

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (hereinafter, the “Agreement”), made as of October 1, 2016, by and between the **DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York with offices at Three Neptune Road, Poughkeepsie, New York 12601 (the “Agency”) and Cardinal Court Apartments LLC, a New York limited liability company with offices at 126 Old Route 55, Pawling, New York 12564 (the “Company”).

WITNESSETH:

WHEREAS, the Agency was created by the Dutchess County Legislature pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the “Act”) as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has requested that the Agency provide financial assistance for a project (the “Project”) consisting of:

(A) the reconstruction, improvement, repair, renovation, installation, furnishing and equipping of two (2) buildings: (i) a four-story building with an unfinished basement; and (ii) a five-story building with a finished basement (collectively referred to as the “**Building**”), both buildings being connected on the ground floor by a common lobby and a connecting corridor on the upper floors; containing a gross floor area of approximately 62,106 sq. ft. (the “**Existing Improvements**”) of mixed uses located on approximately 0.63 acres of land at 40 Cannon Street, City of Poughkeepsie, New York 12601, bearing Tax Map Grid No. 131300-6162-77-068023-0000 (the “**Land**”) as well as improvements including an approximately \$6.4 million upgrade to the structure including, but not limited to the construction of an addition of approximately 1,400 sq. ft., a complete renovation of the property for the installation of forty-nine (49) residential apartments consisting of approximately 37,000 sq. ft. including eight (8) studio apartments containing approximately four hundred (400) sq. ft. each, thirty-nine (39) one-bedroom apartments that will range from approximately five hundred sixty (560) sq. ft. to seven hundred five (705) sq. ft. each, and two (2) two-story one-bedroom penthouse apartments containing approximately one thousand four hundred (1,400) sq. ft. each and both will include one bathroom, one kitchen, an outdoor balcony and roof-top-deck; the property will also contain six (6) commercial spaces consisting of approximately 12,840 sq. ft.; the lobby containing 750 sq. ft. which is expected to include provisions for the exhibit of art created by local artists; and the renovations shall include the improvement of the existing seventy (70) parking spaces to be used by the tenants (collectively, the “**New Improvements**”, the Existing Improvements and the New Improvements collectively referred to the “**Improvements**”; and

(B) the acquisition and installation of new equipment, machinery and other personal property related to the Building, Land and Improvements as set forth in clause (A) above (collectively the “**Equipment**” and together with the building, land and improvements described in clauses (A) above, the “**Facility**”) to be owned by the Agency and leased to the Company to be used as part of the Facility; including the following as they relate to the appointment of the Company as agent of the Agency with respect to the acquisition, construction and equipping of

such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, construction and equipping of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the acquisition, construction and equipping of the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under such Facility; and

WHEREAS, the Company has agreed to lease that portion of the Facility consisting of the Land, Building and Improvements to the Agency pursuant to the terms of a certain Company Lease Agreement, dated as of October 1, 2016 (the “**Company Lease**”), by and between the Company and the Agency; and

WHEREAS, the Company has agreed to transfer title to the Equipment to the Agency pursuant to a Bill of Sale, dated the Closing Date (the “**Bill of Sale**”); and

WHEREAS, the Agency has agreed to sublease and lease the Facility to the Company and the Company desires to rent the Facility from the Agency upon the terms and conditions set forth in a Lease Agreement, dated as of October 1, 2016, (the “**Lease Agreement**”), by and between the Company and the Agency; and

WHEREAS, by Resolution, adopted on January 19, 2016 (the “**Resolution**”), the Agency has taken initial action to confer on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility; and (b) an exemption benefit from mortgage recording tax (collectively, the sales and use tax exemption benefit and the mortgage recording tax benefit, are hereinafter collectively referred to as the “**Financial Assistance**”); and

WHEREAS, it has been estimated and confirmed by the Company as included within its Application for Financial Assistance that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$1,200,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$97,500.00; and (ii) that the mortgage recording tax exemption amount on an anticipated mortgage of \$4,400,000.00 shall be approximately \$33,000.00; and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolution and as more particularly described in the Lease Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

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

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

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

1. Purpose of Project. It is understood and agreed by the parties hereto that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Company Lease and the Lease Agreement in order to, promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Facility to advance job opportunities, health, general prosperity and economic welfare of the people of the City of Poughkeepsie and the County of Dutchess and to otherwise accomplish the public purpose of the Act.

2. **Reserved.**

3. Recapture of Agency Benefits

(a) It is understood and agreed by the parties hereto that the Agency is entering into the Lease Agreement in order to provide financial assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration thereof, the Company hereby agrees that if there shall occur a Recapture Event after October 1, 2016 but on or before December 31, 2017 the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, the Recaptured Benefits.

(b) The term "Recaptured Benefits" shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency's participation in the transaction contemplated by the Lease Agreement including, but not limited to, the amount equal to 100% of:

- (i) any exemption from any applicable mortgage recording tax with respect to the Facility on mortgages granted by the Agency on the Facility at the request of the Company (the "**Mortgage Recording Tax Exemption**"); and
- (ii) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent pursuant to the Lease Agreement any Sales Tax Agent Authorization Letter issued in connection with the Facility (the "**Company Sales Tax Savings**").

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

- (1) the Company, its respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Facility, is not entitled to the sales and use tax exemption benefits;
- (2) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Facility;
- (3) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Facility;
- (4) the sales and use tax exemption benefits are taken in cases where the Company, its respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Facility fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Facility in the manner approved by the Agency in connection with the Facility;
- (5) a termination of the Lease Agreement at any time prior to January 1, 2018 by the Company without authorization by the Agency;
- (6) the Facility shall cease to be a “project” within the meaning of the Act, as in effect on the Closing Date, through the act or omission of the Company;
- (7) the sale (other than pursuant to an assignment of the Lease Agreement as approved by the Agency pursuant to Section 9.3 of the Lease Agreement) or closure of the Facility and/or departure of the Company from Dutchess County, except as due to casualty, condemnation or force majeure as provided below at any time prior to January 1, 2018 and except a sale of the Facility to a business or entity that operates in compliance with the Lease Agreement;
- (8) the Company fails to meet and maintain the thresholds and requirements representing certain material terms and conditions, the Investment Commitment and Employment Commitment, as further defined below, being additional purposes to be achieved by the Agency with respect to its determination to provide Financial Assistance to the Project and required by the Agency to be complied with and adhered to, as evidenced by submission, as so required by the Agency, of written confirmation certifying and confirming on an annual basis beginning in the first year in which Financial Assistance is so claimed, through the conclusion of (i) the construction completion date, or (ii) the termination of the Lease

Agreement (said date hereinafter referred to as the “**Project Completion Date**”) and the time period so referenced being hereinafter defined as the “**Material Terms and Conditions Monitoring Period**”) confirming:

- (a) **Investment Commitment** – that the total investment actually made with respect to the Project at the Project’s construction completion date equals or exceeds \$5,440,000.00 (which represents the product of 85% multiplied by \$6,400,000.00 being the total project cost as stated in the Company’s application for Financial Assistance); and
 - (b) **Project Assessment Reporting Commitment** – that the Company shall provide, annually, to the Agency, certain information to confirm that the Project is achieving the investment and other objectives of the Project.
- (9) Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if it shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or part of the Facility, or (ii) the inability of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a “**Loss Event**”) to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith on the part of the Company or any of their respective affiliates so long as the Company or any of its affiliates has diligently and in good faith using commercially reasonable efforts and after prudent decision making pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof, or (iii) the period of any rebuilding, restoration or replacement after the occurrence of a Loss Event.
- (d) The Company covenants and agrees to furnish the Agency with written notification (i) within sixty (60) days of the end of each Tax Year, the number of full time equivalent employees located at the Facility for such Tax Year, and (ii) within thirty (30) days of actual notice thereof, notice of any facts or circumstances which would materially likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company within thirty (30) days of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.
- (e) In the event any payment owing by the Company under this Section shall not be paid on demand to the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(f) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, legal fees, incurred with the recovery of all amounts due under this Recapture Agreement, from amounts received by the Agency pursuant to this Recapture Agreement.

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

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

If to the Agency: Dutchess County Industrial Development Agency
Three Neptune Road
Poughkeepsie, New York 12601
Attention: Executive Director

With a copy to: Cappillino & Rothschild LLP
Seven Broad Street
P.O. Box 390
Pawling, New York 12564-0390
Attention: Donald Cappillino, Esq.

If to the Company: Cardinal Court Apartments LLC
126 Old Route 55
P.O. Box 305
Pawling, New York 12564
Attention: James J. Sullivan, Managing Member

With a copy to: Law Offices of Lewis B. Stadler
12 East Main Street
Pawling, New York 12564
Attention: Lewis B. Stadler, Esq.

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

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

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

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

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SCHEDULE A

Reserved.

SCHEDULE B

FORM OF ANNUAL EMPLOYMENT AND SALARY FRINGE BENEFITS AND
RELATED PROJECT INFORMATION CERTIFICATION LETTER

[Date], 2017

Re: New Project Verification

Dear :

The Dutchess County Industrial Development Agency (the "Agency") is currently providing assistance in connection with your project in the City of Poughkeepsie.

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

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

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

Very truly yours,

Company name and address:

Project Name:

Company contact:

Contact phone number:

(Please correct any information above)

Financing Information

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

Yes No

If financing assistance was provided, please provide:

- Original principal balance of bond or note issued _____
- Outstanding principal balance of such bond or note at December 31, 2016 _____
- Principal paid during 2016 _____
- Outstanding principal balance of such bond or note at December 31, 2016 _____

Interest rate on mortgage as of December 31, 2016 _____

Final maturity date of the bond or note _____

Is the Company a not-for-profit? _____

Sales Tax Abatement Information

Did your company receive Sales Tax Abatement on your Project during 2016

Yes No

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

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

Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project during 2016

Yes No

(NOTE: Only be applicable the year that a mortgage was place upon the project)

The amount of the mortgage recording tax that was abated

during 2016 _____

Job Information

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

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

Current number of FTE employees for 2016 by category and average hourly wage.

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

Number of FTE jobs **created** during 2016 as a result of the assistance received through the IDA by category and average hourly wage

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

Number of FTE jobs retained during 2016 by category and average hourly wage.

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____
Total annual payroll for 2016		_____

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

Total of FTE construction jobs created during 2016 _____

Number of FTE construction jobs during 2016 _____

2016 Capital Investment

Real Estate	_____
Construction	_____
Machinery and Equipment	_____
Other Taxable Expenses	_____
Other Non-Taxable Expenses	_____
Total Capital Investment	_____

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

Signed:

(authorized company representative)

Date:
