

AGENT AND FINANCIAL ASSISTANCE AND PROJECT AGREEMENT

THIS AGENT AND FINANCIAL ASSISTANCE AND PROJECT AGREEMENT (hereinafter, the “Agent Agreement”), made as of the 19th day of June, 2020, by and between the **VILLAGE OF PORT CHESTER INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 222 Grace Church St, Port Chester, New York 10573 (the “Agency”), and **G&S PORT CHESTER UNIT 2B, LLC**, a New York limited liability company having offices at c/o G&S Investors, 211 East 43rd Street, New York, New York 10017 (the “Company”).

WITNESSETH:

WHEREAS, the Agency was created by Chapter 632 of the Laws of 1972 of the State of New York 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 submitted an application (the “Application”) to the Agency requesting the Agency’s assistance with respect to a certain project (the “Project”) consisting of: (i) the retention by the Agency of a leasehold interest in certain real property located at the corner of North Main Street and Westchester Avenue, Port Chester, New York (the “Land”, being more particularly described as tax parcel numbers 142.31-1-3, 4, 5, 6, 20, 21, 23, and 24, along with adjacent realty, as may be merged) along with the existing parking, site and underground infrastructure improvements located within and thereon (the “Existing Improvements”); (ii) the rehabilitation and reconstruction of portions of the Existing Improvements and the planning, design, construction, operation and leasing by the Company of a multi-tenanted, mixed use redevelopment project that will include a newly constructed 5-story building containing approximately 72,000 square feet with approximately 12,000 square feet of commercial/retail space located on the first floor and 79 apartment units located on upper floors, along with related utility improvements, signage, curbage, sidewalks, and landscaping improvements (collectively, the “Improvements”); (iii) the acquisition of and installation in and around the Existing Improvements and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the “Equipment” and, collectively with, the Land, the Existing Improvements and the Improvements, the “Facility”); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the “Straight Lease Transaction”); and

WHEREAS, by Resolution adopted on April 10, 2019 (the “Resolution”), the Agency authorized the Company to act as its agent for the purposes of undertaking the Project subject to the Company entering into this Agent Agreