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**GLEN COVE  
INDUSTRIAL DEVELOPMENT AGENCY**

**Straight Lease Transaction**

**with**

**ARCADIA LANDING LLC**

**Closing Date: July 6, 2021**

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**GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY**

**STRAIGHT LEASE TRANSACTION**

**with**

**ARCADIA LANDING LLC**

**Closing Date: July 6, 2021**

**Definitions:**

Agency	Glen Cove Industrial Development Agency
Company	Arcadia Landing LLC
Millbrook	Millbrook Realty Group LLC
Guarantors	Timothy H. Sullivan, Joseph Iorio Jr. and Millbrook

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GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY

AND

ARCADIA LANDING LLC

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UNIFORM PROJECT AGREEMENT

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DATED AS OF JULY 1, 2021

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ADDRESS: 100 Breton Way  
CITY: Glen Cove  
TOWN: --  
COUNTY: Nassau  
STATE: New York

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Prepared By:

Phillips Lytle LLP  
1205 Franklin Avenue, Suite 390  
Garden City, NY 11530  
Attention: Milan K. Tyler, Esq.

## UNIFORM PROJECT AGREEMENT

THIS UNIFORM PROJECT AGREEMENT dated as of July 1, 2021 (this "Agreement") by and between the GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at City Hall, 9-13 Glen Street, Glen Cove, NY 11542 (the "Agency"), and ARCADIA LANDING LLC, a limited liability company organized and existing under the laws of the State of New York, having an address at 772 W. Beech Street, Long Beach, NY 11561 (the "Company").

### WITNESSETH:

WHEREAS, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 374 of the 1974 Laws of New York, as amended, constituting Section 919 of said General Municipal Law (said Chapter and the Enabling Act, as in effect as of the Closing Date (as hereinafter defined), being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, the Company submitted an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the construction of an approximately 102,800 square foot building(s) (collectively, the "Building") located on a parcel of land located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the "Land"), and (2) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment" and together with the Land and the Building, collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its affiliates as a multifamily residential facility consisting of approximately 72 age-restricted residential units; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on April 1, 2020 to the chief executive officer of the City of Glen Cove, New York (the “City”) and of each other affected tax jurisdiction within which the Project Facility is or is to be located, and posted a copy of the Application on the Agency’s website; (B) caused notice of the Public Hearing to be published on April 3, 2020 in *Newsday*, a newspaper of general circulation available to residents of the City; (C) caused the Public Hearing to be conducted on April 14, 2020, at 3:30 p.m., local time, via conference call rather than a public hearing open for the public to attend in person because of the restrictions on meetings and gatherings in effect pursuant to Executive Orders issued by the Governor of the State of New York; (D) caused the Public Hearing to be streamed on the Agency’s website in real-time and a recording of the Public Hearing to be posted on the Agency’s website, all in accordance with Section 857 of the Act, as amended; and (E) caused a written report of the Public Hearing to be prepared which fairly summarizes the views presented at the Public Hearing and collected written correspondence from the public (collectively, the “Report”) and distributed the Report to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the New York Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, et. seq., as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), the appropriate personnel of the Agency reviewed the environmental assessment form and other materials submitted by the Company and made any necessary comments to the members of the Agency, and by resolution adopted by the members of the Agency on April 14, 2020, the Agency (A) determined that the City of Glen Cove Planning Board (the “Planning Board”) properly classified the Project as a Type I action, (B) classified the Project as a Type I action, and (C) concurred with the amended negative declaration issued by the Planning Board on September 17, 2019 and adopted as its own the findings contained in such amended negative declaration; and

WHEREAS, by resolution adopted by the members of the Agency on April 14, 2020 (the “Authorizing Resolution”), the Agency, following a review of the Report, determined to proceed with the Project, to grant the Financial Assistance and to enter into the “straight lease transaction” (as such quoted term is defined in the Act) contemplated by this Agreement and the other Transaction Documents (as hereinafter defined); and

WHEREAS, the Agency proposes to appoint the Company as agent of the Agency to complete the acquisition, construction, installation and equipping of the Project Facility, and the Company desires to act as agent of the Agency to complete the acquisition, construction, installation and equipping of the Project Facility, all pursuant to the terms and conditions hereinafter set forth in this Agreement and in the other Transaction Documents; and

WHEREAS, the undertaking of the Project and the granting of the Financial Assistance by the Agency to the Company are for proper purposes, including, without limitation, the advancement of the job opportunities, health, general prosperity and economic welfare of the

inhabitants of the State of New York and the prevention of unemployment and economic deterioration pursuant to the provisions of the Act; and

WHEREAS, the members of the Agency have determined that (A) the granting of the Financial Assistance by the Agency to the Company is necessary to induce the Company to proceed with the Project, and (B) there is a likelihood that the Project would not be undertaken but for the granting of the Financial Assistance by the Agency to the Company; and

WHEREAS, immediately prior to the execution and delivery of this Agreement, the Company will execute and deliver or cause to be executed and delivered to the Agency a bill of sale dated the Closing Date (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in and to the Equipment; and

WHEREAS, the Agency is not acquiring an interest in the portions of the Project Facility constituting real property and no exemption from real property taxes is being granted by the Agency with respect to the Project Facility;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

#### ARTICLE I DEFINITIONS

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

"Act" shall have the meaning assigned to such term in the recitals to this Agreement.

"Administrative Fee" shall have the meaning assigned to such term in Section 5.3(B) of this Agreement.

"Affiliate" of a Person means a Person who directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, such Person. The term "control" means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, or (ii) the ownership, either directly or indirectly, of at least fifty-one percent (51%) of the voting stock or other equity interest of such Person.

"Agency" means (A) the Glen Cove 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 Glen Cove Industrial Development Agency, or its successors or assigns, may be a party.

"Agency Termination Agreement" means the Agency Termination of Project Agreement from the Agency to the Company pursuant to which the Agency terminates this Agreement, substantially in the form attached as Exhibit C to this Agreement.



“Annual Fee” shall have the meaning assigned to such term in Section 5.3(C) of this Agreement.

“Anti-Terrorism Laws” means any applicable laws relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, applicable laws comprising or implementing the Bank Secrecy Act, and applicable laws administered by the United States Treasury Department’s Office of Foreign Asset Control (as any of the foregoing may from time to time be amended, renewed, extended, or replaced).

“Applicable Law” or “Applicable Laws” means, individually or collectively as the context may require, all current and future statutes, codes, laws, acts, ordinances, treaties, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, determinations and requirements, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of the foregoing to be determined both as if the Agency were the owner of an interest in the Project Facility and as if the Company and not the Agency were the owner of an interest in the Project Facility), including but not limited to (1) applicable health, building, zoning, use, rent, accessibility, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, (3) judgments, decrees, orders or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority, and (4) applicable covenants and restrictions relating in any way to the Project Facility.

“Application” shall have the meaning assigned to such term in the recitals to this Agreement.

“Authorizing Resolution” shall have the meaning assigned to such term in the recitals to this Agreement.

“Authorized Representative” means the Person or Persons at the time designated to act on behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Agency or the Company, as the case may be, containing the specimen signature of each such Person and signed on behalf of (A) the Agency by its Chairman, Vice-Chairman, Secretary, Executive Director, Chief Financial Officer or such other Person as may be authorized by resolution of the members of the Agency to act on behalf of the Agency, and (B) the Company by its President or any Vice President, if a corporation, or a member or a manager, if a limited liability company, or a general partner, if a partnership, or such other Person as may be authorized in writing by the members of such limited liability company or by the board of directors of such corporation or by the general partner of such partnership, to act on behalf of the Company, as the case may be.

“Bill of Sale to Agency” shall have the meaning assigned to such term in the recitals to this Agreement.

“Bill of Sale to Company” means the bill of sale from the Agency to the Company, pursuant to which the Agency conveys to the Company all of the Agency’s interest in the Equipment, substantially in the form attached as Exhibit D to this Agreement.

“Building” shall have the meaning assigned to such term in the recitals to this Agreement.

“Business Day” means a day on which banks located in the County are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

“City” means the City of Glen Cove, New York.

“Closing” means the closing at which this Agreement and the other Transaction Documents are executed and delivered by the Company, the Agency and the other parties thereto.

“Closing Date” means the date of the Closing.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

“Collateral” shall have the meaning assigned to such term in Section 5.5 of this Agreement.

“Commissioner” means the Commissioner of Taxation and Finance of the State of New York.

“Company” means ARCADIA LANDING LLC, a limited liability company organized and existing under the laws of the State of New York, and its successors and assigns, to the extent permitted pursuant to this Agreement.

“Company Termination Agreement” means the Company Termination of Project Agreement from the Agency to the Company pursuant to which the Company and the Agency terminate this Agreement, substantially in the form attached as Exhibit F to this Agreement.

“Completion Date” means such date as shall be certified by the Company to the Agency (and accepted by the Agency in its reasonable discretion) as the date of completion of the Project pursuant to Section 4.2 of this Agreement, or such earlier date as the Company shall notify the Agency as being the date of completion of the Project (subject to acceptance thereof by the Agency in its reasonable discretion).

“Compliance Report” shall have the meaning assigned to such term in Section 8.12 of this Agreement.

“Condemnation” means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

“Declaration” shall have the meaning assigned to such term in Section 3.3 of this Agreement.

“Default Interest Rate” means a rate of interest equal to twelve percent (12%) per annum or the maximum rate permitted by applicable law, whichever is less.

“Equipment” shall have the meaning assigned to such term in the recitals to this Agreement and shall include all those materials, machinery, equipment, appliances, fixtures and furnishings intended to be acquired with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of this Agreement, and such substitutions and replacements therefor as may be made from time to time pursuant to this Agreement, including without limitation, all the Property described in Exhibit B attached to this Agreement. “Equipment” shall not include: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, lawns or plants, (v) fine art or other similar decorative items, (vi) motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or similar agency for use on public highways or streets; provided, however, that the term “Equipment” shall exclude any materials, machinery, equipment, appliances, fixtures and furnishings upon their conveyance to the purchaser of an individual residential unit in connection with the sale of such individual residential unit by the Company in the ordinary course of its business.

“Event of Default” means, with respect to any particular Transaction Document, any event specified as an Event of Default pursuant to the provisions thereof.

“Fair Housing Laws” means the Fair Housing Act (42 U.S.C. §360 *et. seq.*), the New York State Human Rights Law (New York Executive Law §290 *et. seq.*), the Nassau County Human Rights Law, and any other federal, state or local code, law, rule or regulation applicable to the Project Facility prohibiting housing discrimination.

“Financial Assistance” means an exemption from all New York State and local sales and use taxes for purchases and rentals of qualifying personal property necessary for the completion of the Project and having a value not exceeding the Maximum Sales Tax Benefit.

“Governmental Authority” means the United States of America, the State, any other state, the County, the City, any political subdivision of any of the foregoing, and any court, tribunal, arbitrator, mediator, agency, department, commission, board, bureau, authority or instrumentality of any of them.

“Gross Proceeds” means one hundred percent (100%) of the proceeds of the transaction with respect to which such term is used, including, but not limited to, the settlement of any insurance or Condemnation award.

“Guarantor” or “Guarantors” shall mean, individually or collectively, as the context may require, Timothy H. Sullivan, Joseph Iorio Jr., and Millbrook Realty Group LLC, a New York limited liability company.

“Guaranty” means the Guaranty dated as of the date hereof by the Guarantors in favor of the Agency.

“Indebtedness” means (1) the monetary obligations of the Company to the Agency or to any of its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, under this Agreement or any of the other Transaction Documents, and (2) all interest accrued on any of the foregoing.

“Land” shall have the meaning assigned to such term in the recitals to this Agreement and is more particularly described in Exhibit A to this Agreement.

“Lien” means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes or a judgment against the Company. The term “Lien” includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including, but not limited to, mechanics’, materialmen’s, landlord’s, warehousemen’s and carriers’ liens and other similar encumbrances affecting real property. For purposes of the Transaction Documents, a Person shall also be deemed to be the owner of any Property that it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

“Maximum Sales Tax Benefit” means \$447,477.00 in the aggregate, with respect to the construction, installation and equipping of the Project Facility.

“Minimum Employment Requirement” shall have the meaning assigned to such term in Section 2.2 of this Agreement.

“Net Proceeds” means so much of the Gross Proceeds with respect to which that term is used as remain after payment of all fees for services, expenses, costs and taxes (including attorneys’ fees) incurred in obtaining such Gross Proceeds.

“Permitted Encumbrances” means (A) Liens for taxes, assessments and utility charges, to the extent permitted by this Agreement, (B) any Lien or encumbrance on the Project Facility obtained through any Transaction Document, (C) subject to obtaining the prior written consent of the Agency, which consent shall not be unreasonably withheld, any Lien or encumbrance necessary for the completion of the Project and the sale of the residential condominium units, and (D) any Lien or encumbrance requested by the Company in writing and consented to by the Agency, which consent may be granted or denied in the Agency’s sole and absolute discretion.

“Person” means an individual, partnership, limited liability company, corporation, trust, unincorporated organization or Governmental Authority.

“Plans and Specifications” means the plans and specifications for the construction, installation and equipping of the Project Facility contemplated by Section 4.1 of this Agreement prepared by the Company’s architect and reviewed by the Agency (solely for the purposes of the granting of the Financial Assistance) and all applicable Governmental Authorities, as the same may be amended, modified, supplemented, restated or replaced from time to time in accordance

with the terms hereof and subject to the review and approval of the Agency (solely for purposes of determining compliance with this Agreement).

“Premises” shall have the meaning assigned to such term in Section 3.1 of this Agreement.

“Prohibited Person” means (i) any Person (A) that is in default or in breach, beyond any applicable grace or cure period, of its obligations under any written agreement with the Agency or the City, or (B) that directly or indirectly controls, is controlled by or is under common control with a Person that is in default or in breach, beyond any applicable grace or cure period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be, and (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

“Project” means that project being undertaken by the Agency consisting of (A) the construction of the Building and related improvements on the Land, (B) the acquisition and installation of the Equipment, and (C) the granting of the Financial Assistance, all as more particularly described in the recitals to this Agreement.

“Project Facility” shall have the meaning assigned to such term in the recitals to this Agreement.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, tangible or intangible.

“Public Hearing” shall have the meaning assigned to such term in the recitals to this Agreement.

“Quarterly Sales Tax Report” shall have the meaning assigned to such term in Section 8.12(C) of this Agreement.

“Recapture Event” shall have the meaning assigned to such term in Section 11.4 of this Agreement.

“Recapture of Benefits” shall have the meaning assigned to such term in Section 11.4 of this Agreement.

“Report” shall have the meaning assigned to such term in the recitals to this Agreement.

“Restricted Party” means any individual or entity (a) listed in the Annex to the Executive Order No. 13224 or is otherwise subject to the provisions of such Executive Order; (b) listed on the “Specially Designated Nationals and Blocked Persons” list maintained by the Office of

Foreign Assets Control (OFAC) of the United States Department of the Treasury, as updated or amended from time to time, or any similar list issued by OFAC; or (c) whose property has been blocked, or is subject to seizure, forfeiture or confiscation, by any order relating to terrorism or money laundering issued by the President, Attorney General, Secretary of State, Secretary of Defense, Secretary of the Treasury or any other U.S. State or Federal governmental official or entity.

“Sales Tax Agency Agreement” shall have the meaning assigned to such term in Section 8.12 of this Agreement.

“Scheduled Completion Date” shall have the meaning assigned to such term in Section 4.2(A) of this Agreement.

“SEQRA” shall have the meaning assigned to such term in the recitals to this Agreement.

“Special Counsel” means the law firm of Phillips Lytle LLP, Garden City, New York, or such other attorney or firm of attorneys located in the State whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and who are acceptable to the Agency.

“State” means the State of New York.

“State Sales and Use Taxes” means sales and compensating use taxes and fees imposed by Article 28 or Article 28-A of the New York State Tax Law, but excluding such taxes imposed in a city by Section 1107 or Section 1108 of such Article 28.

“Stated Expiration Date” shall have the meaning assigned to such term in Section 5.2(A) of this Agreement.

“Stated Sales Tax Expiration Date” shall have the meaning assigned to such term in Section 8.12 of this Agreement.

“Sub-Agency Agency Agreement” shall have the meaning assigned to such term in Section 8.12 of this Agreement.

“Transaction Documents” means this Agreement, the Bill of Sale to Agency, the Guaranty, the Sales Tax Agency Agreement, any Sub-Agent Agency Agreement, and all other instruments, agreements, certificates and documents related thereto and executed in connection therewith, and any other instrument, agreement, certificate or document supplemental thereto.

“UCC” shall have the meaning assigned to such term in Section 5.5 of this Agreement.

“Unassigned Rights” means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.1, 3.2, 4.1(D), 4.1(E), 4.1(F), 4.1(G), 5.2 (A), 5.3 (C), 5.4, 5.5, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.12, 8.13, 8.14, 9.1, 11.2, 11.4, 12.4, 12.7 and 12.9 of this Agreement, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents, servants and employees, past, present and future, of the Agency for their own account pursuant to Sections 2.2(G), 3.1, 4.1, 5.3, 5.4, 8.2, 8.9, 8.12, 9.1, 10.2, 10.4, 11.2 and 11.4 of this

Agreement, (C) the right of the Agency in its own behalf to enforce the obligation of the Company to complete the Project and to confirm the qualification of the Project as a "project" under the Act, and (D) the right to enforce the foregoing pursuant to Section 5.5 and Article X of this Agreement.

SECTION 1.2 INTERPRETATION. In this Agreement, unless the context otherwise requires:

(A) the terms "hereby", "hereof", "herein", "hereunder" and any similar terms as used in this Agreement, refer to this Agreement, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the Closing Date;

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) words importing the singular number shall mean and include the plural number, and vice versa;

(D) words importing persons shall include firms, associations, partnerships, trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons;

(E) any certificates, letters or opinions required to be given pursuant to this Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Agreement; and

(F) references to documents, instruments or agreements shall mean such documents, instruments and agreements as they may be amended, modified, renewed, replaced or restated from time to time in accordance with the terms hereof.

## ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.1 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE AGENCY. The Agency makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Agency is duly established under the provisions of the Act and has the power to enter into this Agreement and the other Transaction Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder. Based upon the representations of the Company, the Project will constitute a "project", as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute, deliver and perform this Agreement and the other Transaction Documents to which the Agency is a party.

(B) Neither the execution and delivery of this Agreement or the other Transaction Documents to which the Agency is a party, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the provisions of this

Agreement or the other Transaction Documents to which the Agency is a party will conflict with or result in a breach by the Agency of any of the terms, conditions or provisions of the Act, the by-laws of the Agency or any order, judgment, agreement or instrument to which the Agency is a party or by which the Agency is bound, nor will constitute a default by the Agency under any of the foregoing.

(C) Except as provided in Articles IX, X and XI hereof, the Agency, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the Project Facility or any part thereof and shall maintain the Project Facility free and clear of all liens or encumbrances created by the Agency, except as contemplated or permitted by the terms of this Agreement and the other Transaction Documents.

SECTION 2.2 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, is qualified and authorized to do business as a foreign limited liability company in all other jurisdictions in which its operations or ownership of its Properties so require, and has the power to enter into this Agreement and the other Transaction Documents to which the Company is a party and to carry out its obligations hereunder and thereunder. By proper action of its Manager-Related Member, the Company has been duly authorized to execute, deliver and perform this Agreement and the other Transaction Documents to which the Company is a party. No other consent, approval or action by the members or the managers of the Company or any other consent or approval (governmental or otherwise) or the taking of any other action is required as a condition to the validity or enforceability of this Agreement or any of the other Transaction Documents.

(B) Neither the execution and delivery of this Agreement or any of the other Transaction Documents to which the Company is a party, the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the provisions of this Agreement or the other Transaction Documents to which the Company is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Company's articles of organization or operating agreement or any other company restriction, order, judgment, agreement, document or instrument to which the Company is a party or by which the Company or any of its Property is bound, or constitute a default by the Company under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon the Project Facility under the terms of any of the foregoing, other than Permitted Encumbrances, (2) to the best of the Company's knowledge, conflict with or result in a violation of Applicable Laws, (3) require consent or approval (which has not been heretofore received and provided to the Agency) under any company restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) require consent or approval (which has not been heretofore obtained and provided to the Agency) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any Governmental Authority having jurisdiction over the Company or any of the Property of the Company.



(C) The undertaking and completion of the Project by the Company as agent of the Agency and the operation of the Project Facility by the Company will not result in the removal of a facility or plant of the Company from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company located in the State. Therefore, the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Financial Assistance by the Agency to the Company.

(D) The Project Facility does not and will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project. For purposes of this representation, "retail sales" shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of Section 1101 of the New York Tax Law; or (ii) sales of a service to such customers.

(E) The Transaction Documents to which the Company is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid, legal and binding obligations of the Company, enforceable in accordance with their respective terms.

(F) The Project Facility constitutes a commercial facility and is not a retail facility and the Project will advance the Agency's purposes by promoting job opportunities and preventing economic deterioration in the City. The Project Facility is, and so long as this Agreement shall remain in effect, the Project Facility will continue to be a "project", as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action), or allow any action to be taken or not taken, which action, inaction or omission would in any way cause the Project Facility not to constitute a "project", as such quoted term is defined in the Act.

(G) The Project Facility and the operation thereof will comply in all material respects with all Applicable Laws, and the Company will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure, or alleged failure, to comply with all Applicable Laws. The Company shall cause all notices as required by all Applicable Laws to be given, and shall comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project or the operation of the Project Facility, and the Company will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future harmless, from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure, or alleged failure, to comply therewith; provided that such claims, liabilities, damages, fees, expenses, fines and penalties of the Agency are not incurred or do not result solely from the intentional wrongdoing or gross negligence of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees. Except as set forth in the preceding sentence, the foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members,

agents (other than the Company), attorneys, servants or employees, and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(H) The Project will not have a “significant adverse environmental impact” (as such term is used in SEQRA) and the Company hereby covenants to comply with all mitigating measures, requirements and conditions enumerated or referenced in the resolution adopted by the Agency on April 14, 2020 under SEQRA applicable to the acquisition, construction, installation, equipping and operation of the Project Facility contemplated by Section 4.1 of this Agreement and in any other approvals issued by any other Governmental Authority with respect to the Project Facility. No material changes with respect to any aspect of the Project Facility have arisen from the date of the adoption of such resolution which would cause the determinations contained therein to be untrue.

(I) There are no actions, suits, investigations or proceedings of or before any Governmental Authority, pending or threatened against the Company or any of its Property which (i) either in any case or in the aggregate, if adversely determined, would materially, adversely affect the business, operations or condition, financial or otherwise, of the Company, or (ii) question the validity of any of the Transaction Documents or any action to be taken in connection with the transactions contemplated thereby.

(J) The Company is not in default with respect to any order, writ, injunction or decree of any Governmental Authority, or in material violation of any law, statute or regulation, domestic or foreign, to which the Company or any of its Property is subject.

(K) The undertaking of the Project by the Agency and the granting of the Financial Assistance have induced the Company to proceed with the Project in the City. The granting of the Financial Assistance by the Agency with respect to the Project Facility, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the City and the State and improve their prosperity and standard of living, and will prevent unemployment and economic deterioration and thereby serve the public purposes of the Act.

(L) The Company shall (i) create at least 0.5 new, full-time equivalent, private sector employees in the State of New York as described in the Application and maintain such jobs throughout the term of this Agreement within one (1) month after the Scheduled Completion Date, which job shall, at all applicable times during the term of this Agreement, be located at the Project Facility, and (ii) create at least fifty-five (55) new, full-time equivalent, private sector, construction jobs during the period from the date of the Authorizing Resolution until the Completion Date with respect to the construction, installation and equipping of the Project Facility (collectively, the “Minimum Employment Requirement”); it being understood and agreed that such construction jobs may exist at different times during the construction, installation and equipping of the Project Facility such that there may not be a point when the total number of construction full-time equivalent jobs will equal the Minimum Employment Requirement.

(M) The funds available to the Company are sufficient to pay all costs in connection with the completion of the Project.

(N) The Company is not a Prohibited Person, no Guarantor is a Prohibited Person, no Affiliate of the Company or any Guarantor is a Prohibited Person, and no member, manager, shareholder or director, as the case may be, of the Company is a Prohibited Person.

(O) Neither this Agreement nor any other Transaction Document nor any other document, certificate, agreement or instrument furnished to the Agency by or on behalf of the Company or any Guarantor contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading.

(P) No funds of the Agency shall be used in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(Q) The Company is, and, shall at all times during the term of this Agreement, continue to be owned solely by Arcadia Landing MM LLC ("Arcadia Landing"), Landing Cove Investors LLC ("Landing Cove"), MRG Glen Cove LLC ("MRG"), Arcadia Breton Hills LLC ("Breton"), and certain other member or members owning less than ten percent (10%) of the membership interest in the Company, and the Guarantors shall at all times maintain day-to-day control of the Company. Notwithstanding the foregoing, (1) the principals of the Company may transfer their interests in the Company to their Affiliates and amongst themselves and/or transfer, in the aggregate, less than fifty (50%) of the membership interest in the Company without the consent of the Agency (but upon reasonable prior written notice to the Agency), provided that the Guarantors shall at all times maintain day-to-day control of the Company, and (2) the Agency shall not unreasonably withhold its consent to a sale of all or a majority of the interest in the Company to a third party.

(R) The Project Facility is located entirely within the boundaries of the City of Glen Cove, Nassau County, New York, is not located in whole or in part within the boundaries of any incorporated village, and is located only within the Glen Cove City School District.

(S) The total cost to complete the Project is at least \$10,276,295.

(T) The Company has not conveyed (except for contracts of sale with respect to individual residential units in the ordinary course of its business), assigned, transferred, mortgaged, hypothecated, pledged or granted a security interest in its interest in the Project Facility pursuant to a mortgage, security agreement, pledge or other agreement that prohibits the Company from executing and delivering this Agreement or any other Transaction Document or, if that is the case, the Company has received the consent in writing of the holder of any such mortgage, security agreement, pledge or agreement for the Company to enter into this Agreement and the other Transaction Documents and has provided a copy of such consent to the Agency. The Company covenants and agrees that it shall not enter into a mortgage, security agreement, pledge or other agreement under which the execution and delivery of this Agreement or any other Transaction Document would constitute a default.

(U) Neither the Company, any Guarantor, nor any Affiliate of the Company or any Guarantor has employed or retained any appointed or elected governmental official to solicit or secure the Agency's undertaking of the Project or its agreement to enter into this Agreement or any other Transaction Document upon an agreement of understanding for a commission or percentage, brokerage or contingent fee.

(V) The undertaking of the Project by the Agency, the appointment of the Company as agent of the Agency and the granting of the Financial Assistance will cause the Company to undertake and complete the Project.

(W) The owner, occupant or operator receiving Financial Assistance hereby certifies, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

(X) The Project is in substantial compliance with all provisions of the Act, including, but not limited to, the provisions of Section 859-a and 862(1) thereof.

### ARTICLE III CONVEYANCE AND USE OF PROJECT FACILITY

SECTION 3.1 CONVEYANCE TO THE AGENCY. (A) Pursuant to the Bill of Sale to Agency, the Company has conveyed or will convey to the Agency all of its right, title and interest in and to the Equipment for the purpose of undertaking and completing the Project. The Company hereby represents and warrants that it has a good and valid fee title to the Land and the Building (together, the "Premises"), and agrees that the Company will defend (with counsel selected by the Agency), indemnify and hold the Agency harmless from any expense or liability due to any defect in title thereto.

(A) The Company and the Agency acknowledge that the Project Facility and the interest therein conveyed to the Agency pursuant to the Transaction Documents are not "property" as defined in Title 5-A of the Public Authorities Law of the State because such property and the interests therein are security for the Company's obligations to the Agency under this Agreement and the other Transaction Documents, including, without limitation, (i) the Company's obligation to undertake the Project on behalf of the Agency, and (ii) the performance by the Company to the Agency of the Company's other obligations under this Agreement and the other Transaction Documents.

SECTION 3.2 USE OF PROJECT FACILITY. The Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Transaction Documents, provided such use causes the Project Facility to qualify or to continue to qualify as a "project" under the Act and does not tend, in the reasonable judgment of the Agency, to bring the Project into disrepute as a public project; provided, further, however, that at no time shall any such use be other than as a multifamily age-restricted (55 and over) residential condominium facility, together with uses incidental thereto, except with the prior written consent of the Agency, which consent may be withheld in the Agency's sole and absolute discretion. Notwithstanding anything to the contrary contained herein or in any other Transaction Document, in the event that

residential condominium units are sold to bona fide thirty-party purchasers prior to the completion of the construction, installation and equipping of the Project Facility, the Agency shall, at the Company's sole expense, (a) terminate the security interest created by the Transaction Documents and release such unit or units from any Uniform Commercial Code filings made against same in which the Agency is the secured party, and (b) deliver to the Company a bill of sale conveying all Equipment in the subject residential unit being sold. The Company shall not occupy, use or operate the Project Facility, or any part thereof, or permit or suffer the Project Facility, or any part thereof, to be occupied, used or operated (1) for any unlawful purpose, or (2) in violation of any certificate of occupancy affecting the Project Facility, or (3) for any use that constitutes a nuisance, public or private, or (4) for any use that makes void or voidable any insurance then in force with respect thereto, or (5) for any use, occupancy or operation of the Project Facility that would be in violation of Applicable Laws. All permits and licenses necessary for the operation of the Project Facility as contemplated by this Section 3.2 shall be procured promptly by the Company. Any provision of this Agreement to the contrary notwithstanding, the Company shall be liable at all times for all risk, loss and damage with respect to the Project Facility.

SECTION 3.3 CONDOMINIUM DECLARATION; FAIR HOUSING. The Company agrees to (i) record the Condominium Declaration with respect to the Project Facility (the "Declaration") in the Office of the County Clerk of Nassau County, New York within sixty (60) days after the Closing Date (subject to extension in the reasonable discretion of the Agency), which Declaration shall be in form and substance reasonably satisfactory to the Agency, and (ii) comply with all of the terms and provisions of the Declaration at all times during the term of this Agreement.

The Company covenants and agrees that: (a) pursuant to the Declaration, the residential housing units within the Project Facility will be restricted to "housing for older persons" within the meaning of the federal Fair Housing Act (42 U.S.C. §360 *et. seq.*) because such units are intended for and shall be operated for occupancy by persons 55 years of age or older; (b) the criterion set forth in the foregoing clause (a) will be the sole eligibility criterion with respect to the residential housing units in the Project Facility; (c) the eligibility criterion for residential units in the Project Facility will not include any residency requirements or preferences (including durational requirements or preferences), age restrictions or other criteria that are discriminatory in violation of Fair Housing Laws.

The Company represents and warrants that no provision of any applicable city, county or other governmental code, law, rule, regulation, resolution or any restrictive covenant, permit or approval applicable to the Project Facility contains any requirement, restriction, criteria or preference with respect to the eligibility for, or the selection of tenants for, the residential units other than criterion set forth in the foregoing clause (a). Furthermore, the Company represents and warrants that the Project Facility, as proposed, will comply with all Fair Housing Laws.

The Company covenants and agrees that the provisions of the Declaration will comply with all Fair Housing Laws.

ARTICLE IV  
UNDERTAKING AND COMPLETION OF THE PROJECT

SECTION 4.1 UNDERTAKING OF THE PROJECT.

(A) The Company shall, on behalf of the Agency, promptly acquire, construct, install and equip the Project Facility, or cause the acquisition, construction, installation and equipping of the Project Facility, and shall acquire all Equipment necessary for completion of the Project Facility, all in accordance with the Plans and Specifications, in a first-class, workmanlike manner using high grade materials, free of material defects in materials and workmanship. Notwithstanding the foregoing, the Company shall not, at any time during the term of this Agreement, construct any new structure on the Land (other than the Building) or construct an addition to or otherwise increase the useable square footage of the Building depicted in the Plans and Specifications or otherwise construct any additional improvements on the Land without the prior written consent of the Agency, not to be unreasonably withheld, conditioned or delayed.

(B) No material change in the Plans and Specifications shall be made unless the Agency shall have consented thereto in writing (which consent shall not be unreasonably withheld or delayed). Interior changes and non-structural changes to the residential condominium units shall be deemed non-material.

(C) Title to all materials, equipment, machinery and other items of Property presently incorporated or installed in and which are a part of the Project Facility that are or were purchased utilizing the sales and use tax exemption granted pursuant to this Agreement shall vest in the Agency immediately upon execution of the Bill of Sale to Agency, subject to only to Permitted Encumbrances. Title to all materials, appliances, equipment, machinery and other items of Property acquired subsequent to the Closing Date and intended to be incorporated or installed in and to become part of the Project Facility that are purchased utilizing the sales and use tax exemption granted pursuant to this Agreement shall vest in the Agency immediately upon deposit in the Premises or incorporation or installation in the Project Facility, whichever shall first occur. The Company shall execute, deliver and record or file (or cause to be executed, delivered, recorded and/or filed) all instruments necessary or appropriate to vest title to the above in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(D) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1; provided, however, that the liability of the Agency thereunder shall be limited to the moneys of the Company available therefor and advanced by the Company for such purpose pursuant to Section 4.1(H) of this Agreement.

(E) The Agency hereby appoints the Company, and the Company hereby accepts such appointment, as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Transaction Documents: (1) to undertake the Project, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be required or proper, all for the undertaking and completion of the Project, with the same powers and with the

same validity as the Agency could do if acting in its own behalf, provided that the liability of the Agency thereunder shall be limited to the moneys made available therefore by the Company and advanced for such purposes by the Company pursuant to Section 4.1(H) of this Agreement, (3) to pay all fees, costs and expenses incurred in undertaking and completing the Project from funds made available therefor in accordance with this Agreement, and (4) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt, writing or instruction in connection with the Project and to enforce the provisions of any contract, agreement, obligation, bond or other performance security in connection with the same.

(F) The Company has given or will give or cause to be given all notices and has complied and will comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project Facility, and the Company will defend (with counsel selected by the Agency), indemnify and save the Agency and its officers, members, agents, attorneys, servants and employees, past, present and future, harmless from all fees, expenses, fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(G) The Company shall not take any action, or neglect to take any action, including, without limitation, the employment of any contractor, if such action or inaction would result in jurisdictional disputes or strikes or labor disharmony in connection with the Project.

(H) The Company agrees, for the benefit of the Agency, to undertake and complete the Project and to pay all such sums as may be required in connection therewith. Title to portions of the Equipment acquired, constructed and installed utilizing the sales and use tax exemption granted pursuant to this Agreement shall immediately upon such acquisition, construction or installation vest in the Agency, subject only to Permitted Encumbrances. The Company shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's interest in and to such portions of the Equipment.

(I) No payment by the Company pursuant to this Section 4.1 shall entitle the Company to any reimbursement for any such expenditure from the Agency or to any diminution or abatement of any amounts payable by the Company under this Agreement.

(J) The Company agrees, (i) at the sole expense of the Company, to erect signage at the Project Facility during the construction, installation and equipping of the Project Facility, which signage shall be in form and content reasonably satisfactory to the Agency and shall identify the Agency and its role in the Project, (ii) at the option of the Agency and at the sole expense of the Company, to install within the Project Facility a sign or plaque permanently memorializing the Agency's role in the Project, which sign or plaque shall be in form, content and placed in a location satisfactory to the Agency, and (iii) that the Agency may otherwise publicize the Agency's role in the Project.

(K) Intentionally omitted.

(L) Intentionally omitted.

(M) The Company shall furnish to the Agency all information and/or documentation requested by the Agency pursuant to this Section 4.1 and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section 4.1.

(N) The Company covenants and agrees to make a total investment (whether sourced from debt and/or equity) in the Project Facility as of the Scheduled Completion Date in an amount not less than \$9,248,665.50 (which represents the product of (1) 0.90 and (2) the sum of \$10,276,295 being the total project costs as stated in the Application. The Company shall provide written documentation of such investment, in form and substance reasonably satisfactory to the Agency, no later than February 11th of the calendar year following the Scheduled Completion Date. This provision shall survive the expiration or earlier termination of this Agreement.

#### SECTION 4.2 COMPLETION OF THE PROJECT FACILITY; FEES.

(A) The Company will proceed with due diligence to commence construction, installation and equipping of the Project Facility in accordance with Section 4.1 of this Agreement within thirty (30) days after the Closing Date and shall proceed with due diligence to complete the construction, installation and equipping of the Project Facility on or before December 31, 2023 (the "Scheduled Completion Date"). Completion of the Project Facility shall be evidenced by a certificate signed by an Authorized Representative of the Company delivered to the Agency stating (A) the date of such completion, (B) that all labor, services, materials and supplies used therefor and all costs and expenses in connection therewith have been paid, (C) that the acquisition, construction, installation and equipping of the Project Facility have been completed in a good and workmanlike manner, (D) that the Company and the Agency have good and valid interests in and to all Property constituting a portion of the Equipment, free and clear of all Liens and encumbrances except Permitted Encumbrances, and (E) that the Project Facility are ready for occupancy, use and operation for its intended purposes.

(B) The Company shall pay or cause the residential condominium unit purchasers to pay within the time periods required by applicable Governmental Authorities, all Planning Board and construction related and other fees for the Project, including, without limitation, building permit fees, plumbing fixture permit fees, recreation fees, site planning fees, municipal consultant review fees, special use fees, variance fees, sewer hook up fees, water service installation fees and fire line fees, if any.

SECTION 4.3 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES. In the event of a default by any contractor, subcontractor or materialman under any contract made by it in connection with the Project or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company and the Agency against the contractor, subcontractor or materialman so in default and against each surety for the performance of such contract. The Company may, in its own name or, with the prior written consent of the Agency, which consent shall not be unreasonably withheld, in the name of the Agency, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety which the Company deems reasonably



necessary, and in such event the Agency hereby agrees, at the Company's sole expense, to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Company shall advise the Agency of any actions or proceedings taken hereunder. The Net Proceeds of any recovery secured by the Company as a result of any action pursued against a contractor, subcontractor, materialman or their sureties pursuant to this Section 4.3 shall be used to the extent necessary to complete the Project Facility then to pay all reasonable costs and expenses incurred by the Agency in connection therewith, and thereafter be paid to the Company for its own use.

SECTION 4.4 PURPOSE OF THE PROJECT. It is understood and agreed by the Agency and the Company that the purposes of the granting of the Financial Assistance are to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of the Project Facility to advance the job opportunities, health, general prosperity and economic welfare of the people of the City and the State, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration, and to otherwise accomplish the purposes of the Act.

#### ARTICLE V TERM AND AMOUNTS PAYABLE

SECTION 5.1 RESERVED.

SECTION 5.2 DURATION OF THE TERM.

(A) The term of this Agreement shall commence on the Closing Date and shall expire and terminate at 12:00 a.m. on the earlier to occur of (1) December 31, 2023 (the "Stated Expiration Date"), and (2) the date that this Agreement shall terminate pursuant to Article X or Article XI hereof.

SECTION 5.3 AMOUNTS PAYABLE.

(A) The Company shall pay on the date of execution and delivery of this Agreement, as the basic project payments due hereunder: (1) the sum of \$1.00, (2) all reasonable fees and expenses of counsel to the Agency and Special Counsel with respect to the Project, and (3) all other actual costs and expenses incurred by the Agency in connection with the transactions contemplated by this Agreement and the other Transaction Documents

(B) The Company agrees to pay to the Agency the following fee: (1) a closing compliance fee in the amount of \$2,500, (2) an Agency administrative fee in the amount of \$17,391.00, with respect to the Project, and (3) the Agency's transaction counsel fee (collectively, the "Administrative Fee"). The Administrative Fee is due and payable by the Company to the Agency on the Closing Date. The Administrative Fee is non-refundable and is deemed earned in full upon the execution and delivery of this Agreement.

(C) The Agency shall invoice and the Company agrees to pay or cause to be paid to the Agency an annual administrative fee, currently in the amount of \$1,000, subject to adjustment from time to time (the "Annual Fee"). The Annual Fee for the first year of the lease term or part thereof (i.e., 2021) shall be due and payable on the Closing Date and the Annual Fee

for each year thereafter (i.e., 2022 and thereafter) shall be due and payable, in advance, on January 1 of each year.

(D) Within fifteen (15) days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency the sum of the reasonable costs and expenses of the Agency and the officers, members, agents, attorneys, servants and employees thereof, past, present and future, incurred by reason of the Agency's undertaking of the Project or in connection with the carrying out of the Agency's duties and obligations under this Agreement or any of the other Transaction Documents, and any other fee or expense of the Agency with respect to the Project Facility or any of the other Transaction Documents, the payment of which is not otherwise provided for under this Agreement.

(E) The Company agrees to make the above-mentioned payments in immediately available funds, without any further notice or demand, by wire transfer or other form of payment satisfactory to the Agency, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to make any payment required by this Section 5.3 within ten (10) days of the date such payment is due, the Company shall pay the same, together with interest thereon at the Default Interest Rate, from the date on which such payment was due until the date on which such payment is received by the Agency.

#### SECTION 5.4 NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER.

(A) The obligations of the Company to make the payments required by this Agreement and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Company and shall be absolute and unconditional irrespective of any defense or any right of setoff, recoupment, counterclaim or abatement that the Company may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in, this Agreement, or terminate this Agreement (except as set forth in Section 11.1 hereof), for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the Project, any defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Company's purposes or needs, failure of consideration for, destruction of or damage to, Condemnation of or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Agreement.

(B) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part expressly contained in this Agreement, and, in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance (subject to the provisions of Section 12.9 hereof); provided, however, that the Company shall look solely to the Agency's estate and interest in the Project Facility for the satisfaction of any right or remedy of the

Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Agency in the event of any liability on the part of the Agency, and no other Property or assets of the Agency or of the members, officers, agents (other than the Company), servants or employees, past, present and future, of the Agency shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Agreement, the relationship of the Agency and the Company hereunder or the Company's use and occupancy to the Project Facility, or any other liability of the Agency to the Company.

SECTION 5.5 GRANT OF SECURITY INTEREST. This Agreement shall constitute a "security agreement", as such term is defined in the Uniform Commercial Code adopted in the State, as the same may from time to time be in effect (the "UCC"). The Company hereby grants the Agency a first-priority security interest in all of the right, title and interest of the Company in the materials, machinery, equipment, appliances, trade fixtures, fixtures, furniture, furnishings and other tangible personal property acquired by or on behalf of the Company using the Sales Tax Agency Agreement and/or any Sub-Agent Agency Agreement, and in all additions and accessions thereto, all replacements and substitutions therefor, all books, records and accounts of the Company pertaining to the Project Facility, and all proceeds and products thereof (collectively, the "Collateral"), as security for payment of the rental payments and all other payments and obligations of the Company hereunder, and the Agency is authorized to file financing statements with respect to such Collateral without the Company executing the same. If an Event of Default shall occur under this Agreement or any other Transaction Document, the Agency shall have, in addition to any and all other rights and remedies set forth in this Agreement, and may exercise without demand, any and all rights and remedies granted to a secured party under the UCC, including, but not limited to, the right to take possession of the Equipment and any fixtures or other personal property that constitute part of the Collateral, and the right to advertise and sell the same, or any part thereof, pursuant to and in accordance with the UCC. The Company agrees that any notice of public or private sale with respect to such Collateral, or any part thereof, shall constitute reasonable notice if it is sent to the Company not less than ten (10) days prior to the date of any such sale. The Company hereby irrevocably appoints the Agency as its attorney-in-fact to execute, deliver and/or file any instruments or statements necessary or convenient to perfect and continue the security interest granted herein.

## ARTICLE VI MAINTENANCE AND MODIFICATIONS; INSURANCE

### SECTION 6.1 MAINTENANCE AND MODIFICATIONS OF THE PROJECT FACILITY.

(A) The Company shall (1) keep the Project Facility in good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (2) occupy, use and operate the Project Facility, and shall cause the Project Facility to be occupied, used and operated, in the manner for which it was intended and contemplated by this Agreement, (3) make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural,

foreseen or unforeseen), (4) operate the Project Facility in a sound and economical manner, (5) not abandon the Project Facility, and (6) not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Equipment, or any part thereof, or the interest of the Agency or the Company in the Equipment or this Agreement, except for Permitted Encumbrances. The Agency shall have no obligation to replace, maintain or effect replacements, renewals or repairs of the Project Facility, or to furnish any utilities or services for the Project Facility and the Company hereby agrees to assume full responsibility therefor.

(B) The Company has given or will give or cause to be given all notices and has complied or will comply or cause compliance with all Applicable Laws applying to or affecting the operation of the Project Facility, and the Company will defend (with counsel selected by the Agency), indemnify and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from all fees, expenses, fines and penalties due to failure to comply therewith.

(C) Any provision of this Agreement to the contrary notwithstanding, the Company shall not construct any new building or structure on the Land (other than the Building) or any addition to any existing building on the Land, without the prior written consent of the Agency, which consent may be withheld in the Agency's sole and absolute discretion.

#### SECTION 6.2 RESERVED.

SECTION 6.3 INSURANCE REQUIRED. During the term of this Agreement, the Company shall maintain or cause to be maintained insurance with respect to the Project Facility against such risks and liabilities and for such amounts as are, in the Agency's reasonable judgment, customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(A) Insurance protecting the interests of the Company, as insured, and the Agency, as loss payee, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils embraced by a so-called "Special Form" policy of property insurance, in amounts sufficient to prevent the Company and the Agency from becoming a co-insurer under such policy and not less than 100% of the replacement cost of the Project Facility, without deduction for depreciation, and including coverage against acts of terrorism. Additionally, during any period in which construction work or alterations are being performed at the Project Facility, the Company shall maintain "Special Form" property insurance in the form of a "Builder's Risk" completed value non-reporting policy in an amount reasonably satisfactory to the Agency and which shall contain a provision granting the insured permission to complete and/or occupy.

(B) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance which 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 Project Facility or who are responsible for the acquisition, construction, installation and equipping of the Project Facility.

(C) Commercial general liability insurance protecting the Company, as insured, and the Agency, as additional insured, against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Company under Section 8.2 of this Agreement), or arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000.00 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000.00 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, and a separate umbrella liability policy protecting the Company, as insured, and the Agency, as additional insured, with a limit of not less than \$10,000,000.00, as said amounts may be adjusted by the Agency from time to time in its sole and absolute discretion.

(D) During any period of construction, renovation, improvement or reconstruction, to the extent not covered by the general liability insurance set forth in Subsection (C) above, Owners & Contractors Liability insurance for the benefit of the Company and the Agency in a minimum amount of \$2,000,000.00 aggregate coverage for personal injury and property damage.

(E) Boiler and machine property damage insurance in respect of any steam and pressure boilers and similar apparatus, insuring risks normally insured against under boiler and machinery policies and in amounts and with deductibles customarily obtained for similar enterprises.

(F) A policy or policies of flood insurance in an amount not less than the maximum amount of flood insurance available with respect to the Project Facility under the Flood Disaster Protection Act of 1973, as amended. The requirements of this Subsection (F) shall be waived upon presentation of evidence satisfactory to the Agency that no portion of the Project Facility is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

(G) Such other insurance in such amounts and against such insurable hazards and risks as the Agency from time to time may reasonably require, including, without limitation, environmental hazard and liability insurance.

(H) The foregoing amounts may be adjusted by the Agency from time to time to account for inflation.

#### SECTION 6.4 ADDITIONAL PROVISIONS RESPECTING INSURANCE.

(A) All insurance required by Section 6.3 hereof 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 and reasonably satisfactory and having an A.M. Best rating reasonably satisfactory to the Agency. Such insurance may be written with 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 and shall provide that such insurance shall be without any right of

contribution from any other insurance carried by the Agency. All policies evidencing such insurance shall name the Company, as insured, and the Agency, as additional insured, with respect to liabilities policies and name the Agency as loss payee with respect to casualty policies (subject to the insurance provisions of the Bank Mortgage), and provide for at least thirty (30) days' written notice to the Company and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. All insurance required hereunder shall be in form, content and coverage reasonably satisfactory to the Agency. Certificates reasonably satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. At least thirty (30) days prior to the expiration of any such policy, the Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement.

(B) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid or cause to be paid by the Company; provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest thereon at the Default Interest Rate.

(C) In the event of construction, reconstruction, improvement or renovation of any part of the Project Facility, the Company shall require its contractors and subcontractors, if any, to name the Agency as additional insured on liability policies carried by such contractors or subcontractors with respect to their operations at the Premises or with respect to the Project.

(D) Each of the policies evidencing the insurance required by Section 6.3 of this Agreement shall provide that: (i) there shall be no recourse against the Agency for the payment of premiums or commissions or, if such policies provide for the payment thereof, additional premiums or assessments; (ii) in respect of the interest of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Company or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding, any such action or inaction; (iii) if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or if there shall occur any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency until at least thirty (30) days after receipt by the Agency of written notice by such insurers of such cancellation, lapse, expiration, reduction or change (except for cancellation for nonpayment of premium for which ten (10) days' notice of cancellation shall be given to the Agency); and (iv) with respect to the property insurance only, the insurers waive subrogation thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or other deduction, in respect of any liability of any Person insured under such policy.

(E) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE COMPANY'S BUSINESS OR INTEREST IN THE PROJECT FACILITY.

SECTION 6.5 RESERVED.

ARTICLE VII  
RESERVED

ARTICLE VIII  
SPECIAL COVENANTS

SECTION 8.1 NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS". THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT THE PROJECT FACILITY "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE AGENCY FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

SECTION 8.2 HOLD HARMLESS PROVISIONS.

(A) The Company hereby releases the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, from, agrees that the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, shall not be liable for and agrees to indemnify, defend (with counsel selected by the Agency) and hold the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising directly or indirectly as a result of the Agency's undertaking the Project, including, but not limited to: (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project or the Project Facility or arising by reason of or in connection with the occupancy or the use thereof or the presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning, leasing, subleasing, sub-subleasing or selling the Project Facility or arising from or incurred based on the Agency's involvement in the Project Facility, including, without limiting the generality of the foregoing, (i) all liabilities or claims arising as a result of the Agency's obligations under this Agreement or any of the other Transaction Documents or the enforcement of or defense of validity of any provision of any of the Transaction Documents, and (ii) all liabilities or claims arising as a result of the Agency's

involvement in the Project or the granting of the Financial Assistance, (3) all liabilities and expenses arising from the failure or alleged failure of the Project Facility, the Company or the Company's members, managers, shareholders, directors, officers, agents, attorneys, servants or employees to comply with Applicable Laws, including, without limitation, any claim that the Agency aided or abetted in such failure or alleged failure to comply with Applicable Laws, (4) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Section 4.1(E) of this Agreement, and (5) all causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the intentional wrongdoing or the gross negligence of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company), attorneys, servants or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(B) In the event of any claim against the Agency or its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(C) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure its liabilities assumed pursuant to this Section 8.2 in the liability policies required by Section 6.3(C) of this Agreement.

(D) Notwithstanding any other provisions of this Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination or expiration of this Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency or its members, agents (other than the Company), attorneys, servants or employees, past, present or future, relating thereto.

**SECTION 8.3 RIGHT OF ACCESS TO THE PROJECT FACILITY.** The Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to enter upon and to examine and inspect the Project Facility; provided, however, that no such notice shall be required in the event of an emergency or if an Event of Default has occurred and is continuing under this Agreement. The Company further agrees that the Agency shall have such rights of access to the Project Facility (subject to the provisions of the immediately preceding sentence of this Section) as may be reasonably necessary to cause the proper maintenance of the Project Facility in the event of failure by the Company to perform its obligations hereunder, but the exercise of such right shall in no event be



construed to mean that the Agency has assumed any obligation hereunder to perform such maintenance.

SECTION 8.4 COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS. The Company agrees that, during the term of this Agreement, it (A) will maintain its limited liability company existence as in effect on the Closing Date, (B) will not dissolve or otherwise dispose of all or substantially all of its assets, and (C) will not consolidate with or merge into another limited liability company or other Person, or permit one or more limited liability companies or other Persons to consolidate with or merge into it, without giving prior written notice to the Agency and obtaining the consent of the Agency. The Company agrees that it will not change its name or its state of organization without giving prior written notice to the Agency and obtaining the consent of the Agency, which consent shall not be unreasonably withheld or delayed.

SECTION 8.6 AGREEMENT TO PROVIDE INFORMATION. The Company agrees, whenever reasonably requested by the Agency, to promptly provide and certify or cause to be provided and certified such information concerning the Project Facility, the Company, the Guarantors and/or the Company's or any Guarantor's finances, operations and affairs and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by Applicable Laws or other governmental regulation or to ensure compliance with the provisions of this Agreement and the other Transaction Documents.

SECTION 8.7 BOOKS OF RECORD AND ACCOUNT; COMPLIANCE CERTIFICATES.

(A) The Company agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company.

(B) Within thirty (30) days after the end of each fiscal year of the Company, the Company shall furnish to the Agency a certificate of an Authorized Representative of the Company stating that no Event of Default hereunder or under any other Transaction Document has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the Company has taken or proposes to take with respect thereto. The Company represents to the Agency that the Company's fiscal year ends on December 31st.

SECTION 8.8 COMPLIANCE WITH APPLICABLE LAWS.

(A) The Company agrees, for the benefit of the Agency, that it will, during the term of this Agreement, promptly comply in all material respects with all Applicable Laws.

(B) Notwithstanding the provisions of subsection (A) of this Section 8.7, the Company may in good faith actively contest the validity or the applicability of any Applicable Law, provided that the Company (1) first shall have notified the Agency in writing of such contest, (2) is not in default under any of the Transaction Documents beyond any applicable notice or cure period, (3) shall have set aside adequate reserves for any such requirement, (4)

demonstrates to the reasonable satisfaction of the Agency that noncompliance with such Applicable Law will not subject the Project Facility or any part thereof to loss or forfeiture, (5) demonstrates to the reasonable satisfaction of the Agency that such contest shall not result in the Company or the Agency being in any danger of any civil or criminal liability for failure to comply therewith, and (6) diligently prosecutes such contest to completion. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

(C) Notwithstanding the provisions of subsection (B) of this Section 8.7, if the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, may be liable for prosecution for failure to comply therewith, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

#### SECTION 8.9 DISCHARGE OF LIENS AND ENCUMBRANCES.

(A) The Company hereby agrees not to create or suffer to be created any Lien on any Properties of the Agency or on any funds of the Agency applicable to or deriving from the Project Facility.

(B) If any Lien (other than a Permitted Encumbrance) is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim, whether or not valid, is made against the Equipment or any part thereof or the interest therein of the Company or the Agency or against any funds of the Agency applicable to or deriving from the Project Facility, the Company, promptly upon receiving notice of the filing, assertion, entry or issuance thereof, shall give written notice thereof to the Agency and take all action (including, without limitation, the payment of money and/or securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and remove or nullify the basis therefor. Nothing herein shall be construed as constituting the consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Project Facility.

#### SECTION 8.10 PERFORMANCE OF THE COMPANY'S OBLIGATIONS.

Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but shall not be obligated to, without notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company or the Agency, and paying all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Agency in connection therewith; and the Company shall pay immediately upon demand all sums so incurred or expended by the Agency under the authority hereof, together with interest thereon, at the Default Interest Rate.

SECTION 8.11 DEPRECIATION DEDUCTIONS AND TAX CREDITS. The parties agree that as between them the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to

Section 38 of the Code with respect to any portion of the Project Facility which constitutes “Section 38 Property” and to all other state and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

#### SECTION 8.12 EMPLOYMENT OPPORTUNITIES.

(A) The Company shall ensure that all employees and applicants for employment with regard to the Project, including, without limitation, the employees of and applicants for employment with the Company or any of its Affiliates, are afforded equal employment opportunities without discrimination.

(B) Pursuant to Section 858-b of the Act, except as otherwise provided by collective bargaining contracts or agreements, the Company agrees (1) to list and to cause its Affiliates to list all new employment opportunities created as a result of the Project with the New York State Department of Labor, Community Services Division (the “NYSDOL”) and with the administrative entity (collectively with NYSDOL, the “JTPA Referral Entities”) of the service delivery area created by the federal Job Training Partnership Act (P.L. No. 97-300) (including any successor statute thereto, including without limitation, the Workforce Investment Act of 1998 (P.L. No. 105-270), collectively, the “JTPA”) in which the Project Facility is located, and (2) where practicable, to first consider and to cause to be first considered for such new employment opportunities persons eligible to participate in federal JTPA programs who shall be referred by the JTPA Referral Entities.

(C) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Company agrees to file with the Agency, prior to the effective date of this Agreement, an employment plan, in form and substance reasonably satisfactory to the Agency.

(D) The Company agrees to file with the Agency, on a calendar year basis not later than February 11 of each year during the term of this Agreement, measured as of December 31st of the immediately preceding calendar year, reports (i) certifying as to the full-time equivalent jobs retained and the full time equivalent jobs created as a result of the granting of the Financial Assistance, by category, including full-time equivalent independent contractors and employees of independent contractors that work at the Project Facility, and (ii) certifying that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that were set forth in the Application are then still accurate or, if not then still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. Said annual reports shall be in substantially the form promulgated from time to time by the Agency. The current forms of reports are annexed hereto as Exhibit G. The Company shall provide such annual reports (and supporting documentation) and shall cause its Affiliates, contractors and agents to provide such reports (and supporting documentation) with respect to their respective employees, if any, at the Project Facility. The Agency shall have the right, at the Company’s expense, to audit, confirm and/or require additional information with regard thereto and the Company agrees to cooperate with and to cause its Affiliates and such third parties to cooperate with the Agency in connection therewith.

(E) The Company shall, at all times during the term of this Agreement, maintain the Minimum Employment Requirement.

#### SECTION 8.13 SALES AND USE TAX EXEMPTION.

(A) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain sales and use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. Any exemption from the payment of New York sales and use taxes resulting from Agency involvement in the Project shall be limited to purchases of services and the purchase or lease of tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency in connection with the completion of the acquisition, construction, installation and equipping of the Project Facility (but not the operation thereof). No operating expenses (including, without limitation, costs of utilities, cleaning services or supplies) of the Project Facility and no other purchases or leases of services or property shall be subject to an exemption from the payment of New York sales or use taxes. The Agency makes no representations or warranties that any property or service is exempt from the payment of New York sales or use taxes.

(B) On the Closing Date, the Agency and the Company shall execute and deliver a sales and use tax agency agreement in the form attached hereto as Exhibit E (the "Sales Tax Agency Agreement"). The granting of the sales and use tax exemption herein is subject to the following additional terms and conditions:

(1) The Sales Tax Agency Agreement shall be dated the Closing Date and shall be effective for a term commencing on its date and expiring upon the earliest to occur of: (a) the termination of this Agreement, (b) December 31, 2021 (the "Stated Sales Tax Expiration Date"), or (c) the termination of the Sales Tax Agency Agreement pursuant to the terms hereof and thereof;

(2) Anything in this Agreement or the Sales Tax Agency Agreement to the contrary notwithstanding, the sales and use tax exemption to be provided pursuant to the Sales Tax Agency Agreement (a) shall not be available for any date subsequent to which the Sales Tax Agency Agreement shall have been suspended as provided in this Agreement; (b) shall not be available for or with respect to any tangible personal property having a useful life of less than one year; (c) shall not be available after the Company (or the contractors or subcontractors engaged by the Company and approved by the Agency as its agents) shall have made purchases under the Sales Tax Agency Agreement resulting in sales and use tax exemptions in the aggregate amount of the Maximum Sales Tax Benefit, and (d) shall not be available with respect to a particular residential condominium unit after the sale of such unit to a third party;

(C) The Company agrees to furnish to the Agency within fifteen (15) days after the end of each calendar quarter, a sales and use tax exemption report (the "Quarterly Sales Tax Report"), in form and substance satisfactory to the Agency in its reasonable judgment, with respect to the use of the Sales Tax Agency Agreement by the Company (and the contractors and subcontractors engaged by the Company and approved by the Agency as its agents) under the

authority granted to the Company pursuant to Section 4.1(E) of this Agreement) during the preceding calendar quarter. Each said Quarterly Sales Tax Report shall be certified by an Authorized Representative of the Company and shall: (1) identify the contracts and specific property exempted from sales taxes and/or use taxes during such period; (2) indicate the parties to said contract; (3) indicate the maximum amount payable under said contract, and indicate what portion of said amount would normally be subject to sales and use taxes imposed in the State; (4) indicate the amount of sales tax benefit expected to be received with respect to said contract; and (5) indicate the cumulative sales tax benefit claimed by the Company (and its contractors and subcontractors approved by the Agency as its agents) with respect to the Project for the calendar year.

(D) Pursuant to Section 874(8) of the Act, the Company agrees to file annually (through the year after the Stated Sales Tax Expiration Date, with the New York State Department of Taxation and Finance (the "Department"), no later than January 15th of each year, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Annual Sales Tax Report"), a statement of the value of all sales and use tax exemptions claimed by the Company (and the contractors and subcontractors engaged by the Company and approved by the Agency as its agents) under the authority granted to the Company pursuant to Section 4.1(E) of this Agreement during the preceding calendar year. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be the termination of authority to act as agent of the Agency. Additionally, if the Company shall fail to comply with the requirements of this subsection (D), the Company (and its contractors and subcontractors) shall immediately cease to be the agent of the Agency in connection with the Project.

(E) The Company agrees to furnish to the Agency, simultaneously with its delivery of such report to the Department, a copy of each such Annual Sales Tax Report submitted to the Department by the Company pursuant to Section 874(8) of the Act.

(F) The Company acknowledges that, pursuant to Section 874(9) of the Act, the Agency shall file within thirty (30) days of the Closing Date with the Department on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Thirty-Day Sales Tax Report"), statements identifying the Company and its contractors and subcontractors approved by the Agency as agents of the Agency, setting forth the taxpayer identification numbers of such Persons, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease. The Company agrees to timely provide the foregoing information to the Agency and to otherwise cooperate with the Agency in connection with the preparation and filing of the Thirty-Day Sales Tax Report.

(G) With respect to any period in which the Company (and the contractors and subcontractors engaged by the Company and approved by the Agency as its agents) receives a sales and use tax exemption benefit hereunder, if requested by the Agency, the Company agrees to furnish to the Agency, on request, an opinion of a certified public accountant to the effect that such accountant has audited the claiming of such exemption from sales and use taxes by the

Company (and the contractors and subcontractors engaged by the Company and approved by the Agency as its agents) for the preceding calendar year, and has reviewed the terms and provisions of the Sales Tax Agency Agreement and of this Section 8.12, and has further audited the Quarterly Sales Tax Reports for the preceding calendar year, and that such Quarterly Sales Tax Reports were properly prepared and accurately reflect the matters certified therein.

(H) The Company covenants and agrees that it shall include or cause to be included the following language in and as a part of each contract, agreement, lease, invoice, bill or purchase order entered into by the Company (or a contractor or subcontractor engaged by the Company and approved by the Agency as its agent), as agent of the Agency, in connection with the undertaking of the Project:

“This [contract, agreement, lease, invoice, bill or purchase order] is being entered into by [ ] (the “Agent”), as approved agent for and on behalf of the Glen Cove Industrial Development Agency (the “Agency”) in connection with a certain project (the “Project”) of the Agency for Arcadia Landing LLC (the “Company”) consisting in part of the acquisition, construction, equipping and installation of a multifamily residential facility located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the “Premises”) and the acquisition of certain capital improvements, materials, machinery, equipment, appliances, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project. The capital improvements, materials, machinery, equipment, appliances, trade fixtures, furniture, furnishings and other tangible personal property necessary for completion of the Project which are the subject of this [contract, agreement, lease, invoice, bill or purchase order] shall be exempt from the sales and use taxes levied by the State of New York and the County of Nassau if effected in accordance with the terms and conditions set forth in the attached Sales Tax Agency Agreement of the Agency, and the Agent hereby represents that this [contract, agreement, lease, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Agency Agreement. This [contract, agreement, lease, invoice, bill or purchase order] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract, agreement, lease, invoice, bill or purchase order], the [vendor, lessor, licensor, contractor or subcontractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

If the Company fails to include, incorporate by reference or otherwise cause the contract, agreement, lease, invoice, bill or purchase order to be subject to the above provision, then such contract, agreement, lease, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits that may be conferred by the

Agency, neither the Company nor any contractor or subcontractor engaged by the Company and approved by the Agency as its agent shall claim any sales or use tax benefits or exemptions with respect thereto, and the Company shall return or cause to be returned to the Agency any such benefits or exemptions so taken, together with interest thereon at the Default Interest Rate, from the date of such taking.

The appointment by the Company of a contractor or subcontractor as an agent of the Agency pursuant to this Section 8.12 shall be subject to the prior written approval of the Agency, which approval shall not be unreasonably withheld, and such appointment shall be subject to all of the provisions of this Section 8.12. Any such appointment approved by the Agency shall not be valid unless and until the contractor or subcontractor executes and delivers an agency agreement in the form required by the Agency (each, a "Sub-Agent Agency Agreement").

(I) The Company agrees to provide a completed Form ST-123, *IDA Agent or Project Operator Exempt Purchase Certificate*, to each vendor, lessor, licensor, contractor or subcontractor from which the Company (or a contractor or subcontractor engaged by the Company and approved by the Agency as its agent) purchases and/or leases goods or services or with which the Company (or a contractor or subcontractor engaged by the Company and approved by the Agency as its agent) enters into an improvement or installation contract relating to the acquisition, construction, installation and equipping of the Project Facility. The Company acknowledges that, pursuant to Section 875 of the Act, the Certificate must be provided to the vendor, lessor, licensor, contractor or subcontractor in order for the contract, agreement, lease, invoice, bill or purchase order to be exempt from the imposition of sales and/or use taxes pursuant to the authority granted under Section 4.1(E) of this Agreement. The Company agrees to provide the Agency a copy of each such Form ST-123 within ten (10) days after the delivery of such form to the vendor, lessor, licensor, contractor or subcontractor.

(J) (1) Without limitation of any of the Agency's other rights under this Agreement, in the event that the Company (or any contractor or subcontractor engaged by the Company and approved by the Agency as its agent) shall utilize the sales or use tax exemption provided pursuant to Section 4.1(E) of this Agreement (i) in a manner that is not authorized or for which the Company (or any contractor or subcontractor engaged by the Company and approved by the Agency as its agent) is not entitled to claim an exemption, (ii) to claim exemptions in excess of the Maximum Sales Tax Benefit, (iii) to purchase or lease goods or services that are not authorized under this Agreement, or (iv) in a manner that violates the provisions of this Section 8.12 or any other provision of this Agreement or any provision of the Sales Tax Agency Agreement or any Sub-Agent Agency Agreement, then the Company shall promptly deliver notice of same to the Agency, and the Company shall promptly pay or cause to be paid to the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the Default Interest Rate from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was used by the Company (or a contractor or subcontractor engaged by the Company and approved by the Agency as its agent). If the Company fails to promptly pay such return of sales or use tax exemptions when due, the Agency shall have the right, without limitation of any of its other rights under this Agreement, to take any action or commence any proceeding at law or in equity which may appear necessary or desirable to the Agency to recover any such amounts and the Agency shall have the right to join the Commissioner as a party in any such action or

proceeding. The Company shall cooperate with the Agency in all such actions and proceedings to recover such amounts. The Company acknowledges and agrees that its failure to pay over any such amounts to the Agency shall also be grounds for the Commissioner to assess and determine State Sales and Use Taxes due from the Company under Article 28 or Article 28-A of the New York State Tax Law, together with any applicable penalties and interest due on such amounts.

(2) The Company acknowledges and agrees that, in the event the Agency recovers, receives or otherwise obtains any amount of State Sales and Use Tax from the Company (or a contractor or subcontractor engaged by the Company and approved by the Agency as its agent) pursuant to the foregoing subsection, the Agency shall have the right to remit same to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amounts, and the Company agrees to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, against any liability incurred as a result of remitting such amounts to the Commissioner.

(3) Pursuant to Section 875 of the Act, the Agency shall prepare and file an annual compliance report (each, a "Compliance Report") detailing provisions of this Agreement and, if applicable, its activities and efforts to recover, receive or otherwise obtain State Sales and Use Taxes pursuant to the terms of this Agreement, together with such other information as the Commissioner and/or the Commissioner of Economic Development may require, which Compliance Report will be filed with the Commissioner, the Director of the Division of the Budget, the Commissioner of Economic Development, the State Comptroller and the City Council of the City. The Company acknowledges the provisions of Section 875 of the Act, agrees to timely provide any information required by the Agency in connection with such Compliance Report and agrees to cooperate with the Agency in connection with the preparation and filing of such Compliance Report.

SECTION 8.14 IDENTIFICATION OF THE EQUIPMENT. All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency in its reasonable discretion.

SECTION 8.15 FINANCIAL STATEMENTS. Within ninety (90) days after the end of each fiscal year, the Company shall deliver to the Agency the financial statements of the Company prepared and compiled by an independent certified public accountant, certified by the chief financial officer of the Company, including a balance sheet as of the last day of such period and an operating statement through the last day of such period.

SECTION 8.15 ANTI-TERRORISM LAWS.

(A) General. Neither the Company nor any director, officer, member, manager or shareholder of the Company, nor any Affiliate of any of the foregoing, is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions



set forth in any Anti-Terrorism Law.

(B) Executive Order No. 13224. Neither the Company, nor any director, officer, member, manager or shareholder of the Company, nor any Affiliate of any of the foregoing, nor their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by the Transaction Documents, is any of the following (each, a “Blocked Person”):

(1) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

(2) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

(3) a Person or entity with which any lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(4) a Person or entity that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224;

(5) a Person or entity that is named as a “specially designated national” on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list, or

(6) a Person or entity who is affiliated or associated with a person or entity listed above.

(C) Blocked Person or Transactions. Neither the Company, nor any director, officer, member, manager or shareholder of the Company, nor any Affiliate of any of the foregoing, nor to the Company’s knowledge any of its agents acting in any capacity in connection with the transactions contemplated by the Transactions Documents (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224.

(D) Trading with the Enemy. The Company is not engaged, nor does it intend to engage, in any business or activity prohibited by the Trading with the Enemy Act.

(E) OFAC and Patriot Act. The Company represents, warrants, covenants and agrees as follows: (i) the Company, its directors, officers, members, shareholders and Affiliates are in compliance with all Anti-Terrorism Laws; (ii) the Company shall immediately notify the Agency if it obtains knowledge that it or any of its Affiliates has become or been listed as a Restricted Party or has been charged with or has engaged in any violation of any Anti-Terrorism Law; (iii) the Company shall not to receive any funds from a Restricted Party and, in any case,

exclude any funds derived from any Restricted Party or from any person or entity involved in the violation of any Anti-Terrorism Law from being used to pay the Indebtedness or any part thereof; (iv) the Company shall not to transfer or permit the transfer of any legal or beneficial ownership interest of any kind in the Company to a Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law; (v) the Company shall not to acquire, directly or indirectly, ownership interest of any kind in any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law, (vi) the Company shall not to form any partnership or joint venture or conduct any business with any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law, (vii) the Company shall not to act, directly or indirectly, as the agent or representative of any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law; and (viii) the Company shall indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency from and against any costs incurred by the Agency, and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, as a result of any violation of an Anti-Terrorism Law by the Company or any of its directors, officers, members, shareholders or Affiliates.

## ARTICLE IX ASSIGNMENTS; MERGER OF THE AGENCY

SECTION 9.1 ASSIGNMENT; TRANSFER. (A) Neither this Agreement nor any of the Equipment may be sold, assigned or otherwise transferred by the Company, in whole or in part, without the prior written consent of the Agency, which consent may be granted or withheld in the Agency's sole and absolute discretion, and shall in all events be subject to and conditioned upon the payment of the then-standard fees of the Agency and the satisfaction of all requirements of the Act. Any such sale, assignment or transfer made by the Company without the prior written consent of the Agency as aforesaid shall be null and void. Any such sale, assignment or transfer consented to by the Agency shall be made pursuant to documentation satisfactory to the Agency. The Company shall pay all reasonable and customary fees and expenses incurred by the Agency in connection with such sale, assignment or transfer.

(B) Notwithstanding anything to the contrary contained in this Section 9.1, in any instance where the Company determines that any portion of the Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such portion of the Equipment and may sell, trade in, exchange or otherwise dispose of the same in the ordinary course of its business, as a whole or in part, without the prior written consent of the Agency but, upon reasonable prior notice to the Agency, provided that such removal will not materially impair the value of the Project Facility as collateral and provided the same is forthwith replaced with items of similar quality and value as the items replaced as of the date of original installation of the replaced items. At the request of the Company, the Agency shall execute and deliver to the Company all instruments reasonably necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Property free from the Liens of the Transaction Documents. The Company shall pay all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred in transferring title to and releasing from the Liens of the Transaction Documents any item of Property removed pursuant to this Section 9.1

## SECTION 9.2 MERGER OF THE AGENCY.

(A) Nothing contained in this Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other public benefit corporation of the State or any political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder and under the other Transaction Documents; provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of this Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests under this Agreement shall be assigned.

(B) As of the date of any such consolidation, merger or assignment, the Agency shall endeavor to give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger or assignment as the Company may reasonably request.

## ARTICLE X EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1 EVENTS OF DEFAULT DEFINED. (A) The following shall be "Events of Default" under this Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(1) A default by the Company in the due and punctual payment of any amount due under this Agreement or under any other Transaction Document, and the continuance thereof for a period of ten (10) days after written notice that same is past due is given by the Agency to the Company.

(2) A default in the performance or observance of any covenant, condition or agreement on the part of the Company in this Agreement (other than as set forth in subsection (1) above or in any other subsection of this Section 10.1(A)) and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, or, if such covenant, condition or agreement is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period or to prosecute the cure to completion with due diligence.

(3) The occurrence of an "Event of Default" under any other Transaction Document.

(4) The Company shall generally not pay its debts as such debts become due or admits its inability to pay its debts as they become due.

(5) The Company shall conceal, remove or permit to be concealed or removed any material part of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is

fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within ten (10) days from the date thereof.

(6) (a) The filing by the Company (as debtor) of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy or insolvency statute; (b) the failure by the Company within thirty (30) days to lift any execution, garnishment or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder; (c) the commencement of a case under Title 11 of the United States Code against the Company as the debtor or commencement under any other federal or state bankruptcy or insolvency statute of a case, action or proceeding against the Company and continuation of such case, action or proceeding without dismissal for a period of thirty (30) days; (d) the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company; or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver, liquidator or trustee of the whole or a substantial portion of the Property of the Company, unless such order, judgment or decree is vacated, dismissed or dissolved within thirty (30) days of such appointment.

(7) If any of the events enumerated in clauses (4) through (6) of this Section 10.1(A) shall occur with respect to any Guarantor.

(8) If any interest in the Company, Arcadia Landing, Landing Cove or MRG shall be sold, assigned, transferred, conveyed, mortgaged, pledged, hypothecated or alienated, or if any member of the Company, Arcadia Landing, Landing Cove or MRG enters into an agreement or contract to do so, without the prior written consent of the Agency, or if, at any time, the Guarantors cease to have day-to-day control of the Company.

(9) The imposition of a Lien on the Equipment other than a Permitted Encumbrance and the failure of the Company to remove such Lien, whether by the payment of money, the securing of a bond or otherwise, within thirty (30) days after the Company receives notice or becomes aware of such imposition.

(10) The removal of the Project Facility, or any portion thereof, outside the City, without the prior written consent of the Agency, other than in connection with a removal permitted under Section 9.1(B) of this Agreement.

(11) If any certificate, statement, representation, warranty or financial statement made to the Agency by or on behalf of the Company or any Guarantor shall prove to have been false, misleading or incorrect in any material respect at the time as of which the facts therein set forth were made, or to have omitted any material liability or claim against the Company or any Guarantor.

(12) Other than the sale of individual residential units to third-parties in the ordinary course of the Company's business, any loss or impairment of the Agency's interest in and to the Project Facility, or any part thereof, not due to the voluntary acts of the Agency.

(13) The Company, any Guarantor, any Affiliate of the Company or any Guarantor, or any director, member, manager or shareholder of the Company shall become a Prohibited Person.

(14) Any assignment of this Agreement, in whole or in part, in violation of the terms of this Agreement.

(15) Intentionally omitted.

(16) The Company defaults under or attempts to withdraw, reate, cancel or disclaim liability under any guaranty or indemnity made by such party in favor of the Agency.

(17) If the Company fails to maintain the Minimum Employment Requirement at any time during the term of this Agreement.

(18) Failure by the Company at any time to keep in full force and effect the insurance policies and coverages required by Section 6.3 of this Agreement.

(19) Other than the sale of individual residential units to third-parties in the ordinary course of the Company's business, any loss or impairment of the Company's interest in and to the Project Facility, or any part thereof.

(B) Notwithstanding the provisions of Section 10.1(A) hereof if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its non-monetary obligations under this Agreement and if such party shall give notice and full particulars of such force majeure event or cause in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability to perform. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an Event of Default under this Section 10.1. Notwithstanding anything to the contrary in this subsection (B), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required under this Agreement, to obtain and continue in full force and effect the insurance required by Article VI hereof, to provide the indemnity required by Sections 2.2(G), 3.1, 4.1(F), 6.1, 8.2 and 12.9(C) hereof and to comply with the provisions of Sections 2.2(G), 8.2, 8.4, 8.5 and 8.7(C) hereof. The term "force majeure" as used herein shall include acts outside of the control of the Agency and the Company, including, but not limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, restraint of government and people, civil disturbances, breakage or accident to transmission pipes or canals, and failure of utilities.

SECTION 10.2            REMEDIES ON DEFAULT.

(A) Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent not prohibited by law, take any one or more of the following remedial steps:

(1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 hereof, and (b) all other payments due under this Agreement or any of the other Transaction Documents, including, without limitation, any resulting Recapture of Benefits under Section 11.4 of this Agreement; or

(2) terminate this Agreement and convey to the Company all the Agency's right, title and interest in and to the Equipment. The termination of this Agreement shall be effected by the execution and delivery of the Agency Termination Agreement (an unexecuted copy of which is attached hereto as Exhibit C) and conveyance of the Agency's right, title and interest in and to the Equipment shall be effected by the execution and delivery of the Bill of Sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such termination. The Company hereby waives delivery and acceptance of such Agency Termination Agreement and Bill of Sale to Company as a condition to their validity, and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording or filing of such documents; or

(3) bring an action for damages, injunction or specific performance; or

(4) suspend the right of the Company (and its contractors and subcontractors approved by the Agency as its agents) to act as agent for the Agency in connection with the Project, including, without limitation, as its agent for the purpose of the sales and use tax exemption afforded to the Company pursuant to this Agreement; or

(5) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Company under this Agreement.

(B) No action taken pursuant to this Section 10.2 shall relieve the Company from its obligations to make all payments required by this Agreement and the other Transaction Documents.

SECTION 10.3            REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any

remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 10.4 AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event the Company should default under any of the provisions of this Agreement or any other Transaction Document and the Agency should retain attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency such fees and expenses (including, without limitation, attorneys' fees and expenses) so incurred, whether an action is commenced or not.

SECTION 10.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE XI OPTIONS AND OBLIGATION TO TERMINATE

SECTION 11.1 EARLY TERMINATION OF THE AGREEMENT. The Company shall have the option to terminate this Agreement at any time prior to the termination date specified in Section 5.2 hereof by filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 11.1 and setting forth the effective date of such termination, which effective date shall not be less than thirty (30) days after the delivery of the certificate to the Agency. The exercise of the option to terminate pursuant to this Section 11.1 shall constitute a "Recapture Event" (as such term is defined in Section 11.4 hereof). The Company shall not, at any time, assign or transfer its option to terminate this Agreement as contained in this Section 11.1 separate and apart from a permitted assignment of this Agreement pursuant to Section 9.1 of this Agreement without the prior written consent of the Agency.

### SECTION 11.2 OBLIGATION TO TERMINATE THE AGREEMENT.

(A) Contemporaneously with the termination of this Agreement in accordance with Section 5.2 or Section 11.1 hereof, the Company shall pay all sums required to be paid to the Agency or any other Person pursuant to this Agreement and the other Transaction Documents (including any applicable Recapture of Benefits). The obligation of the Agency under this Section 11.2 to convey its interest in the Project Facility to the Company will be subject to there being no Event of Default existing hereunder or under any other Transaction Document, and there being no other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default.

(B) The termination of this Agreement and the conveyance of the Agency's right, title and interest in and to the Equipment shall be effected by the execution and delivery by the Agency of (1) the Bill of Sale to Company (an unexecuted copy of which is attached hereto as Exhibit D) and (2) the Company Termination Agreement (an unexecuted copy of which is attached hereto as Exhibit F). The Company hereby agrees to pay all expenses and taxes, if any,

applicable to or arising from such termination, including, without limitation, all of the Agency's reasonable costs and expenses in connection therewith (including reasonable attorneys' fees and expenses).

(C) The Company agrees to prepare the Bill of Sale to Company and the Agency Termination Agreement, and all schedules thereto, together with all other necessary documentation, and to forward same to the Agency at least fifteen (15) days prior to the date that this Agreement is to be terminated and the Agency's interest in the Equipment or any portion thereof is to be conveyed to the Company. The Company hereby irrevocably appoints and designates the Agency as its attorney-in-fact for the purpose of executing, delivering and/or recording such documents and to take such other and further action as shall be necessary to terminate this Agreement .

(D) This Agreement shall survive the transfer of the Equipment to the Company pursuant to this Section 11.2 and shall remain in full force and effect until ninety-one (91) days after all of the Indebtedness shall have been paid in full, and thereafter the obligations of the Company shall survive as set forth in Section 12.7 hereof.

(E) Upon the payment in full of all Indebtedness, and notwithstanding the survival of certain obligations of the Company as described in Section 12.7 hereof, the Agency shall upon the request of the Company execute and deliver to the Company such documents as the Company may reasonably request, in recordable form if so requested, to evidence the termination and release of all Liens granted to the Agency hereunder and the transfer of title to the Equipment back to the Company.

SECTION 11.3 RESERVED.

SECTION 11.4 RECAPTURE OF AGENCY BENEFITS.

(A) It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide the Financial Assistance to the Company for the Project and to accomplish the purposes of the Act. In consideration therefor, the Company hereby agrees that if there shall occur a Recapture Event (as hereinafter defined), then the Company shall pay to the Agency as a return of public benefits conferred by the Agency (the "Recapture of Benefits") in an amount equal to one hundred per cent (100%) of the sales and use tax exemptions claimed by the Agency and its contractors pursuant to this Agreement, the Sales Tax Agency Agreement and any Sub-Agent Agency Agreement.

(B) For the purposes of this Section 11.4 the term "Recapture Event" shall mean the occurrence of any of the following events:

(1) The Company shall have liquidated its operations and/or assets; or

(2) The Company shall have ceased all or substantially all of its operations at the Project Facility (whether by closure or by relocation to another facility either within or outside of the City); or



(3) The Company shall have transferred all or substantially all of its employees engaged in the construction, maintenance or operation of the Project Facility to a location outside of the City; or

(4) The occurrence and continuance of an Event of Default under this Agreement or any other Transaction Document, subject to the provisions of Section 8.13(J) hereof providing for a partial recapture under certain circumstances set forth in Section 875 of the Act; or

(5) The Company shall have effected a substantial change in the scope and nature of the operations of the Company at the Project Facility without the prior written consent of the Agency; or

(6) The Company shall have sold, leased, subleased, sub-subleased, assigned, transferred or otherwise disposed of all or any part of its interest in the Project Facility in violation of this Agreement; or

(7) The Company fails to maintain the Minimum Employment Requirement at any time during the term of this Agreement; or

(8) The Application, or documentation in support of the Application, contained a knowingly false or knowingly misleading statement as to any fact material to the Application or knowingly omitted any information which, if included, would have rendered any information in the Application or supporting documentation false or misleading in any material respect, and such false or misleading statement or omission was made knowingly and intentionally for the purpose of obtaining the Financial Assistance.

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 Condemnation by governmental authority of all or substantially all of the Project Facility or any interest therein, or (ii) the inability at law of the Company to rebuild, repair, restore or replace the Project Facility after the occurrence of a casualty to substantially its condition prior to such casualty, which inability shall have arisen in good faith through no fault on the part of the Company.

(C) The Company covenants and agrees to furnish the Agency with written notification upon the occurrence of any Recapture Event, which notification shall set forth the terms of such Recapture Event.

(D) In the event any payment owing by the Company under this Section 11.4 shall not be paid on demand by the Company, such payment shall bear interest from the date of such demand at the Default Interest Rate until the Company shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

## ARTICLE XII MISCELLANEOUS

### SECTION 12.1 NOTICES.

(A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given on the earlier of (1) three (3) Business Days after being sent to the applicable address stated below by registered or certified mail, return receipt requested, or two (2) Business Days after being sent by nationally recognized overnight courier service, or (2) the date on which delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Arcadia Landing LLC  
772 W. Beech Street  
Long Beach, NY 11561  
Attn: Timothy H. Sullivan

WITH A COPY TO:

Forchelli Deegan Terrana LLP  
333 Earle Ovington Boulevard  
Uniondale, NY 11553  
Attn: Daniel P. Deegan, Esq.

IF TO THE AGENCY:

Glen Cove Industrial Development Agency  
City Hall, 9-13 Glen Street  
Glen Cove, NY 11542  
Attn: Executive Director

WITH A COPY TO:

Phillips Lytle LLP  
1205 Franklin Avenue, Suite 390  
Garden City, NY 11530  
Attn: Milan K. Tyler, Esq.

(C) The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 12.2 BINDING EFFECT. This Agreement shall inure to the benefit of the Agency and the Company and shall be binding upon the Agency, the Company and, as permitted by this Agreement, their respective successors and assigns, but no assignment shall be

effective to relieve the Company of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency.

SECTION 12.3 SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be held void, voidable, invalid or unenforceable by a court of competent jurisdiction, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Agreement.

SECTION 12.4 AMENDMENT. This Agreement may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 12.5 EXECUTION OF COUNTERPARTS. This 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 12.6 APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the applicable laws of the State, as in effect from time to time, without regard to its principles of conflicts of law.

SECTION 12.7 SURVIVAL OF OBLIGATIONS.

(A) The obligations of the Company to make the payments required by Sections 2.2(G), 3.1, 4.1 (and to report pursuant to Subsection (N) thereof), 5.3, 5.4, 8.2, 8.9, 8.12, 9.1, 10.2, 10.4, 11.2 and 11.4 hereof and to provide the indemnity required by Sections 2.2(G), 3.1, 4.1(F), 6.1, 8.2 and 12.9(C) hereof, and, shall survive the termination of this Agreement, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

(B) The obligations of the Company to the Agency with respect to the Unassigned Rights shall survive the termination or expiration of this Agreement until the expiration of the period stated in the applicable statute of limitation during which a claim, cause of action or prosecution relating to the Unassigned Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents (other than the Company), attorneys, servants or employees, past, present or future, related thereto.

SECTION 12.8 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and 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.

SECTION 12.9 NO RECOURSE; SPECIAL OBLIGATION.

(A) The obligations and agreements of the Agency contained herein and in the other Transaction Documents and any other instrument or document executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company), servant or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company), servants and employees, past, present and future, of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State or the City and neither the State nor the City shall be liable hereon or thereon, and, further, 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 the lease, sale or other disposition of the Agency's interest in the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) business days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) business days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten (10) business day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company), servants or employees, past, present or future, shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company), servants and employees, past, present and future, against all liability expected to be incurred as a result of compliance with such request.

SECTION 12.10 NET PAYMENTS. The obligation of the Company to make the payments specified in this Agreement shall be absolutely net to the Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Agreement shall yield, net, to the Agency, the payments set forth herein.

SECTION 12.11 WAIVER OF JURY TRIAL. THE COMPANY AND THE AGENCY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT.

SECTION 12.12 PRIOR AGREEMENTS. This Agreement and the other Transaction Documents shall completely and fully supersede all other prior understandings or agreements, written or oral, between the Company and the Agency relating to the Project.

SECTION 12.13 SERVICE OF PROCESS.

(A) The Company represents that it is subject to service of process in the State of New York and covenants that it will remain so subject so long as this Agreement shall be in effect. If for any reason the Company should cease to be so subject to service of process in the State of New York, the Company hereby designates and appoints, without power of revocation, Daniel P. Deegan, Esq., c/o Forchelli Deegan Terrana LLP, 333 Earle Ovington Boulevard, Uniondale, NY 11553, and successor(s) as its agent for service of process, and if such agent shall cease to act or otherwise cease to be subject to service of process in the State of New York, the Secretary of State of the State of New York, as the agents of the Company upon whom may be served all process, pleadings, notices or other papers which may be served upon the Company as a result of any of its obligations under this Agreement; provided, however, that the serving of such process, pleadings, notices or other papers shall not constitute a condition to the Company's obligations hereunder.

(B) The Company irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Agreement or the other Transaction Documents may be brought in the courts of record of the State of New York in Nassau County or the courts of the United States, Eastern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts. For such time as this Agreement is in effect, the Company's agents designated above shall accept and acknowledge in the Company's behalf service of any and all process in any such suit, action or proceeding brought in any such court. The Company agrees and consents that any such service of process upon such agents and written notice of such service to the Company in the manner set forth in Section 12.1 hereof shall be taken and held to be valid personal service upon the Company whether or not the Company shall then be doing, or at any time shall have done, business within the State of New York and that any such service of process shall be of the same force and validity as if service were made upon the Company according to the laws governing the validity and requirements of such service in the State of New York, and waives all claim of error by reason of any such service. Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Company or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Company.

SECTION 12.14 THIRD PARTY BENEFICIARIES. Nothing herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto.

SECTION 12.15 NON-DISCRIMINATION.

(A) At all times during the term of this Agreement, the Company shall not (and shall cause its Affiliates not to) discriminate against any employee or applicant for employment because of race, color, religion, creed, ethnicity, age, gender, pregnancy, sex, sexual orientation, gender identity, national origin, citizenship, marital status, domestic violence victim status, military status, veteran status, disability, familial status, genetic information, genetic predisposition or carrier status, or other characteristic or criteria protected by Applicable Law. The Company shall use reasonable efforts to ensure that employees and applicants for employment with any tenant, subtenant, occupant or user of the Project Facility, or any part thereof, or any contractor or subcontractor with respect to the Project Facility, are treated without regard to their race, color, religion, creed, ethnicity, age, gender, pregnancy, sex, sexual orientation, gender identity, national origin, citizenship, marital status, domestic violence victim status, veteran status, military status, disability, familial status, genetic information, genetic predisposition or carrier status, or other characteristic or criteria protected by Applicable Law. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(B) The Company shall, in all solicitations or advertisements for employees placed by or on behalf of the Company (or any of its Affiliates), state that all qualified applicants will be considered for employment without regard to race, color, religion, creed, ethnicity, age, gender, pregnancy, sex, sexual orientation, gender identity, national origin, citizenship, marital status, domestic violence victim status, military status, veteran status, disability, familial status, genetic information, genetic predisposition or carrier status, or other characteristic or criteria protected by Applicable Law.

(C) The Company shall furnish to the Agency all information required by the Agency pursuant to this Section 12.15 and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section 12.15.

SECTION 12.16 DATE OF AGREEMENT. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered on July 6, 2021.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Agency and the Company have caused this Agreement to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.

GLEN COVE INDUSTRIAL DEVELOPMENT  
AGENCY

By:   
Ann S. Fangmann  
Executive Director

ARCADIA LANDING LLC

By: Arcadia Landing MM LLC, its Manager-  
Related Member

By: Arcadia Asset Services, LLC, its  
Manager

By: \_\_\_\_\_  
Timothy Sullivan  
Manager

[Signature Page to Uniform Project Agreement]

IN WITNESS WHEREOF, the Agency and the Company have caused this Agreement to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.

GLEN COVE INDUSTRIAL DEVELOPMENT  
AGENCY

By: \_\_\_\_\_  
Ann S. Fangmann  
Executive Director

ARCADIA LANDING LLC

By: Arcadia Landing MM LLC, its Manager-  
Related Member

By: Arcadia Asset Services, LLC, its  
Manager

By: \_\_\_\_\_  
Timothy Sullivan  
Manager

[Signature Page to Uniform Project Agreement]



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

On the 04 day of July, 2021, before me, the undersigned, a notary public in and for said state, personally appeared Ann S. Fangmann, 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

Paul V O'Brien  
Notary Public State of New York  
No. 020B6235944  
Qualified in Nassau County  
Commission Expires February 14, 2022

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

On the \_\_\_\_ day of \_\_\_\_\_, 2021 before me, the undersigned, a notary public in and for said state, personally appeared Timothy Sullivan, 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

[Acknowledgment Page to Uniform Project Agreement]

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

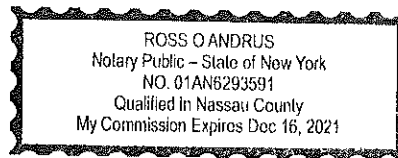
On the \_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned, a notary public in and for said state, personally appeared Ann S. Fangmann, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

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

On the 15<sup>th</sup> day of June, 2021 before me, the undersigned, a notary public in and for said state, personally appeared Timothy Sullivan, 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



[Acknowledgment Page to Uniform Project Agreement]

EXHIBIT A  
DESCRIPTION OF THE LAND

See Attached

ALL that certain plot piece or parcel of land, situate, lying and being in the City of Glen Cove, Town of Oyster Bay, County of Nassau and State of New York, and bounded and described:

BEGINNING at a point on the southerly side of Cottage Row, said point of beginning being further described as being the following six courses from the northerly end of a line connecting the easterly side of Hill Street with the southerly side of Cottage Row:

1. North 43 degrees, 54 minutes 30 seconds East, 57.61 feet;
2. North 52 degrees, 56 minutes 30 seconds East, 59.40 feet;
3. North 74 degrees, 39 minutes, 30 seconds East, 36.56 feet;
4. South 84 degrees, 18 minutes, 30 seconds East, 47.67 feet;
5. South 67 degrees, 21 minutes, 30 seconds East 151.66 feet;
6. South 59 degrees, 36 minutes, 30 seconds East 92.93 feet to the point or place of beginning.

THENCE easterly along the southerly side of Cottage Row South 59 degrees, 36 minutes, 30 seconds East, 30.70 feet;

THENCE continuing along the southerly side of Cottage Row, South 60 degrees, 47 minutes, 30 seconds East, 225.46 feet to lands now or formerly of Iglesia Ciudad De Refugio Inc.

THENCE southerly along lands now or formerly of Iglesia Ciudad De Refugio Inc. and lands now or formerly of Glen Arms Group LLC the following four (4) courses:

- 1) South 26 degrees 08 minutes 30 seconds West, 74.63 feet;
- 2) South 22 degrees 47 minutes 30 seconds West, 38.94 feet;
- 3) South 19 degrees 23 minutes 30 seconds West, 46.36 feet;
- 4) South 20 degrees, 30 minutes 00 seconds West, 519.30 feet to the northerly side of Elsinore Street;

THENCE westerly, partly along the northerly side of Elsinore Street, partly along lot 19 as shown on the map of Flintstone Park, filed September 18, 1919 as map number 345 and partly along land now or formerly of David Berkeley the following two courses:

- 1) North 59 degrees 14 minutes 30 seconds West, 442.65 feet;
- 2) North 59 degrees 52 minutes 30 seconds West, 186.37 feet to the easterly side of Hill Street;

THENCE northerly along the easterly side of Hill Street North 20 degrees 34 minutes 30 seconds East, 187.09 feet;

THENCE the following twelve (12) courses through lands now or formerly of Congregation Tifereth Israel of  
Certificate of Title Template File CDFPURC.pft

(Continued)

Glen Cove:

- 1) Along the arc of a circular curve bearing to the left having a radius of 24.22 feet with an arc length of 14.20 feet;
- 2) South 69 degrees 25 minutes 09 seconds East, 34.97 feet;
- 3) South 68 degrees 08 minutes 55 seconds East, 79.86 feet;
- 4) Along the arc of a circular curve bearing to the right having a radius of 513.00 feet with an arc length of 74.08 feet;
- 5) South 59 degrees 52 minutes 28 seconds East, 125.98 feet;
- 6) Along the arc of a circular curve bearing to the left having a radius of 60.00 feet with an arc length of 104.33 feet;
- 7) North 20 degrees 30 minutes 00 seconds East, 64.92 feet;
- 8) Along the arc of a curve bearing to the left having a radius 50.00 feet with an arc length 17.21 feet;
- 9) North 00 degrees 46 minutes 35 seconds East, 45.30 feet;
- 10) North 69 degrees 30 minutes 00 seconds West, 27.35 feet;
- 11) North 20 degrees 30 minutes 00 seconds East, 126.39 feet;
- 12) North 29 degrees 35 minutes 29 seconds East, 147.27 feet to the southerly side of Cottage Row and the point or place of BEGINNING.

Reserving and Excepting Therefrom, non-exclusive permanent and perpetual easements and rights of way as follows:

1. A non-exclusive permanent and perpetual easement and right of way for the benefit of the Grantor, it's agents, employees, contractors, suppliers and the adjoining lands of the Grantor herein and it's heirs, successors and assigns on, over and across the area of the proposed "Access Roadway" which is shown and designated as Roblu Lane on the map entitled "Subdivision Map for Glen Cove Mews, Map of Lot 1," prepared by H2M Group dated May 10, 2011, last revised May 16, 2012 (the "Map") and which area is more particularly bounded and described in Schedule B annexed hereto (the "Access Roadway") solely for the purpose of ingress and egress to and from Hill Street for vehicular traffic only.

2. A non-exclusive permanent and perpetual easement and right of way for the benefit of the Grantor, it's agents, employees, contractors, suppliers and the adjoining lands of the Grantor herein and it's heirs, successors and assigns on, over and across the westerly part of Lot 1 on the Map extending northerly from the northerly terminus of the Roadway area described in Schedule B in a northerly direction to the Emergency Fire Access Driveway as shown on the Map and on, over and across said Emergency Fire Access Driveway to the adjoining lands of the Grantor solely for the purpose of ingress and egress to and from Hill Street for a vehicular traffic only.

Access Roadway Easement

(Continued)

ALL that certain plot, piece or parcel of land, with improvements erected thereon situate, lying and being at Glen Cove, Town of Oyster Bay, County of Nassau and State of New York, being bounded and described as follows:

BEGINNING at the northwesterly most corner of Lot 4. Said point of beginning being 306.22 feet southerly, along the easterly side of Hill Street, from the southerly end of a line connecting the southerly side of Cottage Row with the easterly side of Hill Street.

THENCE the following fourteen (14) courses through lands now or formerly of Congregation Tifereth Israel of Glen Cove.

1. Along the arc of a circular curve bearing to the left having a radius of 24.22 feet with an arc length of 14.20 feet;
2. South 69 degrees, 25 minutes 09 seconds East, 34.97 feet;
3. South 68 degrees, 08 minutes 55 seconds East, 79.86 feet;
4. Along the arc of a circular curve bearing to the right having a radius of 513.00 feet with an arc length of 74.08 feet;
5. South 59 degrees, 52 minutes 28 seconds East, 125.98 feet;
6. Along the arc of a circular curve bearing to the left having a radius of 60.00 feet with an arc length of 104.33 feet;
7. North 20 degrees, 30 minutes 00 seconds East, 4.46 feet;
8. South 69 degrees, 30 minutes 00 seconds East, 25.00 feet;
9. South 20 degrees, 30 minutes 00 seconds West, 4.46 feet;
10. Along the arc of a circular curve bearing to the right having a radius of 85.00 feet with an arc length of 147.80 feet;
11. North 59 degrees, 52 minutes 28 seconds West, 125.17 feet;
12. Along the arc of a circular curve bearing to the left having a radius of 488.00 feet with an arc length of 81.30 feet;
13. North 69 degrees, 25 minutes 09 seconds West, 102.51 feet;
14. Along the arc of a circular curve bearing to the left having a radius of 24.50 feet with an arc length of 14.18 feet to the easterly side of Hill Street;

THENCE northerly along the easterly side of Hill Street North 20 degrees, 34 minutes 30 seconds East, 34.92 feet to the point or place of BEGINNING.

## EXHIBIT B

### DESCRIPTION OF THE EQUIPMENT

All equipment, appliances, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed in connection with the acquisition, construction, installation and equipping of the 2021 Arcadia Landing Project (the "Project") of the Glen Cove Industrial Development Agency (the "Agency") located on the real property described on Exhibit A hereto (the "Land"), said Project to be acquired, constructed and installed by Arcadia Landing LLC (the "Company") as agent of the Agency pursuant to a uniform project agreement dated as of July 1, 2021 (the "Agreement") by and between the Agency and the Company, and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

(1) Pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery; and

(2) Together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

EXHIBIT C

FORM OF AGENCY TERMINATION OF PROJECT AGREEMENT

WHEREAS, ARCADIA LANDING LLC (the "Company"), as agent, and the Glen Cove Industrial Development Agency (the "Agency"), entered into a uniform project agreement dated as of July 1, 2021 (the "Project Agreement") pursuant to which, among other things, the Agency authorized the Company to undertake the Project (as defined in the Project Agreement) as agent of the Agency; and

WHEREAS, pursuant to Section 10.2 of the Project Agreement, upon the occurrence of an Event of Default (as defined in the Project Agreement), the Agency has the right, inter alia, to terminate the Project Agreement; and

WHEREAS, an Event of Default has occurred under the Project Agreement or another Transaction Document;

NOW, THEREFORE, the Agency hereby terminates the Project Agreement as of the date hereof. The execution of this Agency Termination of Project Agreement by the Agency is not intended, and shall not be construed, as a waiver or alteration by the Agency or the Company of the provisions of Sections 11.4 or 12.7 of the Project Agreement.

IN WITNESS WHEREOF, the Agency has signed this Agency Termination of Project Agreement and caused same to be dated as of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

GLEN COVE INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Authorized Officer



STATE OF )  
 ) ss.:  
COUNTY OF )

On the \_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

EXHIBIT A

See Attached

ALL that certain plot piece or parcel of land, situate, lying and being in the City of Glen Cove, Town of Oyster Bay, County of Nassau and State of New York, and bounded and described:

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(Continued)

Glen Cove:

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2. A non-exclusive permanent and perpetual easement and right of way for the benefit of the Grantor, it's agents, employees, contractors, suppliers and the adjoining lands of the Grantor herein and it's heirs, successors and assigns on, over and across the westerly part of Lot 1 on the Map extending northerly from the northerly terminus of the Roadway area described in Schedule B in a northerly direction to the Emergency Fire Access Driveway as shown on the Map and on, over and across said Emergency Fire Access Driveway to the adjoining lands of the Grantor solely for the purpose of ingress and egress to and from Hill Street for a vehicular traffic only.

Access Roadway Easement

(Continued)

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13. North 69 degrees, 25 minutes 09 seconds West, 102.51 feet;
14. Along the arc of a circular curve bearing to the left having a radius of 24.50 feet with an arc length of 14.18 feet to the easterly side of Hill Street;

THENCE northerly along the easterly side of Hill Street North 20 degrees, 34 minutes 30 seconds East, 34.92 feet to the point or place of BEGINNING.

EXHIBIT D

FORM OF BILL OF SALE TO COMPANY

GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at City Hall, 9-13 Glen Street, Glen Cove, NY 11542 (the "Grantor"), for the consideration of One Dollar (\$ 1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from ARCADIA LANDING LLC, a limited liability company organized and existing under the laws of the State of New York, having an office for the transaction of business 772 W. Beech Street, Long Beach, NY 11561 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, any and all of Grantor's right, title and interest, if any, in and to those materials, machinery, equipment, appliances, fixtures or furnishings which are described in Exhibit B attached hereto (the "Equipment") now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located on a parcel of land (the "Land") located at 100 Breton Way, City of Glen Cove, Nassau County, New York, which Land is more particularly described on Exhibit A attached hereto.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by the officer described below on the date indicated beneath the signature of such officer and dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GLEN COVE INDUSTRIAL DEVELOPMENT  
AGENCY

BY: \_\_\_\_\_

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

On the \_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Notary Public

EXHIBIT A  
DESCRIPTION OF THE LAND

See Attached



ALL that certain plot piece or parcel of land, situate, lying and being in the City of Glen Cove, Town of Oyster Bay, County of Nassau and State of New York, and bounded and described:

BEGINNING at a point on the southerly side of Cottage Row, said point of beginning being further described as being the following six courses from the northerly end of a line connecting the easterly side of Hill Street with the southerly side of Cottage Row:

1. North 43 degrees, 54 minutes 30 seconds East, 57.61 feet;
2. North 52 degrees, 56 minutes 30 seconds East, 59.40 feet;
3. North 74 degrees, 39 minutes, 30 seconds East, 36.56 feet;
4. South 84 degrees, 18 minutes, 30 seconds East, 47.67 feet;
5. South 67 degrees, 21 minutes, 30 seconds East 151.66 feet;
6. South 59 degrees, 36 minutes, 30 seconds East 92.93 feet to the point or place of beginning.

THENCE easterly along the southerly side of Cottage Row South 59 degrees, 36 minutes, 30 seconds East, 30.70 feet;

THENCE continuing along the southerly side of Cottage Row, South 60 degrees, 47 minutes, 30 seconds East, 225.46 feet to lands now or formerly of Iglesia Ciudad De Refugio Inc.

THENCE southerly along lands now or formerly of Iglesia Ciudad De Refugio Inc. and lands now or formerly of Glen Arms Group LLC the following four (4) courses:

- 1) South 26 degrees 08 minutes 30 seconds West, 74.63 feet;
- 2) South 22 degrees 47 minutes 30 seconds West, 38.94 feet;
- 3) South 19 degrees 23 minutes 30 seconds West, 46.36 feet;
- 4) South 20 degrees, 30 minutes 00 seconds West, 519.30 feet to the northerly side of Elsinore Street;

THENCE westerly, partly along the northerly side of Elsinore Street, partly along lot 19 as shown on the map of Flintstone Park, filed September 18, 1919 as map number 345 and partly along land now or formerly of David Berkeley the following two courses:

- 1) North 59 degrees 14 minutes 30 seconds West, 442.65 feet;
- 2) North 59 degrees 52 minutes 30 seconds West, 186.37 feet to the easterly side of Hill Street;

THENCE northerly along the easterly side of Hill Street North 20 degrees 34 minutes 30 seconds East, 187.09 feet;

THENCE the following twelve (12) courses through lands now or formerly of Congregation Tifereth Israel of  
Certificate of Title Template File CDFPURC.pft

(Continued)

Glen Cove:

- 1) Along the arc of a circular curve bearing to the left having a radius of 24.22 feet with an arc length of 14.20 feet;
- 2) South 69 degrees 25 minutes 09 seconds East, 34.97 feet;
- 3) South 68 degrees 08 minutes 55 seconds East, 79.86 feet;
- 4) Along the arc of a circular curve bearing to the right having a radius of 513.00 feet with an arc length of 74.08 feet;
- 5) South 59 degrees 52 minutes 28 seconds East, 125.98 feet;
- 6) Along the arc of a circular curve bearing to the left having a radius of 60.00 feet with an arc length of 104.33 feet;
- 7) North 20 degrees 30 minutes 00 seconds East, 64.92 feet;
- 8) Along the arc of a curve bearing to the left having a radius 50.00 feet with an arc length 17.21 feet;
- 9) North 00 degrees 46 minutes 35 seconds East, 45.30 feet;
- 10) North 69 degrees 30 minutes 00 seconds West, 27.35 feet;
- 11) North 20 degrees 30 minutes 00 seconds East, 126.39 feet;
- 12) North 29 degrees 35 minutes 29 seconds East, 147.27 feet to the southerly side of Cottage Row and the point or place of BEGINNING.

Reserving and Excepting Therefrom, non-exclusive permanent and perpetual easements and rights of way as follows:

1. A non-exclusive permanent and perpetual easement and right of way for the benefit of the Grantor, it's agents, employees, contractors, suppliers and the adjoining lands of the Grantor herein and it's heirs, successors and assigns on, over and across the area of the proposed "Access Roadway" which is shown and designated as Roblu Lane on the map entitled "Subdivision Map for Glen Cove Mews, Map of Lot 1," prepared by H2M Group dated May 10, 2011, last revised May 16, 2012 (the "Map") and which area is more particularly bounded and described in Schedule B annexed hereto (the "Access Roadway") solely for the purpose of ingress and egress to and from Hill Street for vehicular traffic only.
2. A non-exclusive permanent and perpetual easement and right of way for the benefit of the Grantor, it's agents, employees, contractors, suppliers and the adjoining lands of the Grantor herein and it's heirs, successors and assigns on, over and across the westerly part of Lot 1 on the Map extending northerly from the northerly terminus of the Roadway area described in Schedule B in a northerly direction to the Emergency Fire Access Driveway as shown on the Map and on, over and across said Emergency Fire Access Driveway to the adjoining lands of the Grantor solely for the purpose of ingress and egress to and from Hill Street for a vehicular traffic only.

Access Roadway Easement

(Continued)

ALL that certain plot, piece or parcel of land, with improvements erected thereon situate, lying and being at Glen Cove, Town of Oyster Bay, County of Nassau and State of New York, being bounded and described as follows:

BEGINNING at the northwesterly most corner of Lot 4. Said point of beginning being 306.22 feet southerly, along the easterly side of Hill Street, from the southerly end of a line connecting the southerly side of Cottage Row with the easterly side of Hill Street.

THENCE the following fourteen (14) courses through lands now or formerly of Congregation Tifereth Israel of Glen Cove.

1. Along the arc of a circular curve bearing to the left having a radius of 24.22 feet with an arc length of 14.20 feet;
2. South 69 degrees, 25 minutes 09 seconds East, 34.97 feet;
3. South 68 degrees, 08 minutes 55 seconds East, 79.86 feet;
4. Along the arc of a circular curve bearing to the right having a radius of 513.00 feet with an arc length of 74.08 feet;
5. South 59 degrees, 52 minutes 28 seconds East, 125.98 feet;
6. Along the arc of a circular curve bearing to the left having a radius of 60.00 feet with an arc length of 104.33 feet;
7. North 20 degrees, 30 minutes 00 seconds East, 4.46 feet;
8. South 69 degrees, 30 minutes 00 seconds East, 25.00 feet;
9. South 20 degrees, 30 minutes 00 seconds West, 4.46 feet;
10. Along the arc of a circular curve bearing to the right having a radius of 85.00 feet with an arc length of 147.80 feet;
11. North 59 degrees, 52 minutes 28 seconds West, 125.17 feet;
12. Along the arc of a circular curve bearing to the left having a radius of 488.00 feet with an arc length of 81.30 feet;
13. North 69 degrees, 25 minutes 09 seconds West, 102.51 feet;
14. Along the arc of a circular curve bearing to the left having a radius of 24.50 feet with an arc length of 14.18 feet to the easterly side of Hill Street;

THENCE northerly along the easterly side of Hill Street North 20 degrees, 34 minutes 30 seconds East, 34.92 feet to the point or place of BEGINNING.

## EXHIBIT B

### DESCRIPTION OF THE EQUIPMENT

All equipment, appliances, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed in connection with the acquisition, construction, installation and equipping of the 2021 Arcadia Landing Project (the "Project") of the Glen Cove Industrial Development Agency (the "Agency") located on the real property described on Exhibit A hereto (the "Land"), said Project to be acquired, constructed and installed by Arcadia Landing LLC (the "Company") as agent of the Agency pursuant to a uniform project agreement dated as of July 1, 2021 (the "Agreement") by and between the Agency and the Company, and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

(1) Pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery; and

(2) Together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

EXHIBIT E  
FORM OF SALES TAX AGENCY AGREEMENT

See Attached

## SALES TAX AGENCY AGREEMENT

July 6, 2021

Arcadia Landing LLC  
772 W. Beech Street  
Long Beach, NY 11561

Re: Glen Cove Industrial Development Agency  
(2021 Arcadia Landing Project)

Ladies and Gentlemen:

The Glen Cove Industrial Development Agency (the "Agency") and Arcadia Landing LLC (the "Company") agree as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, including the acquisition of property, is exempt from the imposition of any New York State or Nassau County sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

2. Pursuant to a resolution adopted by the Agency on April 14, 2020 (the "Authorizing Resolution") and a Uniform Project Agreement, dated as of June 1, 2021 (as amended, modified, supplemented or restated, the "Project Agreement"), between the Agency and the Company, the Agency has authorized the Company to act as its agent to complete the acquisition, construction, installation and equipping of a commercial facility in the City of Glen Cove, New York, consisting of: (1) the construction of an approximately 102,800 square foot building(s) (collectively, the "Building") located on a parcel of land located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the "Land"), and (2) the acquisition of certain

furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment" and together with the Land and the Building, collectively, the "Project Facility").

3. As agent for the Agency, the Company agrees that each contract, agreement, lease, invoice, bill or purchase order entered into by the Company as agent for the Agency in connection with the acquisition, construction, installation or equipping of the Project Facility shall include language in substantially the following form:

"This [contract, agreement, lease, invoice, bill or purchase order] is being entered into by [ ] (the "Agent"), as approved agent for and on behalf of the Glen Cove Industrial Development Agency (the "Agency") in connection with a certain project (the "Project") of the Agency for Arcadia Landing LLC (the "Company") consisting in part of the acquisition, construction, equipping and installation of a multifamily residential facility located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the "Premises") and the acquisition of certain capital improvements, materials, machinery, equipment, appliances, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project. The capital improvements, materials, machinery, equipment, appliances, trade fixtures, furniture, furnishings and other tangible personal property necessary for completion of the Project which are the subject of this [contract, agreement, lease, invoice, bill or purchase order] shall be exempt from the sales and use taxes levied by the State of New York and the County of Nassau if effected in accordance with the terms and conditions set forth in the attached Sales Tax Agency Agreement of the Agency, and the Agent hereby represents that this [contract, agreement, lease, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Agency Agreement. This [contract, agreement, lease, invoice, bill or purchase order] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract, agreement, lease, invoice, bill or purchase order], the [vendor, lessor, licensor, contractor or subcontractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

4. The acquisition of capital improvements, materials, machinery, equipment, appliances, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project Facility (collectively, the "Property") shall be exempt from the sales and use taxes levied by the State of New York and the County of Nassau on the condition that (i) such items of Property are separately identifiable property of the Agency, and (ii) each item of Property shall have a useful life of one year or more, and shall solely be for the use of the Company at and in the Project Facility, and for no other entity and at no other location, and shall be effected by and at the sole cost of the Company. The exemption provided pursuant

to Section 4.1(E) of the Project Agreement shall not apply to the acquisition of: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, lawns or plants, (v) fine art or other similar decorative items, or (vi) motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or other similar agency for use on public highways or streets.

5. The Agency shall have no liability or performance obligations under any contract, agreement, lease, invoice, bill or purchase order entered into by the Company, as agent for the Agency pursuant to Section 4.1(E) of the Project Agreement, and in the event liability should arise under any such contract, agreement, lease, invoice, bill, or purchase order, the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, lease, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company shall be the sole party liable thereunder.

6. By execution of its acceptance of the terms of this Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Agreement by the Company is and will be strictly for the purposes above stated.

7. Until the earliest of (i) December 31, 2021, (ii) the completion of the Project as provided in the Project Agreement, (iii) the receipt by the Company of the Maximum Sales Tax Benefit (as defined in the Project Agreement), and (iv) the termination of the Project Agreement and/or revocation of the appointment of the Company as agent of the Agency (the earliest to occur of the foregoing, the "Termination Date"), all vendors, lessors, licensors, contractors and subcontractors are hereby authorized to rely on the ST-123 Form prepared by the Company and issued to such vendor, lessor, licensor, contractor or subcontractor pursuant to Paragraph 11 hereof as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Company, as agent for the Agency, are exempt from all New York State and Nassau County sales and use taxes. In addition, all vendors, lessors, licensors, contractors and subcontractors are advised and the Company acknowledges and agrees that the exemption from sales and use taxes shall not be available with respect to a particular residential condominium unit after the sale of such unit to a third party.

8. Any vendor, lessor, licensor, contractor or subcontractor that does not collect otherwise applicable sales or use tax in reliance upon this Agreement and the ST-123 Form issued by the Company to such vendor, lessor, licensor, contractor or subcontractor, shall be deemed to have acknowledged and agreed to the provisions of Paragraph 3 hereof regardless of whether or not the provisions thereof are inserted in the contract, agreement, lease, invoice, bill or purchase order entered into with the Company.

9. This Agreement and the ST-123 Form issued by the Company to a vendor, lessor, licensor, contractor or subcontractor are provided solely for the purposes described herein and therein. No other principal/agent relationship is intended or may be implied or inferred from this Agreement or the issuance of such ST-123 Form.

10. The exemption from sales and use taxes provided under the Project Agreement is granted subject to the requirements of Section 875 of the General Municipal Law,



which requirements are incorporated herein by reference, and the Company agrees to such requirements as a condition precedent to receiving the exemption from sales and use taxes.

11. The Company agrees to provide a completed Form ST-123, *IDA Agent or Project Operator Exempt Purchase Certificate*, to each vendor, lessor, licensor, contractor or subcontractor from which the Company purchases and/or leases Property, or with which the Company enters into an improvement or installation contract relating to the acquisition, installation and equipping of the Project Facility. All vendors, lessors, licensors, contractors and subcontractors are authorized to rely on such completed Form ST-123 as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Company as agent for the Agency pursuant to Section 4.1(E) of the Project Agreement, are exempt from all New York State and Nassau County sales and use taxes. The Company agrees to provide the Agency a copy of each such Form ST-123 within five (5) days after the delivery of such form to the vendor, lessor, licensor, contractor or subcontractor.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

The signature of a representative of the Company where indicated below will indicate that the Company has accepted the terms hereof.

**GLEN COVE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: Ann S. Fangmann  
Title: Executive Director

ACCEPTED AND AGREED TO BY:

ARCADIA LANDING LLC

By: Arcadia Landing MM LLC, its Manager-  
Related Member

By: Arcadia Asset Services, LLC, its  
Manager

By: \_\_\_\_\_  
Timothy Sullivan  
Manager

[Signature Page to Sales Tax Agency Agreement]

EXHIBIT F

COMPANY TERMINATION OF PROJECT AGREEMENT

WHEREAS, ARCADIA LANDING LLC (the "Company") and the Glen Cove Industrial Development Agency (the "Agency") entered into a uniform project agreement dated as of July 1, 2021 (the "Project Agreement") pursuant to which, among other things, the Agency authorized the Company to undertake the Project (as defined in the Project Agreement) as agent of the Agency; and

WHEREAS, pursuant to the Project Agreement, the Company and the Agency agreed that the Project Agreement would terminate on the earlier to occur of (1) December 31, 2023 or (2) the date the Project Agreement would terminate pursuant to Article X or Article XI of the Project Agreement; and

WHEREAS, the Company and the Agency now desire to evidence the termination of the Project Agreement;

NOW, THEREFORE, it is hereby agreed that the Project Agreement has terminated as of the dated date hereof; provided, however, that, as provided in Section 12.7 of the Project Agreement, certain obligations of the Company shall survive the termination of the Project Agreement, and the execution of this company termination of project agreement by the Agency is not intended, and shall not be construed, as a waiver or alteration by the Agency or the Company of the provisions of Sections 11.4 and 12.7 of the Project Agreement.

IN WITNESS WHEREOF, the Company and the Agency have signed this company termination of project agreement and caused same to be dated as of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[ \_\_\_\_\_ ]

By: \_\_\_\_\_  
Authorized Officer

GLEN COVE INDUSTRIAL DEVELOPMENT  
AGENCY

By: \_\_\_\_\_  
Authorized Officer

STATE OF )  
 ) ss.:  
COUNTY OF )

On the \_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Notary Public

STATE OF )  
 ) ss.:  
COUNTY OF )

On the \_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Notary Public

EXHIBIT G  
FORMS OF ANNUAL  
EMPLOYMENT REPORT



BILL OF SALE  
TO  
GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY

ARCADIA LANDING LLC, a limited liability company organized and existing under the laws of the State of New York, having an office at 772 W. Beech Street, Long Beach, NY 11561 (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from the GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having an office for the transaction of business located at City Hall, 9-13 Glen Street, Glen Cove, NY 11542 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, all right, title and interest of the Grantor in and to the materials, machinery, equipment, fixtures and furnishings which are described in Schedule B attached hereto (the "Equipment"), whether now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located on a parcel of land (the "Land") located at 100 Breton Way, City of Glen Cove, Nassau County, New York, which Land is more particularly described on Schedule A attached hereto.

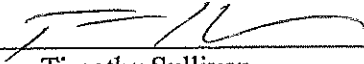
TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever, and the said Grantor, for itself, its successors and assigns, covenants and agrees to and with the Grantee, its successors and assigns, to warrant and defend the sale of said Equipment hereby made unto the Grantee, its successors and assigns against the claims and demands of every and all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by its duly authorized officer and dated as of the 6<sup>th</sup> day of ~~June~~<sup>July</sup>, 2021.

ARCADIA LANDING LLC

By: Arcadia Landing MM LLC, its Manager-Related Member

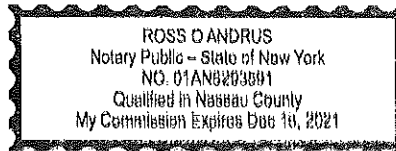
By: Arcadia Asset Services, LLC, its Manager

By:   
Timothy Sullivan  
Manager

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

On the 15<sup>th</sup> day of June, 2021, before me, the undersigned, personally appeared Timothy Sullivan, 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



[Acknowledgment Page to Bill of Sale]



SCHEDULE A  
DESCRIPTION OF THE LAND

See Attached

ALL that certain plot piece or parcel of land, situate, lying and being in the City of Glen Cove, Town of Oyster Bay, County of Nassau and State of New York, and bounded and described:

BEGINNING at a point on the southerly side of Cottage Row, said point of beginning being further described as being the following six courses from the northerly end of a line connecting the easterly side of Hill Street with the southerly side of Cottage Row:

1. North 43 degrees, 54 minutes 30 seconds East, 57.61 feet;
2. North 52 degrees, 56 minutes 30 seconds East, 59.40 feet;
3. North 74 degrees, 39 minutes, 30 seconds East, 36.56 feet;
4. South 84 degrees, 18 minutes, 30 seconds East, 47.67 feet;
5. South 67 degrees, 21 minutes, 30 seconds East 151.66 feet;
6. South 59 degrees, 36 minutes, 30 seconds East 92.93 feet to the point or place of beginning.

THENCE easterly along the southerly side of Cottage Row South 59 degrees, 36 minutes, 30 seconds East, 30.70 feet;

THENCE continuing along the southerly side of Cottage Row, South 60 degrees, 47 minutes, 30 seconds East, 225.46 feet to lands now or formerly of Iglesia Ciudad De Refugio Inc.

THENCE southerly along lands now or formerly of Iglesia Ciudad De Refugio Inc. and lands now or formerly of Glen Arms Group LLC the following four (4) courses:

- 1) South 26 degrees 08 minutes 30 seconds West, 74.63 feet;
- 2) South 22 degrees 47 minutes 30 seconds West, 38.94 feet;
- 3) South 19 degrees 23 minutes 30 seconds West, 46.36 feet;
- 4) South 20 degrees, 30 minutes 00 seconds West, 519.30 feet to the northerly side of Elsinore Street;

THENCE westerly, partly along the northerly side of Elsinore Street, partly along lot 19 as shown on the map of Flintstone Park, filed September 18, 1919 as map number 345 and partly along land now or formerly of David Berkeley the following two courses:

- 1) North 59 degrees 14 minutes 30 seconds West, 442.65 feet;
- 2) North 59 degrees 52 minutes 30 seconds West, 186.37 feet to the easterly side of Hill Street;

THENCE northerly along the easterly side of Hill Street North 20 degrees 34 minutes 30 seconds East, 187.09 feet;

THENCE the following twelve (12) courses through lands now or formerly of Congregation Tifereth Israel of  
Certificate of Title Template File CDFPURC.pft

(Continued)

Glen Cove:

- 1) Along the arc of a circular curve bearing to the left having a radius of 24.22 feet with an arc length of 14.20 feet;
- 2) South 69 degrees 25 minutes 09 seconds East, 34.97 feet;
- 3) South 68 degrees 08 minutes 55 seconds East, 79.86 feet;
- 4) Along the arc of a circular curve bearing to the right having a radius of 513.00 feet with an arc length of 74.08 feet;
- 5) South 59 degrees 52 minutes 28 seconds East, 125.98 feet;
- 6) Along the arc of a circular curve bearing to the left having a radius of 60.00 feet with an arc length of 104.33 feet;
- 7) North 20 degrees 30 minutes 00 seconds East, 64.92 feet;
- 8) Along the arc of a curve bearing to the left having a radius 50.00 feet with an arc length 17.21 feet;
- 9) North 00 degrees 46 minutes 35 seconds East, 45.30 feet;
- 10) North 69 degrees 30 minutes 00 seconds West, 27.35 feet;
- 11) North 20 degrees 30 minutes 00 seconds East, 126.39 feet;
- 12) North 29 degrees 35 minutes 29 seconds East, 147.27 feet to the southerly side of Cottage Row and the point or place of BEGINNING.

Reserving and Excepting Therefrom, non-exclusive permanent and perpetual easements and rights of way as follows:

1. A non-exclusive permanent and perpetual easement and right of way for the benefit of the Grantor, it's agents, employees, contractors, suppliers and the adjoining lands of the Grantor herein and it's heirs, successors and assigns on, over and across the area of the proposed "Access Roadway" which is shown and designated as Roblu Lane on the map entitled "Subdivision Map for Glen Cove Mews, Map of Lot 1," prepared by H2M Group dated May 10, 2011, last revised May 16, 2012 (the "Map") and which area is more particularly bounded and described in Schedule B annexed hereto (the "Access Roadway") solely for the purpose of ingress and egress to and from Hill Street for vehicular traffic only.
2. A non-exclusive permanent and perpetual easement and right of way for the benefit of the Grantor, it's agents, employees, contractors, suppliers and the adjoining lands of the Grantor herein and it's heirs, successors and assigns on, over and across the westerly part of Lot 1 on the Map extending northerly from the northerly terminus of the Roadway area described in Schedule B in a northerly direction to the Emergency Fire Access Driveway as shown on the Map and on, over and across said Emergency Fire Access Driveway to the adjoining lands of the Grantor solely for the purpose of ingress and egress to and from Hill Street for a vehicular traffic only.

Access Roadway Easement

(Continued)

ALL that certain plot, piece or parcel of land, with improvements erected thereon situate, lying and being at Glen Cove, Town of Oyster Bay, County of Nassau and State of New York, being bounded and described as follows:

BEGINNING at the northwesterly most corner of Lot 4. Said point of beginning being 306.22 feet southerly, along the easterly side of Hill Street, from the southerly end of a line connecting the southerly side of Cottage Row with the easterly side of Hill Street.

THENCE the following fourteen (14) courses through lands now or formerly of Congregation Tifereth Israel of Glen Cove.

1. Along the arc of a circular curve bearing to the left having a radius of 24.22 feet with an arc length of 14.20 feet;
2. South 69 degrees, 25 minutes 09 seconds East, 34.97 feet;
3. South 68 degrees, 08 minutes 55 seconds East, 79.86 feet;
4. Along the arc of a circular curve bearing to the right having a radius of 513.00 feet with an arc length of 74.08 feet;
5. South 59 degrees, 52 minutes 28 seconds East, 125.98 feet;
6. Along the arc of a circular curve bearing to the left having a radius of 60.00 feet with an arc length of 104.33 feet;
7. North 20 degrees, 30 minutes 00 seconds East, 4.46 feet;
8. South 69 degrees, 30 minutes 00 seconds East, 25.00 feet;
9. South 20 degrees, 30 minutes 00 seconds West, 4.46 feet;
10. Along the arc of a circular curve bearing to the right having a radius of 85.00 feet with an arc length of 147.80 feet;
11. North 59 degrees, 52 minutes 28 seconds West, 125.17 feet;
12. Along the arc of a circular curve bearing to the left having a radius of 488.00 feet with an arc length of 81.30 feet;
13. North 69 degrees, 25 minutes 09 seconds West, 102.51 feet;
14. Along the arc of a circular curve bearing to the left having a radius of 24.50 feet with an arc length of 14.18 feet to the easterly side of Hill Street;

THENCE northerly along the easterly side of Hill Street North 20 degrees, 34 minutes 30 seconds East, 34.92 feet to the point or place of BEGINNING.

## SCHEDULE B

### DESCRIPTION OF THE EQUIPMENT

All equipment, appliances, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed in connection with the acquisition, construction, installation and equipping of the 2021 Arcadia Landing Project (the "Project") of the Glen Cove Industrial Development Agency (the "Agency") located on the real property described on Exhibit A hereto (the "Land"), said Project to be acquired, constructed and installed by Arcadia Landing LLC (the "Company") as agent of the Agency pursuant to a uniform project agreement dated as of June 1, 2021 (the "Agreement") by and between the Agency and the Company, and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

(1) Pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery; and

(2) Any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.



## SALES TAX AGENCY AGREEMENT

July 6, 2021

Arcadia Landing LLC  
772 W. Beech Street  
Long Beach, NY 11561

Re: Glen Cove Industrial Development Agency  
(2021 Arcadia Landing Project)

Ladies and Gentlemen:

The Glen Cove Industrial Development Agency (the “Agency”) and Arcadia Landing LLC (the “Company”) agree as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, including the acquisition of property, is exempt from the imposition of any New York State or Nassau County sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

2. Pursuant to a resolution adopted by the Agency on April 14, 2020 (the “Authorizing Resolution”) and a Uniform Project Agreement, dated as of June 1, 2021 (as amended, modified, supplemented or restated, the “Project Agreement”), between the Agency and the Company, the Agency has authorized the Company to act as its agent to complete the acquisition, construction, installation and equipping of a commercial facility in the City of Glen Cove, New York, consisting of: (1) the construction of an approximately 102,800 square foot building(s) (collectively, the “Building”) located on a parcel of land located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the “Land”), and (2) the acquisition of certain

furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment" and together with the Land and the Building, collectively, the "Project Facility").

3. As agent for the Agency, the Company agrees that each contract, agreement, lease, invoice, bill or purchase order entered into by the Company as agent for the Agency in connection with the acquisition, construction, installation or equipping of the Project Facility shall include language in substantially the following form:

"This [contract, agreement, lease, invoice, bill or purchase order] is being entered into by [ ] (the "Agent"), as approved agent for and on behalf of the Glen Cove Industrial Development Agency (the "Agency") in connection with a certain project (the "Project") of the Agency for Arcadia Landing LLC (the "Company") consisting in part of the acquisition, construction, equipping and installation of a multifamily residential facility located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the "Premises") and the acquisition of certain capital improvements, materials, machinery, equipment, appliances, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project. The capital improvements, materials, machinery, equipment, appliances, trade fixtures, furniture, furnishings and other tangible personal property necessary for completion of the Project which are the subject of this [contract, agreement, lease, invoice, bill or purchase order] shall be exempt from the sales and use taxes levied by the State of New York and the County of Nassau if effected in accordance with the terms and conditions set forth in the attached Sales Tax Agency Agreement of the Agency, and the Agent hereby represents that this [contract, agreement, lease, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Agency Agreement. This [contract, agreement, lease, invoice, bill or purchase order] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract, agreement, lease, invoice, bill or purchase order], the [vendor, lessor, licensor, contractor or subcontractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

4. The acquisition of capital improvements, materials, machinery, equipment, appliances, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project Facility (collectively, the "Property") shall be exempt from the sales and use taxes levied by the State of New York and the County of Nassau on the condition that (i) such items of Property are separately identifiable property of the Agency, and (ii) each item of Property shall have a useful life of one year or more, and shall solely be for the use of the Company at and in the Project Facility, and for no other entity and at no other location, and shall be effected by and at the sole cost of the Company. The exemption provided pursuant



to Section 4.1(E) of the Project Agreement shall not apply to the acquisition of: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, lawns or plants, (v) fine art or other similar decorative items, or (vi) motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or other similar agency for use on public highways or streets.

5. The Agency shall have no liability or performance obligations under any contract, agreement, lease, invoice, bill or purchase order entered into by the Company, as agent for the Agency pursuant to Section 4.1(E) of the Project Agreement, and in the event liability should arise under any such contract, agreement, lease, invoice, bill, or purchase order, the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, lease, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company shall be the sole party liable thereunder.

6. By execution of its acceptance of the terms of this Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Agreement by the Company is and will be strictly for the purposes above stated.

7. Until the earliest of (i) December 31, 2021, (ii) the completion of the Project as provided in the Project Agreement, (iii) the receipt by the Company of the Maximum Sales Tax Benefit (as defined in the Project Agreement), and (iv) the termination of the Project Agreement and/or revocation of the appointment of the Company as agent of the Agency (the earliest to occur of the foregoing, the "Termination Date"), all vendors, lessors, licensors, contractors and subcontractors are hereby authorized to rely on the ST-123 Form prepared by the Company and issued to such vendor, lessor, licensor, contractor or subcontractor pursuant to Paragraph 11 hereof as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Company, as agent for the Agency, are exempt from all New York State and Nassau County sales and use taxes. In addition, all vendors, lessors, licensors, contractors and subcontractors are advised and the Company acknowledges and agrees that the exemption from sales and use taxes shall not be available with respect to a particular residential condominium unit after the sale of such unit to a third party.

8. Any vendor, lessor, licensor, contractor or subcontractor that does not collect otherwise applicable sales or use tax in reliance upon this Agreement and the ST-123 Form issued by the Company to such vendor, lessor, licensor, contractor or subcontractor, shall be deemed to have acknowledged and agreed to the provisions of Paragraph 3 hereof regardless of whether or not the provisions thereof are inserted in the contract, agreement, lease, invoice, bill or purchase order entered into with the Company.

9. This Agreement and the ST-123 Form issued by the Company to a vendor, lessor, licensor, contractor or subcontractor are provided solely for the purposes described herein and therein. No other principal/agent relationship is intended or may be implied or inferred from this Agreement or the issuance of such ST-123 Form.

10. The exemption from sales and use taxes provided under the Project Agreement is granted subject to the requirements of Section 875 of the General Municipal Law,

which requirements are incorporated herein by reference, and the Company agrees to such requirements as a condition precedent to receiving the exemption from sales and use taxes.

11. The Company agrees to provide a completed Form ST-123, *IDA Agent or Project Operator Exempt Purchase Certificate*, to each vendor, lessor, licensor, contractor or subcontractor from which the Company purchases and/or leases Property, or with which the Company enters into an improvement or installation contract relating to the acquisition, installation and equipping of the Project Facility. All vendors, lessors, licensors, contractors and subcontractors are authorized to rely on such completed Form ST-123 as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Company as agent for the Agency pursuant to Section 4.1(E) of the Project Agreement, are exempt from all New York State and Nassau County sales and use taxes. The Company agrees to provide the Agency a copy of each such Form ST-123 within five (5) days after the delivery of such form to the vendor, lessor, licensor, contractor or subcontractor.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

The signature of a representative of the Company where indicated below will indicate that the Company has accepted the terms hereof.

**GLEN COVE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Name: Ann S. Fangmann  
Title: Executive Director

ACCEPTED AND AGREED TO BY:

ARCADIA LANDING LLC

By: Arcadia Landing MM LLC, its Manager-  
Related Member

By: Arcadia Asset Services, LLC, its  
Manager

By: \_\_\_\_\_  
Timothy Sullivan  
Manager

[Signature Page to Sales Tax Agency Agreement]

The signature of a representative of the Company where indicated below will indicate that the Company has accepted the terms hereof.

**GLEN COVE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

Name: Ann S. Fangmann

Title: Executive Director

ACCEPTED AND AGREED TO BY:

ARCADIA LANDING LLC

By: Arcadia Landing MM LLC, its Manager-  
Related Member

By: Arcadia Asset Services, LLC, its  
Manager

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

Timothy Sullivan  
Manager

[Signature Page to Sales Tax Agency Agreement]



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2021 Jul 07 PM02:13

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

<b>A. NAME &amp; PHONE OF CONTACT AT FILER (optional)</b> Crystal Almeter, Paralegal (716-483-5303)
<b>B. SEND ACKNOWLEDGMENT TO: (Name and Address)</b>  Phillips Lytle LLP 1205 Franklin Avenue, Suite 390 Garden City, NY 11530, USA

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names**

1a. ORGANIZATION'S NAME <b>ARCADIA LANDING LLC</b>						
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS <b>772 W. Beech Street</b>			CITY <b>Long Island</b>	STATE <b>NY</b>	POSTAL CODE <b>11561</b>	COUNTRY <b>USA</b>
1d. <u>SEE INSTRUCTIONS</u>	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION <b>Limited Liability Company</b>	1f. JURISDICTION OF ORGANIZATION <b>New York</b>	1g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE		

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names**

2a. ORGANIZATION'S NAME						
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY
2d. <u>SEE INSTRUCTIONS</u>	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE		

**3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)**

3a. ORGANIZATION'S NAME <b>GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY</b>						
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS <b>City Hall, 9-13 Glen Street</b>			CITY <b>Glen Cove</b>	STATE <b>NY</b>	POSTAL CODE <b>11542</b>	COUNTRY <b>USA</b>

**4. This FINANCING STATEMENT covers the following collateral:**

All materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property acquired by or on behalf of the Debtor using the Sales Tax Agency Agreement and/or and Sub-Agent Agency Agreement provided by the Secured Party in connection with the real property at 100 Breton Way, City of Glen Cove, Nassau County, New York (the "Project Facility"), and in all additions and accessions thereto, all replacements and substitutions therefor, all books, records and accounts of the Debtor pertaining to the Project Facility, and all proceeds and products thereof.

5. ALTERNATIVE DESIGNATION (if applicable):	<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAIOLR	<input type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> AG. LIEN	<input type="checkbox"/> NON-UCC FILING
6. This FINANCING STATEMENT is to be filed (or record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum	<input type="checkbox"/> if applicable	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)	<input type="checkbox"/> All Debtors	<input type="checkbox"/> Debtor 1	<input type="checkbox"/> Debtor 2	
8. OPTIONAL FILER REFERENCE DATA <b>GCIDA/ARCADIA #11581.34</b>						

FILING OFFICE COPY -- NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

Filing Number-202107078304222

**New York State Department of State**  
**Uniform Commercial Code**  
 Filing Data Report

Please note that this record report has been generated by an independent searcher, using the Department of State's Uniform Commercial Code On-Line Database. This report lists filing records on file as of June 23, 2021, 11:59 PM. However, the information contained in this report is NOT an official record of the Department of State and may contain filings filed after this date.

<b>1. Debtors:</b>	<b>ARCADIA LANDING LLC</b>	<b>772 W. BEECH STREET, LONG ISLAND, NY 11561, USA</b>			
<b>Secured Party Names:</b>	<b>GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY</b>	<b>CITY HALL, 9-13 GLEN STREET, GLEN COVE, NY 11542, USA</b>			
<b>File no.</b>	<b>File Date</b>	<b>Lapse Date</b>	<b>Filing Type</b>	<b>Pages</b>	<b>Image</b>
202107078304222	07/07/2021	07/07/2026	Financing Statement	0	NA *

[Back](#)

\* Images marked NA are not available on this webpage.

[ [Division of Corporations, State Records and UCC Home Page](#) ] [ [NYS Department of State Home Page](#) ]

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)
<div style="border: 1px solid black; padding: 5px;">                 Phillips Lytle LLP                  1205 Franklin Avenue, Suite 390                  Garden City, NY 11530                  Attn: Milan K. Tyler, Esq.             </div>

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME <b>ARCADIA LANDING LLC</b>				
OR 1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
1c. MAILING ADDRESS <b>772 W. Beech Street</b>	CITY <b>Long Beach</b>	STATE <b>NY</b>	POSTAL CODE <b>11561</b>	COUNTRY

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR 2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY</b>				
OR 3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
3c. MAILING ADDRESS <b>City Hall, 9-13 Glen Street</b>	CITY <b>Glen Cove</b>	STATE <b>NY</b>	POSTAL CODE <b>11542</b>	COUNTRY

4. COLLATERAL: This financing statement covers the following collateral:

**All materials, machinery, equipment, trade fixtures, fixtures, furniture, furnishings and other tangible personal property acquired by or on behalf of the Debtor using the Sales Tax Agency Agreement and/or any Sub-Agent Agency Agreement provided by the Secured Party in connection with the real property at 100 Breton Way, City of Glen Cove, Nassau County, New York (the "Project Facility"), and in all additions and accessions thereto, all replacements and substitutions therefor, all books, records and accounts of the Debtor pertaining to the Project Facility, and all proceeds and products thereof.**

5. Check only if applicable and check only one box: Collateral is  held in a Trust (see UCC1Ad, Item 17 and Instructions)  being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:  Public-Finance Transaction  Manufactured-Home Transaction  A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:  Agricultural Lien  Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable):  Lessee/Lessor  Consignee/Consignor  Seller/Buyer  Bailee/Bailor  Licensee/Licenser

8. OPTIONAL FILER REFERENCE DATA:  
**File with County Clerk, Nassau County, New York**



# UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here

9a. ORGANIZATION'S NAME <b>ARCADIA LANDING LLC</b>	
OR	
9b. INDIVIDUAL'S SURNAME	
FIRST PERSONAL NAME	
ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME				
OR				
10b. INDIVIDUAL'S SURNAME				
INDIVIDUAL'S FIRST PERSONAL NAME				
INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)				SUFFIX
10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

11.  ADDITIONAL SECURED PARTY'S NAME or  ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME				
OR				
11b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13.  This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:  
 covers timber to be cut     covers as-extracted collateral     is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:  
**100 Breton Way  
 Glen Cove, NY 11542**  
  
**Section: 39  
 Block: F  
 Lot: 79**

17. MISCELLANEOUS:  
**File with County Clerk, Nassau County, New York**



## GUARANTY

THIS GUARANTY dated as of July 1, 2021 (this "Guaranty") is given by TIMOTHY H. SULLIVAN, JOSEPH IORIO, JR., and MILLBROOK REALTY GROUP LLC, a New York limited liability company (each a "Guarantor" and, collectively the "Guarantors"), to the GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at City Hall, 9-13 Glen Street, Glen Cove, NY 11542 (the "Agency").

### WITNESSETH:

WHEREAS, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 374 of the 1974 Laws of New York, as amended, constituting Section 919 of said General Municipal Law (said Chapter and the Enabling Act, as in effect as of the Closing Date (as hereinafter defined), being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, Arcadia Landing LLC, a limited liability company organized and existing under the laws of the State of New York (the "Company"), submitted an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the construction of an approximately 102,800 square foot building(s) (collectively, the "Building") located on a parcel of land located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the "Land"), and (2) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment" and together with the Land and the Building, collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its affiliates as a multifamily residential facility consisting of approximately 72 age-restricted residential units; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential

exemptions or partial exemptions from sales and use taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the members of the Agency have determined that (A) the granting of the Financial Assistance by the Agency to the Company is necessary to induce the Company to proceed with the Project, and (B) there is a likelihood that the Project would not be undertaken but for the granting of the Financial Assistance by the Agency to the Company; and

WHEREAS, the Agency proposes to undertake the Project as an authorized “project” under the Act pursuant to a uniform project agreement dated as of the date hereof entered into between the Agency and the Company (as amended, modified, restated or replaced from time to time, the “Project Agreement”); and

WHEREAS, the Guarantors are the indirect owners of beneficial interests in the Company and will derive a direct benefit from the granting of the Financial Assistance by the Agency to the Company with respect to the Project Facility;

WHEREAS, it is a condition to the Agency’s agreement to undertake the Project that each Guarantor guaranty the timely and proper payment and performance of the Company under the Project Agreement and the other Transaction Documents (as defined in the Project Agreement);

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, each Guarantor does hereby represent, warrant, guaranty and agree with the Agency as follows:

## ARTICLE I DEFINITIONS

Section 1.1DEFINITIONS. Capitalized terms used herein and not otherwise defined herein shall have the same meanings assigned to such terms in the Project Agreement.

Section 1.2ACCOUNTING PRINCIPLES. Where the character or amount of any asset or liability or item of income or expense is required to be determined or consolidated or other accounting computation is required to be made for the purposes of this Guaranty, such determination, consolidation or computation shall be made in accordance with generally accepted accounting principles at the time in effect, to the extent applicable, except where such principles are inconsistent with the requirements of this Guaranty.

Section 1.3DIRECTLY OR INDIRECTLY. Where any provision of this Guaranty refers to action to be taken by any Person, or which provision prohibits any Person from taking certain

action, such provision shall be applicable whether such action is to be taken or is not to be taken directly or indirectly by such Person.

## ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.1 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE GUARANTOR. Each Guarantor makes the following representations, warranties and covenants with respect to himself, as the case may be, as the basis for the undertakings on his part herein contained:

(A) No consent or approval (governmental or otherwise) or the taking of any action is required as a condition to the validity or enforceability of this Guaranty or any of the other Transaction Documents.

(B) Neither the execution and delivery of this Guaranty or any of the other Transaction Documents to which such Guarantor is a party, the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the provisions of this Guaranty or the other Transaction Documents to which such Guarantor is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of any restriction, order, judgment, agreement, document or instrument to which such Guarantor is a party or by which such Guarantor or any of such Guarantor's Property is bound, or constitute a default by such Guarantor under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon the Project Facility under the terms of any of the foregoing, other than the Permitted Encumbrances, (2) to the best of such Guarantor's knowledge, conflict with or result in a violation of Applicable Laws, (3) require consent or approval (which has not been heretofore received and provided to the Agency) under any agreement or instrument to which such Guarantor is a party or by which such Guarantor or any of such Guarantor's Property may be bound or affected, or (4) require consent or approval (which has not been heretofore obtained and provided to the Agency) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any Governmental Authority having jurisdiction over such Guarantor or any of the Property of such Guarantor.

(C) The Transaction Documents to which such Guarantor is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid, legal and binding obligations of such Guarantor, enforceable in accordance with their respective terms.

(D) RESERVED.

(E) There are no actions, suits, investigations or proceedings of or before any Governmental Authority, pending or threatened against such Guarantor or any of such Guarantor's Property which (i) either in any case or in the aggregate, if adversely determined,

would materially, adversely affect the condition, financial or otherwise, of such Guarantor, or (ii) question the validity of this Guaranty or any of the Transaction Documents or any action to be taken in connection with the transactions contemplated thereby.

(F) To the best of such Guarantor's knowledge, such Guarantor is not in default with respect to any order, writ, injunction or decree of any Governmental Authority, nor is such Guarantor in violation of any law, statute or regulation, domestic or foreign, to which such Guarantor or any of such Guarantor's Property is subject.

(G) The funds available to the Company are sufficient to pay all costs in connection with the acquisition, construction, installation and equipping of the Project Facility.

(H) Such Guarantor is not a Prohibited Person, no Affiliate of such Guarantor, and no trustee, shareholder, director, manager or member, if applicable, of such Guarantor is a Prohibited Person.

(I) To the best of such Guarantor's knowledge, neither this Guaranty nor any other Transaction Document nor any other document, certificate, agreement or instrument furnished by such Guarantor contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading.

(J) Such Guarantor is an indirect owner of the beneficial interests in the Company and the undertaking of the Project by the Agency, the granting of the Financial Assistance and the assumption by the Guarantors of this obligations hereunder will result in a financial benefit to such Guarantors.

(K) Such Guarantor is solvent and such Guarantor has not filed for bankruptcy or reorganization nor has such Guarantor taken any action to achieve protection from their creditors. In addition, no proceeding has been commenced against such Guarantor in bankruptcy or reorganization by such Guarantor's creditors, or to promote the interests of the creditors against such Guarantor.

### ARTICLE III COVENANTS AND AGREEMENTS

#### Section 3.1 GUARANTY OF PAYMENT AND PERFORMANCE.

(A) The Guarantors hereby irrevocably and unconditionally guaranty to the Agency (1) the full and prompt payment of all moneys or rents due under or pursuant to the Project Agreement and any other sums or amounts payable under or pursuant to any of the Transaction Documents, when and as the same shall become due, and (2) the complete, prompt

and timely performance and observance by the Company of its obligations under the Project Agreement and the other Transaction Documents (collectively, the “Guaranteed Obligations”).

(B) This Guaranty is intended by the Guarantors to be an evidence of indebtedness of the Guarantor to the Agency within the meaning of 12 U.S.C. 24(7) and a primary obligation of the Guarantors to pay the sums payable by the Company under each of the Transaction Documents.

(C) All payments by the Guarantors shall be made in immediately available funds, upon written notice by the Agency to the Guarantors of the Company’s default and failure of the Company to cure such default within the applicable notice and/or cure period, if any, by wire transfer or other form of payment reasonably satisfactory to the Agency, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts.

(D) Each and every default in payment of any sum payable by the Company under any of the Transaction Documents shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by the Agency as each cause of action arises.

(E) The Guarantors shall pay to the Agency all fees and reasonable costs and expenses (including reasonable attorneys’ fees and expenses) incurred by the Agency in the administration of this Guaranty, or any amendment hereto, or in the protection of its rights or in pursuit of its remedies in respect of this Guaranty.

Section 3.2 OBLIGATIONS UNCONDITIONAL. The obligations of the Guarantors under this Guaranty shall be absolute, unconditional and shall remain in full force and effect until each and every one of the Guaranteed Obligations shall have been irrevocably paid and/or performed in full, and such obligations shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event, including, without limitation, any of the following, whether or not with notice to or the consent of the Company and/or of the Guarantors:

(A) the invalidity, irregularity, illegality or unenforceability of, or any defect in, (1) the Project Agreement, (2) any other Transaction Document, or (3) any collateral security for any thereof;

(B) any present or future law or order of any government (de jure or de facto) or of any agency thereof purporting to reduce, amend or otherwise affect the Project Agreement, any other Transaction Documents or any other obligation or right of the Guarantors or any other obligor, or to vary any terms of payment;

(C) any claim of immunity on behalf of the Agency or any other obligor or with respect to any Property of the Agency;

(D) the waiver, compromise, extension, settlement, release or termination of any or all of the obligations, covenants or agreements of any party under the Project Agreement or any of the other Transaction Documents;

(E) the occurrence of, or the failure to give notice to the Guarantors of the occurrence of, an Event of Default under any Transaction Document;

(F) the transfer, assignment or mortgaging, or the purported or attempted transfer, assignment or mortgaging, of all or any part of the interest of the Agency or the Company in the Project Facility, or any failure of or defect in the Agency's or the Company's respective interests in the Project Facility;

(G) the release, sale, exchange, surrender or other change in any security for payment of any obligation under any of the Transaction Documents;

(H) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the Project Agreement or any other Transaction Document;

(I) the taking of, or the failure to take, any action by the Agency, the Company and/or the Guarantors;

(J) any failure, omission or delay on the part of the Agency or any other Person to enforce, assert or exercise any right, power or remedy conferred in this Guaranty or any other Transaction Document;

(K) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization or other similar proceedings affecting the Company, the Guarantors or the Agency or any of the assets of any of them, or any allegation or any contest of the validity of the Transaction Documents in any such proceedings;

(L) any event or action that would, in the absence of this Section 3.2, result in the release or discharge of any Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty;

(M) the default or failure of any Guarantor fully to perform any of such Guarantor's obligations set forth in this Guaranty; or

(N) any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a surety or a guaranty.



Section 3.3 WAIVER BY THE GUARANTOR. Each Guarantor hereby waives diligence, presentment, demand for payment, filing of claims with a court in the event of bankruptcy of the Agency or any other Person; protest; notice of reliance on this Guaranty by the Agency, or of dishonor or non-payment of any such liabilities; and any other notice and all demands whatsoever.

Section 3.4 NO SET-OFF BY THE GUARANTOR. No set-off, counterclaim, reduction or diminution of an obligation, or any defense of any kind or nature which any Guarantor has or may have against the Agency or any other party shall be available hereunder to any Guarantor with respect to a claim under this Guaranty. The Guarantors acknowledge that no oral or other agreements, understandings, representations, or warranties exist with respect to this Guaranty or with respect to the obligations of the Guarantors under this Guaranty.

Section 3.5 WAIVER OF JURY TRIAL. THE AGENCY AND THE GUARANTORS HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES EACH RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF THIS GUARANTY.

Section 3.6 NATURE OF GUARANTY. This Guaranty is a guaranty of payment and performance and not of collection, and the Guarantors hereby waive any right to require that any action be brought against any other party or to require that resort be had to any security or to any balance of any fund or credit held by the Agency prior to the Agency proceeding under this Guaranty. If at any time any payment of any amount payable by the Company and guaranteed by the Guarantors pursuant to Section 3.1 hereof is rescinded or is otherwise required to be restored or returned upon the insolvency, bankruptcy or reorganization of the Company's or any Guarantor's obligations hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

Section 3.8 HOLD HARMLESS PROVISIONS.

(A) Each Guarantor hereby release the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, from, agrees that the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, shall not be liable for, and agrees to indemnify, defend (with counsel selected by the Agency and reasonably acceptable to the Guarantors) and hold the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from and against, any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to: (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project or the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Project Facility, and (2) liability

arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning or leasing the Project Facility, including, without limiting the generality of the foregoing, (i) all liabilities or claims arising as a result of the Agency's obligations under the Project Agreement or any of the other Transaction Documents or the enforcement of or defense of validity of any provision of any of the Transaction Documents, and (ii) all liabilities or claims arising as a result of the Agency's involvement in the Project or the granting of the Financial Assistance, (3) all liabilities and expenses arising from the failure or alleged failure of the Project Facility, the Company or the Company's members, managers, officers, agents, attorneys, servants or employees to comply with Applicable Laws, including, without limitation, any claim that the Agency aided or abetted in such failure or alleged failure to comply with Applicable Laws, (4) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Section 4.1(E) of the Project Agreement, and (5) all causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the intentional wrongdoing or gross negligence of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees.

(B) In the event of any claim against the Agency or its members, officers, agents (other than the Company), attorneys, servants or employees by any employee of any Guarantor or any contractor of any Guarantor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Guarantors hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Guarantors or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(C) Notwithstanding any other provisions of this Guaranty, the obligations of the Guarantors pursuant to this Section 3.8 shall remain in full force and effect after the termination or expiration of this Guaranty until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all reasonable expenses, charges and costs incurred by the Agency or its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, relating thereto.

Section 3.9 AGREEMENT TO PROVIDE INFORMATION. The Guarantors agrees, whenever reasonably requested by the Agency, to promptly provide and certify or cause to be provided and certified such information concerning the Guarantors or their respective finances, operations and affairs and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by Applicable Laws or other governmental regulation.

Section 3.10 NO SUBROGATION. No payment hereunder by any Guarantor shall entitle any Guarantor by subrogation to the rights of the Agency to any payment by any other obligor or out of the property of any other obligor, except for payment and performance in full of the Guaranteed Obligations.

#### ARTICLE IV EVENTS OF DEFAULT

Section 4.1EVENTS OF DEFAULT DEFINED. An “Event of Default” shall exist if any of the following occurs:

(A) any Guarantor defaults in the payment or performance of any Guaranteed Obligation and such default continues for more than thirty (30) days after written notice thereof has been given to the Guarantors by the Agency;

(B) any Guarantor fails to observe and perform any covenant, condition or agreement on his part to be performed under Section 3.1(E) or Section 3.9 hereof and such failure continues for a period of thirty (30) days after receipt by such Guarantor of written notice specifying the nature of such default or failure from the Agency;

(C) any Guarantor fails to observe and perform any covenant, condition or agreement hereunder on his part to be performed (except as set forth in Section 4.1(A) or (B) above) and (i) continuance of such failure for a period of thirty (30) days after receipt by such Guarantor of written notice specifying the nature of such default or failure from the Agency, or (ii) if by reason of the nature of such default or failure the same can be remedied, but not within the said thirty (30) days, such Guarantor fails to proceed with reasonable diligence after receipt of said notice to cure the same or fail to continue with reasonable diligence its efforts to cure the same or fail to cure the same within ninety (90) days of receipt of said notice;

(D) any Guarantor shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or all or a substantial part of such Guarantor’s property, (ii) admit in writing such Guarantor’s inability, or be generally unable, to pay such Guarantor’s debts as such debts generally become due, (iii) make a general assignment for the benefit of such Guarantor’s creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against such Guarantor in a voluntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(E) a proceeding or case shall be commenced in any court of competent jurisdiction against any Guarantor seeking (i) liquidation, reorganization, dissolution, winding-up

or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of such Guarantor or of all or any substantial part of such Guarantor's assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of ninety (90) days; or any order for relief against such Guarantor shall be entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect);

(F) any representation or warranty made (i) by the Company in the Application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Guaranty, or (ii) by the Company in the Project Agreement or in any other Transaction Document, or (iii) by any Guarantor herein or in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, that shall prove to be false, misleading or incorrect in any material respect as of the date made; or

(G) there shall occur an "Event of Default" under the Project Agreement or any other Transaction Document or under any Permitted Encumbrance.

Section 4.2 REMEDIES ON DEFAULT. If an Event of Default exists, the Agency may proceed to enforce the provisions hereof and to exercise any other rights, powers and remedies available to the Agency. The Agency, in its sole discretion, shall have the right to proceed first and directly against the Guarantors without proceeding against or exhausting any other remedies which it may have and without resorting to any other security held by the Agency.

#### Section 4.3 WAIVER AND NOTICE.

(A) No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty now or hereafter existing at law or in equity or by statute.

(B) No delay or omission to exercise 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 as often as may be deemed expedient.

(C) In order to entitle the Agency to exercise any remedy reserved to it in this Guaranty, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Guaranty.

(D) In the event any provision contained in this Guaranty shall 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 waive any other breach hereunder.

(E) No waiver, amendment, change, alteration, release, discharge, modification or termination of this Guaranty shall be established by conduct, custom or course of dealing.

ARTICLE V  
MISCELLANEOUS

Section 5.1 NOTICES.

(A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given on the earlier of (a) five (5) Business Days after being sent to the applicable address stated below by registered or certified mail, return receipt requested, or two (2) Business Days after being sent by nationally recognized overnight courier service, or (b) the date on which delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE GUARANTORS:

c/o Arcadia Landing LLC  
772 W. Beech Street  
Long Beach, NY 11561  
Attn: Timothy H. Sullivan

WITH A COPY TO:

Forchelli Deegan Terrana LLP  
333 Earle Ovington Boulevard  
Uniondale, NY 11553  
Attn: Daniel P. Deegan, Esq.

IF TO THE AGENCY:

Glen Cove Industrial Development Agency  
City Hall, 9-13 Glen Street  
Glen Cove, NY 11542

Attn: Executive Director

WITH A COPY TO:

Phillips Lytle LLP  
1205 Franklin Avenue, Suite 390  
Garden City, NY 11530  
Attn: Milan K. Tyler, Esq.

(C) The Agency and the Guarantor may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 5.2 **BINDING EFFECT.** This Guaranty shall inure to the benefit of the Agency and the Guarantors and shall be binding upon the Agency, the Guarantors and, as permitted by this Guaranty, their respective successors and assigns.

Section 5.3 **SEVERABILITY.** If any one or more of the covenants or agreements provided herein on the part of the Agency or the Guarantors to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be held void, voidable, invalid or unenforceable by a court of competent jurisdiction, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Guaranty.

Section 5.4 **AMENDMENT.** This Guaranty may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the Guarantors hereto and the Agency.

Section 5.5 **DATE OF GUARANTY.** The date of this Guaranty shall be for reference purposes only and shall not be construed to imply that this Guaranty was executed on the date first above written. This Guaranty was executed and delivered on the Closing Date.

Section 5.6 **EXECUTION OF COUNTERPARTS.** This Guaranty 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 5.7 **APPLICABLE LAW.** This Guaranty shall be governed by and construed in accordance with the applicable laws of the State of New York, as in effect from time to time, without regard to its principles of conflicts of law.

Section 5.8SECTION HEADINGS NOT CONTROLLING. The headings of the several sections in this Guaranty 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 Guaranty.

Section 5.9NO RECOURSE; SPECIAL OBLIGATION.

(A) The obligations and agreements of the Agency contained herein and in the other Transaction Documents and any other instrument or document executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company), servant or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company), servants and employees, past, present and future, of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York, the City of Glen Cove or any town, school district or village within which the Project Facility is located, and neither the State of New York, the City of Glen Cove, nor any such town, school district or village, shall be liable hereon or thereon, and, further, 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 the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) business days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) business days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten (10) business day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its members, officers, agents (other than the

Company), attorneys, servants and employees, past, present and future, against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, against all liability expected to be incurred as a result of compliance with such request.

#### Section 5.10 SERVICE OF PROCESS; VENUE.

Each Guarantor represents that it is subject to service of process in the State of New York and covenants that it will remain so subject so long as this Guaranty shall be in effect. If for any reason any Guarantor should cease to be so subject to service of process in the State of New York, such Guarantor hereby designates and appoints, without power of revocation, Daniel P. Deegan, Esq., c/o Forchelli Deegan Terrana LLP, 333 Earle Ovington Boulevard, Uniondale, NY 11553, as his agent for service of process upon whom may be served all process, pleadings, notices or other papers which may be served upon such Guarantor as a result of any of their respective obligations under this Guaranty; provided, however, that the serving of such process, pleadings, notices or other papers shall not constitute a condition to such Guarantor's obligations hereunder.

(B) Each Guarantor irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Guaranty or the other Transaction Documents may be brought in the courts of record of the State of New York in Chautauqua County or the courts of the United States, Western District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which he may have to the laying of venue of any such suit, action or proceeding in any of such courts. For such time as this Guaranty is in effect, the Guarantors' agent designated above shall accept and acknowledge in the Guarantors' behalf service of any and all process in any such suit, action or proceeding brought in any such court. Each Guarantor agrees and consents that any such service of process upon such agents and written notice of such service to such Guarantor in the manner set forth in Section 5.1 hereof shall be taken and held to be valid personal service upon such Guarantor whether or not such Guarantor shall then be doing, or at any time shall have done, business within the State of New York and that any such service of process shall be of the same force and validity as if service were made upon such Guarantor according to the laws governing the validity and requirements of such service in the State of New York, and waive all claim of error by reason of any such service. Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Guarantors or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Guarantors.




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IN WITNESS WHEREOF, the Guarantor have executed this Guaranty as of the day and year first above written.

  
\_\_\_\_\_  
TIMOTHY H. SULLIVAN

  
\_\_\_\_\_  
JOSEPH IORIO, JR.


MILLBROOK REALTY GROUP LLC

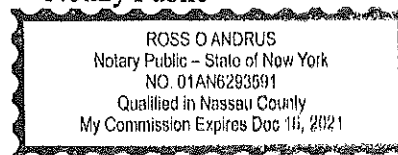
By:   
\_\_\_\_\_  
Eric Trucksess  
Managing Member

[Signature Page to Guaranty]

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

On the 15<sup>TH</sup> day of JUNE, 2021, before me, the undersigned, a Notary Public in and for said state, personally appeared Timothy H. Sullivan, 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 capacities, and that by his signature on the instrument, the individual, or the persons upon behalf of which the individual acted, executed this instrument.

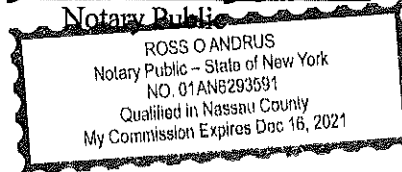
  
Notary Public



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

On the 15<sup>TH</sup> day of JUNE, 2021, before me, the undersigned, a Notary Public in and for said state, personally appeared Joseph Iorio, Jr., 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 capacities, and that by his signature on the instrument, the individual, or the persons upon behalf of which the individual acted, executed this instrument.

  
Notary Public

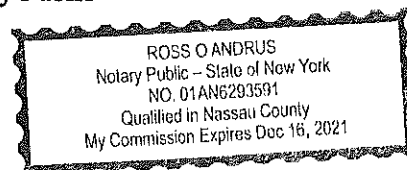


STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF NASSAU )

On the 15<sup>TH</sup> day of JUNE, 2021, before me, the undersigned, a Notary Public in and for said state, personally appeared Eric M. Trucksess, 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 capacities, and that by his signature on the instrument, the individual, or the persons upon behalf of which the individual acted, executed this instrument.

  
Notary Public

[Acknowledgment Page to Guaranty]





GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY

**AGENCY GENERAL CERTIFICATE**

This certificate is made in connection with the execution by the Glen Cove Industrial Development Agency (the “Agency”) of a certain Uniform Project Agreement dated as of July 1, 2021 (the “Project Agreement”) between the Agency and Arcadia Landing LLC (the “Company”) and the other documents, instruments, certificates and agreements required to be executed and/or delivered by the Agency (collectively, the “Agency Documents”) in connection with the undertaking by the Agency of a project (the “Project”) on behalf of the Company, consisting of the following: (A)(1) the construction of an approximately 102,800 square foot building(s) (collectively, the “Building”) located on a parcel of land located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the “Land”), and (2) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the “Equipment” and together with the Land and the Building, collectively, the “Project Facility”), all of the foregoing for use by the Company and/or its affiliates as a multifamily residential facility consisting of approximately 72 age-restricted residential units; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from sales and use taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency.

Capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to them in the Project Agreement except that, for purposes of this certificate, (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date, and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

THE UNDERSIGNED, BEING THE EXECUTIVE DIRECTOR OF THE AGENCY, HEREBY CERTIFIES THAT:

1. The Agency is an industrial development agency duly established under Chapter 1030 of the Laws of 1969 of the State of New York (the “State”) constituting Title I of Article 18-A of the New York General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”), and Chapter 374 of the 1974 Laws of New York, as amended, constituting Section 919 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”), and is a corporate governmental agency constituting a public benefit corporation of the State.

2. The Agency (A) has full legal power and authority to execute, deliver and perform its obligations under each of the Agency Documents, and (B) has taken all actions and obtained all approvals required in connection therewith by the Act and any other applicable laws and regulations.

3. Pursuant to the Act, the governing body of the City of Glen Cove, New York, for whose benefit the Agency was established, filed or caused to be filed within six (6) months after the effective date of such Chapter 374 of the 1974 Laws of New York, in the office of the New York State Department of State, Miscellaneous Records Unit, the Certificate of Establishment of the Agency pursuant to Section 919 of the General Municipal Law. Attached hereto as Exhibit A are certified copies of said Certificate of Establishment of the Agency and of the Certificates of Appointment for each of the present members of the Agency.

4. Attached hereto as Exhibit B is a true, correct and complete copy of the amended and restated by-laws of the Agency, together with all amendments thereto or modifications thereof (collectively, the "By-laws"), which said copy is the whole of the By-laws, that said copy has been compared by the undersigned with the original thereof on file in the Minutes Book of the Agency, and that said By-laws are in full force and effect in accordance with their terms on and as of the date of this certificate.

5. The execution, delivery and performance of all agreements, certificates and documents required to be executed, delivered and performed by the Agency in order to carry out, give effect to and consummate the transactions contemplated by the Agency Documents have been duly authorized by all necessary action of the Agency. No authorization for the execution, delivery or performance of the Agency Documents by the Agency has been repealed, revoked or rescinded.

6. The execution, delivery and performance of the Agency Documents, the consummation of the transactions therein contemplated and compliance with the provisions of each by the Agency do not and will not (A) violate the Act or the By-laws of the Agency, (B) require consent under (which has not heretofore been received) or result in a breach of or default under any credit agreement, purchase agreement, indenture, mortgage, deed of trust, commitment, guaranty, lease or other agreement or instrument to which the Agency is a party or by which the Agency may be bound or affected, or (C) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court, domestic or foreign, having jurisdiction over the Agency or any of the Property of the Agency.

7. 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 my knowledge, threatened against or affecting the Agency (nor, to my knowledge, any basis therefor), wherein an unfavorable decision, ruling or finding would adversely affect (A) the transactions contemplated by the Inducement/Authorizing Resolution (as defined below), (B) the validity or the enforceability of the Inducement/Authorizing Resolution or the Agency Documents or the transactions contemplated therein, or (C) the existence or organization of the Agency.

8. The Agency Documents have been duly executed and delivered on behalf of the Agency by the Chairman, the Vice Chairman, the Executive Director or the Chief Financial Officer of the Agency; the signature of said officer is the genuine signature of such officer; and the Agency Documents are in substantially the same form as the forms thereof presented to the members of the Agency and approved by the Inducement/Authorizing Resolution.

9. Attached hereto as Exhibit C are (a) an affidavit of publication of notice of the public hearing (the "Public Hearing") conducted by the Executive Director of the Agency with respect to the Project, which notice was published by *Newsday* in its April 3, 2020 edition, and (b) copies of letters that were mailed or delivered on April 1, 2020 giving notice of the Public Hearing to the Mayor of the City of Glen Cove and the chief executive officer of each county, town, village and school district in which the Project Facility is located in accordance with Section 859-a of Act.

10. Attached hereto as Exhibit D is the report of the Public Hearing held on April 14, 2020 with respect to the Project pursuant to Section 859-a of the General Municipal Law (the "Report"). Because of the restrictions on meetings and gatherings in effect pursuant to Executive Orders issued by the Governor of the State of New York, the public hearing was held via conference call rather than a public hearing open for the public to attend in person. The public hearing was streamed on the Agency's website in real-time and a recording of the public hearing has been posted on the Agency's website, all in accordance with Section 857 of the New York General Municipal Law, as amended.

11. Pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively with the SEQR Act, "SEQRA"), the Agency, by resolution of the members of the Agency adopted at a meeting of the Agency on April 14, 2020 (the "SEQR Resolution"), (A) determined that the City of Glen Cove Planning Board (the "Planning Board") properly classified the Project as a Type I action, (B) classified the Project as a Type I action, and (C) concurred with the amended negative declaration issued by the Planning Board on September 17, 2019 and adopted as its own the findings contained in such amended negative declaration. Attached hereto as Exhibit E is a certified copy of the SEQR Resolution. Such SEQR Resolution was duly adopted by the members of the Agency, has not been amended or modified since its adoption and is in full force and effect as of the date of this certificate in accordance with its terms.

12. The Agency, pursuant to a resolution of the members of the Agency adopted at a meeting of the Agency on April 14, 2020, and following a review of the Report by the members of the Agency, (i) authorized the acquisition, construction, installation and equipping of the Project, all subject to certain conditions set forth therein, and (ii) approved and authorized execution of the Agency Documents and approved other matters in connection therewith (the "Inducement/Authorizing Resolution"). Attached hereto as Exhibit F is a certified copy of the Inducement/Authorizing Resolution. Such Inducement/Authorizing Resolution was duly adopted by the members of the Agency, has not been amended or modified since its

adoption and is in full force and effect as of the date of this certificate in accordance with its terms.

13. The resolutions described in this certificate were duly adopted at meetings of the Agency duly called and held in accordance with applicable law in effect at the time of such meetings, and at which a quorum was present and acted throughout.

14. The Agency has complied with all of the agreements and satisfied all of the conditions on its part to be performed and satisfied by the terms of the Agency Documents on or prior to the Closing Date. Each of the representations and warranties of the Agency contained in the Agency Documents is true, accurate and complete on and as of the date of this certificate with the same force and effect as though such representations and warranties were made on and as of the date hereof. The Agency Documents are in full force and effect on and as of the date hereof.

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IN WITNESS WHEREOF, I have hereunto set my signature as Executive Director of the Agency and have affixed the seal of the Agency this 6<sup>th</sup> day of July, 2021.

GLEN COVE INDUSTRIAL  
DEVELOPMENT AGENCY

BY:   
Name: Ann S. Fangmann  
Title: Executive Director

-SEAL-

EXHIBIT A

CERTIFICATE OF ESTABLISHMENT OF THE AGENCY  
AND CERTIFICATES OF APPOINTMENT OF PRESENT MEMBERS

SECRET  
Secretary of State



STATE OF NEW YORK  
DEPARTMENT OF STATE  
162 WASHINGTON AVENUE  
ALBANY, NEW YORK 12225

JERRY V. LIVADAS  
Deputy Secretary  
RICHARD J. BRADY  
Deputy Secretary  
SHELDON ROSENBLATT  
Deputy Secretary - Counsel  
MAURICE FLASTERSTEIN  
Administrative Director

April 18, 1975

Mr. Arthur E. Sweid  
Chairman, Glen Cove  
Industrial Development Agency  
50 Glen Street  
Glen Cove, NY 11542

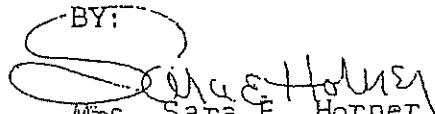
Dear Mr. Sweid:

This will acknowledge the receipt and filing on November 14, 1974, of the Certificate of Establishment for the Glen Cove Industrial Development Agency and the Certificates of Appointment of the Members.

Very truly yours,

MARIO M. CUOMO,  
Secretary of State

BY:

  
Mrs. Sara E. Horner  
Principal Clerk  
Miscellaneous Records

mlo

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APR 21 1975

GLEN COVE  
URBAN RENEWAL AGENCY

Name

<u>GLENN HOWARD</u>	Member
<u>A. JAY POWERS, III</u>	Member
<u>GILBERT GALLEG0</u>	Member

(4) The facts establishing the need for the Agency in the City of Glen Cove are as follows:

To promote the economic welfare, recreation opportunities and prosperity of the inhabitants of the City of Glen Cove and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry in the City of Glen Cove for the purpose of preventing unemployment and economic deterioration.

THE COMMON COUNCIL OF THE CITY OF GLEN COVE

By *L. Stensrud*  
Clerk

(SEAL)

OF NEW YORK  
MENT OF STATE

ss:

Is Hereby Certified, That the attached copy of the Certificate of  
Establishment of the Glen Cove Industrial Development Agency  
and the Certificate of Appointment of the Members are true  
copies of the originals thereof, filed in this office on  
November 14, 1974.

WITNESS my hand and the official seal of the  
Department of State at the City of  
Albany, this 22nd day  
of April one thousand  
nine hundred and seventy-five.

*Walter J. Sweeney*  
Secretary of State

EXHIBIT B  
BY-LAWS OF THE AGENCY

**AMENDED AND RESTATED**

**BY-LAWS**

**OF**

**GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY**

**As amended and restated effective June 24, 2021**

**ARTICLE I**

**THE AGENCY**

Section 1. Name. The name of the Agency shall be "Glen Cove Industrial Development Agency." The Agency may do business under an assumed name to the extent permitted by applicable law upon authorization thereof by the Members (as hereinafter defined) of the Agency.

Section 2. Seal of Agency. The corporate seal of the Agency shall be in the form of a circle and shall bear the name of the Agency and the year of its organization. The corporate seal of the Agency may be used by causing it to be impressed directly upon an instrument of writing, upon adhesive substance affixed thereto or by facsimile, whether engraved, printed, stamped or reproduced by photographic process.

Section 3. Office of Agency. The office of the Agency shall be at City Hall, 9 Glen Street, Glen Cove, New York, but the Agency may have such other offices at such other places as the Members of the Agency may from time to time designate by resolution.

**ARTICLE II**

**MEMBERS**

Section 1. Appointment of Members; Qualifications Thereof; Resignation.

(A) Pursuant to Title 1 of Article 18-A and Section 919 of the General Municipal Law of the State of New York, as amended from time to time (collectively, the "Act"), the members of the Agency (each a "Member" and collectively the "Members") shall consist of not less than three (3) nor more than seven (7) individuals appointed by the Mayor of the City of Glen Cove (the "Mayor"). Each Member shall serve for a term determined by the Mayor upon the appointment of such Member, or, if the appointment of a Member shall not set forth a term, then at the pleasure of the Mayor; provided, however, at no time shall there be less than three (3) appointed Members of the Agency.

(B) Pursuant to Section 3 of the Public Officers Law of the State of New York (the "Public Officers Law"), each Member must be at least eighteen years of age and each Member must be a citizen of the United States and a resident of the City of Glen Cove, New York. A public officer or employee may be appointed as a Member of the Agency without forfeiture of any other public office or employment.

(C) Except for Members of the Agency who serve as members by virtue of holding a civil office of the State of New York, the majority of the remaining Members appointed after January 13, 2006 shall be "Independent Members" (as defined below). For purposes of these by-laws, the term "Independent Member" means a Member who: (1) is not, and in the past two (2) years has not been, employed by the Agency (or an "Affiliate" of the Agency) in an executive capacity; (2) is not, and in the past two (2) years has not been, employed by an entity that received remuneration valued at more than \$15,000 for goods and services provided to the Agency or received any other form of financial assistance valued at more than \$15,000 from the Agency; (3) is not a relative of an executive officer or employee in an executive position of the Agency (or an "Affiliate" of the Agency); and (4) is not, and in the past two (2) years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the Agency (or an "Affiliate" of the Agency).

(D) For purposes of these by-laws, the term "Affiliate" means a corporate body having substantially the same ownership or control as the Agency.

(E) Upon appointment, each Member shall give all required oaths of office and the Agency shall file such oaths as required by applicable law, subject to applicable law and the Agency's policies and procedures.

(F) Members of the Agency shall receive no compensation for their services but may be reimbursed for the expenses reasonably incurred by them in the performance of their duties to the Agency.

(G) Any Member of the Agency may resign at any time by giving written notice to the Chairperson of the Agency and to the Mayor; provided, however, that if a resignation of a Member would cause the Agency to have less than the minimum number of Members specified in Section 1(A) above, such resigning Member shall be deemed to continue to hold office until his or her successor is appointed and has been qualified. Subject to the preceding sentence, such resignation shall take effect at the time specified therein or, if no time is specified therein, then on delivery of such resignation. Acceptance of a resignation shall not be necessary to make it effective. Any Member of the Agency may be removed at any time by the Mayor; provided, however, that if the removal of a Member would cause the Agency to have less than the minimum number of Members specified in Section 1(A) above, such Member shall be deemed to continue to hold office until his or her successor is appointed and has been qualified.



Section 2. Responsibilities of Members; Training Requirement. (A) The Members of the Agency shall constitute the governing body of the Agency and shall have and exercise all of the powers prescribed by the New York State Industrial Development Agency Act, Article 18-A of the General Municipal Law of the State of New York (as amended from time to time, the "Act"), and all other laws applicable to public benefit corporations and local public authorities pursuant to New York State law, including, without limitation, the applicable provisions of Chapter 766 of the 2005 Laws of the State of New York (the "Accountability Act"), Chapter 506 of the 2009 Laws of the State of New York (the "Reform Act"), and the Public Officers Law.

(B) Every annual financial report of the Agency must be approved by the Members of the Agency.

(C) The Members of the Agency shall: (1) execute direct oversight of the Executive Director, the Administrative Director (if any) and the Chief Financial Officer of the Agency and other senior management of the Agency in the effective and ethical management of the Agency; and (2) understand, review and monitor the implementation of fundamental financial and management controls and operational decisions of the Agency.

(D) Members of the Agency shall file annual financial disclosure statements with the City Clerk of the City of Glen Cove and IDA Board Secretary that will be kept on file for review by the Nassau County Board of Ethics upon request (*PAL 2825(3)*).

(E) As and to the extent required by the Public Authority Accountability Act, individuals appointed as Members of the Agency on or after January 1, 2006 (the "Effective Date") must participate in State approved training regarding their legal, fiduciary, financial and ethical responsibilities within one year of appointment as Members. All Members shall participate in such continuing training as may be required by applicable law and to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance.

(F) Each Member shall have one (1) vote.

(G) No Member of the Agency shall be an employee of or serve as an executive officer of the Agency while also serving as a Member of the Agency.

### ARTICLE III

#### COMMITTEES

Section 1. Standing Committees. The Agency shall have the following standing committees, each consisting of not less than three (3) Members of the Agency: (A) an Audit Committee; (B) a Governance Committee; and (C) a Finance Committee.

Section 2. Audit Committee.

(A) The Members of the Agency shall appoint the members of the Audit Committee and the Chairperson of the Audit Committee. The Audit Committee shall be composed entirely of Members of the Agency who are Independent Members and who shall possess the necessary skills to understand and perform the duties and functions of the Audit Committee and who shall be familiar with corporate financial and accounting principles and practices.

(B) The Audit Committee shall ensure that the Agency arranges for the timely preparation and appropriate filing of the annual budget, the annual financial statements, the annual financial reports and the annual financial audit required by the Act, the Accountability Act and other applicable law.

(C) The Audit Committee shall recommend to the Members of the Agency the hiring of a certified independent public accounting firm for the Agency, establish the compensation to be paid to the accounting firm, and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purpose. The Audit Committee shall not recommend the hiring of a certified independent public accounting firm to provide audit services to the Agency if the Executive Director, Administrative Director, comptroller, Chief Financial Officer, chief accounting officer, or any other person serving in an equivalent position for the Agency was employed by that certified independent public accounting firm and participated in any capacity in the audit of the Agency during the one (1) year period preceding the date of the initiation of the audit.

(D) If the lead (or coordinating) audit partner (having primary responsibility for the audit) of the certified independent public accounting firm proposing to provide an annual independent audit for the Agency, or the audit partner responsible for reviewing the audit, has performed audit services for the Agency in each of the five previous fiscal years of the Agency, the Audit Committee shall prohibit such certified independent public accounting firm from providing an annual independent audit for the Agency.

(E) The Audit Committee shall require that each certified independent public accounting firm that performs for the Agency an audit required by law shall timely report to the Audit Committee: (1) all critical accounting policies and practices to be used; (2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the Agency, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the certified independent public accounting firm; and (3) other material written communications between the certified independent public accounting firm and the management of the Agency, such as the management letter along with management's response or plan of corrective action, material corrections identified or schedule of unadjusted differences, where applicable.

(F) The Audit Committee shall prohibit the certified independent public accounting firm providing an annual independent audit for the Agency from performing any non-audit services to the Agency contemporaneously with the audit, unless receiving previous written approval by the Audit Committee, including: (1) bookkeeping or other services related to the accounting records or financial statements of the Agency; (2) financial information systems design and implementation; (3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (4) actuarial services; (5) internal audit outsourcing services; (6) management functions, (7) broker or dealer, investment advisor, or investment banking services; and (8) legal services and expert services unrelated to the audit.

(G) The Audit Committee shall have such other and further purposes and powers as determined by the Members of the Agency from time to time, including, without limitation, pursuant to any Audit Committee Charter adopted by the Members of the Agency from time to time.

Section 3. Governance Committee.

(A) The Members of the Agency shall appoint the members of the Governance Committee and the Chairperson of the Governance Committee. The Governance Committee shall be composed entirely of Members of the Agency who are Independent Members, who shall possess the necessary skills to understand and perform the duties and functions of the Governance Committee and who shall be familiar with corporate governance principles and practices.

(B) The Governance Committee shall: (1) keep the Members of the Agency informed of current best governance practices; (2) review corporate governance trends; (3) update the Agency's corporate governance principles; (4) examine ethical and conflict of interest issues; (5) perform board self-evaluation; (6) recommend by-laws which include rules and procedures for conduct of Agency business; and (7) advise the Mayor on the skills and experience required of potential Members of the Agency.

(C) The Governance Committee shall have such other and further purposes and powers as determined by the Members of the Agency from time to time, including, without limitation, pursuant to any Governance Committee Charter adopted by the Members of the Agency from time to time.

Section 4. Finance Committee.

(A) The Members of the Agency shall appoint the members of the Finance Committee and the Chairperson of the Finance Committee. The Finance Committee shall be composed entirely of Members of the Agency who are Independent Members and who shall possess the necessary skills to understand and perform the duties and functions of the Finance Committee.

(B) The Finance Committee shall review proposals for the issuance of debt by the Agency (and any subsidiary thereof) and make recommendations with respect thereto.

(C) The Finance Committee shall have such other and further purposes and powers as determined by the Members of the Agency from time to time, including, without limitation, pursuant to any Finance Committee Charter adopted by the Members of the Agency from time to time.

Section 5. Ad Hoc Committees. The Agency may, by resolution of the Members of the Agency, create one (1) or more ad hoc committees of the Agency with such powers and responsibilities as the Members of the Agency shall determine.

Section 6. Tenure of Members of Committees. Unless otherwise provided by resolution of the Members of the Agency, each committee shall exist and every member thereof shall serve at the pleasure of the Members of the Agency.

Section 7. Alternate Members. The Members of the Agency may designate one (1) or more persons as alternate members of any committee, who may replace any absent member or members at any meeting of such committee.

## ARTICLE IV

### OFFICERS OF THE AGENCY

Section 1. Officers of the Agency.

(A) The officers of the Agency shall be a Chairperson, one or more Vice Chairperson(s), a Secretary, one or more Assistant Secretaries, a Treasurer, and one or more Assistant Treasurers. Any two or more offices of the Agency, except the offices of Chairperson and Secretary, may be held by the same person. If two or more Members of the Agency hold similar offices (for example, two Vice Chairperson(s) are appointed), one of those Members shall be designated as "first", the next shall designated as "second", and so forth. Such officers shall act in the order of their designation. Except as otherwise provided in these by-laws, each officer must be a Member of the Agency.

(B) In addition, the Agency shall also have the following executive officers appointed from time to time by the Members of the Agency: an Executive Director and a Chief Financial Officer. The Agency may also have an Administrative Director appointed from time to time by the Members of the Agency.

(C) The officers of the Agency shall perform the duties and functions specified in these by-laws and such other duties and functions as may from time to time be authorized by resolution of the Members of the Agency or required to effect the statutory purposes of the Agency.

Section 2. Chairperson. The Chairperson shall be a Member of the Agency. The Chairperson shall perform all duties set forth in any resolution adopted by the members of the Agency and, except as otherwise authorized or directed by the Members of the Agency, the Chairperson shall preside at all meetings of the Members of the Agency. The Chairperson shall sign all agreements, contracts, deeds and any other documents on behalf of the Agency, except as otherwise authorized or directed by resolution of the Members of the Agency. The Chairperson shall have the authority, at all times, to execute, on behalf of the Agency, agreements and documents of a ministerial or procedural nature which the Chairperson deems expedient in order to further the statutory purposes of the Agency, provided the execution of such agreements and documents does not contravene any provision of these by-laws, any resolution of the Members of the Agency, the Act or any other applicable laws. At each meeting, the Chairperson may submit such recommendations and information as he/she may consider proper concerning the business, affairs and policies of the Agency, but the foregoing shall not restrict or prohibit any other Member from submitting such recommendations or information as such Member may deem necessary or proper.

Section 3. Vice Chairperson. The Vice Chairperson shall be a Member of the Agency and shall perform the duties of the Chairperson in the absence or incapacity of the Chairperson. In the event of the incapacity, resignation or death of the Chairperson, the Vice Chairperson shall become Acting Chairperson and perform the duties of the Chairperson until such time as the Members of the Agency shall appoint a new Chairperson.

Section 4. Secretary. The Secretary may, but need not, be a Member of the Agency. The Secretary shall keep all records of the Agency, shall act as secretary at the meetings of the Agency, shall keep a record of all votes, shall record the proceedings of the Agency in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to the office of Secretary. The Secretary shall cause the minutes of all proceedings of the Agency to be made available to the public in accordance with applicable law. The Secretary shall have custody of the seal of the Agency, and shall have the power to affix such seal to all contracts and other instruments authorized by the Agency to be executed. When a facsimile corporate seal is authorized to be used, the Secretary shall have the power to approve the manner and fashion of such facsimile and authorize such minor variations as are expedient to implement the process by which such facsimile is created.

Section 5. Assistant Secretary. The Assistant Secretary may, but need not, be a Member of the Agency. The Assistant Secretary shall perform the duties of the Secretary in the absence or incapacity of the Secretary. In case of the incapacity, resignation or death of the Secretary, the Assistant Secretary shall perform the duties of the Secretary until such time as the Members of the Agency shall appoint a new Secretary.

Section 6. Treasurer. The Treasurer shall be a Member of the Agency. The Treasurer shall oversee the Chief Financial Officer with respect to the care and custody of

all funds of the Agency and the deposit of all such funds in the name of the Agency in such bank(s), trust company(ies) or financial institution(s) as the Agency may designate in compliance with applicable law. The Treasurer shall keep, or cause to be kept, regular books of accounts showing receipts and expenditures and shall render, or cause to be rendered, to the Agency at each regular meeting an account of the financial transactions and the financial condition of the Agency. The Treasurer shall give such bond for the faithful performance of the duties of Treasurer as the Members of the Agency may determine. The Treasurer shall also perform such other duties as from time to time may be assigned by the members of the Agency.

Section 7. Assistant Treasurer. The Assistant Treasurer may, but need not, be a Member of the Agency. The Assistant Treasurer shall perform the duties of the Treasurer in the absence or incapacity of the Treasurer. In the event of the incapacity, resignation or death of the Treasurer, the Assistant Treasurer shall perform the duties of the Treasurer until such time as the Members of the Agency shall appoint a new Treasurer. The Assistant Treasurer shall give such bond for the faithful performance of the duties of Assistant Treasurer as the Members of the Agency may determine.

Section 8. Executive Director.

(A) The Executive Director shall be appointed by the Members of the Agency and shall serve as the Chief Executive Officer of the Agency. The individual appointed as Executive Director of the Agency may not be a Member of the Agency. The selection and compensation of the Executive Director shall be determined by the Members of the Agency, subject to the laws of the State of New York. The Executive Director shall serve at the pleasure of the Members of the Agency.

(B) The Executive Director shall have general supervision over the administration of the business and affairs of the Agency and shall cause the Agency to carry out its Missions Statement, subject to the direction of the Chairperson and the Members of the Agency. Whenever possible, the Executive Director shall attend each meeting of the Agency, and shall provide such recommendations and information to the Chairperson and the Members of the Agency as the Executive Director may consider proper concerning the business, affairs and policies of the Agency.

(C) The Executive Director shall be charged with the management of all projects and staff of the Agency.

(D) The Executive Director shall also serve as the Chief Compliance Officer of the Agency, in concert with Agency Counsel and/or a Compliance Officer (as needed) and, as such, shall be responsible for ensuring that the Agency is in full compliance with the requirements of the Public Authorities Accountability Act of 2005, the Public Authorities Reform Act of 2009 (PARA) and all other applicable laws, rules, and regulations in Article 18-A of the General Municipal Law.

(D) Every annual financial report of the Agency shall be prepared by the Chief Financial Officer and must be certified in writing by the Executive Director and Chief Financial Officer that based on their respective knowledge (1) the information provided therein is accurate, correct and does not contain any untrue statement of material fact; (2) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (3) fairly presents in all material respects the financial condition and results of operations of the Agency as of, and for, the periods presented in the financial statements.

Section 9. Administrative Director.

(A) The Administrative Director, if any, shall be appointed by the Members of the Agency. The person appointed as Administrative Director may not be a Member of the Agency. The selection and compensation of the Administrative Director shall be determined by the Members of the Agency, subject to the laws of the State of New York. The Administrative Director shall serve at the pleasure of the Members of the Agency.

(B) The Administrative Director shall perform the duties of the Executive Director in the absence or incapacity of the Executive Director. In the event of the incapacity, resignation or death of the Executive Director, the Administrative Director shall perform such duties as are imposed on the Executive Director until such time as the [Members of the Agency] shall appoint a new Executive Director.

Section 10. Chief Financial Officer.

(A) The Chief Financial Officer shall be appointed by the Members of the Agency, and shall be the chief financial officer of the Agency. The person appointed as Chief Financial Officer of the Agency may not be a Member of the Agency but may hold other executive offices of the Agency. The selection and compensation of the Chief Financial Officer shall be determined by the Chairperson, subject to the laws of the State of New York. The Chief Financial Officer shall serve at the pleasure of the Members of the Agency.

(B) The Chief Financial Officer, under the supervision of the Executive Director, shall have the care and custody of all funds of the Agency and shall deposit the same in the name of the Agency in such banks, trust companies or other financial institutions as the Members of the Agency may designate in compliance with applicable law.

(C) The Chief Financial Officer shall keep regular books of accounts showing receipts and expenditures, shall render to the Audit Committee at each regular meeting thereof an account of the financial transactions and also of the current financial condition of the Agency, and shall otherwise handle the day-to-day financial affairs of the Agency and shall ensure that all such transactions are in full compliance with the requirements of the Act, the Accountability Act, the Reform Act and all other applicable laws, rules and regulations.

(D) The Chief Financial Officer shall give such bond for the faithful performance of his or her duties as the Members of the Agency may determine.

(E) The Chief Financial Officer shall prepare the annual budget and annual financial reports of the Agency in consultation and cooperation with the Audit and/or Finance Committee for submission to the Members of the Agency for their review and approval.

(F) Every annual financial report of the Agency shall be prepared by the Chief Financial Officer and must be certified in writing by the Chief Financial Officer that based on the Chief Financial Officer's knowledge (1) the information provided therein is accurate, correct and does not contain any untrue statement of material fact; (2) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (3) fairly presents in all material respects the financial condition and results of operations of the Agency as of, and for, the periods presented in the financial statements.

Section 11. Additional Duties. The officers of the Agency shall perform such other duties and functions as may from time to time be required by the Members of the Agency, by the Agency's by-laws, by the Act or other applicable laws, or by the Agency's rules and regulations.

Section 12. Appointment of Officers. All officers of the Agency shall be appointed at the annual meeting of the Agency. Board Officers of the Agency shall hold office for one (1) year or until their successors are appointed. If the term of a Member should terminate, such person's term of office as a Board Officer of the Agency shall also simultaneously terminate.

Section 13. Vacancies. Should any Board office become vacant, the Members of the Agency shall appoint a successor at the next regular meeting or special meeting called for that purpose and such appointment shall be for the unexpired term of said Board office.

Section 14. Additional Personnel. (A) The [Members of the Agency] shall appoint a Contracting Officer of the Agency, who may also be the Executive Director. The Contracting Officer shall be responsible for (1) the disposition of property of the Agency, and (2) the Agency's compliance with the Agency's property use and disposition guidelines. (B) . (A) The [Members of the Agency] shall appoint a Compliance Officer of the Agency, who may also be the Executive Director.

(B) The Agency may from time to time employ such personnel as it deems necessary to exercise its powers, duties and functions as prescribed by the Act and all other laws of the State of New York applicable thereto. The selection and compensation of all personnel shall be determined by the Members of the Agency, subject to the laws of the State of New York.



Section 15. Financial Disclosure. Officers and employees of the Agency shall file annual financial disclosure statements with the City Clerk of the City of Glen Cove and IDA Board Secretary that will be kept on file and released upon request by the Nassau County Board of Ethics.

Section 16. Resignation. Any officer or employee may resign at any time by notifying the Chairperson and the Secretary of the Agency in writing. Such resignation shall take effect at the time specified therein or, if no date/time is specified therein, then upon delivery, and unless otherwise specified in such resignation, the acceptance thereof shall not be necessary to make it effective.

Section 17. Duties of Officers May Be Delegated. In case of the absence or disability of an officer of the Agency, or for any other reason that the Members of the Agency may deem sufficient, the Members of the Agency, except where otherwise provided by applicable law, may delegate, for the time being, the powers or duties of any officer to any other officer, or to any Member of the Agency.

Section 18. Removal of Officers and Employees. Any officer or employee of the Agency may be removed by the Members of the Agency with or without cause at any time.

## ARTICLE V

### MEETINGS

Section 1. Annual Meeting. The annual meeting of the Agency shall be held on the 2nd Tuesday, immediately following New Year's Day of each year, or at such times and at such places as may be called by the Chairperson. Notice of such annual meeting shall be delivered to each Member of the Agency by e-mail or shall be mailed to the business or home address of each Member of the Agency at least seven (7) days prior to the date of such annual meeting. The time and location of the annual meeting may be changed upon the giving of all requisite notices. Waivers of notice of the annual meeting may be signed by any Member failing to receive a proper notice.

Section 2. Regular Meetings. Regular meetings of the Agency may be held at such times and places as from time to time may be determined by the Members of the Agency. Notice of each regular meeting shall be delivered to each Member of the Agency or shall be mailed to the business or home address of each Member of the Agency at least five (5) days prior to the date of such regular meeting. The time and location of the regular meeting may be changed upon the giving of all requisite notices. Waivers of notice of a regular meeting may be signed by any Member failing to receive a proper notice.

Section 3. Special Meetings. The Chairperson of the Agency may, when he/she deems it desirable, and shall, upon the written request of two Members of the

Agency, call a special meeting of the Agency for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered to each Member of the Agency or may be mailed to the business or home address of each Member of the Agency at least two (2) days prior to the date of the special meeting. Waivers of notice may be signed by any Members of the Agency failing to receive a proper notice. At such special meeting, no business shall be considered other than as designated in the call, but if all Members of the Agency are present at a special meeting, with or without notice thereof, and are all agreeable thereto, any and all business may be transacted at such special meeting.

Section 4. Meetings of Committees. Committees of the Agency shall meet at such times and places and the respective chairmen of said committees shall determine and the notice of the meeting shall specify. Meetings of committees shall be governed by the provisions of these by-laws governing meetings of the Members of the Agency. The procedures and manner of acting of the committees of the Agency shall be subject at all times to the directions of the Members of the Agency.

Section 5. Open Meetings Law. All meetings of the Agency or any committee of the Agency shall be held in the City of Glen Cove, New York. Except as otherwise provided in Article 7 of the Public Officers Law (the "Open Meetings Law"), every meeting of the Agency or any committee of the Agency shall be open to the public. Notice of each meeting of the Agency or any committee of the Agency shall be given to the news media and to the public in the manner required by the Open Meetings Law. Pursuant to the Open Meetings Law, Members of the Agency or any committee of the Agency must be present either in person or via videoconferencing at a meeting of the Agency or such committee of the Agency, as the case may be, to vote on a question coming before the Agency or such committee.

Section 6. Executive Sessions. When a subject falls within one (1) or more of the enumerated purposes for an executive session pursuant to Section 105 of the Open Meetings Law, the Agency may, upon its own motion, establish an executive session, to the extent permitted and governed by applicable law.

Section 7. Quorum. (A) At all meetings of the Agency or any committee of the Agency, a majority of the Members or of such committee of the Agency, as the case may be, shall constitute a quorum for the purpose of transacting business; provided that a smaller number may meet and adjourn to some other time or until a quorum is obtained. The non-voting members shall not be considered for the purpose of quorum requirements.

(B) Pursuant to Section 41 of the General Construction Law of the State of New York, a resolution or other action of the Members of the Agency or any committee of the Agency shall not be effective unless adopted by a majority of the whole number of the Members of the Agency or of the members of such committee of the Agency, as the case may be.

Section 8. Order of Business.

(A) At the regular meetings of the Agency, the following shall be the order of business.

1. Roll Call/Notice of Meeting
2. Approval of the minutes of the previous meeting
3. Executive Director Report
4. Financial Report
5. Unfinished business
6. New Business
7. Resolutions
8. Executive Session
9. Adjournment

(B) Notwithstanding the foregoing, the Member presiding at the meeting shall have the authority to vary the order of business, as the need arises. All resolutions shall be in writing and shall be recorded in or attached to the journal of the proceedings of the Agency.

Section 9. Manner of Voting. The voting on all questions coming before the Members of the Agency shall be by roll call, and the Ayes and Nays shall be entered on the minutes of such meeting, except in the case of appointments when the vote may be by ballot.

Section 10. Rules of Order. The meetings and proceedings of the Agency shall be regulated and controlled according to Robert's Rules of Order for parliamentary procedure, except as may otherwise be provided by these by-laws or any rule, regulation, policy or procedure of the Agency.

## ARTICLE VI

### AMENDMENTS

Section 1. Amendments to By-laws. The by-laws of the Agency may be amended with the approval of a majority of all Members at a regular meeting or at a special meeting called for that purpose; but no such amendment shall be adopted unless at least seven (7) days' advance written notice thereof has been given to all Members of the Agency, unless all Members of the Agency shall have waived the right to receive such notice.

## ARTICLE VII

### POLICIES AND PROCEDURES

Section 1. Purposes and Powers of the Agency. The purposes and powers of the Agency shall be in accordance with those enumerated in the Act.

Section 2. Approval of Agency Projects.

- (A) It is the policy of the Agency that any project shall be considered by it which shall conform to the letter and spirit of the Act.
- (B) The Agency shall not approve any project which shall be in violation of the health, labor or other laws of the State of New York or the United States or of the local laws of the County of Nassau or the City of Glen Cove.
- (C) The Agency shall not approve any projects which shall be in violation of the antipollution laws of the State of New York or the County of Nassau.]

Section 3. Rules, Regulations, Policies and Procedures. The Members of the Agency by resolution may adopt such rules, regulations, policies and procedures as it may deem necessary and appropriate to the operation of the Agency, provided however, that none may be adopted if contrary to these by-laws as they may be amended from time to time.

Section 4. Financial Statements. The books and accounts of the Agency shall be audited annually by an independent firm of certified public accountants selected by the Members of the Agency and in compliance with applicable law. Financial statements shall be made available to the Members of the Agency promptly upon their completion.

Section 5. Books and Records. There shall be kept at the office of the Agency: (a) correct and complete books and records of account, (b) minutes of the proceedings of the Members and the standing and ad hoc committees of the Agency, (c) a current list of the Members and the officers and employees of the Agency and their residence addresses, and (d) a copy of these by-laws.

Section 6. Agency Website. The Agency shall maintain a website in conformance with applicable law and the rules and regulations of all applicable regulatory authorities, including, without limitation, the Authorities Budget Office.

## ARTICLE VIII

### ETHICAL STANDARDS

Section 1. Disclosure and Abstention. The provisions of the Code of Ethics adopted by the Agency (as the same may be amended from time to time) are incorporated herein by reference in their entirety.

Section 2. Relationship to General Municipal Law. Nothing herein or in any Code of Ethics adopted by the Agency shall be deemed to amend, modify, limit or supersede the application of any provision of Article 18 of the General Municipal Law (the "Conflicts of Interest Law"), but in each instance shall be deemed to be in addition to the requirements of the Conflicts of Interest Law.

## ARTICLE IX

### INDEMNIFICATION

Section 1. Right of Indemnification. Each Member, officer and employee of the Agency (each, an "Indemnitee"), whether or not then in office, and any person whose testator or intestate was such an Indemnitee, shall be indemnified by the Agency for the defense of, or in connection with, any threatened, pending or completed actions or proceedings and appeals therein, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Member, officer or employee of the Agency, in accordance with and to the fullest extent permitted by applicable law, as such law now exists or may hereafter be adopted or amended; provided, however, that the Agency shall provide indemnification in connection with an action or proceeding (or part thereof) initiated by such an Indemnitee only if such action or proceeding (or part thereof) was authorized by the Members of the Agency.

Section 2. Advancement of Expenses.

(A) Expenses incurred by an Indemnitee in connection with any action or proceeding as to which indemnification may be given under Section 1 of this Article IX may be paid by the Agency in advance of the final disposition of such action or proceeding upon (i) the receipt of an undertaking by or on behalf of such Indemnitee to repay such advancement in case such Indemnitee is ultimately found not to be entitled to indemnification as authorized by this Article IX and (ii) approval by the Members of the Agency.

(B) To the extent permitted by law, the Members of the Agency shall not be required to find that the Indemnitee has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding before the Agency makes any advance payment of expenses hereunder.

Section 3. Availability and Interpretation. To the extent permitted under applicable law, the rights of indemnification and to the advancement of expenses provided in this Article IX, (a) shall be available with respect to events occurring prior to the adoption of this Article IX, (b) shall continue to exist after any rescission or restrictive amendment of this Article IX with respect to events occurring prior to such rescission or amendment, (c) shall be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding

or, at the sole discretion of the Indemnitee (or, if applicable, at the sole discretion of the testator or intestate of such Indemnitee seeking such rights), on the basis of applicable law in effect at the time such rights are claimed and (d) shall be in the nature of contract rights that may be enforced in any court of competent jurisdiction as if the Agency and the Indemnitee for whom such rights are sought were parties to a separate written agreement.

Section 4. Other Rights. The rights of indemnification and to the advancement of expenses provided in this Article IX shall not be deemed exclusive of any other rights to which any Indemnitee or other person may now or hereafter be otherwise entitled, whether contained in these by-laws, a resolution of the Members of the Agency or an agreement providing for such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and to the advancement of expenses provided in this Article IX shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any Indemnitee or other person in any action or proceeding to have assessed or allowed in his or her favor, against the Agency or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

Section 5. Severability. If this Article IX or any part hereof shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Article IX shall remain fully enforceable. Any payments made pursuant to this Article IX shall be made only out of funds legally available therefor.

Section 6. Binding Effect. Any person entitled to indemnification under these by-laws has a legally enforceable right to indemnification that cannot be abridged by amendment of these by-laws with respect to any event, act or omission that occurred prior to the date of such amendment.

Section 7. Insurance. The Agency is not required to purchase directors and officers liability insurance, but the Agency shall have the right to purchase such insurance if authorized by the Members of the Agency. To the extent not prohibited by applicable law, such insurance may insure the Agency for any obligation it incurs as a result of this Article IX or by operation of law and it may directly insure the Members, officers, employees and agents of the Agency with respect to liabilities against which they are not entitled to indemnification under this Article IX as well as such liabilities against which such persons are entitled to indemnification under this Article IX.

## ARTICLE X

### CORPORATE FINANCE

Section 1. Corporate Funds. (A) Pursuant to Section 860 of the Act, the Agency shall have power to contract with the holders of any of its bonds or notes as to the custody, collection, securing, investment and payment of any moneys of the Agency

or any moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and to carry out any such contract.

(B) Except as provided in subsection (A) of this Section 1, the funds of the Agency shall be deposited in its name with such banks, trust companies or other financial institutions as the Members may from time to time designate.

(C) Except as provided in subsection (A) of this Section 1, all checks, notes, drafts and other negotiable instruments of the Agency shall be signed by such officer or officers, agent or agents, employee or employees as the Members from time to time may designate. No officers, agents or employees of the Agency, alone or with others, shall have the power to make any checks, notes, drafts or other negotiable instruments in the name of the Agency or to bind the Agency thereby, except as provided in this Section 1.

Section 2. Fiscal Year. The fiscal year of the Agency shall be the calendar year unless otherwise provided by the Members of the Agency.

Section 3. Loans to Members and Officers. The Agency shall not, directly or indirectly, including through a subsidiary or affiliate, extend or maintain credit or a loan or arrange for the extension of credit or a loan, or renew an extension of credit or a loan, to any Member, officer or employee of the Agency, or to any company, corporation, firm, association or other entity in which one (1) or more Members, officers or employees of the Agency, are partners, members, directors or officers or hold a substantial financial interest, except as allowed by applicable law.

Section 4. Gifts. The Members of the Agency or any authorized officer, employee or agent of the Agency may accept on behalf of the Agency any contribution, gift, bequest or devise for any general or special purpose or purposes of the Agency.

Section 5. Voting of Securities Held by the Agency. Stocks or other securities owned by the Agency may be voted in person or by proxy as the Members of the Agency shall specify. In the absence of any direction by the Members of the Agency, such stocks or securities shall be voted by the Chairperson as the Chairperson shall determine.

Section 6. Income from Agency Activities. All income from activities of the Agency shall be applied to the maintenance, expansion or operation of the lawful activities of the Agency.

*Amended & restated 6/24/21*

EXHIBIT C  
PUBLIC HEARING NOTICES



# NEWSDAY AFFIDAVIT OF PUBLICATION

GLEN COVE COMM DEVELOP  
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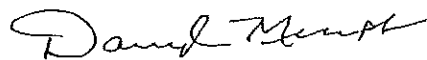
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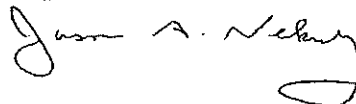
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**SWORN** to before me this  
7 Day of April, 2020.



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Jason A. Neknez  
Notary Public - State of New York  
No. 01NE6219108  
Qualified in Suffolk County  
My Commission Expires 03/22/2022



**Ad Content**

Legal Notice # 21577389  
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Glen Cove Industrial Development Agency (the "Agency") will hold a public hearing on Tuesday, April 14, 2020 at 3:30 p.m., local time, at City Hall, 9-13 Glen Street, City of Glen Cove, County of Nassau, New York, pursuant to Section 859-a of the General Municipal Law, as amended (the "Act"). The purpose of the public hearing is to provide an opportunity for all interested parties to present their views with respect to the "Project" and the "Financial Assistance" (as such terms are defined below). Arcadia Landing LLC, a limited liability company duly organized and existing under the laws of the State of New York (the "Applicant"), presented an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the construction of an approximately 102,800 square foot building(s) (collectively, the "Building") located on a parcel of land located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the "Land"), and (2) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment") and together with the Land and the Building, collectively, the "Project Facility", all of the foregoing for use by the Applicant and/or its affiliates as a multi-family residential facility consisting of approximately 72 age-restricted residential units; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from sales and use taxes; and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency. The Applicant (or such other designated entity or entities) would receive financial assistance from the Agency in the form of potential exemptions or partial exemptions from sales and use taxes (the "Financial Assistance"). Because of the restrictions on meetings and gatherings in effect pursuant to Executive Orders issued by the Governor of the State of New York, the public hearing will be held via conference call rather than a public hearing open for the public to attend in person. A representative of the Agency will hear and accept any comments that are made orally at the above-stated place and time. Members of the public may listen to the public hearing and provide their comments during the public hearing by calling 844-621-3956 and entering access code 477 140 578. Comments may also be submitted to the Agency in writing or electronically to [afangmann@glencoveida.org](mailto:afangmann@glencoveida.org). The hearing is available for viewing via livestream as follows: <https://glencoveida.org/meeting-livestream/>. A representative of the Agency will provide a report or reasonable summary of all such comments to the Agency's members. Subject to applicable law, copies of the Application, including an analysis of the costs and benefits of the Project, are available for review by the public online at [www.glencoveida.org](http://www.glencoveida.org). The public hearing will be streamed on the Agency's website in real-time and a recording of the public hearing will be posted on the Agency's website, all in accordance with Section 857 of the New York General Municipal Law, as amended.

Dated: April 1, 2020  
GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY  
By: Ann S. Fangmann  
Executive Director

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*Chairman*

**Ann S. Fangmann**  
*Executive Director*

**Phone: (516) 676-1625**  
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**GLEN COVE**  
**INDUSTRIAL DEVELOPMENT AGENCY**

City Hall, 9 Glen Street, Glen Cove, NY 11542

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**April 1, 2020**

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**NOTICE OF PUBLIC HEARING**

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GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY

By: Ann S. Fangmann/cb

Ann S. Fangmann  
Executive Director

**Distribution:**

Hon. Laura Curran  
Nassau County Executive  
Office of the County Executive  
1550 Franklin Avenue  
Mineola, NY 11501

Hon. Timothy Tenke, Mayor  
City of Glen Cove  
City Hall  
9 Glen Street  
Glen Cove, NY 11542

Dr. Maria L. Rianna  
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Glen Cove City School District  
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
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YOUR OPINION COUNTS

EXHIBIT D  
REPORT OF PUBLIC HEARING

MS. FANGMANN: Good afternoon. My name is Ann Fangmann. I am the Executive Director and duly authorized hearing officer of the Glen Cove Industrial Development Agency (the "Agency") and I have been authorized to hold a public hearing. Today is April 14, 2020 and the time is now 3:30 p.m. This is a public hearing pursuant to Section 859-a of the New York General Municipal Law, as amended (the "Act"), and is being held at Glen Cove City Hall, 9-13 Glen Street, City of Glen Cove, County of Nassau, New York. Because of the restrictions on meetings and gatherings in effect pursuant to Executive Orders issued by the Governor of the State of New York as a result of the COVID-19 pandemic, this public hearing is being held via conference call rather than a public hearing open for the public to attend in person.

. The Agency has received an application for financial assistance in connection with the following matter:

Arcadia Landing LLC, a limited liability company duly organized and existing under the laws of the State of New York (the "Applicant"), presented an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the construction of an approximately 102,800 square foot building(s) (collectively, the "Building") located on a parcel of land located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the "Land"), and (2) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment" and together with the Land and the Building, collectively, the "Project Facility"), all of the foregoing for use by the Applicant and/or its affiliates as a multi-family residential facility consisting of approximately 72 age-restricted residential units; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from sales and use taxes; and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency. The Project Facility would be initially owned, operated and/or managed by the Applicant or such other entity or entities as may be designated by the Applicant and agreed upon by the Agency.

The Applicant (or such other designated entity or entities) would only receive financial assistance from the Agency in the form of potential exemptions or partial exemptions from sales and use taxes (the "Financial Assistance"). Please note that no exemptions or abatements from real property taxes or mortgage recording taxes are being contemplated with respect to the Project.

Notice of this public hearing was published in the Nassau edition of *Newsday* on April 3, 2020 and provided to the Chief Executive Officer of each affected tax jurisdiction within which the Project Facility is or will be located by letter dated April \_\_, 2020.

The purpose of this public hearing is to provide an opportunity for all interested parties to present their views, both orally and in writing, with respect to the granting of the Financial Assistance contemplated by the Agency or the location or nature of the Project. The notice of this public hearing stated that members of the public may listen to this public hearing and provide their comments during the public hearing by calling 844-621-3956 and entering access code 477 140 578. As set forth in the notice of this public hearing, comments may also be submitted to the Agency in writing or electronically at the following email address: [afangmann@glencovecda.org](mailto:afangmann@glencovecda.org).

This public hearing is being streamed on the Agency's website in real-time and a recording of this public hearing is being made and will be posted on the Agency's website, all in accordance with Section 857 of the New York General Municipal Law, as amended. In addition, a transcript of this hearing will be made and posted on the Agency's website and such transcript or a reasonable summary of all comments received by the Agency shall be provided to the



Agency's members. Comments received in writing will be also be included in the transcript and any reasonable summary of this public hearing.

If any member of the public wishes to make comments via the conference call, I would ask that such person identify themselves and provide their address. I request the patience and cooperation of all participants in allowing each person to finish their comments before anyone else identifies themselves and begins speaking.

Is there anyone wishing to be heard with respect to the Project or the Financial Assistance?

[COMMENTS FROM THE PUBLIC] *No*

MS. FANGMANN: It is now 3<sup>39</sup> p.m. Let the record show that, other than comments submitted in writing, no [other] members of the public have indicated a desire to comment with respect to the Project or the Financial Assistance. I therefore call this hearing to a close.

(TIME NOTED: 3<sup>40</sup> p.m.)

EXHIBIT E  
SEQR RESOLUTION

See Exhibit F

EXHIBIT F  
INDUCEMENT/AUTHORIZING RESOLUTION

**Arcadia  
Approving Resolution 7a**

A special meeting of the Glen Cove Industrial Development Agency (the "Agency") was convened in public session on April 14, 2020, at 7:00 p.m., local time, and held remotely by conference call in compliance with Executive Order 220.1 issued by the Governor of the State of New York on March 12, 2020.

The meeting was called to order by the Chairman Tenke, upon roll being called, the following members of the Agency were:

PRESENT:

Timothy J. Tenke	Chairman
Vincent C. Hartley	Vice Chairman/Treasurer
James J. Cappiello	Member

NOT PRESENT:

Joseph Gioino	Member
John Tetta	Member

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Ann Fangmann	Executive Director
Camille Byrne	Secretary
Margo Zoldessy	Finance Manager
Milan K. Tyler, Esq.	Transaction Counsel

The attached resolution no. 04-14-20-7a was offered by Chairman Tenke, seconded by Vincent Hartley:

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND APPROVING THE  
STRAIGHT LEASE DOCUMENTS FOR A CERTAIN PROJECT FOR  
ARCADIA LANDING LLC AND/OR ITS AFFILIATES

WHEREAS, the Glen Cove Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), and Chapter 374 of the 1974 Laws of New York, as amended, constituting Section 919 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, Arcadia Landing LLC, a limited liability company duly organized and existing under the laws of the State of New York (the "Applicant"), presented an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the construction of an approximately 102,800 square foot building (collectively, the "Building") located on a parcel of land located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the "Land"), and (2) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment" and together with the Land and the Building, collectively, the "Project Facility"), all of the foregoing for use by the Applicant and/or its affiliates as a multi-family residential facility consisting of approximately 72 age-restricted residential units; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, any approval of the Project is contingent upon, inter alia, a determination by the members of the Agency to proceed with the Project following a determination by the Agency that (A) the applicable procedural requirements contained in the Act relating to the Project have been satisfied; and (B) the undertaking of the Project by the Agency and the granting of the Financial Assistance are and will be in compliance with all other applicable requirements of the Act, SEQRA (as hereinafter defined), and all other statutes, codes, laws, rules and regulations of

any governmental authority having jurisdiction over the Project and/or the Project Facility (collectively, the "Applicable Laws"); and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on April 2, 2020 to the chief executive officer of the City of Glen Cove, New York (the "City") and of each other affected tax jurisdiction within which the Project Facility is or is to be located, and posted a copy of the Application on the Agency's website; (B) caused notice of the Public Hearing to be published on April 3, 2020 in the *Newsday*, a newspaper of general circulation available to residents of the City; (C) caused the Public Hearing to be conducted on April 14, 2020, at 3:30 p.m., local time, via conference call rather than a public hearing open for the public to attend in person because of the restrictions on meetings and gatherings in effect pursuant to Executive Orders issued by the Governor of the State of New York; (D) caused the Public Hearing to be streamed on the Agency's website in real-time and a recording of the Public Hearing to be posted on the Agency's website, all in accordance with Section 857 of the Act, as amended; and (E) caused a written report of the Public Hearing to be prepared which fairly summarizes the views presented at the Public Hearing and collected written correspondence from the public (collectively, the "Report") and distributed the Report to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the New York Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York ("NYSDEC"), being 6 NYCRR Part 617, et. seq., as amended (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to undertake the Project; and

WHEREAS, the Planning Board of the City of Glen Cove ("Planning Board"), pursuant to SEQRA, previously classified the Project as a Type I action and performed a coordinated review of the Project pursuant to 6 NYCRR 617.6(b)(3); and

WHEREAS, the Agency was inadvertently missed as an involved agency during the Planning Board's coordinated review of the Project; and

WHEREAS, on May 5, 2009, Planning Board, as Lead Agency, issued a determination of significance, a negative declaration, finding that the Project would not have any significant adverse environmental impacts; and

WHEREAS, on December 7, 2011, the Applicant's predecessor in interest applied for Final Subdivision Approval of the Project, including, among other things, changes to the facades of the proposed building, alterations of the driveway entrance and modifications to the landscape plan; and

WHEREAS, on July 17, 2012, Planning Board, as Lead Agency, issued an updated determination of significance, an amended negative declaration, finding that the Project, as amended, would not have any significant adverse environmental impacts; and

WHEREAS, the Applicant's predecessor in interest was unable to continue with the development of the Project due to financial reasons which necessitated a change in Project design as well as Project ownership; and

WHEREAS, on June 13, 2019, the Applicant submitted to the Planning Board an application for amended Site Plan Approval for the project, including, among other things, changes to the location of buildings 1-4 and the addition of a new clubhouse; and

WHEREAS, for purposes of SEQRA, the action under consideration by the Agency is limited to the granting of an exemption from sales and use taxes for buildings 1 - 4 and the new clubhouse; and

WHEREAS, nonetheless, the Agency is reviewing the potential environmental impacts for the Project as a whole to avoid any improper segmentation;

WHEREAS, on September 17, 2019, Planning Board, as Lead Agency, issued an updated determination of significance, an amended negative declaration, finding that the Project, as amended, would not have any significant adverse environmental impacts; and

WHEREAS, pursuant to SEQRA, to aid the Agency in determining whether the Project may have a significant adverse impact upon the environment, the Agency has reviewed documentation provided to the Planning Board as a part of its SEQRA coordinated review including (1) Part 1 of a Full Environmental Assessment Form, dated August 2, 2019 ("EAF"); (2) an Indenture between Landing Cove, LLC and Arcadia Landing, LLC dated June 7, 2019; (3) a Topographic Survey prepared by John Schnurr LLS, dated April 15, 2019; (4) a letter from Timothy H. Sullivan, Director of Arcadia Landing, LCC, dated June 11, 2019; and (5) Detailed Site Plans prepared by H2M Architects and Engineers entitled "Breton Hills Residential Development", dated September 2019 (collectively, 1-5 shall be referred to as the "Planning Board SEQRA Record"); and

WHEREAS, pursuant to SEQRA, to aid the Agency in determining whether the Project may have a significant adverse impact upon the environment, the Agency has also completed, received and/or reviewed the Application (collectively, the Planning Board SEQRA Record and the Application shall be referred to as the "Environmental Information"); and

WHEREAS, prior to making a recommendation about the potential environmental significance of the Project, the Agency has reviewed the Environmental Information, consulted various information sources, and considered the list of activities which are Type I Actions outlined in Section 617.4 of the Regulations, the list of activities that are Type II Actions outlined in Section 617.5 of the Regulations and the criteria for determining significance outlined in Section 617.7 of the Regulations; and

WHEREAS, the Agency concurs with the negative declaration issued by Planning Board and desires to adopt the Planning Board's amended negative declaration as its own negative declaration under SEQR; and

WHEREAS, the Agency now desires to make its determination to proceed with the Project and to grant the Financial Assistance, subject to the terms hereof; and

WHEREAS, the Applicant and/or one (1) or more of its affiliates will (A) execute and deliver a certain Uniform Project Agreement (the "Project Agreement"), pursuant to which the Applicant and/or such affiliates will undertake the Project and the Agency will grant to the

Applicant and/or such affiliate(s) the Financial Assistance; (B) execute and deliver a certain Bill of Sale (the "Bill of Sale"), pursuant to which the Applicant and/or such affiliates will convey title to the Equipment to the Agency; and (C) execute and deliver certain other certificates, documents, instruments and agreements related to the Project (together with the Project Agreement and the Bill of Sale, collectively, the "Transaction Documents");

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Project was properly classified as a Type I action by the Planning Board pursuant to the City of Glen Cove Code Sections 134-2 and 134-3, and the Agency hereby classifies the Project as a Type I action pursuant to 6 NYCRR 617.4(b)(11).

Section 2. After careful review of the Environmental Information, the Agency agrees with the determination of Planning Board relative to SEQRA - specifically, that the Project, as amended, will not have any significant adverse environmental impacts and that a negative declaration is appropriate.

Section 3. The Agency adopts as its own, the findings contained in the September 17, 2019 amended negative declaration issued by the Planning Board and attached hereto as Exhibit A.

Section 4. In accordance with Section 859-a of the Act, the Agency has prepared a written cost-benefit analysis with respect to the Project and the granting of the Financial Assistance (the "Analysis"). The Agency has reviewed the Application, the Report and the Analysis, and, based upon the representations made by the Applicant to the Agency and information obtained by the Agency, the Agency has reviewed and assessed all material information necessary to afford a reasonable basis for the Agency to make a determination to approve the Financial Assistance. In addition, the Agency hereby makes the following findings and determinations with respect to the Project:

(a) based on the proposed use of the Project Facility as set forth in the Application, the economic effects of the Project on the area in which it is situated, and the employment reasonably expected to be created and/or maintained by the Project, and an analysis of how the Project contributes to the realization of the public purposes of promoting employment opportunities in the City and the prevention of economic deterioration in the City, the Project will constitute a commercial facility with a significant impact on the area in which it is situated, and will advance the Agency's purposes by promoting employment opportunities and preventing economic deterioration in the City. Therefore, the Project constitutes a "project" within the meaning of the Act;

(b) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Applicant to undertake the Project in the City;

(c) there is a likelihood that the Project would not be undertaken but for the granting of the Financial Assistance by the Agency to the Applicant;



(d) the completion of the Project Facility and the operation thereof by the Applicant will not result in the removal of a facility or plant of the Applicant or any other occupant or user of the Project Facility from one area of the State of New York (the "State") to another area of the State or in the abandonment of one or more plants or facilities of the Applicant or any other occupant or user located within the State (but outside of the City). Therefore, the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Financial Assistance by the Agency to the Applicant;

(e) the Project will serve the public purposes of the Act by preserving permanent, private sector jobs, and increasing the overall number of permanent, private sector jobs in the State;

(f) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State, nor shall any funds of the Agency be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media;

(g) the Project Facility does not and will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project. For purposes of this finding, retail sales shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section 1101 of the New York Tax Law; or (ii) sales of a service to such customers; and

(h) the granting of the Financial Assistance by the Agency with respect to the Project will encourage and assist the Applicant in undertaking the Project in the City, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the City and the State and improve their standard of living, and thereby serve the public purposes of the Act; and

(i) The Project will not result in the removal or abandonment of a plant or facility of the Applicant or any other occupant or user of the Project Facility, currently located within the City.

Section 5. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Executive Director, Chief Financial Officer and staff of the Agency with respect to the Application and the Public Hearing, including, without limitation, (a) those actions required to ensure full compliance with the requirements of the Act, SEQRA and all other Applicable

Laws that relate to the Project, and (b) the appointment of the law firm of Phillips Lytle LLP as Counsel to the Agency with respect to all matters in connection with the Project.

Section 6. The Agency hereby determines that the Agency has fully complied with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Project.

Section 7. Having considered fully all comments received at or in connection with the Public Hearing, including correspondence received subsequent to the Public Hearing, the Agency hereby further determines to proceed with the Project and the granting of the Financial Assistance, subject to the terms hereof. The Agency hereby approves the granting of an exemption from sales and use taxes in an amount not to exceed \$447,477.00.

Section 8. The Agency recognizes that due to the complexities of the proposed transaction it may become necessary that certain of the terms approved hereby may require modifications from time to time which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman, Executive Director and Chief Financial Officer of the Agency, acting individually or jointly, to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution, but may include adjustments to the Financial Assistance granted hereunder. The approval of such modifications shall be evidenced by the certificate of determination of an Agency officer or the execution and delivery by some or all such Agency officers of relevant documents containing such modified terms.

Section 9. The Agency is hereby authorized to (a) acquire an interest in the Equipment pursuant to the Bill of Sale and the other Transaction Documents, (b) grant the Financial Assistance pursuant to the Project Agreement and the other Transaction Documents, and (c) do all things necessary, convenient or appropriate for the accomplishment thereof. All acts heretofore taken by the Agency with respect to the foregoing are hereby approved, ratified and confirmed.

Section 10. The form and substance of the Transaction Documents, in the forms presented to the members of the Agency, together with such changes as the Chairman, Vice Chairman, Executive Director or Chief Financial Officer may hereafter deem necessary or appropriate, are hereby approved. The Chairman, Vice Chairman, Executive Director and Chief Financial Officer are hereby authorized, on behalf of the Agency, acting together or individually, to execute and deliver the Transaction Documents to which the Agency is a party and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The execution and delivery of each such document, instrument and agreement by such person(s) shall be conclusive evidence of such approval.

Section 11. The Chairman, Vice Chairman, Executive Director and Chief Financial Officer of the Agency are hereby further authorized, on behalf of the Agency, acting together or individually, to designate any additional Authorized Representatives (as defined in the Agency Lease) of the Agency.

Section 12. The officers, employees and agents of the Agency are hereby authorized and directed, acting individually or jointly, for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Transaction Documents, to execute and deliver all such additional certificates, instruments, agreements and documents, to pay all such fees, charges and expenses, and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, convenient or appropriate to effect the purposes of this Resolution and to cause compliance with all of the terms, covenants and provisions of the Transaction Documents to which the Agency is a party or which are binding on the Agency.

Section 13. The members of the Agency acknowledge the terms and conditions of Section 875(3) of the Act and the duties and obligations of the Agency thereunder with respect to granting of State Sales and Use Taxes (as such term is defined in Section 875 of the Act) with respect to the Project. The members hereby direct the officers of the Agency to comply with such terms and conditions with respect to the Project and hereby direct Counsel to the Agency to include such terms and conditions in all relevant Transaction Documents.

Section 14. The Chairman, Vice Chairman, Executive Director and Chief Financial Officer of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Applicant and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 15. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<u>VOTING</u>
Timothy J. Tenke	AYE
Vincent C. Hartley	AYE
James J. Cappiello	AYE
Joseph Gioino	Absent
John Tetta	Absent

The foregoing Resolution was thereupon declared duly adopted.

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

WE, the undersigned officers of the Glen Cove Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on April 14, 2020 with the original thereof on file in our offices, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

WE FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held remotely by conference call in compliance with Executive Order 220.1 issued by the Governor of the State of New York on March 12, 2020 (the "Executive Order"); (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; (D) the public had the ability to listen to the proceedings in accordance with the Executive Order; and (E) there was a quorum of the members of the Agency present throughout said meeting.

WE FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, we have hereunto set our hand this 14 day of April, 2020.

*Camille Byrne*, Secretary

\_\_\_\_\_  
[Vice] Chairman

EXHIBIT A

CITY PLANNING BOARD SEQRA  
DETERMINATION

See Attached

State Environmental Quality Review

**AMENDED NEGATIVE DECLARATION**

Notice of Determination of Non-Significance

**PROJECT:** Breton Hills

**CITY OF GLEN COVE, NEW YORK**

**DATE:** September 17, 2019

This notice is issued pursuant to Part 617 of the implementing regulation pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Planning Board of the City of Glen Cove, as lead agency, has determined that the proposed action described below will not have a significant effect on the environment and a Draft Environmental Impact Statement will not be prepared.

**Name of Action:** Breton Hills Site Plan and Subdivision Approval

**SEQR Status:** Type 1

**Conditioned Negative Declaration:** No

**Description of Action:** Subdivision of 9.43 acre tract into four lots to support an existing temple and 72 Condominium units in 7 buildings and one recreational clubhouse building to be constructed in two phases. The property was previously rezoned from R-3A and R-6 Zoning classification to an R-5 district zoning classification. The existing Temple will remain.

**Purpose of Amendment:** The project sponsor submitted revised plans reflecting realignment of structures, redesign of grading and retaining walls, gating of community, minor changes to building footprints, addition of a clubhouse recreational building, and some minor changes to improvements on the Temple property.

**Location:** Corner of Hill Street and Cottage Row in the City of Glen Cove, Nassau County, New York.

**Reasons Supporting This Determination:**

The proposed action is not anticipated to result in any adverse environmental impacts based on the following:

1. On or about May 1, 2009, the Planning Board received a Part 1 Full Environmental Assessment Form (EAF) for the application of Glen Cove Mews providing environmental setting, project description, agency jurisdiction, and planning and zoning information;
2. On or about May 5, 2009 the Planning Board received a proposed Part 2 EAF prepared by the City's Planning Consultant at the Board's instruction;
3. On or about June 30, 2009 the Planning Board adopted the Part 2 EAF indicating potential large impacts to:
  - a. stormwater impacts to erosion;
  - b. aesthetic impacts from development obviously different from the surrounding land use; and
  - c. traffic impacts at the site entrance and area intersections
4. In adopting the Part 2 EAF, the Planning Board made a further determination that the proposed action would not result in the following potential large impacts:
  - a. a substantial adverse change in existing air quality, or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;
  - b. the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;
  - c. the impairment of the environmental characteristics of a Critical Environmental Area as designated pursuant to subdivision 617.14(g) of this Part;
  - d. the creation of a material conflict with a community's current plans or goals as officially approved or adopted;
  - e. the impairment of the character or quality of important historical, archeological, architectural, or of existing community or neighborhood character;
  - f. a major change in the use of either the quantity or type of energy;
  - g. the creation of a hazard to human health;
  - h. a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;
  - i. the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;
  - j. the creation of a material demand for other actions that would result in one of the above consequences;
  - k. changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when

considered together result in a substantial adverse impact on the environment; or

- l. two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.
5. The applicant submitted a Part 3 EAF at its September 15, 2009 meeting, the Planning Board reviewed the submission and considered the advice of its consultants and having found the document provided adequate information and analysis to determine the importance of potential large impacts, adopted the Part 3 EAF;
6. It was determined that any potential impacts to ground or surface water quality and quantity were unlikely given that the project will be required to meet DEC, Nassau County and City DPW standards for stormwater management and erosion control and that the permit requirements of such agencies will result in adequate mitigation of any potential large impacts;
7. It was determined that the project proposes to preserve much of the existing trees on site, and that where trees are proposed to be removed, adequate landscape buffering is proposed to screen the site from neighboring residences, public rights-of-way and other substantial public vantage points. Further, the applicant has proposed to significantly improve the originally proposed facades of buildings visible from public rights-of-way and making significant impact to aesthetic resources unlikely;
8. It was determined that significant traffic impacts were unlikely due to the division of the Temple and residential site accesses. More specifically, the relocation of the residential site access to the west, from the original proposal, has resulted in the traffic entering and exiting the site at an intersection that is much better able to accommodate increased demands without requiring any additional off-site mitigations;
9. On or about December 7, 2011, the project sponsor submitted an application for Final Subdivision showing a layout revised in response to the requirements of Nassau County during that agency's various departmental reviews. The modifications were largely with the building footprints (and resultant changes to the facades), the width of the driveway at the intersection with Hill Street, building facades and the landscape plan;
10. On or about July 5, 2012, the project sponsor submitted further revised plans based on further comments from Nassau County. The modifications were largely to the details of the sanitary and storm sewer systems, the design of which are subject to County approval;
11. On or about July 17, 2012 the lead agency considered the changes proposed for the project and determined that those changes are not anticipated to result in any adverse environmental impacts;
12. On or about March 19, 2013, the project sponsor submitted further revised plans indicating the removal of balconies from all building facades, and a



singular treatment for all rear facades, regardless of location or proximity to public rights-of-way.

13. On or about April 16, 2013, the Planning Board determined that the revised facades sought would not result in significant adverse visual impacts;
14. On or about June 13, 2019, Arcadia Landing, LLC, submitted application materials indicating that they had purchased the partially constructed project and advance an application for amended site plan approval, modifying the layout to:
  - a. Realign/relocate buildings 1-4 to provide more space for an additional 1 story amenity building;
  - b. Increase the size of buildings 1-4;
  - c. Provide an electronic access control gate at Hill Street;
  - d. Redesign proposed Temple improvements;
15. On or about August 19, 2019 the Planning Board distributed a notice of intent to become lead agency copying same to the Nassau County Department of Public Works;
16. On or about September 17, 2019, the Glen Cove Planning Board having received no objection re-established itself as lead agency for the purpose of considering project changes;
17. On or about September 17, 2019, the Glen Cove Planning Board, having reviewed the Part 1 EAF provided by the applicant for the revised plan as well as the extensive revised site plan sheets detailing changes, determined that the proposed application and proposed project changes were not likely to result in any significant adverse impacts.
18. No other impacts have been identified.

This Amended Negative Declaration shall be filed with:

Tim Tenke, City of Glen Cove Mayor - 9 Glen Street, Glen Cove, NY 11542

City of Glen Cove Planning Board - 9 Glen Street, Glen Cove, NY 11542

Sean E. Sallie, Deputy Commissioner -Nassau County Planning Commission  
100 County Seat Drive, Mineola, NY 11501

Nassau County Department of Health, Environmental Division  
106 Charles Lindbergh Blvd. Uniondale, NY 11553

Nassau County Department of Public Works - 1194 Prospect Avenue  
Westbury, NY 11590-2723

NYS Department of Environmental Conservation – Region 1 (SPDES)

Division of Environmental Permits, SUNY Stony Brook 50 Circle Road  
Stony Brook, NY 1170

Environmental Notice Bulletin - 625 Broadway, Albany, NY 12233-1750.



ARCADIA LANDING LLC

COMPANY GENERAL CERTIFICATE

This certificate is made in connection with the execution by Arcadia Landing LLC (the "Company") of that certain Uniform Project Agreement dated as of July 1, 2021 (the "Project Agreement") between the Glen Cove Industrial Development Agency (the "Agency") and the Company, and any other documents, instruments or agreements to be executed by the Company (together with the Project Agreement, collectively, the "Company Documents") in connection with the undertaking by the Agency, a public benefit corporation created pursuant to Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), and Chapter 374 of the 1974 Laws of New York, as amended, constituting Section 919 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), of a project (the "Project") on behalf of the Company consisting of the following: (A)(1) the construction of an approximately 102,800 square foot building(s) (collectively, the "Building") located on a parcel of land located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the "Land"), and (2) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment" and together with the Land and the Building, collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its affiliates as a multifamily residential facility consisting of approximately 72 age-restricted residential units; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency.

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Project Agreement except that, for purposes of this certificate, (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date, and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

THE UNDERSIGNED, AS MANAGER OF THE MANAGER OF THE MANAGER-RELATED MEMBER OF THE COMPANY, HEREBY CERTIFIES THAT:

1. I am duly authorized to execute and deliver this certificate in the name and on behalf of the Company.
2. The Company (A) has been duly organized, is validly existing and is in good standing as a limited liability company under the laws of the State of New York, with full legal

power and authority to own its Property, conduct its business and execute, deliver and perform its obligations under the Company Documents, and (B) has taken all actions and obtained all approvals required in connection therewith.

3. The articles of organization of the Company (and filing receipt), together with all amendments thereto, in the form attached hereto as Exhibit A (collectively, the "Articles"), are in full force and effect on and as of the date of this certificate, without further amendment or modification in any respect.

4. The operating agreement of the Company, together with all amendments thereto, in the form attached hereto as Exhibit B (collectively, the "Operating Agreement"), is in full force and effect on and as of the date of this certificate, without further amendment or modification in any respect.

5. Attached hereto as Exhibit C is a true, correct and complete copy of the Written Consent of the Manager-Related Member of the Company (the "Consent") approving and authorizing execution and delivery of the Company Documents. Such Consent was duly adopted by the Manager-Related Member of the Company by written consent on May 28, 2021, has not been amended or modified since its adoption and is in full force and effect on the date of this certificate.

6. Attached hereto as Exhibit D is a true, correct and complete copy of the Certificate of the Secretary of State of New York to the effect that the Company is in Good Standing in such state.

7. Attached hereto as Exhibit E is a list of all material pending litigation relating to the Company. Except as set forth in Exhibit E, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body, pending or, to the best of my knowledge, threatened against or affecting the Company, nor to the best of my knowledge is there any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect (A) the validity or the enforceability of the Company Documents or the transactions contemplated therein, (B) the organization or existence of the Company, or (C) the business, prospects, Property or condition of the Company.

8. Timothy Sullivan, as Manager of the Manager of the Manager-Related Member of the Company, has been duly designated to act, individually or jointly, as an "Authorized Representative" of the Company pursuant to and in accordance with the provisions of the Project Agreement.

9. There are no Liens against or overdue taxes, assessments, fees or other governmental charges payable by the Company to the United States, the State of New York, or, to my knowledge, to any other state or municipality in the United States.

10. The execution, delivery and performance of all agreements, certificates and documents required to be executed, delivered and performed by the Company in order to carry

out, give effect to and consummate the transactions contemplated by the Company Documents have been duly authorized by all necessary action of the Company. The Company Documents are in full force and effect on and as of the date hereof, and no authority for the execution, delivery or performance of the Company Documents has been repealed, revoked or rescinded.

11. The execution, delivery and performance of the Company Documents, the consummation of the transactions therein contemplated and compliance with the provisions of each by the Company do not and will not (A) violate the Company's Articles or Operating Agreement, (B) require consent under (which has not heretofore been received) or result in a breach of or default under any credit agreement, purchase agreement, indenture, mortgage, deed of trust, commitment, guaranty, lease or other agreement or instrument to which the Company is a party or by which the Company may be bound or affected, or (C) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court, domestic or foreign, having jurisdiction over the Company or any of the Property of the Company.

12. The Company has duly authorized the taking of and has taken any and all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Company Documents.

13. No Event of Default specified in any of the Company Documents has occurred and no event which with notice or lapse of time or both would become such an Event of Default has occurred and is continuing.

14. Each of the representations and warranties of the Company in the Company Documents is true, accurate and complete on and as of the date of this certificate with the same force and effect as though such representations and warranties were made on and as of the date hereof.

15. Each of the Company Documents has been duly executed, acknowledged, where appropriate, and delivered on behalf of the Company by an Authorized Representative of the Company; the signature of said Authorized Representative thereon is the genuine signature of said Authorized Representative; and said executed Company Documents are in substantially the same form as the forms thereof presented to the Manager-Related Member of the Company and approved by the Consent.

16. The Company is not contemplating instituting bankruptcy, insolvency or any similar proceedings against itself.

17. The Company has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied by the terms of the Company Documents at or prior to the Closing Date.

18. As of the Closing Date, there has been no material adverse change in the business, condition, Property or prospects (financial or otherwise) of the Company.

IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate in the name and on behalf of the Company as of the 6<sup>th</sup> day of July, 2021.

ARCADIA LANDING LLC

By: Arcadia Landing MM LLC, its Manager-Related Member

By: Arcadia Asset Services, LLC, its Manager

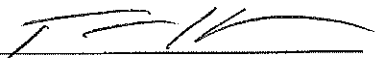
By:   
Timothy Sullivan  
Manager

EXHIBIT A  
ARTICLES OF ORGANIZATION



ONLINE FILING RECEIPT

ENTITY NAME: ARCADIA LANDING LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM. LLC)

COUNTY: NASS

FILED:09/07/2018 DURATION:\*\*\*\*\* CASH#:180907010160 FILE#:180907010160  
DOS ID:5406153

FILER:

EXIST DATE

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BLUMBERGEXCELSIOR CORPORATE SERVICES, INC.  
236 BROADWAY  
MENANDS, NY 12204

-----  
09/07/2018

ADDRESS FOR PROCESS:

-----  
THE LIMITED LIABILITY COMPANY  
772 W. BEECH ST.  
LONG BEACH, NY 11561

REGISTERED AGENT:



The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the Biennial Statement is due will only be made via email. Please go to [www.email.ebiennial.dos.ny.gov](http://www.email.ebiennial.dos.ny.gov) to provide an email address to receive an email notification when the Biennial Statement is due.

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SERVICE COMPANY: BLUMBERGEXCELSIOR CORPORATE SERVICES INC.-39  
SERVICE CODE: 39

FEE:	200.00	PAYMENTS	200.00
	-----		-----
FILING:	200.00	CHARGE	0.00
TAX:	0.00	DRAWDOWN	200.00
PLAIN COPY:	0.00		
CERT COPY:	0.00		
CERT OF EXIST:	0.00		

260648

DOS-1025 (04/2007)

Authentication Number: 1809070165 To verify the authenticity of this document you may access the Division of Corporation's Document Authentication Website at <http://ecorp.dos.ny.gov>

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**AMENDED AND RESTATED  
OPERATING AGREEMENT  
OF  
ARCADIA LANDING LLC**

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# ACKNOWLEDGEMENT COPY

## ARTICLES OF ORGANIZATION OF ARCADIA LANDING LLC

Under Section 203 of the Limited Liability Company Law

**FIRST:** The name of the limited liability company is:

**ARCADIA LANDING LLC**

**SECOND:** The county, within this state, in which the office of the limited liability company is to be located is NASSAU.

**THIRD:** The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is:

THE LIMITED LIABILITY COMPANY  
772 W. BEECH ST.  
LONG BEACH, NY 11561

**FOURTH:** The limited liability company is to be managed by: ONE OR MORE MEMBERS.

I certify that I have read the above statements, I am authorized to sign these Articles of Organization, that the above statements are true and correct to the best of my knowledge and belief and that my signature typed below constitutes my signature.

KRISTIE L. DELONG, ORGANIZER (signature)

---

KRISTIE L. DELONG , ORGANIZER  
BLUMBERGEXCELSIOR  
236 BROADWAY  
MENANDS, NY 12204

**Filed by:**  
BLUMBERGEXCELSIOR CORPORATE SERVICES, INC.  
236 BROADWAY  
MENANDS, NY 12204

**BLUMBERGEXCELSIOR CORPORATE SERVICES INC. (39)**  
**DRAWDOWN**  
**CUSTOMER REF# 260648**

**ACKNOWLEDGEMENT COPY**

STATEMENT OF ORGANIZATION

OF

THE SOLE ORGANIZER

OF

ARCADIA LANDING LLC

THE UNDERSIGNED, being the sole organizer of the within named limited liability company (the "Company"), formed under Article 2 of the Limited Liability Company Law of the State of New York (LLCL), does hereby state that:

1. The Articles of Organization of the Company under LLCL § 203 were filed by the Department of State of the State of New York on September 7, 2018. A copy of the Articles of Organization and the original receipt of the Department of State showing payment of the filing fee are annexed hereto. The same hereby, is ordered filed with the Operating Agreement of the Company.

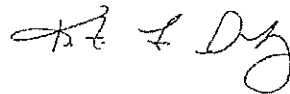
2. At the time of its formation, the Company had at least one member/manager, to wit:

JOSEPH IORIO, JR. & TIMOTHY SULLIVAN

3. The sole organizer herein is neither a member or a manager of the Company.

4. The undersigned, effective the date upon filing of the limited liability company, has fulfilled the duties as the sole organizer of ARCADIA LANDING LLC, in accordance with the provisions set forth in LLCL § 203 and herewith relinquishes all further duties relating to the organization and formation of the Company.

IN WITNESS WHEREOF, I have made and subscribed this Statement of Organization on the date of filing.



---

Kristie L. DeLong  
*Sole Organizer*

EXHIBIT B  
OPERATING AGREEMENT

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**AMENDED AND RESTATED  
OPERATING AGREEMENT  
OF  
ARCADIA LANDING LLC**

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THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS, AND CONDITIONS WHICH ARE SET FORTH HEREIN.

**AMENDED AND  
RESTATED OPERATING  
AGREEMENT OF  
ARCADIA LANDING LLC**

WHEREAS, the Operating Agreement of Arcadia Landing LLC, a limited liability company organized pursuant to the laws of the State of New York governing the organization and operations of domestic limited liability companies, was entered into effective as of the 7th day of September, 2018, by and among the initial members as set forth herein ("Initial Members");

WHEREAS, the Initial Members of the Company (as hereinafter defined) have concurrent with this Amended and Restated Operating Agreement ("Agreement") resigned and have transferred and assigned their respective Membership Interests in the Company to the Members hereinafter identified, and the Members have been admitted to the Company;

WHEREAS, the Company and the Members desire to make and adopt this Agreement, which shall supersede, amend and replace in its entirety, the original Operating Agreement of Arcadia Landing LLC and any amendments heretofore made thereto; and

WHEREAS, this Agreement, is made effective as of the 6<sup>th</sup> day of June, 2019, by and among those Persons identified as Members (as hereinafter defined) on the books and records of the Company, who have entered into and executed this Agreement, and whose names appear on Schedule A attached hereto, which schedule shall be amended from time to time to include new Class A Members and/or Class B Members.

**ARTICLE I**

**Definitions**

All capitalized words, terms, and phrases in this Agreement shall have the meanings ascribed to them as set forth in Exhibit A attached hereto and made a part hereof.

**ARTICLE II**

**Name, Place of Business,  
Resident Office and Resident Agent, Term, and Purposes**

Section 2.1 Name. The Company was formed on September 7, 2018 under and pursuant to the NY LLC Act.

Section 2.2 Principal Office and Resident Agent. The principal office of the Company is 772 W. Beech Street, Long Beach, New York 11561 with a copy of all correspondence sent to the Company under this Agreement also required to be sent to MRG Landing MM c/o Millbrook Realty Group, LLC, 546 Fifth Avenue, 6<sup>th</sup> Floor, New York, NY 10036. The Manager-Related Member may hereafter change the address of the principal office or designate such other principal offices from time to time by giving written notice to the Members. The name and address of the resident agent of the Company is: the Company, 772 W. Beech Street, Long Beach, New York 11561 or such other resident agent as on record with the New York Secretary of State from time to time.

Section 2.3 Term. The term (the "Term") of the Company commenced upon the filing of the Articles of Formation with the New York Secretary of State and shall continue until terminated upon the events of dissolution provided for in accordance with **Section 9.1**, unless sooner terminated as herein provided or as provided by law.

Section 2.4 Articles of Organization. The organizing Member authorized the execution and filing of the Articles of Formation with the New York Secretary of State on 7th day of September, 2018. The Manager-Related Member shall take all necessary action to maintain the Company in good standing as a limited liability company under the NY LLC Act, including (without limitation) the filing of any amendments to the Articles of Formation and such other certificates, applications, registrations, qualifications, articles, instruments, or other documents as may be necessary to protect the limited liability of the Members and to cause the Company to comply with the applicable laws of each state or jurisdiction in which the Company owns property or does business.

Section 2.5 Purposes. The purposes for which the Company has been formed to: purchase, acquire, own, hold, lease, develop, sell, and otherwise deal with real property including the Property; (b) conduct any other lawful business as may be approved by the Manager-Related Member; and (c) do all things necessary, convenient, or incidental to the foregoing.

**ARTICLE III**

**Members, Capital Contributions, and Rights Relating to Units**

Section 3.1 Members. The Members of the Company are all of those Members as may be identified on **Schedule A**, as amended or supplemented from time to time.

Section 3.2 Admission of Members and Capital Contributions of Class A Members.

A. Class A Units.

(i) Issuance of Class A Units. Each Class A Member shall contribute cash as its Capital Contribution with respect to its Class A Units in an amount equal to the number of Class A Units set forth in Schedule A. The Class A Members shall not be required to make any additional Capital Contribution to the Company. The Class A Members shall not have any right to vote on any Company matter or policy except to the extent provided for in this Agreement.

B. Class B Units.

(i) The Capital Contribution of the Class B Member is set forth in Schedule A,

(ii) Manager-Related Member. The Class B Member shall initially be the Manager-Related Member. The Class B Member may elect a substitute the Manager-Related Member in accordance with **Section 6.2**. The Manager-Related Member will have sole authority to modify or amend this Agreement subject to certain limitations. Additionally the Manager-Related Member shall have sole discretion in the operation of the business of the Company. The Class B Member will be entitled to all the rights, privileges and benefits of a Member except that the Class B Member will not be entitled to receive the Preferred Return. The Class B Member shall have at all times a minimum of fifty (50%) percent of the overall ownership interest in the Company by way the Class B Units. Subject to the terms of this Agreement, the Class B Member shall have the sole right to vote on any matter before the Company as well as implement Company policy. The Manager-Related Member (whose members may also include the Class B Member) shall have sole authority to make decisions related to the operation of the Company's business.

Section 3.3 Capital Accounts.

A. Maintenance of Capital Account. An individual Capital Account shall be maintained on the books and records of the Company for each Member in accordance with the provisions of this Agreement. Each Member shall initially be credited with an amount equal to the Capital Contribution of such Member subject to and as set forth above in **Section 3.2**. Each Member's Capital Account shall be further maintained and adjusted as may be necessary in order for the Member's Capital Account to be determined and maintained in accordance with applicable Treasury Regulations to Section 704(b) and (c) of the Code relating to the allocation of profits and losses among partners, including those provisions applicable to contributions and distributions of property to the extent applicable.

(i) to each Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's distributive share of Profits, and any items in the nature of income or gain which are specially allocated pursuant to **Section 4** hereof, and the amount of any Company liabilities assumed by such Member or which are secured by any property distributed to such Member;

(ii) to each Member's Capital Account there shall be debited the

amount of cash and the Gross Asset Value of any property distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Losses, and any items in the nature of expenses or losses which are specially allocated pursuant to **Section 4** hereof, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company;

(iii) in the event any Interest is Assigned in accordance with the terms of this Agreement, the Assignee shall succeed to the Capital Account of the Assignor to the extent it relates to the Assigned Interest; and

(iv) in determining the amount of any liability for purposes of clauses (i) and (ii) above, there shall be taken into account Section 752(c) of the Code and any other applicable provisions of the Code and the Treasury Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Section 1.704-1(b) of the Treasury Regulations, and shall be interpreted and applied in a manner consistent with such regulations. In the event the Manager-Related Member shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company or the Members), are computed in order to comply with such regulations, the Manager-Related Member may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to **Section 12.4** hereof upon the dissolution of the Company. The Manager-Related Member also shall (a) make any adjustments that are necessary or appropriate to maintain equality between the aggregate Capital Accounts of the Members and the aggregate amount of Company capital reflected on the Company's balance sheet, as computed for book purposes in accordance with Section 1.704-1(b)(2)(iv)(q) of the Treasury Regulations, and (b) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Section 1.704-1(b) of the Treasury Regulations.

B. No Interest. No interest shall be paid on any present or future Capital Account.

C. Return of Capital. Neither a Member nor the Manager-Related Member shall be liable for the return of the Capital Contributions of any Members, or any portion thereof, and it is expressly understood that any such return of contributions shall be made solely from the assets of the Company. No Member shall be entitled to withdraw any part of such Member's Capital Account or to receive any distribution from the Company except as provided in **Article IV** or **Article IX**. No Member shall have any right to demand or receive property (other than cash) in return of its Capital Contributions except as may be specifically provided by and in accordance with the NY LLC Act to the extent not inconsistent with this Agreement.

D. No Right to Partition. No Member shall have the right to require partition

of any property of the Company or to compel any sale or appraisal of the Company's assets or any sale of a deceased Interest Holder's interest in the Company's assets.

#### ARTICLE IV

##### Profits and Losses: Distributions

Section 4.1 Allocation of Profits. For tax and accounting purposes, Profits and Losses of the Company for each Fiscal Year shall be allocated among the Members as follows:

A. Subject to **Section 4.3** hereof, Profits shall be allocated to the Members in the following order of priority:

(i) First, to the Class A Members until the Class A Members have been allocated pursuant to this **Section 4.1.A(i)** for the current and prior fiscal years an amount equal to the Losses allocated to the Class A Members pursuant to the last sentence of **Section 4.1.B** for all prior Fiscal Years, if any;

(ii) Second, to the Class B Member until the Class B Member has been allocated pursuant to this **Section 4.1.A(ii)** for the current and prior Fiscal Years, an amount equal to the Losses allocated to the Class B Member for all prior Fiscal Years, if any; and

(iii) Thereafter, to the Members in accordance with the cumulative distributions pursuant to **Sections 4.2.A(v)** and **4.2.B(ix)** hereof with respect to the current and all prior Fiscal Years until the aggregate amount allocated to each Member pursuant to this **Section 4.1.A(iii)** equals the aggregate amount distributed to each Member pursuant to **Sections 4.2.A(v)** and **4.2.B(ix)** with respect to the current and all prior Fiscal Years ("Excess Income"), then the Excess Income derived in the current fiscal year shall be allocated to the Members in accordance with the distribution that would have been made pursuant to **Sections 4.2.A(v)** and **4.2.B(ix)** hereof had there been such distribution for the current Fiscal Year.

B. Subject to **Section 4.3** hereof, Losses shall be allocated 50% to the Class A Members (on a pro rata basis to their Capital Contributions) and 50% to the Class B Member; provided that the Losses allocated pursuant to this **Section 4.1.B** shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year of the Company; and provided, further, that to the extent the Class B Member shall have contributed capital to the Company, the Class B Member shall be allocated Losses equal to any such contribution. All Losses which would have been allocated to the Class A Members but for the first proviso set forth in the preceding sentence shall be allocated to the Class B Member.

C. To the extent that same can be allocated, Nonrecourse Liabilities of the Company shall be specially allocated 50% to the Class A Members (on a pro rata basis to their Capital Contributions) and 50% to the Class B Member. In the event Nonrecourse Liabilities cannot be allocated to Class A Members or the Class B Member, said Nonrecourse Liabilities shall be allocated to the Member(s) that can receive said Nonrecourse Liabilities.

D. (i) To the extent that same can be allocated, Nonrecourse Deductions for any Fiscal Year of the Company or other period shall be specially allocated 50% to the Class A

Members (on a pro rata basis to their Capital Contributions) and 50% to the Class B Member. In the event Nonrecourse Deductions cannot be allocated to Class A Members or the Class B Member, said Nonrecourse Deductions shall be allocated to the Member(s) that can receive the Nonrecourse Deductions.

(ii) Any Member Nonrecourse Deductions for any Fiscal Year of the Company or other period shall be specially allocated to the Members who bear the risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Section 1.704-2(i) of the Treasury Regulations.

E. Where a distribution of an asset is made in the manner described in Section 734 of the Code, or where a transfer of an Interest permitted by this Agreement is made in the manner described in Section 743 of the Code, the Company shall file, upon the request of a Class A Member, an election under Section 754 of the Code, in accordance with the procedures set forth in the applicable Treasury Regulations, unless the provisions of Sections 734 or 743 of the Code require adjustments to the basis of property owned by the Company due to a substantial basis reduction having occurred or the Company having a substantial built-in loss, in which events the Company shall adjust the basis for its assets in accordance with the procedures set forth in the applicable regulations. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Sections 734(b) or 743(b) of the Code is required, and consistent with Section 1.704-1(b)(2)(iv)(m) of the Treasury Regulations, an adjustment should be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations. In no event shall the Manager-Related Member (who is the Partnership Representative) make any election that would cause the Company not to be treated as a partnership for federal income tax purposes, or make any election under Section 266 of the Code to treat items which are otherwise deductible as chargeable to capital account, without the Consent of the Class A Members. All other elections required or permitted to be made by the Company under the Code shall be made in such manner as, in the opinion of the Partnership Representative with the advice of the accountants and legal counsel for the Company, that will be most advantageous to the Class A Members.

F. Except as otherwise provided herein, each Member shall be allocated Profits and Losses in accordance with this Section 4.1 from the date on which it is admitted to the Company. For purposes of determining the Profits, Losses, or any other items allowable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Manager-Related Member using any permissible method under Section 706 of the Code and the Treasury Regulations promulgated thereunder.

G. Except as otherwise provided in this Agreement, all items of Company income, gain, loss, deduction, and any other allocations not otherwise provided for herein shall be divided among the Members in the same proportions as they share Profits or Losses, as the case may be, for the Fiscal Year of the Company.

H. During any Fiscal Year, an allocation of Profits or Losses which does not arise from a Sale or Refinancing Transaction shall be made before an allocation of Profits or

Losses arising from a Sale or Refinancing Transaction.

4.2 Distribution and Application of Cash Flow and Proceeds From Sale or Refinancing Transactions. Except as otherwise provided by this Agreement or required by law, cash distributions shall be made to the Members on the following bases within sixty (60) days after the end of each semiannual calendar period:

A. Subject to the provisions of **Section 4.2.C** hereof, Cash Flow shall be applied in the following order of priority:

(i) To the Class A Members, other than the Manager-Related Member, an amount equal to the unpaid balance of any Voluntary Loan (including interest earned thereon) made by any of them;

(ii) To the Class B Member, an amount equal to the unpaid balance of any Voluntary Loan (including interest earned) made by any of them;

(iii) Return of Capital Contribution to Class A Members on a pro rata basis;

(iv) Preferred Return and Accrued Preferred Return to Class A Members;

(v) The balance, 50% to the Class A Members on a pro rata basis and 50% to the Class B Member until such time as Class A Members receive 20% External Internal Rate of Return and an Equity Multiple at which time the balance of Cash Flow shall be distributed 35% to Class A Members on a pro rata basis and 65% to the Class B Member.

B. Subject to the provisions of **Sections 4.2.C** and **4.3** hereof, Sale or Refinancing Transaction Proceeds shall be applied in the following order of priority:

(i) To the payment of all of the expenses of such Sale or Refinancing Transaction, and, with regard to damage recoveries or insurance or condemnation proceeds (other than for temporary loss of use and subject to the terms of the Project Documents), to the payment of all repairs, replacements, or renewals resulting from damage to or partial condemnation of the affected property;

(ii) To the payment of all debts and obligations of the Company due upon the occurrence of such Sale or Refinancing Transaction other than amounts owing to Members;

(iii) To establish such reserves as the Manager-Related Member in its sole discretion determines to be reasonably necessary for any contingent or foreseeable liability or obligation of the Company; provided, however, that the balance of any such reserve remaining at such time as the Manager-Related Member shall reasonably determine that such reserve is no longer necessary shall be distributed in accordance with subparagraphs (iv) through (ix) of this **Section 4.2.B**;

(iv) To the Class A Members, an amount equal to the unpaid balance of any Voluntary Loan (including interest earned thereon) made by any of them;

(v) To the Class B Member, an amount equal to the unpaid balance of any Voluntary Loan (including interest earned) made by any of them;

(vi) Accrued Preferred Return;

(vii) RESERVED;

(viii) Return of Capital Contribution less distributions received under Sections 4.2A. and 4.2B (excluding Preferred Returns); and

(ix) The balance, 50% to the Class A Members on a pro rata basis and 50% to the Class B Member until such time as Class A Members receive 20% External Internal Rate of Return and an Equity Multiple at which time the balance of Cash Flow shall be distributed 35% to Class A Members on a pro rata basis and 65% to Class B Member.

C. Except as otherwise provided in this **Section 4.2**, each Member shall share in distributions in accordance with this **Section 4.2** from the date on which such Member is admitted to the Company.

#### 4.3 Overriding Allocations of Profits and Losses.

A. (i) Notwithstanding anything contained in **Section 4.1** hereof or this **Section 4.3** to the contrary, if there is a net decrease in Partnership Minimum Gain (which shall have the meaning set forth in Section 1.704-2(b)(2) of the Regulation) during a taxable year of the Company, then there shall be allocated to each Member, before any other allocation of any item of income, gain, loss, deduction, or credit is made for such taxable year, items of income and gain for such taxable year (and, if necessary, for subsequent taxable years), in the order provided in Section 1.704-2(j)(2) of the Treasury Regulations, equal to such Member's share of the net decrease in Partnership Minimum Gain during such year as specified in Section 1.704-2(g)(2) of the Treasury Regulations, unless an exception specified in Section 1.704-2(f) of the Treasury Regulations applies. The allocation contained in this **Section 4.3A(i)** is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Treasury Regulations, and shall be interpreted consistently therewith. Thereafter, subject to **Section 4.3.E** hereof, all Profits and Losses shall be allocated as provided for in **Sections 4.1, 4.3.A(ii), 4.3.B, 4.3.C, and 4.3.D** hereof.

(ii) Notwithstanding anything contained in **Section 4.1** hereof or this **Section 4.3** to the contrary, except **Section 4.3.A(i)** hereof, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain during a taxable year of the Company, then there shall be allocated to each Member who has a share of the Partner Nonrecourse Debt Minimum Gain determined in accordance with Section 1.704-2(i)(5) of the Treasury Regulations, items of income and gain for such taxable year (and, if necessary, subsequent taxable years), in the order provided in Section 1.704-2(j)(2) of the Treasury Regulations, equal to such Member's share of the net decrease in Partner Nonrecourse Debt Minimum Gain during such year as specified in Section 1.704-2(i)(5) of the Treasury Regulations, unless an exception specified in Section 1.704-2(i)(4)



of the Treasury Regulations applies. The allocation contained in this **Section 4.3.A(ii)** is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Treasury Regulations, and shall be interpreted consistently therewith. Thereafter, subject to **Section 4.3.E** hereof, all Profits and Losses shall be allocated as provided for in **Sections 4.1, 4.3.B, 4.3.C and 4.3.D** hereof.

(iii) The Member Minimum Gain and, accordingly, the minimum gain chargeback requirement amount for each Member as of the date of this Agreement, shall be zero.

B. Notwithstanding any provisions of **Section 4.1** hereof or this **Section 4.3** to the contrary, but subject to the provisions of **Section 4.3.A** hereof, in the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations, items of partnership income and gain (including gross income) shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this **Section 4.3.B** shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this **Article IV** have been tentatively made as if this **Section 4.3.B** were not in this Agreement. In the event that any such adjustments, allocations, or distributions create an Adjusted Capital Account Deficit for more than one Member in any taxable year of the Company, all such items of income and gain of the Company for such taxable year and all subsequent taxable years shall be allocated among all such Members in proportion to their respective Adjusted Capital Account Deficits in such amount and manner sufficient to eliminate such Adjusted Capital Account Deficits as quickly as possible. The allocation contained in this **Section 4.3.B** is intended to comply with the qualified income offset requirement in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations, and shall be interpreted consistently therewith. Thereafter, subject to **Section 4.3.E** hereof, all Profits and Losses shall be allocated as provided for in **Sections 4.1, 4.3.C and 4.3.D** hereof.

C. Notwithstanding any provisions of **Section 4.1** hereof or this **Section 4.3** to the contrary, but subject to the provisions of **Sections 4.3.A and 4.3.B** hereof:

(i) (a) in accordance with Section 704(c) of the Code and the Treasury Regulations promulgated thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members as provided in Section 704(c) of the Code so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value; (b) in the event the Gross Asset Value of any Company asset is adjusted as provided herein, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Section 704(c) of the Code and the Treasury Regulations promulgated thereunder; and (c) any elections or other decisions relating to the allocations provided in this **Section 4.3.C(i)** shall be made by the Manager-Related Member in any manner that reasonably reflects the purpose and intention of this Agreement; allocations pursuant to this **Section 4.3.C(i)** are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions

pursuant to any provision of this Agreement; and

(ii) in the event any Class A Member has a deficit Capital Account balance at the end of any Fiscal Year of the Company that is in excess of the sum of: (a) the amount such Member is obligated to restore to its Capital Account (pursuant to the terms of such Member's promissory note or otherwise); and (b) the amount such Member is deemed to be obligated to restore to its Capital Account pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Treasury Regulations, each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this **Section 4.3.C(ii)** shall be made if and only to the extent that such Member would have a deficit Capital Account balance in excess of such sum after all other allocations provided for in this **Article IV** have been tentatively made as if **Section 4.3.B** hereof and this **Section 4.3.C(ii)** were not in this Agreement.

D. To the extent that **Section 4.1** hereof in any of its subsections provides for references to the allocation of Profits or Losses pursuant to particular subsections within **Section 4.1** hereof, including, without limitation, the aggregate Profits or Losses previously allocated pursuant to a subsection, such subsection references shall be deemed to incorporate allocations of Profits or Losses pursuant to this **Section 4.3** to the extent that the allocation of Profits or Losses pursuant to this **Section 4.3** is of the same category of Profits or Losses.

E. Notwithstanding anything to the contrary contained herein, **Sections 4.3A and 4.3.B** hereof shall be applied in the order provided in Section 1.704-2 of the Treasury Regulations.

F. Any allocations made pursuant to this **Section 4.3** shall be taken into account in the making of subsequent allocations under other sections of this **Article IV** in a manner that will, to the maximum extent possible, avoid or eliminate duplicative or excessive allocations of income to any Member.

#### 4.4 Certain Additional Allocations

A. For income tax purposes, if the Company in any Fiscal Year realizes income or is allowed a deduction (including additional depreciation or amortization as a result of adding an item to its basis) as a result of the transfer of an Interest or the transfer of an interest in property to or from a Member, the difference between the amount taken into account for tax purposes and the amount otherwise taken into account under this Agreement shall be allocated solely to such Member.

B. All Profits and Losses to the Class A Members as a Class shall be allocated among the Class A Members as follows: 50% to the Class A Members (on a pro rata basis) and the balance of each allocation to the Class B Member. (to the extent same can be allocated to the Class B Member).

C. Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Section 1.752-3(a)(3) of the Treasury Regulations, the Company's interests in Company Profits are as provided in **Section 4.1.D(i)** hereof.

D. To the extent permitted by Sections 1.704-2(h) and 1.704-2(i)(6) of the Treasury Regulations, the Class A Members shall endeavor to treat distributions of Cash Flow or Sale or Refinancing Transaction Proceeds as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for the Class A Members.

E. The Members are aware of the income tax consequences of the allocations made by this Article IV and hereby agree to be bound by the provisions of this Article IV in reporting their shares of Company income and loss for income tax purposes.

F. To the extent that the amount distributed to (or withheld on behalf of) any Member in respect of a fiscal year of the Company is less than such Member's Assumed Tax Liability, the Manager-Related Member shall distribute cash equal to such shortfall to such Member, at such times as to permit the Member to timely satisfy estimated tax or other tax payment requirements. Each Member's "Assumed Tax Liability" shall equal the expected aggregate federal, state, and local tax liability of such Member attributable to items of income, gain, loss, and deduction allocated to such Member for income tax purposes (excluding allocations under Code Section 704(c) principles), assuming the highest marginal income tax rates applicable to any member, taking into account the character of the relevant income or loss to such member and the deductibility, if any, of any state or local tax in computing any state or federal tax liability. Any amounts paid to Members under this section shall be treated as advances on distributions otherwise payable under this Agreement and are limited to available Cash Flow, with any shortfall pro-rated according to each Member's relative Assumed Tax Liability during such fiscal year.

## ARTICLE V

### Meetings of Members

#### Section 5.1 Meetings of Members; Member Action.

A. Meetings. All meetings of the Members shall be held at the principal office of the Company; provided that meetings may be held at such other place as may be designated by the Manager-Related Member and set forth in the notice of the meeting. The Members may conduct any meeting by telephone conference or other similar communications equipment if all Persons participating in the meeting can hear and speak to each other at the same time. Participation in a meeting by such means shall constitute presence in person at such meeting.

B. Notice of Meetings. A meeting of the Members may be called by any Class B Member by way of a writing to the Manager-Related Member of the Company. If a meeting is so called, the Manager-Related Member shall provide all Members with notice of the meeting. The notice shall be in writing, shall state the place, date, time, and purpose(s) of the meeting, and shall indicate that it is being issued by or at the direction of the Person(s) calling the meeting. The notice shall be given either personally, by first class mail, electronic email, or facsimile not less than ten (10) or more than sixty (60) days before the date of the

meeting, to each Member entitled to notice of such meeting at the mailing address, email account, or facsimile number of such Member on record with the Company. If a meeting is adjourned to another time or place, and if any announcement of the adjournment of time or place is made at the meeting, it shall not be necessary to give notice of the adjourned meeting. Notices will be deemed given by the Company as of the date the Company transmits any electronic or facsimile notice or upon placing the notices into the U.S. Postal Service.

C. Quorum. The presence in person or by proxy of the holders of more than seventy percent (70%) of the Class B Member Percentage (voting Members) shall constitute a quorum at all meetings of the Members of Members; provided, however, that if there is no quorum present, holders of fifty percent (50%) or more of the Class B Member Percentages may adjourn the meeting from time to time without further notice until a quorum is obtained.

D. Proxies. Each Member may authorize any Person or Persons to act for him, her, or it by proxy in all matters in which a Member is entitled to participate, whether by waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Member or by his, her, or its attorney-in-fact. Every proxy shall be revocable at the pleasure of the Member executing it. Unless a proxy provides otherwise, it is not valid more than eleven (11) months after its date.

E. Member Action: Unanimous Written Consent. Except as otherwise provided in this Agreement or by statute, all actions taken by the Members shall require at least fifty percent (50%) of the outstanding Class B Member Percentage entitled to vote on the matter. The Class A Members shall not have the right to vote on any matter that may come before the Company except as specifically set forth in this Agreement. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if there is filed with the records of the Company a written consent which sets forth the action and is signed, in one or more counterparts, by those Members holding the outstanding Member Percentage that would be necessary to approve the matter at a meeting at which all Members entitled to vote thereon were present and voted.

## ARTICLE VI

### Powers, Management, and Control

Section 6.1 Management of the Company. The conduct and control of the business and affairs of the Company shall be vested fully and exclusively in the Manager-Related Member or Director if designated by Manager-Related Member, who shall have the powers necessary and incidental to such conduct and control, subject only to the limitations set forth in Section 6.4. No other Person, including, but not limited to a Class A Member, shall have the authority to bind the Company unless such authority is specifically delegated to a Person by the or required by law. The Manager-Related Member or Directors must be a Class B Member or an Affiliate of a Class B Member provided same is permissible. When acting on behalf of the Company, the Manager-Related Member may use any designation the Manager-Related Member determines appropriate from time to time.

Section 6.2 Election and Removal of Manager-Related Member or Director. The Manager-Related Member or Director shall be elected by the Class B Member. By execution of this Agreement, all Members hereby designate Arcadia Landing MM LLC, a New York limited liability company, as the Manager-Related Member of the Company. The Manager-Related Member shall hold office unless removed by the Class B Member at a duly called meeting of Members and until its successor is duly elected and qualified. Subject to the limitations set forth in Section 6.1, the Class B Member may elect a successor to fill any vacancy of the Manager-Related Member which results for any reason, including removal, resignation, or dissolution of a Manager-Related Member.

Section 6.3 Powers of Manager-Related Member or Director. In addition to the powers granted by the terms and provisions of this Agreement, the Manager-Related Member or Director is hereby authorized to:

A. invest in any one or more real estate businesses or parcels of real property including the Property;

B. incur, at the expense of the Company, such charges, costs, and fees as are necessary in connection with the operation of the Company;

C. borrow money for and on behalf of the Company including but not limited to borrowing money for the purchase and improvement/development of the Property, which may be necessary in connection with the Company's business upon such terms and conditions as the Manager-Related Member may deem advisable and proper and to pledge the credit of the Company for such purpose;

D. obtain and enter into contracts of insurance, including but not limited to, fire and extended coverage and public liability which the Manager-Related Member deems necessary or appropriate for the protection of the Company, the Members, and the Manager-Related Member and for the conservation of Company assets;

E. enter into management agreements for the management of the Property;

F. employ Persons in the operation and management of the business of the Company, including Affiliates of any Member or the Manager-Related Member, on such terms and for such compensation as the Manager-Related Member shall determine;

G. maintain working capital, contingency, and other reserves in such amounts as the Manager-Related Member determines to be necessary for the prudent operation of the Company, and to release from such reserves, from time to time, such amounts as the Manager-Related Member determines to be in excess of the amounts then required by the Company;

H. establish one or more checking, savings, and investment accounts in the name of the Company, and to have exclusive control over the disbursement of the Company's deposit or invested therein;

I. determine, in its sole discretion, the amount of Cash Flow that is to be

distributed to the Members from time to time prior to the liquidation of the Company;

J. confess a judgment against the Company and to assign the property of the Company or assets of the Company in trust for creditors on the basis of an assignee's promise or undertaking to pay the debts or obligations of the Company;

K. terminate and dissolve the Company; and

L. take any other actions that the Manager-Related Member, in its reasonable discretion, determines to be in the best interest and consistent with the purposes of the Company.

Section 6.4 Limitations on Powers of the Manager-Related Member or Director. Notwithstanding any provision of this Agreement to the contrary, the Manager-Related Member or Director shall have no authority to perform any act in violation of the NY LLC Act or any other applicable laws or regulations thereunder, nor shall the Manager-Related Member or Director have any authority, except with the consent of the Members, to:

A. amend, alter, repeal or add any provision to the Articles of Formation or this Agreement in a manner that adversely affects the Class A Members, except amendments to Schedule A as otherwise permitted in this Agreement;

B. exchange, reclassify, or cancel (whether by merger, consolidation, or otherwise) all or any part of the Class A Units, or create or authorize the creation of (by reclassification or otherwise) any additional securities having rights, preferences, or privileges that are senior to or on parity with the Class A Units.

Section 6.5 Board of Advisors. The Manager-Related Member may, in its sole discretion, constitute and appoint Persons to serve as members of a Board of Advisors to the Company. The Board of Advisors, if constituted by the Manager-Related Member, shall be comprised of at least three (3) but not more than five (5) members. The members of the Board of Advisors may, but need not be, Members or Affiliates of the Company. The Board of Advisors will provide advice with respect to the Company from time to time as requested by the Manager-Related Member, but shall have no right to vote on, approve, or consent to matters before the Company, and shall not have any authority, express or implied, to act for or on behalf of the Company in any capacity simply by virtue of being a member of the Board of Advisors.

## ARTICLE VII

### Transferability of Member's LLC Interests and Rights Upon Transfer or Issuance

Section 7.1 Restrictions on Transfer.

A. Restriction on Transfer. Except as expressly provided in this Article VII, no Member may Transfer all or any portion of its LLC Interest without the approval of the Manager-Related Member and meeting the requirements of any agreements that the Company may be a party to. Any such attempted Transfer in contravention of any of the provisions of this Agreement shall be void *ab initio* and shall not bind or be recognized by the Company. Even if the approval of the Manager-Related Member is obtained with respect to a Transfer by a Member, such Transfer shall remain subject to the right of first refusal set forth in Section 7.2.

B. Permitted Transferees. Other than restrictions placed on the Company and or its Members under any agreements that the Company may enter into, including but not limited to loan agreements, there shall be no restriction hereunder against any transfer of Units by any Member to or for the benefit of any Permitted Transferee; provided, however, that any Units transferred by any Member to or for the benefit of any Permitted Transferee shall continue to be subject to all of the terms and conditions of this Agreement and, as a condition to the effectiveness of the transfer of such Units, any Permitted Transferee to whom any Units are transferred shall execute a supplement to this Agreement to the effect that any such Units and such Permitted Transferee shall thereafter be subject to all of the terms and conditions of this Agreement; provided further, that such Permitted Transferee shall be deemed only a successor-in-interest (in accordance with Section 7.5) of the Member who transferred the Units, and shall only be admitted as a Member of the Company upon compliance with the requirements of Section 7.6.

C. Withdrawals. No Member may voluntarily withdraw from the Company without the consent of the Manager-Related Member.

Section 7.2 Right of First Refusal. Notwithstanding any provision in this Agreement to the contrary, in the event that a Member (the "Selling Member") desires to sell, transfer, assign, or convey some or all of its Units pursuant to a Bona Fide Offer acceptable to it, the Selling Member shall, not less than fifty (50) days prior to the closing date of the proposed sale, give notice thereof (the "Notice of Sale") to the Company and to the Members (excluding the Selling Member) (the "Optionees"), subject, however, to the following terms and provisions:

A. Option to Purchase. The Notice of Sale shall state that a Bona Fide Offer has been received by the Selling Member and shall be accompanied by a copy of the Bona Fide Offer and copies of all supporting documents. The Notice of Sale shall further contain an affirmative offer by the Selling Member to sell his, her, or its Units identified in the Bona Fide Offer to the Optionees for the same consideration and upon the same terms and conditions set forth in the Bona Fide Offer (the "Option").

B. Option Period. The Company shall have the option, for a period of thirty (30) days after receipt of the Notice of Sale from the Selling Member (the "Option Period"), to commit to purchase the Units offered by the Selling Member, in whole or in part, on the same terms and conditions set forth in the Bona Fide Offer. Such commitment to purchase must be in writing and received by the Selling Member within the Option Period. Any failure by the Company to respond to the Notice of Sale during the Option Period shall be deemed to constitute a waiver of such Option.

C. Second Option Period. In the event the Company does not exercise its right to purchase all of the Units offered by the Selling Member, the remaining Members shall

have the right (the "Second Option"), for a period of ten (10) days after the end of the Option Period (the "Second Option Period"), to commit to purchase the Units offered by the Selling Member and to which the Company has not exercised its right to purchase on the same terms and conditions set forth in the Bona Fide Offer. Each Member shall have the right to purchase that number of Units of the Selling Member determined by multiplying the total number of Units being sold by the Selling Member by a fraction, the numerator of which is the number of the Member's Units, and the denominator of which is the total number of Units held by all Members electing to purchase the Selling Member's Units; provided that in the event less than all of the Members elect to purchase the Selling Member's Units, those Members exercising their purchase right shall be permitted to purchase any unpurchased portion in an amount determined in accordance with the formula set forth above. Any failure by the Members to respond to the Notice of Sale during such Second Option Period shall be deemed to constitute a waiver of this Second Option.

D. Closing. The closing of the purchase of the Units being offered for sale shall take place on the date designated as the closing date in the Bona Fide Offer, but in no event sooner than fifteen (15) days after the expiration of the Option Period or the Second Option Period, as the case may be (provided, however, that if such day shall be a Saturday, Sunday, or legal holiday, the closing shall take place on the next succeeding regular business day), in the office of the Company, or at such other time and place as may be mutually agreed upon in writing by the Selling Member and the purchaser of his, her, or its Units.

E. Sale to Bona Fide Purchaser. In the event (i) the Optionees fail to exercise either the Option or the Second Option, as the case may be, to purchase the Units of the Selling Member, the Option or Second Option is not exercised in full, or, if after exercising such Option or Second Option, the Optionee fails to close the purchase hereunder (unless such failure to close is attributable to the action or inaction of the Selling Member), and (ii) the Selling Member has received the approval of the Manager-Related Member pursuant to **Section 7.1A**, the Selling Member shall have the right to sell its Units identified in the Notice of Sale to the purchaser designated in the Notice of Sale (the "Bona Fide Purchaser"), in accordance with the terms thereof. Such Bona Fide Purchaser shall not become a substituted Member in the Company, however, unless the Bona Fide Purchaser complies with the requirements of **Section 7.6**. In the event such sale or transfer to the Bona Fide Purchaser is not consummated upon the terms and conditions set forth in the Bona Fide Offer and within sixty (60) days of the date thereof, a new Notice of Sale shall be required in the manner provided for above and the Optionees will again have the Option and Second Option to purchase such Units as provided herein.

**Section 7.3 Drag-Along Rights**. Notwithstanding the provisions of **Section 7.2**, if the Managing Manager, consented or proposed to effectuate a Sale Event with a third party pursuant to a definitive purchase and sale or merger agreement (the "Definitive Agreement"), such Members shall, upon fifteen (15) calendar days prior written notice to the other Members (the "Remaining Members"), have the right to require the Remaining Members to participate in the Sale Event, provided that the consideration received by the Members in the Sale Event is distributed in the same manner required by **Section 9.3** as if the Company were liquidated and the proceeds available for distribution upon liquidation equivalent to the aggregate consideration received by the Class A and Class B Member in the Sale Event. A copy of the Definitive Agreement shall be provided to each Remaining Member along with



the notice described above. Each Remaining Member hereby agrees that it: (i) will cooperate in good faith to effectuate the Sale Event pursuant to the Definitive Agreement; (ii) will consent to, raise no objections against, and take all actions necessary in order to consummate the Definitive Agreement (including the making of all customary representations, warranties, covenants, indemnities, and agreements); and (iii) hereby waives any and all dissenter's rights, appraisal rights, or other similar rights in connection with the Sale Event.

**Section 7.4 No Participation Rights.** Subject to the terms and conditions set forth in this **Section 7.4** and the applicable securities laws, in the event the Company proposes to offer or sell any Units to Persons other than existing Members, the Manager-Related Member may, but shall not be required to, offer such Units for subscription to the Members. Nothing in this **Section 7.4** shall grant any Member the right to participate in any offering of Units.

**Section 7.5 Rights of Successor in Interest of a Member Ceasing to be a Member.** The successor-in-interest to the LLC Interest of the a Member who has ceased to be a Member of the Company for any reason: (i) shall have no right to be admitted as a substitute Member of the Company unless the Manager-Related Member approves the Transfer; (ii) shall have only the rights of an assignee of the LLC Interest of such Member to receive the profits, losses, and distributions which would otherwise have been made to such Member unless admitted as a substitute Member of the Company in accordance with the preceding clause (i); and (iii) shall have no rights to receive any payments or distributions in redemption or liquidation of such Member's LLC Interest unless admitted as a substitute Member of the Company in accordance with the preceding clause (i).

**Section 7.6 Requirements for Substitution.** In addition to the limitations on transferability set forth in **Sections 7.1** and **7.2**, an assignee or transferee of a Member's LLC Interest shall have no right to become a substitute Member with respect to the transferred LLC Interest unless all of the following conditions are satisfied:

- A. an executed or authenticated copy of the written instrument of assignment or transfer is delivered to the Manager-Related Member;
- B. the transferee agrees to be bound by all of the terms of this Agreement by executing a counterpart signature page to this Agreement;
- C. the transferee has made payment to the Company of all costs and expenses incurred as a result of his or its admission to the Company; and
- D. the Manager-Related Member consents to the admission and substitution of the transferee, which consent may be withheld by the Manager-Related Member in its sole discretion.

## **ARTICLE VIII**

### **Affiliated Transactions & Other Business Agreements**

**Section 8.1 Contracts with Members and the Manager-Related Member.** The Company may acquire property from or lease or sell property to, borrow money from or loan to, and

enter into any agreement or contract for the provision of goods or services with any Member, Manager-Related Member, or Affiliate thereof.

Section 8.2 Competitive Activities. Any Member, Manager-Related Member, or Affiliate thereof, may engage in or possess an interest in other business ventures of any nature or description independently or with others, including, but not limited to, the ownership, financing, operation, management, and development of business similar to the Company, and neither the Company nor any Member shall have any rights in or to such independent ventures or the income or profits derived therefrom.

Section 8.3 Compensation of Manager-Related Member. The Manager-Related Member shall not receive any compensation associated with the purchase of the Property or with respect to management of the Property.

Section 8.4 Reimbursements. Each Member and the Manager-Related Member shall be entitled to reimbursement for reasonable ordinary and necessary expenses incurred by it in such capacity on behalf of the Company, as determined pursuant to the Company's budget or approved by the Manager-Related Member. The Manager-Related Member shall be reimbursed for all expenses incurred by the Manager-Related Member in connection with the Company including but not limited to the formation of the Company.

Section 8.5 Third-Party Fees and Expenses. The Company shall pay all third-party expenses (which expenses shall be billed directly to the Company insofar as practicable) of the Company incurred in connection with the Company's business and affairs, including, but not limited to:

- A. extraordinary expenses of the Company.
- B. legal, audit, accounting (including all fees incurred pursuant to the provisions of Article XI), insurance, brokerage, appraisal, leasing, property management, and consulting fees, travel expenses, and all other fees, costs or expenses related to the operation of the Company.
- C. expenses of organizing, revising, amending, converting, modifying, or terminating the Company.
- D. expenses in connection with distributions made by the Company to, and communications and bookkeeping and clerical work necessary in maintaining relations with, Members.
- E. the cost of preparation and dissemination of all Company tax returns, reports and filings as required hereunder or as required by law.
- F. sale, brokerage and lender fees.

## ARTICLE IX

### Continuation of the Company; Dissolution of the Company

Section 9.1 Dissolution and Termination. The Company shall be dissolved upon the happening of any of the following events:

- A. the determination of the Manager-Related Member; or
- B. the Bankruptcy or insolvency of the Company.

Section 9.2 Accounting. In the case of the dissolution and termination of the Company, a proper accounting shall be made of the Capital Account of each Member and the profits or losses of the Company from the close of the preceding Fiscal Year shall be determined and allocated among the Members in accordance with the provisions of Sections 4.1 and 4.2. Financial statements presenting such an accounting shall be delivered to all Members, at Company expense, within ninety (90) days after dissolution and termination of the Company.

Section 9.3 Liquidation and Distribution. Upon dissolution of the Company, the Manager-Related Member (or if applicable, the Liquidating Trustee appointed under the provisions of Section 9.4) shall cause the cancellation of the Company's Articles of Formation, shall take full account of the Company's liabilities and assets, shall liquidate the assets of the Company, and shall distribute the assets of the Company as follows:

- A. First, to creditors (including Members, and the Manager-Related Member, to the extent otherwise permitted by law) in satisfaction of all of the Company's debts and other liabilities;
- B. Second, to payment of a reserve for contingent liabilities to the extent deemed reasonable by the Manager-Related Member or the Liquidating Trustee;
- C. Third, to the repayment of any loans or advances that may have been made by any of the Members to the Company;
- D. Fourth, to the Members in an amount equal to their respective Preferred Returns (less distributions under Section 4.4 attributable to allocations of profit under Section 4.1.B), in proportion to their respective Preferred Returns, until all Preferred Returns have been paid in full;
- E. Fifth, to the Members in accordance with the positive balance in their Capital Accounts, after giving effect to all contributions, distributions, and allocations for all periods until such Capital Account balances have been reduced to zero; and
- F. Finally, 50% to the Class A Members on a pro rata basis and 50% to the Class B Member until such time as the Class A Members receive 20% External Rate of Return and an Equity Multiple at which time the balance of assets shall be distributed 35% to Class A Members on a pro rata basis and 65% to the Class B Member.

Each Member shall look solely to the assets of the Company for all distributions with respect to the Company and its Capital Contribution thereto and share of profits, gains, and

losses thereof and shall have no recourse therefor (upon dissolution or otherwise) against the Manager-Related Member or any other Member. No Member shall have any right to demand or receive property other than cash upon dissolution and liquidation of the Company.

Section 9.4 Liquidating Trustee. In the event that the Company is dissolved and no Manager-Related Member remains to wind up the Company, a majority of the remaining Members shall appoint a Member or any other Person of their choice to act as "Liquidating Trustee" in the liquidation of the Company, which Liquidating Trustee shall have the rights, duties and obligations granted under the provisions of **Section 9.3**.

## **ARTICLE X**

### **Indemnification & Limitation of Liability**

Section 10.1 Company Liabilities. Except as provided under the NY LLC Act or otherwise by operation of law, the debts, obligations, and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations, and liabilities of the Company, and neither the Members nor the Manager-Related Member, shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member of or acting as the Manager-Related Member.

Section 10.2 No Personal Liability. To the fullest extent permitted by New York statutory or decisional law, as amended or interpreted, neither the Manager-Related Member nor a Member shall be personally liable to the Company or any of its Members for money damages or otherwise except for: acts (i) of gross negligence or willful misconduct; (ii) constituting reckless disregard for the best interests of the Company; or (iii) that are criminal. No amendment to or modification of this Agreement shall limit or eliminate the benefits provided to the Manager-Related Member and Members under this **Section 10.2** with respect to any act or omission which occurred prior to such amendment or modification. Notwithstanding anything to the contrary contained herein, it is expressly acknowledged and agreed that this limitation of liability shall not grant Members or the Manager-Related Member indemnification for legal and other expenses that such Member or the Manager-Related Member may incur with respect to any dispute not directly related to such Member's or Manager-Related Member's actions in his or her capacity as the Manager-Related Member or a Member of the Company.

Section 10.3 Indemnification of Manager-Related Member. The Company (but not any Member) shall, to the fullest extent permitted by New York law, indemnify and hold harmless the Manager-Related Member and its officers, employees, members and Affiliates for any threatened, pending, or completed action, suit, proceeding, loss, damage, liability, cost or expense (including reasonable attorneys' fees), arising out of any act or failure to act by such Person if such act or failure to act is in good faith and in a manner reasonably believed by such Person to be within the scope of the authority granted to the Manager-Related Member under this Agreement and is not attributable to willful misconduct, gross negligence, recklessness,

or a criminal activity. Any indemnity shall include the additional amount of any federal and state taxes for which such Person is liable as a result of receiving the indemnification amount. Any indemnity under this **Section 10.3** shall be paid from, and only to the extent of, assets of the Company and no Member shall have any personal liability on account thereof.

Section 10.4 Insurance. The Company may obtain and maintain insurance as deemed necessary and required by the Manager-Related Member. Such insurance, if obtained, shall be reviewed annually and shall be increased as appropriate. To the extent possible, the Company may obtain appropriate insurance to cover the actions of the Manager-Related Member, and if such insurance is not available, may seek to obtain a fidelity bond or similar bonds for such individuals to protect the Company from any wrongdoing or misconduct by the Manager-Related Member as is reasonable and appropriate.

## **ARTICLE XI**

### **Accounting**

Section 11.1 Books and Records. At all times during the existence of the Company, the Manager-Related Member shall keep or cause to be kept true and full books and records showing all receipts and expenditures, assets and liabilities, income and losses, and all other records necessary for recording the Company's allocations and distributions provided for in **Article IV** and all other records required by the NY LLC Act. The Manager-Related Member shall maintain such books and records at all times at the principal office of the Company, where they shall be available during regular business hours and upon reasonable prior notice for inspection, examination, and copying by all Members or by their duly authorized representatives for bona fide reasons.

Section 11.2 Reports. The Manager-Related Member shall use its best commercial efforts to cause to be prepared and delivered to each Member, and shall further cause the Company to file as and when required, the following:

A. Within ninety (90) days after the expiration of each Fiscal Year of the Company, reviewed financial statements showing the taxable income and expenses of the Company, the balance sheet thereof, related statements of income and Members' capital and cash distributions, a statement of each Member's share of the Company's taxable income or loss, and all other information necessary for the preparation by each Member of its federal income tax return as to the Company's income, gain, losses, deductions and credits and the allocations thereof to each Member, including Form K-1.

B. Within forty-five (45) days after the end of each semi-annual period, the unaudited financial statements of the Company, including a balance sheet as of the end of the quarter and statements of income and cash flows for such semi-annual period.

C. All periodic reports, returns, or statements required to be distributed to the Members by any federal, state, or local governmental agency having jurisdiction over the Company.

D. Within thirty (30) days after the end of each calendar quarter, an executive summary of any material transactions effected by the Company during such quarter.

Section 11.3 Bank Accounts. All funds of the Company shall be deposited in such high-quality, federally insured, checking or savings accounts or time certificates as shall be designated from time to time by the Manager-Related Member.

Section 11.4 Accounting Decisions and Tax Elections. All decisions as to accounting principles and tax elections required or permitted to be made by the Company under the Code or otherwise shall be made by the Manager-Related Member in its sole and absolute discretion.

Section 11.5 Tax Matters.

A. Tax Elections. The Manager-Related Member shall, without any further consent of the Members being required (except as specifically required herein), make any and all elections for federal, state, local, and foreign tax purposes including, without limitation, any election, if permitted by applicable law and is specifically authorized to act as the "Tax Matters Partner" under the Code and in any similar capacity under state or local law; provided, however, that in no event shall the Manager-Related Member make an election for the Company to be treated as an association taxable as a corporation for federal income tax purposes without the unanimous written consent of the Members.

B. Partnership Representative. The Members hereby designate the Manager-Related Member to serve as the "Partnership Representative" in accordance with Code Section 6223 for any Post-TEFRA Period. Effective for any Post-TEFRA Period, the Partnership Representative will be subject to the same terms and conditions imposed on the Tax Matters Partner pursuant to this Agreement. If the Company receives a notice of final partnership adjustment from the Internal Revenue Service, the Partnership Representative shall promptly forward a copy of such notice to the Members. The Partnership Representative may, within forty-five (45) days of receipt by the Company of a notice of final partnership audit adjustment, make the election described in Code Section 6226(a) to not have Code Section 6225 apply with respect to any underpayment of tax liability. Pursuant to such election, any final partnership adjustments shall be taken into account by each Member in accordance with Code Section 6226(b). In the event that an election described in Code Section 6226(a) is not made with respect to any notice of final partnership adjustment, each Member shall be obligated to make a Capital Contribution in an amount equal to such Member's share of any taxes imposed in connection with such adjustment (and any associated interest and penalties). For purposes of the preceding sentence, each Member's share of such taxes shall be determined by taking into account (i) such Member's share of Profits and Losses to which such adjustment relates. If for any Post-TEFRA Period the Company meets the requirements of Code Section 6221(b) to elect not to have Code Section 6221(a) apply with respect to any adjustment to Company tax items, the Partnership Representative may make such election described in Code Section 6221(b) for each tax year, as applicable.

C. Tax Information. Necessary tax information shall be delivered to each Member as soon as practicable after the end of each Fiscal Year of the Company but not

later than five (5) months after the end of each Fiscal Year.

## ARTICLE XII

### Miscellaneous Provisions

Section 12.1 Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if mailed by first class mail, postage prepaid, or transmitted via email to the Manager-Related Member on behalf of the Company at the street or email address of the Company and to the street or email address of each Member as set forth in the records of the Company. Any such notice shall be deemed received by the Member three (3) days after the notice is postmarked if sent by first class mail, or upon transmission if sent by email. Any Member may change his, her, or its street or email address by giving notice, in writing, stating his, her or its new street or email address to the Secretary of the Company, and the Manager-Related Member may change their street or email address by giving such notice to all Members.

#### Section 12.2 Amendment.

A. This Agreement may be amended by the Class B Member without the consent or approval of the Class A Members:

(i) To preserve the legal status of the Company as a limited liability company under the NY LLC Act or other applicable state or federal laws, if such amendment does not adversely affect the interests of the Members and is necessary or appropriate in the opinion of counsel;

(ii) To satisfy the requirements of the Code and the Treasury Regulations thereunder with respect to limited liability companies and/or of any federal or state securities laws or regulations, if such amendment does not adversely affect the interests of the Members and is necessary or appropriate in the opinion of counsel, and any such amendment under this clause to be effective as of the date of this Agreement;

(iii) To provide for the admission of additional Members and the respective rights, benefits, and obligations of such Members in the Company consistent with the provisions of this Agreement;

(iv) To reflect any Transfer of a Member's LLC Interest, on the terms provided herein; and

(v) Upon advice of the Accountants and counsel for the Company, to amend Article IV and to restate the Capital Accounts of the Members to comply with the Treasury Regulations promulgated under the Code relating to the allocations of Profits and Losses among Members and the administrative and judicial interpretations thereof, provided, however, that no amendment shall be made pursuant to this subsection which would cause a material adverse change in the economic benefits to the Members without the Consent of the Class A Members.

B. This Agreement may not be amended by the Manager-Related Member/Director without Consent of the Class A Members to make any change prohibited by Section 6.4.

C. Except as expressly provided herein, this Agreement may only be amended or modified with the Consent of the Members.

Section 12.3 Successors and Assigns. All of the terms and conditions of this Agreement shall be binding upon the successors and assigns of the Members, but shall not inure to the benefit of the successors or assigns of the Members except as otherwise expressly provided in this Agreement.

Section 12.4 Waiver of Certain Rights. Each Member, on behalf of himself or itself and his or its successors, representatives, heirs, and assigns hereby waives and releases each and all of the following rights that he or it have or may have, if any, by virtue of holding a LLC Interest in the Company: (i) any right of partition or any right to take any other action which otherwise might be available to such Person for the purpose of severing his or its relationship with the Company or such Person's interest in the assets held by the Company from the interest of the other Members; (ii) any right to valuation and payment of the LLC Interest of any Member (including any appraisal rights such Member may be entitled to under the NY LLC Act or otherwise); and (iii) any right to petition a court for judicial dissolution of the Company.

Section 12.5 Securities Laws Restrictions. The LLC Interests described in this Agreement have not been registered under the Securities Act of 1933, as amended (the "1933 Act") or under the securities laws of the States in which the LLC Interests have been offered and sold or any other jurisdiction (the "State Acts"). Consequently, these LLC Interests may not be sold, transferred, assigned, pledged, hypothecated or otherwise disposed of, except in accordance with the provisions of the 1933 Act, the State Acts, and this Agreement.

Section 12.6 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument.

Section 12.7 Captions. Captions to and headings of the articles, sections and subsections, paragraphs, or subparagraphs of this Agreement are inserted solely for the convenience of the parties, are not a part of this Agreement, and in no way define, limit, extend or describe the scope or the intent of any of the provisions.

Section 12.8 Entire Agreement. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof. There are no representations, agreements, or understandings, oral or written, express or implied, between the parties relating to the subject matter of this Agreement which are not expressed herein, nor does any party, agent, or employee have any authority to make any representations or agreements to vary, alter, amend, or modify the terms.

Section 12.9 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, without giving effect to conflicts of laws.



Section 12.10 Separability. The provisions of this Agreement are separate and divisible. In the event that any provisions of this Agreement shall be held invalid, the remaining provisions shall be construed and shall be valid as if the invalid provisions were not a part.

Section 12.11 Application of Subchapter K. No election shall be made by the Company, or the Members for the Company to be excluded from the application of the provisions of Subchapter K of the Code, or from any similar provisions of State and foreign tax laws, which relate to the taxation of partnerships.

Section 12.12 Waiver of Partition. Each Member (and his, her, or its representatives, successors, and assigns) hereby irrevocably waives any and all right to maintain any actions for partition or to compel any sale with respect to any assets or properties of the Company.

Section 12.13 Arbitration. Every dispute arising among the parties hereunder shall be solely and finally settled by an arbitration conducted in any location within the City and State of New York, depending on the location of the party filing the dispute, in accordance with the commercial arbitration rules of the American Arbitration Association (the "AAA") then in force (the "Rules"). The party or parties requesting arbitration (the "Petitioner(s)") shall serve upon the other party or parties (the "Respondent(s)") a written demand for arbitration stating what the Petitioner(s) contends is the substance of the controversy, dispute or claim, the contention of the Petitioner(s) requesting arbitration. The parties shall cooperate in good faith to appoint an arbitrator mutually agreeable to the parties. In the event that the parties are unable to agree to a mutually acceptable arbitrator within thirty (30) business days, the Petitioner shall apply to the AAA for appointment of an arbitrator in accordance with the provisions of the Rules. The decision or award agreed to by the arbitrator shall be final and binding upon the parties. The parties shall abide by all awards and decisions rendered in the arbitration proceedings, and all such awards and decisions may be enforced and executed upon in any court having jurisdiction over the parties against whom enforcement of such award is sought. After the conduct of any arbitration pursuant to the provisions hereof, the arbitrators shall determine what amount of the administrative charges, arbitrator's fees, and related expenses of such arbitration each of the parties shall pay. If the arbitrators fail so to determine, the Petitioner(s) and Respondent(s) shall each pay half of such charges, fees, and expenses. In all cases, each party shall pay its own legal fees incurred in connection with any such arbitration. The parties can mutually agree to waive this **Section 12.13** in the event that they are able to agree in good faith upon an acceptable alternative mediation or arbitration forum.

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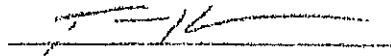
IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

**MEMBER**

Arcadia Landing MM, LLC

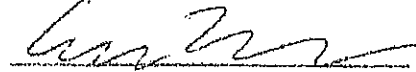
By its Managers:

Arcadia Asset Services, LLC



MRG Landing MM LLC

By its Member/Manager Millbrook Realty Group

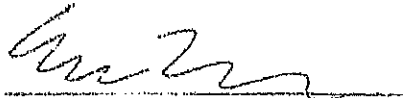


By: Eric Trucksess, Member/Manager

**MEMBER**

MRG Glen Cove LLC

By its Manager Millbrook Realty Group, LLC



By: Eric Trucksess, Member/Manager

**MEMBER**

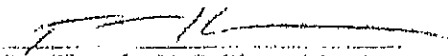
Landing Cove Investors LLC



By:

**MEMBER**

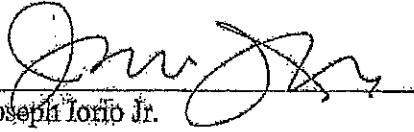
Arcadia Breton Hills LLC



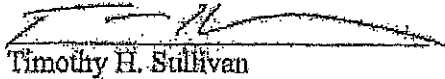
By: Timothy H. Sullivan, Member/Manager

[Signature Page to Arcadia Landing LLC  
Amended and Restated Operating Agreement]

THE INITIAL MEMBER HEREBY  
CONFIRMS HIS WITHDRAWAL  
FROM THE COMPANY:



Joseph Lorio Jr.



Timothy H. Sullivan

[Signature Page to Arcadia Landing LLC  
Amended and Restated Operating Agreement Continued]



## EXHIBIT A

### GENERAL DEFINITIONS

The following terms used in this Agreement shall, unless otherwise noted or unless the context otherwise requires, have the following meanings:

1933 Act: shall have the meaning provided in **Section 12.5**.

AAA: shall have the meaning provided in **Section 12.13**.

Accountants: such firm of independent certified public accountants as may be selected and engaged by the Manager-Related Member from time to time.

Accrued Preferred Returns: shall mean Preferred Returns that have not been earned or declared.

Adjusted Capital Balance: with respect to any Member as of any day, the portion of such Member's Capital Contribution then actually paid into the Company in cash with respect to such Member's Units, less any amount distributed to such Member pursuant to **Sections 4.4.C** and **9.3**. If any Member transfers all or any portion of its Units in accordance with the terms of this Agreement, its transferee shall succeed to the Adjusted Capital Balance of the transferor, in proportion to the interest transferred.

Affiliate(s): with respect to any Member or Manager-Related Member, a Person who directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with that Member or Manager-Related Member. The term "control" as used herein (including the terms "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to: (a) vote ten percent (10%) or more of the outstanding voting securities of a Member or a Manager-Related Member or such Person; or (b) otherwise direct the management policies of a Member or a Manager-Related Member or such Person by contract or otherwise.

Agreement: this Operating Agreement, as amended from time to time. Words such as "herein," "hereof," "hereby," and "hereunder," when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.

Articles of Formation: the Articles of Formation of the Company as filed with the New York Secretary of State on April 7, 2018, as such certificate may be amended from time to time.

Assignee: means a Person who receives an Assignment.

Assignment: (including the verb form "Assign" and the adjectival form "Assigned") means a valid sale, exchange, transfer or other disposition of all or any portion of an Interest.

Assignor: means a Member who makes an Assignment.

Bankruptcy: With respect to any Member:

- (i) the commencement of a proceeding in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Code (as now or in the future amended) or an admission seeking the relief therein provided;
- (ii) an assignment for the benefit of creditors;
- (iii) consenting to the appointment of a receiver for all or a substantial part of its property;
- (iv) being adjudicated bankrupt or insolvent;
- (v) the entry of a court order appointing a receiver or trustee for all or a substantial part of its property without its consent; or
- (vi) the assumption of custody or sequestration by a court of competent jurisdiction of all or substantially all of its property.

Bipartisan Budget Act: means the Bipartisan Budget Act of 2015 (P.L. 114-74).

Bona Fide Offer: means an offer which is (a) in writing, (b) from a person who is neither an Interest Holder nor an Affiliate of an Interest Holder, and (c) from a person or entity that has the financial wherewithal to consummate the purchase.

Bona Fide Purchaser: shall have the meaning provided in **Section 7.2E**.

Capital Account: shall mean with respect to any Member (i) the amount of money contributed by it to the Company, (ii) the fair market value of property contributed by it to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code) and (iii) allocations to it of Company income and gain (or items thereof), and decreased by (iv) the amount of money distributed to it by the Company, (v) the fair market value of property distributed to it by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code), (vi) all allocations to it of expenditures of the Company described in Section 705(a)(2)(B) of the Code, and (vii) allocations of Company loss and deduction (or item thereof), subject to such other adjustments required by Treas. Reg. Section 1.704-1(b)(4) (or any corresponding successor provisions). The Capital Accounts of the Members, as of the date of this Agreement, as agreed by the members, are set forth on **Schedule A**. Upon the determination by the Manager-Related Member, the Capital Accounts of the Members may be restated to their fair market values in connection with the admission of an Additional Member. In all events, such Capital Account shall be maintained in accordance with the Treasury Regulations promulgated under Section 704(b) of the Code.

Capital Contribution: shall mean the amount of cash and the fair market value of assets (as of the date of contribution), net of any liabilities, contributed to the Company by each Class A Member. Any reference in this Agreement to the Capital Contribution of a then Member, Permitted Transferee or successor-in-interest to an LLC Interest shall include a Capital Contribution previously made by any prior Class A Member with respect to the LLC Interest of such then Member.

Cash Flow: shall mean the gross cash proceeds of the Company (other than Capital Contributions or proceeds from the winding up of the Company) less the portion thereof used to pay or establish reserves for all Company expenses, debt payments on secured loans, capital improvements, replacements, and contingencies, all as determined by the Manager-Related Member of the Company in its sole discretion. "Cash Flow" shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to the first sentence of this definition.

Class A Members: are equity members entitled to a Preferred Return and to receive fifty (50%) percent of the distributions on a pro-rata basis to their Capital Contribution until such time as they receive a twenty (20%) percent External Interest Rate of Return and an Equity Multiple and thereafter will receive thirty five (35%) percent of the distributing on a pro-rata basis to the Capital Contribution and have limited voting rights.

Class B Member: is the Member and initial Manager-Related Member entitled to receive distribution of fifty percent (50 %) Contribution until such time as the Class A Members receive a twenty (20%) percent External Interest Rate of Return and an Equity Multiple, thereafter the Class B Member will receive a distribution of sixty five (65%) percent and has full voting rights and control of the Company operations.

Class A Units: shall have the meaning provided in **Section 3.2A**.

Class B Units: shall have the meaning provided in **Section 3.2B**.

Code: the Internal Revenue Code of 1986, as amended. Any references in this Agreement to sections of the Code are intended to include such sections as they may be amended from time to time and any corresponding provision or provisions of succeeding law.

Company: means Arcadia Landing LLC, a New York limited liability company, which was formed pursuant to the Articles of Formation for the purposes stated herein.

Definitive Agreement: shall have the meaning provided in **Section 7.3**.

Directors: shall mean Eric Trucksess and or Timothy Sullivan.

Effective Gross Income: shall mean the amount income produced by the Property, plus miscellaneous income, less vacancy costs and collection losses.

Equity Multiple: shall mean total return including return of capital, preferred returns and all distributions received divided by the original Capital Contribution.

Excess Income: shall have the meaning provided in Section 4.1 A. (iii).

Extended Internal Rate of Return: Is the interest rate at which the net present value of all cash flows equals zero and will be calculated at various times as determined by the Manager-Related Member.

Fiscal Year: means (i) the period commencing on the Effective Date and ending on December 31, 2019 (ii) any subsequent twelve-month period commencing on January 1 and ending on December 31, or (iii) any portion of the period described in clauses (i) or (ii) for which the Company is required to allocate profits, losses, and other items of Company income, gain, loss or deduction pursuant to this Agreement.

Gross Asset Value: means, with respect to any asset owned by the Company, the asset's adjusted basis for Federal income tax purposes, except as follows:

(i) the initial Gross Asset Value of each asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Manager-Related Member;

(ii) the Gross Asset Value of each asset shall be adjusted to equal its respective gross fair market value, as determined by the Manager-Related Member, as of the following times: (a) the acquisition of an additional Interest by any new or existing Member in exchange for more than a de minimis Capital Contribution; (b) the distribution by the Company to a Member of more than a de minimis amount of property as consideration for an Interest; and (c) the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations; provided, however, that adjustments pursuant to sub clauses (a) and (b) of this clause (ii) shall be made only if the Manager-Related Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(iii) the Gross Asset Value of any asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution; and

(iv) the Gross Asset Value of each asset shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such asset pursuant to Section 734(b) or Section 743(b) of the Code, but only to the extent that such adjustment is taken into account in determining Capital Accounts pursuant to Sections 1.704-1(b)(2)(iv)(m) of the Regulations and Article IV hereof; provided, however, that the Gross Asset Values shall not be adjusted pursuant to this Clause (iv) to the extent the Manager-Related Member determines that an adjustment pursuant to clause (ii) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to clause



(i), (ii) or (iv) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses

Interest means the entire ownership interest of a Member in the Company at any particular time, including the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all terms and provisions of this Agreement. Except as provided in this Agreement, a Member's Interest shall not include any interest that such Member may otherwise have as a creditor of the Company.

Interest Holder: the holder of an LLC Interest.

Liquidating Trustee: shall have the meaning provided in **Section 9.4**.

LLC Interest: the ownership interest (in Units) of a Member or his, her or its successor in the Company at any particular time, including the Member's share of the profits and losses of the Company, the right to receive distributions from the Company, the right to vote on and approve actions and decisions granted under this Agreement, and the right to any and all other benefits to which such Member may be entitled as provided in this Agreement and in the NY LLC Act, together with the obligations of such Member to comply with all of the terms and provisions of this Agreement and of the NY LLC Act.

Loan: All borrowings by the Company which shall be subject to the terms of the Agreement and applicable rules, regulations or agreements to which the Company is a party to. To the extent borrowings are permitted, they may be made from any source, including any Member or an Affiliate. If any Member or Affiliate thereof shall lend any monies to the Company, such loan shall be unsecured and the amount of any such loan shall not be an increase of such Member's Capital Contribution nor affect in any way such Member's share of the Profits and Losses or distributions of the Company. Loans by a Member or an Affiliate thereof shall bear interest per annum at a rate equal to two percent in excess of the Prime Rate (the rate of interest publicly announced from time to time by JPMorgan Chase Bank, a New York state banking corporation, as its prime rate) (but not in excess of the lawful maximum rate) and shall be repayable as set forth in Article IV of this Agreement (to the extent permitted by any agreements to which the Company is a party to), but in any event only out of the assets of the Company, provided, however, that any Voluntary Loan shall be made solely for the benefit of the Company.

Manager-Related Member: shall have the meaning provided in **Section 3.2B**.

Member: Any Person who owns Class A or Class B LLC Interest in the Company.

Members: collectively, the Equity Members and Manager Member.

Member Percentage: the percentage indicated for a Member (of any class) on **Schedule A** attached hereto, as amended from time to time, which percentage is determined with respect to a Member by dividing such Member's Units, as the case may be, by the total number of issued and outstanding Units, as the case may be.

Nonrecourse Deductions: shall have the meaning set forth in Section 1.704-2(b)(1) of the Regulations.

Nonrecourse Liability shall have the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

Notice of Sale: shall have the meaning provided in **Section 7.2**.

NY LLC ACT: means the Limited Liability Company Act of the State of New York, or any corresponding provision or provisions of succeeding law, as it or they may be amended from time to time.

Option: shall have the meaning provided in **Section 7.2A**.

Option Period: shall have the meaning provided in **Section 7.2B**.

Optionees: shall have the meaning provided in **Section 7.2**.

Partnership Representative: shall have the meaning provided in **Section 11.5**.

Partnership Tax Audit Rules: means, with respect to any Post-TEFRA Period, the provisions of Section 1101 of the Bipartisan Budget Act, as amended, and any corresponding provisions of state, local, or foreign law.

Permitted Transferee: means (1) any spouse or lineal descendant of a Member, provided that at the time of transfer, such lineal descendant is of the age of majority, (2) a trust for the benefit of a spouse or lineal descendent of a Member, and (3) any corporation, partnership, limited liability company, or other entity at least 51% of the voting interest of which is owned by a Member; *provided*, however, that any such person (or entity) shall not be considered a Permitted Transferee unless that person (or entity) shall execute a supplement to this Agreement to the effect that such person (or entity) and any Units transferred to that person (or entity) shall thereafter be subject to all of the terms and conditions of this Agreement.

Person: any individual, general partnership, limited partnership, corporation, joint venture, trust, business trust, limited liability company, cooperative or association, and the successors and assigns of any of the foregoing where the context so requires or permits; and, unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter and vice versa.

Petitioner(s): shall have the meaning provided in **Section 12.13**.

Post-TEFRA Period: means each federal income tax period of the Company beginning after December 31, 2017 (or such other later effective date of Section 1101 of the Bipartisan Budget Act if the implementation of such provisions is delayed by legislation or regulation), and such earlier periods, if any, with respect to which the Company has made an election pursuant to Section 1101(g)(4) of the Bipartisan Budget Act.

Preferred Return: an amount equal to twelve and one half percent (12.5%) simple annual return on a Class A Member's then Capital Contribution (pro rated for any partial year based on a three hundred sixty-five (365) day year). The Preferred Return shall be cumulative, shall accrue whether or not earned or declared, and is payable only out of Cash Flow at such time or times as are determined by the Manager-Related Member. The Manager-Related Member shall have no personal liability for the payment of the Preferred Return.

Profits and Losses: means, for each fiscal year of the Company or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(i) any income of the Company that is exempt from Federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss;

(ii) any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705 (a)(2)(B) expenditures pursuant to Section 1.704-1(b)(2)(iv)(i) of the Regulations and not otherwise taken into account in computing Profits or Losses, shall be subtracted from such taxable income or loss;

(iii) in the event the Gross Asset Value of any Company asset is adjusted pursuant to clause (ii) or (iii) of the definition thereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(iv) gain or loss resulting from any disposition of Partnership property with respect to which gain or loss is recognized for Federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(v) in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period; and

(vi) Notwithstanding any other provision thereof, any items which are specially allocated pursuant to Article IV hereof shall not be taken into account in computing Profits or Losses.

Project Documents: means this Agreement, any mortgage loan documents, and any other documents related to the acquisition, development, construction, financing, operation or contemplated use of the Property, as such documents may be amended from time to time in accordance with the terms of this Agreement.

Property: shall mean 40 Hill Street, Glen Cove, New York 11542, known as the Nassau County Land and Tax Map as Section 31, Block F, Lot 1079.

Remaining Members: shall have the meaning provided in Sections 7.2C and Section 7.3, respectively.

Respondent(s): shall have the meaning provided in Section 12.13

Rules: shall have the meaning provided in Section 12.13.

Sale Event: (i) the sale of greater than fifty percent (50%) of the total Units held by the Members in one or a series of related transactions; (ii) the merger or consolidation of the Company with or into any other entity; or (iii) the sale of all or substantially all of the assets of the Company.

Sale or Refinancing Transaction: means any of the following items or transactions not in the ordinary course of business: a sale, transfer, exchange or other disposition of all or substantially all of the assets of the Company, a condemnation of or casualty at the Property (other than an event which produces business interruption insurance proceeds, casualty insurance proceeds that are used to rebuild the buildings at the Property or other similar payments), a claim against a title insurance company, the refinancing of any Mortgage Note or other indebtedness of the Company and any similar item or transaction; provided however, that neither distributions which are deemed returns of capital for Federal income tax purposes nor the payment of Capital Contributions by the Members shall be included within the meaning of the term "Sale or Refinancing Transaction".

Second Option: shall have the meaning provided in Section 7.2C.

Second Option Period: shall have the meaning provided in Section 7.2C.

Selling Member: shall have the meaning provided in Section 7.2.

State Acts: shall have the meaning provided in Section 12.5.

Tax Matters Partner: shall have the meaning provided in Section 11.5A.

Transfer: as a noun, any voluntary or involuntary sale, assignment, transfer, pledge, hypothecation, exchange or other disposition of an LLC Interest by any means whatsoever, directly or indirectly, whether by operation of law or otherwise; and as a verb, any action or actions taken by or on behalf of a Member which result in such sale, assignment, transfer, pledge, hypothecation, exchange or other disposition of an LLC Interest.

Treasury Regulations: the income tax regulations promulgated under the Code. Any references in this Agreement to Treasury Regulations are intended to refer to such regulations and to such regulations as they may be amended and to any corresponding provision or provisions of succeeding law.

Units: that number of units representing an LLC Interest set forth after a Member's name on Schedule A hereto, as amended from time to time, which shall not be affected by any increases or decreases in such Member's Capital Account, and which shall be subject to the rights and obligations set forth in this Agreement. By the execution of this

Agreement, the Members hereby authorize the issuance of Units to Class A Members representing fifty (50%) percent ownership interest in the Company (subject to specific limitations and voting restrictions), and Units to the Class B Member representing fifty (50%) percent ownership interest (with full voting and control rights of the Company).

Voluntary Loan: means a voluntary, unsecured interest-bearing Loan of any Member to the Company.

-----

EXHIBIT C

CONSENT

**WRITTEN CONSENT**  
**OF THE MANAGER-RELATED MEMBER**  
**OF**  
**ARCADIA LANDING LLC**

The undersigned, being the sole Manager-Related Member of Arcadia Landing LLC, a New York limited liability company (the "Company") hereby consents to the actions set forth herein in lieu of a meeting.

**WHEREAS**, the Company desires to enter into a "Sales and Use Tax Exemption Transaction" with Glen Cove Industrial Development Agency (the "Agency") which shall consist of the following: (A)(1) the construction of an approximately 102,800 square foot building(s) (collectively, the "Building") located on a parcel of land located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the "Land"), and (2) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment" and together with the Land and the Building, collectively, the "Facility"), all of the foregoing for use by the Company and/or its affiliates as a multifamily residential facility consisting of approximately 72 age-restricted residential units; and (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from sales and use taxes (collectively, the "Financial Assistance");

**WHEREAS**, in connection with the Sales and Use Tax Exemption Transaction, it is in the best interests of the Company to enter into the following documents (the "Transaction Documents"):

- (a) Uniform Project Agreement between the Company and the Agency;
- (b) Bill of Sale from the Company to the Agency;
- (c) Sales Tax Agency Agreement between the Company and the Agency;
- (d) UCC-1 Financing Statements
- (e) Company General Certificate from the Company to the Agency
- (f) Affidavit of the Company to the Agency

**NOW, THEREFORE, IT IS HEREBY**

**RESOLVED**, that the form, terms and conditions of the Transaction Documents are hereby approved and adopted and that Timothy Sullivan (the "Authorized Agent"), in his capacity as Manager of Arcadia Asset Services, LLC, manager of Arcadia Landing MM LLC, the Manager-Related Member of the Company, is authorized and directed in the name of and on behalf of the Company, to enter into and to execute and deliver and perform the Transaction Documents with such changes therein and additions and deletions thereto as the Authorized Agent, in his sole discretion, may approve or authorize, and the execution of the Transaction Documents by the Authorized Agent to be deemed conclusive evidence of the Company's approval of the Transaction Documents as so executed and the transactions contemplated thereby;

**RESOLVED**, that all acts and deeds heretofore done by the Authorized Agent for or on behalf of the Company to carry out the terms and intentions of the foregoing resolutions are hereby ratified and confirmed; and be it further

**RESOLVED**, that the Authorized Agent be, and he hereby is, authorized to make, execute and deliver any and all consents, certificates, documents, instruments, amendments, papers or writings as may

be required in connection with or in furtherance of the transactions contemplated by the Transaction Documents, and to do any and all other acts necessary or desirable to effectuate the foregoing resolutions, the execution, delivery and performance thereof by the Authorized Agent to be deemed conclusive evidence of the approval by the Company of the terms, provisions and conditions thereof.

This Consent may be executed in counterparts and may be delivered by facsimile or email.

This Consent is dated as of May 28, 2021:

Manager-Related Member:

ARCADIA LANDING MM LLC  
By: Arcadia Asset Services, LLC,  
its manager

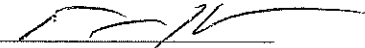
By:   
Timothy Sullivan, Manager



EXHIBIT D  
NY GOOD STANDING

**State of New York  
Department of State } ss:**

*I hereby certify, that ARCADIA LANDING LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 09/07/2018, and that the Limited Liability Company is existing so far as shown by the records of the Department.*

*The Biennial Statement is past due.*



\*\*\*

*Witness my hand and the official seal  
of the Department of State at the City  
of Albany, this 25th day of May  
two thousand and twenty-one.*

*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State

EXHIBIT E

PENDING LITIGATION RELATING TO THE COMPANY

None



MILLBROOK REALTY GROUP LLC

**COMPANY GENERAL CERTIFICATE**

This certificate is made in connection with the execution by Millbrook Realty Group LLC (the "Company") of that certain Guaranty dated as of July 1, 2021 (the "Guaranty") made by the Company in favor of the Glen Cove Industrial Development Agency (the "Agency"), and any other documents, instruments or agreements to be executed by the Company (together with the Guaranty, collectively, the "Company Documents") in connection with the undertaking by the Agency, a public benefit corporation created pursuant to Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), and Chapter 374 of the 1974 Laws of New York, as amended, constituting Section 919 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), of a project (the "Project") on behalf of Arcadia Landing LLC, an affiliate of the Company (the "Applicant"), consisting of the following: (A)(1) the construction of an approximately 102,800 square foot building(s) (collectively, the "Building") located on a parcel of land located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the "Land"), and (2) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment" and together with the Land and the Building, collectively, the "Project Facility"), all of the foregoing for use by the Applicant and/or its affiliates as a multifamily residential facility consisting of approximately 72 age-restricted residential units; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency.

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agency Lease (as defined in the Guaranty) except that, for purposes of this certificate, (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date, and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

THE UNDERSIGNED, AS MANAGING MEMBER OF THE COMPANY, HEREBY CERTIFIES THAT:

1. I am duly authorized to execute and deliver this certificate in the name and on behalf of the Company.
2. The Company (A) has been duly organized, is validly existing and is in good standing as a limited liability company under the laws of the State of New York, with full legal

power and authority to own its Property, conduct its business and execute, deliver and perform its obligations under the Company Documents, and (B) has taken all actions and obtained all approvals required in connection therewith.

3. The articles of organization of the Company (and filing receipt), together with all amendments thereto, in the form attached hereto as Exhibit A (collectively, the "Articles"), are in full force and effect on and as of the date of this certificate, without further amendment or modification in any respect.

4. The operating agreement of the Company, together with all amendments thereto, in the form attached hereto as Exhibit B (collectively, the "Operating Agreement"), is in full force and effect on and as of the date of this certificate, without further amendment or modification in any respect.

5. Attached hereto as Exhibit C is a true, correct and complete copy of the Unanimous Written Consent of the Managing Member and Members (the "Consent") approving and authorizing execution and delivery of the Company Documents. Such Consent was duly adopted by the Managing Member and the Members of the Company by written consent on May 28, 2021, has not been amended or modified since its adoption and is in full force and effect on the date of this certificate.

6. Attached hereto as Exhibit D is a true, correct and complete copy of the Certificate of the Secretary of State of New York to the effect that the Company is in Good Standing in such state.

7. Attached hereto as Exhibit E is a list of all material pending litigation relating to the Company. Except as set forth in Exhibit E, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body, pending or, to the best of my knowledge, threatened against or affecting the Company, nor to the best of my knowledge is there any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect (A) the validity or the enforceability of the Company Documents or the transactions contemplated therein, (B) the organization or existence of the Company, or (C) the business, prospects, Property or condition of the Company.

8. Eric Trucksess, as Managing Member of the Company, has been duly designated to act, individually or jointly, as an "Authorized Representative" of the Company pursuant to and in accordance with the provisions of the Agency Lease.

9. There are no Liens against or overdue taxes, assessments, fees or other governmental charges payable by the Company to the United States, the State of New York, or, to my knowledge, to any other state or municipality in the United States.

10. The execution, delivery and performance of all agreements, certificates and documents required to be executed, delivered and performed by the Company in order to carry out, give effect to and consummate the transactions contemplated by the Company Documents

have been duly authorized by all necessary action of the Company. The Company Documents are in full force and effect on and as of the date hereof, and no authority for the execution, delivery or performance of the Company Documents has been repealed, revoked or rescinded.

11. The execution, delivery and performance of the Company Documents, the consummation of the transactions therein contemplated and compliance with the provisions of each by the Company do not and will not (A) violate the Company's Articles or Operating Agreement, (B) require consent under (which has not heretofore been received) or result in a breach of or default under any credit agreement, purchase agreement, indenture, mortgage, deed of trust, commitment, guaranty, lease or other agreement or instrument to which the Company is a party or by which the Company may be bound or affected, or (C) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court, domestic or foreign, having jurisdiction over the Company or any of the Property of the Company.

12. The Company has duly authorized the taking of and has taken any and all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Company Documents.

13. No Event of Default specified in any of the Company Documents has occurred and no event which with notice or lapse of time or both would become such an Event of Default has occurred and is continuing.

14. Each of the representations and warranties of the Company in the Company Documents is true, accurate and complete on and as of the date of this certificate with the same force and effect as though such representations and warranties were made on and as of the date hereof.

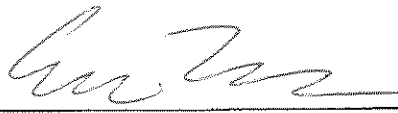
15. Each of the Company Documents has been duly executed, acknowledged, where appropriate, and delivered on behalf of the Company by an Authorized Representative of the Company; the signature of said Authorized Representative thereon is the genuine signature of said Authorized Representative; and said executed Company Documents are in substantially the same form as the forms thereof presented to the Managing Member and the Members of the Company and approved by the Consent.

16. The Company is not contemplating instituting bankruptcy, insolvency or any similar proceedings against itself.

17. The Company has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied by the terms of the Company Documents at or prior to the Closing Date.

18. As of the Closing Date, there has been no material adverse change in the business, condition, Property or prospects (financial or otherwise) of the Company.

IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate in the name and on behalf of the Company as of the 6<sup>th</sup> day of July, 2021.

By: 

Name: Eric Trucksess

Title: Managing Member



EXHIBIT A  
ARTICLES OF ORGANIZATION

FILING RECEIPT

=====

ENTITY NAME: MILLBROOK REALTY GROUP LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: NEWY

=====

FILED:06/09/2014 DURATION:\*\*\*\*\* CASH#:140609000368 FILM #:140609000341  
DOS ID:4589100

FILER:

EXIST DATE

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BARATTA, BARATTA & AIDALA LLP  
546 FIFTH AVENUE

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06/09/2014

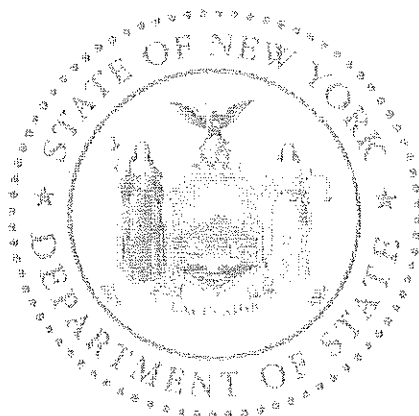
NEW YORK, NY 10036

ADDRESS FOR PROCESS:

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THE LLC  
C/O BARATTA, BARATTA ET'AL  
NEW YORK, NY 10036

546 FIFTH AVENUE

REGISTERED AGENT:



The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the biennial statement is due will only be made via email. Please go to [www.email.ebiennial.dos.ny.gov](http://www.email.ebiennial.dos.ny.gov) to provide an email address to receive an email notification when the Biennial Statement is due.

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SERVICE COMPANY: VANGUARD CORPORATE SERVICES, LTD. - 52 SERVICE CODE: 52 \*

FEEs            225.00  
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FILING           200.00  
TAX              0.00  
CERT             0.00  
COPIES           0.00  
HANDLING        25.00

PAYMENTS       225.00  
-----  
CASH             0.00  
CHECK            0.00  
CHARGE           0.00  
DRAWDOWN        225.00  
    OPAL           0.00  
REFUND            0.00

ARTICLES OF ORGANIZATION

OF

Millbrook Realty Group LLC

Under Section 203 of the Limited Liability Company Law

The undersigned, for the purpose of forming a limited liability company pursuant to Section 203 of the Limited Liability Company Law of the State of New York, does hereby certify and set forth:

FIRST: The name of the Limited Liability Company is:

Millbrook Realty Group LLC

SECOND: The purposes for which the Limited Liability Company is formed are as follows:

To engage in any lawful act or activity within the purposes for which Limited Liability Companies may be organized pursuant to New York State Law provided that the Limited Liability Company is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency, or other body without such consent or approval first being obtained. agency or other body without such consent or approval first being obtained.

THIRD: The office of the company within the State of New York shall be located in the county of New York.

FOURTH: The Secretary of State is designated as agent of the company upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the company served upon him is:

The Limited Liability Company  
c/o Baratta, Baratta & Aidala LLP  
546 Fifth Avenue  
New York, New York 10036

FIFTH: The limited liability company is to be managed by one (1) or more Members.

SIXTH: The Company does not have a specific date of dissolution in addition to the events of dissolution set forth by law.

IN WITNESS WHEREOF, these Articles of Organization have been signed this 6th day of June, 2014, by the undersigned, who affirms that the statements made herein are true under the penalties of perjury.


  
\_\_\_\_\_  
Fred Larison  
Organizer

EXHIBIT B  
OPERATING AGREEMENT

**SECOND AMENDED AND RESTATED OPERATING AGREEMENT  
OF  
MILLBROOK REALTY GROUP, LLC**

**AMENDED AND RESTATED OPERATING AGREEMENT** (the "Agreement") of MILLBROOK REALTY GROUP, LLC, a New York limited liability company (the "Company") dated as of May 18, 2020 (the "Effective Date"), by and among the Member(s) (as hereinafter defined).

**WITNESSETH:**

**WHEREAS**, the Company was formed on June 9, 2014; and

**WHEREAS**, the Members desire to set forth his agreement with respect to (a) the business of the Company, (b) the conduct of the Company's affairs, and (c) the rights, powers, preferences, limitations and responsibilities of Members of the Company; and

**WHEREAS**, the Members of the Company desires that the Company be treated as a partnership for federal income tax purposes.

**NOW, THEREFORE**, in consideration of the mutual covenants and premises hereof and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

**1. DEFINITIONS**

For the purposes of this Agreement, the following terms shall have the indicated meanings:

1.1 "Agreement" means this Operating Agreement of the Company, by and among the Members referred to herein.

1.2 "Capital Account" means, with respect to any Member, the capital account maintained for such Member in accordance with the provisions of Section 5 hereof.

1.3 "Capital Contribution" means the total amount of cash actually contributed as capital to the Company by each Member pursuant to the terms of this Agreement.

1.4 "Code" means the Internal Revenue Code of 1986, as amended from time to time, or corresponding provisions of future law.

1.5 "Company" means MILLBROOK REALTY GROUP, LLC, the limited liability company formed pursuant to this Agreement and the LLC Law, as defined below.

1.6 "Damages" means any and all damages, disbursements, suits, claims, liabilities, obligations, judgments, fines, penalties, charges, amounts paid in settlement, expenses, costs and expenses (including, without limitation, attorneys' fees and disbursements) arising out of or related to litigation, and interest on any of the foregoing.

- 1.7 "Fiscal Year" means the calendar year.
- 1.8 "Interest" means, with respect to any Member, the Capital Account, the Percentage Interest and all other rights with respect to the Company, of such Member.
- 1.9 "LLC Law" means the New York Limited Liability Company Law and any successor statute, as amended from time to time.
- 1.10 "Managing Member" shall initially mean Eric Trucksess until the time of his resignation or removal as the Managing Member.
- 1.11 "Member" means each of the parties who executes a counterpart of this Agreement as a Member and each of the parties who may hereafter become Members.
- 1.12 "Net Profits and Net Losses" means the net taxable income or net taxable loss of the Company, respectively, as determined for federal income tax purposes, for each Fiscal Year of the Company, plus any income that is exempt from federal income tax, and minus expenditures that are not deductible in computing net federal taxable income and not properly chargeable to capital accounts, in each case to the extent such items are not otherwise taken into account in computing Net Profits or Net Losses.
- 1.13 "Percentage Interest" means the percentage interest of a Member in the Company from time to time in accordance with terms and conditions of this Agreement. The Percentage Interest of the Members as of the date hereof is set forth on Schedule A.
- 1.14 "Person" means any association, corporation, joint stock company, estate, general partnership, limited association, limited liability company, foreign limited liability company, joint venture, limited partnership, limited liability partnership, natural person, real estate investment trust, business trust or other trust, custodian, nominee or any other individual or entity in its own or any representative capacity.

## 2. FORMATION OF THE COMPANY

2.1 Formation. On June 9, 2014 the Company was organized as a New York limited liability company by the filing of the Articles of Organization with the New York State Department of State. This Agreement is executed and delivered pursuant to the LLC Law.

2.2 Name. The name of the Company is MILLBROOK REALTY GROUP, LLC, and its business shall be carried on in such name with such variations and changes as the Managing Member deem necessary to comply with requirements of the jurisdictions in which the Company's operations are conducted.

2.3 Principal Address. The principal addresses of the Company are: 1 Brynwood Court, Gladstone NJ 07934 and in care of Baratta, Baratta & Aidala LLP, 546 Fifth Avenue, New York NY 10036. The Company shall have such other offices as the Managing Member

determine.

2.4 Term. The term (the "Term") of the Company commenced upon the filing of the Articles of Organization with the New York State Department of State and shall continue until terminated upon the events of dissolution provided for in this Agreement.

2.5 Title to Company Property. All of the Company's right, title and interest in tangible property, intangible property, real property, personal property and other assets acquired by the Company shall be held in the name of the Company as an entity. Upon the acquisition of any such property, the Members shall execute such documents as may be necessary to reflect the Company's ownership interest in such property. No Member shall have an ownership interest in any property of the Company in his individual name or right and each Member's Percentage Interest shall be personal property of such member for all purposes.

2.6 Purposes of the Company. The purposes of the Company are to engage in any activity that limited liability companies may engage in under the LLC Law.

### 3. MEMBERS' CAPITAL CONTRIBUTIONS

3.1 Initial Capital Contributions. Each Member has or shall make the contributions to the capital of the Company as set forth in Schedule A hereto.

3.2 Additional Capital Contributions. The Members shall not be required to make additional Capital Contributions to the Company.

3.3 No Interest on Capital Contributions. Members shall not receive interest on Capital Contributions.

3.4 No Rights to Withdraw Capital Contributions. Members shall not have the right to demand the return of or otherwise withdraw their Capital Contributions or terminate or call a termination of the existence of the Company, except as specifically set forth in this Agreement.

3.5 Loans. Any Member may, with the prior written consent of the majority of Members (based upon Percentage Interest) not making the proposed loan, make or cause a loan to be made to the Company in such amount and on such terms upon which the majority of Members (based upon Percentage Interest) not making the proposed loan may agree. In addition, to manner of repayment, such terms may include securing repayment of the loan with a lien on the assets owned by the Company.



4. **MEMBERS; PERCENTAGE INTERESTS**

4.1 **Members.** The Members are those Persons who execute this Agreement as Members.

4.2 **Initial Percentage Interests.** The names and addresses of the Members and their initial Capital Contribution and Percentage Interests as of the date hereof is set forth on Schedule A hereto.

5. **CAPITAL ACCOUNTS**

Each Member's Capital Account shall be maintained in accordance with the following provisions:

5.1 **Maintenance of Capital Accounts.** A separate Capital Account shall be maintained on the books of the Company for each Member in accordance with Treasury Regulation Section 1.704-1(b) (2)(iv). The Capital Accounts shall be adjusted, as described below, (a) as of December 31 of each year, (b) immediately prior to the acquisition of an Interest by any Person, (c) effective as of the date of the sale of the Company (whether by way of asset sale, sale of Interests or merger) in which the Members immediately prior to such transaction shall cease to own a majority of the Interests, and (d) on the date of dissolution of the Company.

5.2 **Initial Capital Account.** Each Member's Capital Account shall initially equal the cash such Member contributes to the capital of the Company upon admission to the Company.

5.3 **Increases in Capital Account.** Each Member's Capital Account shall be increased by (a) the amount of any additional cash or the fair market value of property (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Code Section 752) subsequently contributed by such Member to the capital of the Company, and (b) the amount of any profits or items thereof allocated to such Member pursuant to Section 6 hereof.

5.4 **Reductions in Capital Account.** Each Member's Capital Account shall be reduced by (a) the amount of all cash distributions made to such Member to the extent provided in Section 5.1 hereof, (b) the fair market value of any property (net of liabilities secured by such distributed property that the Member is considered to assume or take subject to under Code Section 752) distributed by the Company to such Member, and (c) the amount of any losses or items thereof allocated to such Member pursuant to Article 6.

6. **ALLOCATIONS OF PROFITS AND LOSSES**

6.1 **Net Profits and Net Losses.** Net Profits and/or Losses earned by the Company during any fiscal year shall be credited and/or charged to each Member's Capital Account as of the last day of such year. For the avoidance of doubt if a member is admitted or leaves the Company during the course of the year, net profits and/or losses will be prorated accordingly.

Subject to Section 6.2 below, the Code, and all regulations relating thereto, Net Profits and Net Losses shall be allocated to the Members in accordance with Schedule A hereto.

6.2 Special Allocation. Payment by the Company to a Member for services rendered shall be treated by the Company as a guaranteed payment. If such payments are treated by the Internal Revenue Service for Federal income tax purposes as a distribution, then Company income, in an amount equal to such payment, shall be allocated to such Member, for Federal income tax purposes but shall not otherwise have any effect on any distribution of profits and losses.

6.3 Allocations Upon Transfer or Change in Company Interest. If in accordance with this Agreement, the respective Interests of the existing Members in the Company change or if an Interest is transferred to any other person or entity, then with respect to the applicable Fiscal Year, all income, gains, losses, deductions, tax credits and other tax incidents resulting from the operations of the Company shall be allocated, as between transferor and transferee, by taking into account their varying Interests in accordance with Section 706 of the Code. A transferee of an Interest in the Company shall succeed to the Capital Account of the transferor Member to the extent it relates to the transferred Interest. The Members hereby agree to be bound by the provisions of this Section 6.3 in reporting their respective shares of items of Company income, gain, loss, deduction and credit.

## 7. DISTRIBUTIONS

7.1 Net Profit Distributions. The Managing Member shall cause the Company to distribute Net Profits of the Company to the Members as the Managing Member shall determine in his sole discretion, but at least annually, during each Fiscal Year as follows:

7.1.1 First, to the setting up of reserves which the Managing Member deem reasonably necessary for liabilities or obligations of the Company;

7.1.2 Second, to the Members in accordance with their respective allocations as set forth on Schedule A.

7.2 Additional Distributions. Additional distributions from Net Profits or a Member's Unrecovered Capital Balance may be distributed or paid to the Members at such time or times as the Managing Member shall determine in his sole discretion. Notwithstanding the provisions of Section 7.1 and this Section 7.2, distributions made upon the termination or dissolution of the LLC shall be made in accordance with Article 15 of this Agreement.

## 8. MANAGEMENT OF THE COMPANY

8.1 Managing Member. The business and affairs of the Company shall be exclusively managed by the Managing Member, subject to the terms and conditions hereof. The Managing Member as designated by this Agreement shall be Eric Trucksess.

8.2 Management. The Managing Member shall direct, manage, and control the day-to-day business operations of the Company to the best of his ability. The Managing Member shall have full and complete authority, power, and discretion to manage and control the business, affairs, and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Company's business.

8.3 Certain Powers of the Managing Member. Without limiting the generality of Section 8.2, the Managing Member shall have power and authority, on behalf of the Company in furtherance of the purposes set forth in Section 2.6:

8.3.1 To purchase liability and other insurance to protect the Company's property and business;

8.3.2 To execute on behalf of the Company all instruments and documents, including, without limitation: checks, drafts, notes and other negotiable instruments, documents providing for the acquisition, or disposition of the Company's property, and other instruments or documents necessary, in the opinion of the Managing Member, to the business of the Company;

8.3.3 To employ employees, accountants, legal counsel, or other experts or third parties to perform services for the Company and to compensate them from Company funds;

8.3.4 To enter into any and all other agreements on behalf of the Company, in such forms as the Managing Member may approve;

8.3.5 To open, from time to time, bank accounts in the name of the Company, and designate the signatories thereon;

8.3.6 To form subsidiaries and make, hold and dispose of investments; and

8.3.7 To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

8.4 Limitation of Managing Member Authority. Unless approved in writing by a fifty-one (51%) percent vote of all the Percentage Interests of the Company, the Managing Member shall not have the authority in the name of or on behalf of the Company:

8.4.1 To engage in business activities unrelated to the purposes set forth in Section 2.6 of this Agreement; or

8.4.2 To admit new Members except as expressly permitted pursuant to this Agreement.

8.5 Liability for Certain Acts. The Managing Member shall perform his managerial duties in good faith, in a manner he reasonably believe to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. The Managing Member does not, in any way, guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company. The Managing Member shall not be liable to the Company or to any Member for any

loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, or a wrongful taking by that particular Managing Member.

8.6 Duty of Managing Member to Company. The Company and the Members acknowledge that the Managing Member may engage in other business activities. The Company and the Members agree that the Managing Member shall have the right to engage in such other activities as the Managing Member deem appropriate, however, the Managing Member shall commit such of his business time to the management and operation of the Company as may be reasonably necessary.

8.7 Indemnification of Managing Member. The Company shall, to the maximum extent permitted by applicable law, indemnify and hold harmless the Managing Member from and against any and all Damages, including, without limitation, Damages incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from any of the foregoing by or before any court or governmental, administrative or other regulatory agency, body or commission, whether pending or threatened, whether or not the Managing Member is or may be a party thereto, which arises out of, relates to or is in connection with this Agreement or the management or conduct of the business or affairs of the Company, except for any such Damages that are finally found by a court of competent jurisdiction to have resulted primarily from the bad faith or intentional misconduct of, or breach of this Agreement or knowing violation of law by, the Managing Member. The termination of any proceeding by settlement shall not be deemed to create a presumption that the Managing Member acted in a manner which constituted bad faith, intentional misconduct or a knowing violation of law. All judgments against the Managing Member wherein entitled to indemnification shall, to the extent available, be satisfied from Company assets.

## 9. RESPONSIBILITY OF MEMBERS

9.1 Outside Interests. Except as otherwise provided, nothing in this Agreement shall be deemed to prohibit the Member or Members from engaging in or owning any interest in any other business venture or activity.

9.2 Limitation of Liability. The Member or Members shall have no personal liability with respect to the liabilities, obligations, debts or losses of the Company. Without limiting the foregoing, each Member's liability shall be limited as set forth in this Agreement, the LLC Law and other applicable law. No Member, officer, director, stockholder, partner, employee or agent of any Member shall be personally liable for the return of the Capital Contributions of any other Member or any portion thereof, except as may be required by law, and such return shall be made solely from available Company assets, if any.

9.3 Limitation on Authority of Members. No Member is an agent of the Company solely by virtue of being a Member, and no Member has authority to act for the Company solely by virtue of being a Member. Notwithstanding the provisions of Section 9.2, any Member who takes any action or binds the Company in violation of this Section 9.3 shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and

shall indemnify and hold the Company harmless with respect to the loss or expense.

## 10. MEETINGS OF MEMBERS

10.1 Annual Meeting. There shall be no requirement that annual meetings of the Members be held.

10.2 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by any Member.

10.3 Place of Meetings. The Members may designate any place, within the United States, as the place of meeting for any of the Members. All meetings may be held telephonically to the extent provided by the LLC Law.

10.4 Notice of Meetings. Written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered no fewer than seventy two (72) hours nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the Members or Person calling the meeting, to each Member entitled to vote at the meeting, unless such waiver of notice is agreed to by all Members. When any notice is required to be given to any Member, a waiver of the notice in writing signed by the Person entitled to the notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of the notice.

10.5 Meeting of All Members. If all of the Members shall meet at any time and place, either within or outside of the State of New York and consent to the holding of a meeting at that time and place, the meeting shall be valid without call or notice, and at the meeting lawful action may be taken.

10.6 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment of the meeting, or Members entitled to receive payment of any distribution, or to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring the distribution is adopted, as the case may be, shall be the record date for the determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, the determination shall apply to any adjournment of the meeting.

10.7 Manner of Acting. Members holding a majority of the Percentage Interests of the Company shall constitute a quorum at any meeting of the Members. Except as otherwise provided in this Agreement, if a quorum is present, the affirmative vote of Members holding a majority of the Percentage Interests shall be the act of the Members except as otherwise required by this Agreement. Further, the Members may act by written consent or agreement of Members holding a majority of the Percentage Interests of the Company, with or without a meeting on written notice to all Members, except as otherwise provided for in this Agreement.

## 11. TRANSFER OF INTERESTS

11.1 Transfer of Interest. In the event a Member wishes to sell his/ her or its Interest (a "Transfer"), the selling Member (the "Selling Member") must give notice (the "Notice to Sell") to the other Members (the "Non-Selling Members") of such desire to sell the Interest, at what price and at what other terms and conditions pertinent to the sale (the "Offer"). Within thirty (30) days of the Notice to Sell, the Non-Selling Members or either of them shall have first rights to buy the Selling Member's Interest in proportion to their respective percentage of Interest on the same terms as contained in the Offer. After thirty (30) days, if the Non-Selling Members decide not to purchase the Selling Member's Interest, the Selling Member may then approach individuals or entities outside the Company for the purpose of selling the Interest, or whatever may remain, on terms no more favorable to such buyer than contained in the Offer. The membership of the purchaser or transferee of the Selling Member's Interest shall be subject to unanimous approval of the Non-Selling Members and once approved, shall be entitled to full financial and managerial rights in the Company after purchase. Approval on behalf of the Non-Selling Members to sell the Selling Member's Membership Interest to an outside individual or entity may not be unreasonably delayed or denied.

11.2 Transfer in Violation. A Transfer of all or any part of the Interest of a Member in the Company or other person holding any beneficial Interest in the Company in violation of the provisions of this Article 11 shall be null and void for all purposes.

11.3 Effect of a Transfer. No Transfer of all or any part of the Interest of any Member permitted under this Agreement shall be binding upon the Company unless and until a duly executed and acknowledged counterpart of such assignment or instrument of transfer, in form and substance satisfactory to the Managing Member, has been delivered to the Company. As between a Member and an assignee or transferee of such Member's Interest in accordance with this Agreement, allocations and distributions for any Fiscal Year shall be apportioned as of the date of the Transfer, on the basis of the number of days before and after said date, without regard to the results of the Company's operations before or after the Transfer. The Members and the Company shall be entitled to treat the record holder of the Interest of a Member as the absolute owner thereof, and shall incur no liability by reason of distributions made in good faith to such record holder, unless and until there has been delivered to the Managing Member the assignment or other instrument of transfer and such other evidence as may be reasonably required by the Managing Member to establish to the satisfaction of the Managing Member that an Interest has been assigned or transferred in accordance with this Agreement.

11.4 Prohibited Transfers. No Transfer of any Interest of any Member may be made if such Transfer, alone or when combined with other transactions, would result in the termination of the Company within the meaning of Section 708 of the Code or under any other relevant section of the Code or any successor statute. No Transfer of any Interest of any Member may be made without an opinion of counsel satisfactory to the Managing Member that such Transfer is subject to an effective registration under, or exempt from the registration requirements of, the applicable State and Federal securities laws. No Interest in the Company may be Transferred to any Person below the age of 21 years or to a person who has been adjudged to be insane or incompetent.

11.5 Permitted Transfers. Notwithstanding the provisions of 11.1 above, a Member may Transfer such Member's Interest in the Company without offering his Interests to the other Members if such Transfer is made to (i) a member of the Member's immediate family (spouse, child or grandchild); or (ii) a family limited partnership or family limited liability company, the partners or members of which are the Member and/or his immediate family and/or a trust for the benefit of same; or (iii) a trust for the benefit of any of the foregoing (each a "Permitted Transferee"). The Permitted Transferee shall not succeed to the allocations and distributions to which the transferred Interest is entitled unless the Permitted Transferee is admitted as a Member pursuant to the provisions of Article 12.

## 12. ADMISSION OF NEW MEMBERS

12.1 The Company shall not admit any new Members, other than a transfer or sale pursuant to Article 11 of this Agreement, without the written consent or approval of the Members holding fifty-one (51%) percent of the Percentage Interests of the Company. In no event shall a new Member be admitted to the Company if such admission would be in violation of applicable Federal or State laws or would adversely affect the treatment of the Company as a partnership for income tax purposes.

12.2 No purchaser, assignee, donee, or other transferee shall become a Member unless all of the following conditions have been satisfied:

12.2.1 The Transfer complies with Article 11 of this Agreement;

12.2.2 The prospective transferee has executed an instrument, in form and substance satisfactory to the Managing Member, accepting and agreeing to be bound by all terms and conditions of this Agreement and to pay all expenses of the Company in effecting the Transfer; and

12.2.3 All requirements of the LLC Law have been complied with by the transferee and the transferring Member and the Company.

## 13. BANKRUPTCY OF A MEMBER

13.1 If there shall occur an event of bankruptcy or insolvency with respect to a Member (the "Bankrupt Member"), the remaining Members shall have the right and option to purchase the Bankrupt Member's Interest in the Company for cash at the book value as of the end of the preceding quarter. Said option shall be exercised upon notice from the remaining Members to the Bankrupt Member within thirty (30) days after the remaining Members shall have received notice of the event of bankruptcy or insolvency, and the closing shall take place on the date set forth in such notice which shall not be less than ten (10) nor more than thirty (30) days from the date of such notice. In the event of a dispute or uncertainty as to the Person to whom payment is to be made, the deposit of the purchase price in escrow with an attorney, to be held for the Bankrupt Member, shall be deemed compliance with the provisions hereof and the purchase of such Bankrupt Member's Interest shall be deemed effective as of the date of such deposit. If the option shall not be exercised, then the trustee, assignee or other legal representative of such Bankrupt Member shall be entitled only to the allocations and

distributions to which the Interest of the Bankrupt Member is entitled, unless such trustee, assignee or other legal representative is admitted as a new Member in accordance with Article 12 of this Agreement.

13.2 An "event of bankruptcy or insolvency" with respect to a Member shall occur if such Member: (i) applies for or consents to the appointment of a receiver, trustee or liquidator of all or a substantial part of his assets; (ii) makes a general assignment for the benefit of creditors; (iii) is adjudicated a bankrupt or an insolvent; (iv) files a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or to take advantage of any bankruptcy, insolvency, readjustment of debt or similar law or statute, or an answer admitting the material allegations of a petition filed against him in any bankruptcy, insolvency, readjustment of debt or similar proceedings; or (v) takes any action for the purpose of effecting any of the foregoing or an order, judgment or decree shall be entered, with or without the application, approval or consent of such Member, by any court of competent jurisdiction, approving a petition for or appointing a receiver or trustee of all or a substantial part of the assets of such Member, and such order, judgment or decree shall continue unstayed and in effect for thirty (30) days.

#### 14. BOOKS AND RECORDS; ACCOUNTING AND TAX ACCOUNTING

14.1 Books and Records; Right to Inspect. The Company shall keep adequate books and records reflecting all financial activities of the Company. The books and records will be based on the accrual method of accounting in accordance with (i) generally accepted accounting principles, as consistently applied, and (ii) the Code. Such books and records may be inspected and audited by any Member or a Member's duly authorized representative at any time during business hours, at the principal office of the Company.

14.2 Tax Return; Tax Matters Partner. The Managing Member shall cause the Company to file a Federal income tax information return and all other tax returns required to be filed by the Company for each taxable year or part thereof. Within three (3) months after the end of each taxable year of the Company, the Managing Member shall cause each Member to be furnished with information necessary for preparing such Member's income tax return. In connection with any examination of the Company's Federal income tax information returns, Eric Trucksess is hereby appointed as the "tax matters partner". As such, he shall have substantial responsibility and authority in connection with any examination of the Company's Federal income tax information returns, including, without limitation, the authority to enter into agreement with the Internal Revenue Service on behalf of each Member to extend the period for assessing against such Member a Federal income tax deficiency attributable to "partnership items" as that term is defined in Section 6231(a)(3) of the Code.

14.3 Federal Income Tax Elections. The tax matters partner is authorized to cause the Company to make such elections for Federal income tax purposes as it deems advisable, including, in the event of a transfer of all or part of the Percentage Interest of any Member, an election pursuant to Section 754 of the Code to adjust the basis of the assets of the Company.



15. **ELECTION TO DISCONTINUE MEMBERSHIP**

A member seeking to discontinue his/ her or its membership must give written notice (the "Notice to Discontinue") to the Company and other Members (the "Continuing Members") a minimum of ninety (90) days prior to the desired to exit the Company as a Member. The Continuing Members and/or the Company will then have ninety (90) days from said notice in which to return the Discontinuing Members Capital Contribution as adjusted for pro rata profit and losses attributed to the Discontinuing Partner (the "Adjusted Capital Contribution"). The payment of any Adjusted Capital Contribution to a Discontinuing Member shall be accompanied by a financial statement prepared by the Company's accountants showing how the Adjusted Capital Contribution was arrived at. In the event the Remaining Partners or Company cannot return the Adjusted Capital Contribution within the prescribed ninety (90) day period, then in that event the Company shall wind up its affairs and be dissolved in accordance with the terms of this Agreement.

16. **DISSOLUTION AND WINDING-UP**

16.1 Events Causing Dissolution. The Company shall be dissolved upon the earlier to occur of the following:

16.1.1 the vote of Members holding fifty-one (51%) percent of the Percentage Interests of the Company; or

16.1.2 the filing by the Company for protection under any of the insolvency laws of the United States or the State of New York.

16.2 Liquidation of Assets Upon Dissolution. Upon dissolution of the Company, a Certificate of Dissolution shall be filed pursuant to the LLC Law and the Managing Member shall cause the Company's assets to be sold in such manner as to obtain the highest price therefor. Pending the sale thereof, the Managing Member may continue to operate and otherwise deal with the assets of the Company.

16.3 Distribution of Liquidation Proceeds. The proceeds of any sales made pursuant to Section 16.2, plus any unsold assets of the Company, shall be distributed as follows:

16.3.1 First, to the payment Company's debts and liabilities to Persons other than Members;

16.3.2 Second, to the setting up of any funds or reserves which the Managing Member deems reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company. Such funds or reserves shall be placed in escrow by the Managing Member for the purpose of disbursing such amounts in payment of any of the contingencies, liabilities or obligations of the Company and, at the expiration of such period as the Managing Member shall deem advisable, the balance remaining shall be distributed in the manner hereinafter provided;

16.3.3 Third, to the repayment of any loans or advances that may have been made by any of the Members to the Company;

16.3.4 Fourth, to any Members with positive Capital Accounts after taking into

account any adjustments to Capital Accounts pursuant to Section 5 hereof in proportion to such Members' Capital Account balances until such Capital Account balances have been reduced to zero; and

16.3.5 Finally, to the Members in proportion to their Percentage Interest as set forth on Schedule A.

17. AMENDMENTS

Amendments to this Agreement may be adopted by the affirmative vote of those Members holding fifty-one (51%) percent of the Percentage Interests in the Company.

18. MISCELLANEOUS

18.1 Choice of Law. This Agreement and all matters relating to the Company shall be governed and construed in accordance with the law of the State of New York.

18.2 Notices. Notices or other communications of any kind and shall be deemed given when sent as provided herein to the Members at the addresses set forth in Schedule A hereto. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given or made: if by hand, immediately upon delivery; if by telecopier or similar electronic device, two (2) hours after sending, provided it is sent on a business day, but if not, then immediately upon the beginning of the first business day after being sent; if by Federal Express, Express Mail or any other overnight delivery service, one business day after dispatch; and if mailed by certified mail, return receipt requested, three (3) business days after mailing. The address for notices may be changed by any Member by written notice to the Members.

18.3 Execution in Counterpart; Binding Effect. This Agreement may be executed in counterparts and shall be binding upon each party executing this or any counterpart. This Agreement may be executed via facsimile of electronic signature and the same shall hold full and binding effect. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, devisees, personal representatives, successors and permitted assigns.

18.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties.

18.5 Section Headings and Gender Neutral. The section and subsection headings in this Agreement are for convenience only and shall not be used to construe or interpret this Agreement, and use of gender terminology shall be gender neutral.

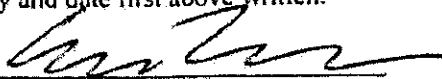
18.6 Section References. Except as otherwise indicated, all references to Sections shall refer to sections or subsections of this Agreement.

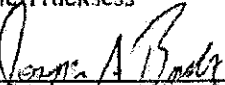
18.7 Further Assurances. The Members agree to execute any additional documents and/or agreements and writings and take any other actions which may be necessary or expedient in connection with the organization of the Company and the achievement of this Agreement's

purposes; including without limitation (a) any amendments to this Agreement and such certificates and other documents as fifty-one (51%) percent of the Percentage Interests deem necessary or appropriate to form, qualify or continue the Company as a limited liability company in all jurisdictions in which the Company conducts or plans to conduct business and (b) all such agreements, certificates, tax statements, tax returns and other documents as may be required of the Company or its Members by the laws of the United States of America or any jurisdiction in which the Company conducts or plans to conduct business, or any political subdivision or agency thereof.

[The Remainder of This Page Intentionally Left Blank]

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

  
Eric Trucksess

  
Joseph A. Baratta


[Signature Page to Second Amended Restated Operating Agreement  
Millbrook Realty Group LLC]

**SCHEDULE A to  
Second Amended  
and Restated  
Operating Agreement**

**MILLBROOK REALTY GROUP, LLC**

**NAME, ADDRESS, CAPITAL CONTRIBUTION,  
PERCENTAGE INTEREST AND NET PROFIT**

<u>Name and Address</u>	<u>Capital Contribution</u>	<u>Percentage Interest</u>
Eric Trucksess 40 Florence Drive Chappaqua, NY 10514	\$97.00, receipt of which is hereby acknowledged	Ninety-seven (97%) Percent Membership Interest
Joseph A. Baratta 1 Brynwood Court Gladstone, NJ 07934	\$3.00, receipt of which is hereby acknowledged	Three (3%) Percent Membership Interest

  
Eric Trucksess

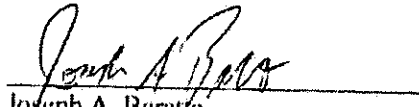
  
Joseph A. Baratta

EXHIBIT C

CONSENT

**UNANIMOUS WRITTEN CONSENT**

**OF THE MANAGING MEMBER**

**OF**

**MILLBROOK REALTY GROUP LLC**

The undersigned, being the Managing Member and all of the Members of Millbrook Realty Group LLC, a New York limited liability company (the "Company") hereby unanimously consent to the actions set forth herein in lieu of a meeting.

**WHEREAS**, Arcadia Landing LLC ("Arcadia"), a New York limited liability company in which the Company indirectly owns certain membership interests through the Company's ownership of all of the membership interest in MRG Glen Cove LLC, and desires to enter into a "Sales and Use Tax Exemption Transaction" with Glen Cove Industrial Development Agency (the "Agency") which shall consist of the following: (A)(1) the construction of an approximately 102,800 square foot building(s) (collectively, the "Building") located on a parcel of land located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the "Land"), and (2) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment" and together with the Land and the Building, collectively, the "Facility"), all of the foregoing for use by the Arcadia and/or its affiliates as a multifamily residential facility consisting of approximately 72 age-restricted residential units; and (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from sales and use taxes (collectively, the "Financial Assistance");

**WHEREAS**, the Company is the Managing Member of Arcadia Landing MM LLC ("Arcadia Managing Member"), the Manager Related Member of Arcadia:

**WHEREAS**, in connection with the Sales and Use Tax Exemption Transaction, the Agency has required that the Company execute and deliver to the Agency a Guaranty, pursuant to which, the Company agrees to guarantee all of Arcadia's obligations to the Agency under the following documents (the "Transaction Documents"):

- (a) Uniform Project Agreement between the Company and the Agency;
- (b) Bill of Sale from the Company to the Agency;
- (c) Sales Tax Agency Agreement between the Company and the Agency;
- (d) UCC-1 Financing Statements
- (e) Company General Certificate from the Company to the Agency
- (f) Affidavit of the Company from the Company to the Agency

**NOW, THEREFORE, IT IS HEREBY**

**RESOLVED**, that the form, terms and conditions of the Guaranty is hereby approved and adopted and that Eric Trucksess (the "Authorized Agent"), in his capacity as the Managing Member of the Company, is authorized and directed in the name of and on behalf of the Company, to enter into and to execute and deliver and perform the Guaranty with such changes therein and additions and deletions thereto as the Authorized Agent, in his sole discretion, may approve or authorize, and the execution of the Guaranty by the Authorized Agent to be deemed conclusive evidence of the Company's approval of the Guaranty as so executed and the transactions contemplated thereby; and be it further

**RESOLVED**, that the form, terms and conditions of the Transaction Documents are hereby approved and adopted and Arcadia and Arcadia Managing Member are hereby authorized to enter into the Transaction Documents with such changes therein and additions and deletions thereto as Arcadia and Arcadia Managing Member in his their discretion, may approve or authorize; and be it further

**RESOLVED**, that all acts and deeds heretofore done by the Authorized Agent for or on behalf of the Company to carry out the terms and intentions of the foregoing resolutions are hereby ratified and confirmed; and be it further

**RESOLVED**, that the Authorized Agent be, and he hereby is, authorized to make, execute and deliver any and all consents, certificates, documents, instruments, amendments, papers or writings as may be required in connection with or in furtherance of the transactions contemplated by the Guaranty, and to do any and all other acts necessary or desirable to effectuate the foregoing resolutions, the execution, delivery and performance thereof by the Authorized Agent to be deemed conclusive evidence of the approval by the Company of the terms, provisions and conditions thereof.

This Consent may be executed in counterparts and may be delivered by facsimile or email.

This Consent is dated as of May 28, 2021:



Eric Trucksess, Managing Member



EXHIBIT D  
NY GOOD STANDING

**State of New York  
Department of State } ss:**

*I hereby certify, that MILLBROOK REALTY GROUP LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 06/09/2014, and that the Limited Liability Company is existing so far as shown by the records of the Department.*



\*\*\*

*Witness my hand and the official seal  
of the Department of State at the City  
of Albany, this 25th day of May  
two thousand and twenty-one.*

*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State

EXHIBIT E  
PENDING LITIGATION RELATING TO THE COMPANY

None





ARCACON-01

MCCOLLINS

# CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)  
 6/28/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> The Whitmore Group, Ltd. 370 Old Country Road Suite 200 Garden City, NY 11530	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): (516) 746-4141      FAX (A/C, No): (516) 746-7875 E-MAIL ADDRESS:												
<b>INSURER(S) AFFORDING COVERAGE</b>													
<b>INSURED</b>  Arcadia Construction Services, LLC 722 West Beech St. Long Beach, NY 11561	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">INSURER A : <b>Peleus Insurance Company</b></td> <td style="width: 20%;">NAIC # <b>34118</b></td> </tr> <tr> <td>INSURER B : <b>Colony Insurance Company</b></td> <td>NAIC # <b>39993</b></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER A : <b>Peleus Insurance Company</b>	NAIC # <b>34118</b>	INSURER B : <b>Colony Insurance Company</b>	NAIC # <b>39993</b>	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER C :													
INSURER D :													
INSURER E :													
INSURER F :													

**COVERAGES**                                      **CERTIFICATE NUMBER:**                                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		103 GL 0029514-01	7/5/2020	7/5/2021	EACH OCCURRENCE	\$ 2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 4,000,000
							PRODUCTS - COMP/OP AGG	\$ 4,000,000
								\$
	AUTOMOBILE LIABILITY  <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE  DED            RETENTION \$			AR4236105	7/5/2020	7/5/2021	EACH OCCURRENCE	\$ 3,000,000
							AGGREGATE	\$ 3,000,000
								\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY  <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE	OTH-ER
E.L. EACH ACCIDENT							\$	
E.L. DISEASE - EA EMPLOYEE							\$	
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Glen Cove Industrial Development Agency is named as additional insured.

Liability policy includes contractual liability. Certificate holder will be provided 30 days notice of cancellation, except 10 days for non-payment of premium.

**CERTIFICATE HOLDER****CANCELLATION**

Glen Cove Industrial Development Agency 9 Glen Street. Glen Cove, NY 11542	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
--	---







FORCHELLI  
DEEGAN  
TERRANA

July 6, 2021

City of Glen Cove Industrial Development Agency  
City Hall  
9-13 Glen Street  
Glen Cove, New York 11542

Re: City of Glen Cove Industrial Development Agency and Arcadia Landing LLC

Ladies and Gentlemen:

We have acted as counsel to Arcadia Landing LLC (the “**Company**”), Millbrook Realty Group LLC (“**MRG**”), Timothy Sullivan (“**Sullivan**”) and Joseph Iorio, Jr. (“**Iorio**”, who together with Sullivan being herein collectively referred to as the “**Individual Guarantor**” and together with Sullivan and MRG being herein collectively referred to as the “**Guarantor**”), in connection with the preparation, execution and delivery of:

- (i) a Uniform Project Agreement between the Glen Cove Industrial Development Agency (the “**Agency**”) and the Company (the “**Project Agreement**”);
- (ii) a Guaranty from the Guarantor to the Agency (the “**Guaranty**”);
- (iii) Bill of Sale from the Company to the Agency (the “**Bill of Sale**”);
- (iv) Sales Tax Agency Agreement between the Company and the Agency (the “**Sales Tax Agreement**”)
- (v) UCC-1 Financing Statements (the “**Financing Statements**”)
- (vi) Company General Certificate from the Company to the Agency (the “**Company Certificate**”);
- (vii) Company General Certificate from the Guarantor to the Agency (the “**Guarantor Certificate**”); and
- (viii) Affidavit of the Company from the Company to the Agency (the “**Affidavit**”)

We have examined the resolutions and consents of the members and manager of the Company and executed counterparts of the Project Agreement, Bill of Sale, Sales Tax Agreement, Financing Statements, Company Certificate and Affidavit of Company (collectively,



July 6, 2021

Page 2

the “**Company Documents**”). We have also examined the resolutions and consents of the members and manager of MRG and executed counterparts of the Guaranty and the Guarantor Certificate (collectively, the “**Guarantor Documents**”).

We have also examined copies, certified or otherwise identified to our satisfaction, of such certificates, documents and records of the Company, the Guarantor and their respective members and managers and of such other documents and matters as we have considered necessary or appropriate under the circumstances to render the following opinions and have relied on certifications provided by our clients as to factual matters.

Based on the foregoing, it is our opinion that:

1. (A) The Company is a limited liability company duly organized and validly existing under the laws of the State of New York and authorized to transact business in the State of New York, and is in good standing in the State of New York and has full power and authority and, to our knowledge, possesses all licenses, permits and approvals necessary to own its property and assets, to conduct its business and to execute and deliver the Company Documents and perform its obligations thereunder. There is no restriction under federal or state law which would prohibit the Company from executing and delivering the Company Documents or owning, operating or leasing the Project Facility (as such term is defined in the Project Agreement).

(B) MRG is a limited liability company duly organized and validly existing under the laws of the State of New York and authorized to transact business in the State of New York, and is in good standing in the State of New York and has full power and authority and, to our knowledge, possesses all licenses, permits and approvals necessary to own its property and assets, to conduct its business and to execute and deliver the Guarantor Documents to which it is a party and perform its obligations thereunder. There is no restriction under federal or state law which would prohibit MRG executing and delivering the Guarantor Documents to which it is a party.

(c) There is no restriction under federal or state law which would prohibit the Individual Guarantor executing and delivering the Guaranty.

2. The Company Documents have each been duly authorized, executed and delivered by the Company and are each the legal, valid and enforceable obligations of the Company in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors’ rights generally, and subject to general principles of equity. Each Guarantor has full power and authority to execute and deliver the Guarantor Documents to which he or it is a party and to perform his or its obligations thereunder and the Guarantor Documents have each been duly authorized, executed and delivered by each Guarantor party thereto and are each the legal, valid and enforceable obligations of each Guarantor party thereto in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors’ rights generally, and subject to general principles of equity. No other approval, authorization or other action is required in connection with the execution and delivery by the Company of the

Company Documents for the Company to be bound. No other approval, authorization or other action is required in connection with the execution and delivery by the Guarantor of the Guarantor Documents for the Guarantor to be bound.

3. Neither the execution or the delivery of any of the Company Documents and/or Guarantor Documents nor the consummation of the transactions on the part of the Company and/or the Guarantor therein contemplated nor compliance with the terms, conditions or provisions thereof contravenes the Articles of Organization or the Amended and Restated Operating Agreement of the Company or the Articles of Organization or the Amended and Restated Operating Agreement of MRG, nor any provision of applicable law or regulations, or, to our knowledge, any order, decree, writ or injunction, or, to our knowledge requires consent under, or will result in a material breach of or constitute (with due notice and/or lapse of time) a material default under, any credit agreement, indenture, purchase agreement, guaranty or other instrument to which the Company or any Guarantor is a party or by which the Company or any Guarantor is bound or affected and to which we have actual knowledge.

4. To our knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, which calls into question the creation, organization or existence of the Company, the validity of any of the Company Documents or the authority of the Company to execute, deliver or perform any of the Company Documents, nor is the Company in default with respect to any order or of any court, governmental authority, arbitration board or tribunal. To our knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, which calls into question the creation, organization or existence of MRG, the validity of any of the Guarantor Documents or the authority of any Guarantor to execute, deliver or perform any of the Guarantor Documents, nor is any Guarantor in default with respect to any order or decree of any court, governmental authority, arbitration board or tribunal.

For the purpose of this opinion we have assumed the accuracy of all factual information furnished to us, the genuineness of all documents submitted to us, whether as an original document or certified or other copy of a document, and the genuineness of all signatures on all documents (other than those on behalf of the Company and the Guarantor).

We express no opinion as to (a) the state of title to personal property and fixtures described in any financing statement, (b) the accuracy or legal sufficiency of the description of such personal property and fixtures contained in the financing statements or (c) zoning or land use matters. We have not made any investigation of, and do not express any opinion as to, any matter of title.

Any opinion concerning the validity, binding effect or enforceability of any document (A) means that (1) such document constitutes an effective contract under applicable law, (2) such document is not invalid in its entirety under applicable law because of a statutory prohibition or public policy, and is not subject in its entirety to a contractual defense under applicable law and (3) subject to the following sentence, an effective remedy is available under applicable law if the person concerning whom such opinion is given is in material default under such document, but (B) does not mean that (1) any particular remedy is available under applicable law upon such

material default or (2) every provision of such document will be upheld or enforced in any or each circumstance by a court applying applicable law. Furthermore, the validity, binding effect or enforceability of any document may be limited to or otherwise affected by (a) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar statute, rule, regulation or other law affecting the enforcement of creditor's rights and remedies generally or (b) the unavailability of, or any limitation on the availability of, any particular right or remedy (whether in a proceeding in equity or law) because of the discretion of a court or because of any equitable principle or requirement as to commercial reasonableness, conscionability or good faith.

The foregoing opinions (this "Opinion") are subject to the qualifications that:

(a) we undertake no obligation to advise you of facts or changes in law occurring after the date of this Opinion which might affect the opinions expressed herein;

(b) this Opinion is limited to the matters expressly set forth herein, and no opinion is to be implied or may be inferred beyond the matters expressly so stated herein;

(c) except as set forth below, this Opinion is furnished to you and your counsel and is solely for your benefit as herein expressly provided, and may not be relied upon by, nor copies delivered to, any other person without our prior written consent, except that a copy may be included in the Agency's Transcript of Proceedings;

(d) we express no opinion herein as to the applicability or effect of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, any state securities laws, the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974 or any amendment to any of them or regulations promulgated pursuant to any of them to the transactions contemplated herein;

(e) this Opinion is limited to laws of the State of New York and to the Federal laws of the United States of America, and we have made no investigation as to, and we express no opinion concerning, the applicability or effect of any law of any other jurisdiction; and

(f) notwithstanding anything contained to the contrary, as used herein, the phrase "to our knowledge", with respect to the existence or absence of facts is intended to signify that, while we have made no specific inquiry or other independent examination or investigation to determine the existence or absence of such facts other than as expressly set forth herein, we have obtained no actual knowledge to the contrary in our representation of the Company and/or the Guarantor in connection with the transaction.

(g) We have assumed that the Company Documents and the Guarantor Documents constitute the legal, valid and binding obligations of all parties thereto (other than the Company and/or the Guarantor), enforceable against such parties (other than the Company and/or the Guarantor) in accordance with the Company Documents' and/or Guarantor Documents' respective terms.

July 6, 2021

Page 5

(h) We do not express any opinion as to the perfection or priority of any conveyance, lien, assignment or security interest contemplated by any of Company Documents and/or Guarantor Documents.

(i) We have not conducted an examination of the public or any other records regarding the status of title to any real or personal property that may be transferred, pledged or encumbered under any of the Company Documents and/or Guarantor Documents. Accordingly, we do not express any opinion, expressly or by implication, as to ownership or other status of title as to any real or personal property or the accuracy or legal sufficiency of the description of the personal property in any financing statement.

(j) We have assumed that each party to each of the Company Documents and/or Guarantor Documents, other than the Company and the Guarantor, is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation, has all requisite power and all material governmental licenses, authorizations, consents and approvals necessary to own and operate its property and perform its obligations under the Company Documents and/or Guarantor Documents and has the full trust, corporate or partnership, as the case may be, power and authority to execute, deliver and perform its obligations under, and engage in the transactions contemplated by, such Company Documents and/or Guarantor Documents and that all persons executing such the Company Documents and/or Guarantor Documents, other than the Company and/or the Guarantor, will have full authority and capacity to do so.

(k) We have assumed that each of the Company Documents and the Guarantor Documents has been authorized by each party thereto, other than the Company and/or the Guarantor, and will be duly executed, acknowledged (where appropriate) and delivered by each party thereto, other than the Company and/or the Guarantor.

The opinions contained herein are being rendered to you in connection with the execution and delivery by the Company of the Company Documents and the Guarantor of the Guarantor Documents and the transactions contemplated therein and may not be relied upon for any other purpose or by any other party except by Transaction Counsel and Agency Counsel to the Agency in connection with their respective opinions relating to the transactions described herein.

Very truly yours,

*Konelli Deegan Terrano LLP*





Department of Taxation and Finance

# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

**ST-60**  
(1/18)

The industrial development agency or authority (IDA) must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

For IDA use only

### IDA information

Name of IDA GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY			IDA project number (use OSC numbering system for projects after 1998) 2801-21-02A
Street address City Hall, 9-13 Glen Street			Telephone number (516) 676-1625
City Glen Cove	State NY	ZIP code 11542	Email address (optional)

### Project operator or agent information

Name of IDA project operator or agent ARCADIA LANDING LLC		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or Social Security number 83-1838593
Street address 772 W. Beech Street		Telephone number (516) 345-4200	Primary operator or agent? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
City Long Beach	State NY	ZIP code 11561	Email address (optional)

### Project information

Name of project 2020 Arcadia Landing Project			
Street address of project site 100 Breton Way			
City Glen Cove	State NY	ZIP code 11542	Email address (optional)
Purpose of project Other: Housing			

Description of goods and services intended to be exempted from New York State and local sales and use taxes  
Furniture, fixtures, machinery and equipment; construction materials.

Date project operator or agent appointed (mmddyy) 07/06/21	Date project operator or agent status ends (mmddyy) 123121	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 5,188,139.13	Estimated value of New York State and local sales and use tax exemption provided: 447,477.00	

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA Ann S. Fangmann	Print title Executive Director
Signature 	Date 7/7/21
	Telephone number (516) 676-1625



**Phillips Lytle LLP**

July 7, 2021

VIA CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

New York State Tax Department  
IDA Unit  
W.A. Harriman Campus  
Albany, NY 12227

Re: Glen Cove Industrial Development Agency (the "Agency") Project with Arcadia  
Landing LLC; Project No. 2801-21-02A

Dear Ladies and Gentlemen:

At the request and direction of the Agency, enclosed herewith is an IDA Appointment  
of Project Operator or Agent Form (Form ST-60) with respect to the above-referenced  
project. The appointment therein is effective as of July 6, 2021.

Please call us if you have any questions.

Very truly yours,

Phillips Lytle LLP

By

Paul V. O'Brien

Encl.

cc: Ann S. Fangmann (w/ encl. by e-mail)

ATTORNEYS AT LAW

PAUL V. O'BRIEN, SPECIAL COUNSEL POBRIEN@PHILLIPSLYTTLE.COM

1205 FRANKLIN AVENUE PLAZA SUITE 390 GARDEN CITY, NY 11530-1629 PHONE 516 742 5201 FAX 516 742 3910

NEW YORK: ALBANY, BUFFALO, CHAUTAUQUA, GARDEN CITY, NEW YORK, ROCHESTER | WASHINGTON, DC | CANADA: WATERLOO REGION | PHILLIPSLYTTLE.COM







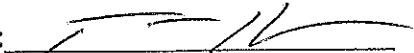
7. As of the Closing Date, there has been no material adverse change in the business, condition, property or prospects (financial or otherwise) of the Applicant from the information contained in the Application.

IN WITNESS WHEREOF, the undersigned has executed this Affidavit as of the 6<sup>th</sup> day of July, 2021.

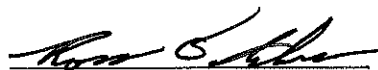
ARCADIA LANDING LLC

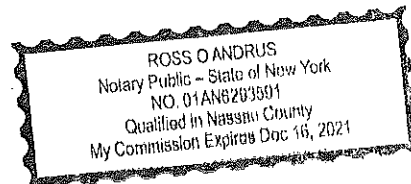
By: Arcadia Landing MM LLC, its Manager-Related Member

By: Arcadia Asset Services, LLC, its Manager

By:   
Timothy Sullivan  
Manager

Sworn to before me this 15<sup>th</sup> day of June, 2021.

  
Notary Public



[SIGNATURE PAGE TO AFFIDAVIT OF APPLICANT]

SCHEDULE A  
NOTICE OF PUBLIC HEARING

See Attached

# NEWSDAY AFFIDAVIT OF PUBLICATION

GLEN COVE COMM DEVELOP  
9 GLEN ST.  
GLENN COVE, NY 11542-2798

STATE OF NEW YORK)

Legal Notice No. 0021577389

:SS.:

COUNTY OF SUFFOLK)

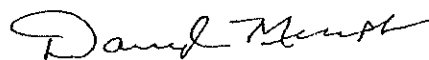
Darryl Murphy of Newsday Media Group., Suffolk County, N.Y., being duly sworn, says that such person is, and at the time of publication of the annexed Notice was a duly authorized custodian of records of Newsday Media Group, the publisher of NEWSDAY, a newspaper published in the County of Suffolk, County of Nassau, County of Queens, and elsewhere in the State of New York and other places, and that the Notice of which the annexed is a true copy, was published in the following editions/counties of said newspaper on the following dates:

Friday

April 03, 2020

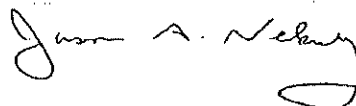
Nassau

**SWORN** to before me this  
7 Day of April, 2020.



---

Jason A. Neknez  
Notary Public - State of New York  
No. 01NE6219108  
Qualified in Suffolk County  
My Commission Expires 03/22/2022



**Ad Content**

Legal Notice # 21577389  
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Glen Cove Industrial Development Agency (the "Agency") will hold a public hearing on Tuesday, April 14, 2020 at 3:30 p.m., local time, at City Hall, 9-13 Glen Street, City of Glen Cove, County of Nassau, New York, pursuant to Section 859-a of the General Municipal Law, as amended (the "Act"). The purpose of the public hearing is to provide an opportunity for all interested parties to present their views with respect to the "Project" and the "Financial Assistance" (as such terms are defined below).

Arcadia Landing LLC, a limited liability company duly organized and existing under the laws of the State of New York (the "Applicant"), presented an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the construction of an approximately 102,800 square foot building(s) (collectively, the "Building") located on a parcel of land located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the "Land"), and (2) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment" and together with the Land and the Building, collectively, the "Project Facility"), all of the foregoing for use by the Applicant and/or its affiliates as a multi-family residential facility consisting of approximately 72 age-restricted residential units; (B) the granting of certain "financial assistance" (within the meaning of Section 854(4) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from sales and use taxes; and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency.

The Applicant (or such other designated entity or entities) would receive financial assistance from the Agency in the form of potential exemptions or partial exemptions from sales and use taxes (the "Financial Assistance").

Because of the restrictions on meetings and gatherings in effect pursuant to Executive Orders issued by the Governor of the State of New York, the public hearing will be held via conference call rather than a public hearing open for the public to attend in person.

A representative of the Agency will hear and accept any comments that are made orally at the above-stated place and time. Members of the public may listen to the public hearing and provide their comments during the public hearing by calling 844-621-3956 and entering access code 477.140.578. Comments may also be submitted to the Agency in writing or electronically to [afangmann@glencoveida.org](mailto:afangmann@glencoveida.org). The hearing is available for viewing via livestream as follows: <https://glencoveida.org/meeting-livestream>. A representative of the Agency will provide a report or reasonable summary of all such comments to the Agency's members.

Subject to applicable law, copies of the Application, including an analysis of the costs and benefits of the Project, are available for review by the public online at [www.glencoveida.org](http://www.glencoveida.org). The public hearing will be streamed on the Agency's website in real-time and a recording of the public hearing will be posted on the Agency's website, all in accordance with Section 87 of the New York General Municipal Law, as amended.

Dated: April 1, 2020  
GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY  
By: Ann S. Fangmann  
Executive Director

**NEWSDAY PROOF**

Advertiser: GLEN COVE COMM DEVELOP  
Agency: GLEN COVE COMM DEVELOP  
Ad Number: 0021577389  
Start Date: 04/03/2020  
End Date: 04/03/2020  
Price: \$560.00  
Ordered By: Legaladv@newsday.com

Phone: 5166761625  
Contact: Camille Byrne  
Section: Legals  
Class: 11100  
Size: 2 x 70 Times: 1  
Date: 4/7/2020  
Zone(s): C-Nassau

Signature of Approval: \_\_\_\_\_ Date: \_\_\_\_\_

SCHEDULE B  
VARIATIONS IN THE PROJECT

None



**CERTIFICATE REGARDING  
CONFLICTS OF INTEREST**

I, the undersigned Executive Director of the Glen Cove Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY as follows:

1. The Agency is an industrial development agency duly established under Title I of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 374 of the 1974 Laws of New York, as amended (collectively, the "Act"), and is a corporate governmental agency constituting a public benefit corporation of the State of New York.

2. In accordance with the Act, the Agency has determined to undertake a project (the "Project") on behalf of Arcadia Landing LLC (the "Company") consisting of the following: (A)(1) the construction of an approximately 102,800 square foot building(s) (collectively, the "Building") located on a parcel of land located at 100 Breton Way, City of Glen Cove, County of Nassau, New York (the "Land"), and (2) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment" and together with the Land and the Building, collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its affiliates as a multifamily residential facility consisting of approximately 72 age-restricted residential units; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency. References herein to the Project Agreement shall mean that certain Uniform Project Agreement dated as of July 1, 2021 between the Agency and the Company (the "Project Agreement"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Project Agreement.

3. I have made careful inquiry of each member, officer and employee of the Agency having the power or duty to (a) negotiate, prepare, authorize or approve the Project Agreement or any other Transaction Document or authorize or approve payment thereunder, (b) audit bills or claims under the Project Agreement or any other Transaction Document, or (c) appoint an officer or employee who has any of the powers or duties as set forth above, as to whether or not such member, officer or employee has an "interest" (as defined pursuant to Article 18 of the General Municipal Law of the State of New York) in any of the Transaction Documents. Upon information and belief, as a result of such inquiry, no such member, officer or employee has any such interest in any of the Transaction Documents, unless otherwise noted below:

(i) No member, officer or employee of the Agency directly or indirectly owns shares of or membership or other equity interests in the Company or in any affiliate of the Company.




(ii) No member, officer or employee of the Agency is an officer, director, manager or employee of the Company or any affiliate of the Company.

(iii) Any member, officer or employee having a conflict of interest disclosed on Exhibit A has publicly disclosed the nature and extent of such interest in writing to the members of the Agency, such written disclosure has been made a part of and set forth in the official minutes of the Agency, and a true, correct and complete copy of such written disclosure is annexed hereto as Exhibit A.

IN WITNESS WHEREOF, I have hereunto set my hand as of this 6<sup>th</sup> day of July, 2021.

  
Name: Ann S. Fangmann  
Title: Executive Director

Sworn to before me this 6<sup>th</sup> day of July, 2021.

  
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Notary Public

Paul V O'Brien  
Notary Public State of New York  
No. 020B6235944  
Qualified in Nassau County  
Commission Expires February 14, 2015 2023

EXHIBIT A

WRITTEN DISCLOSURES OF CONFLICTS OF INTEREST

None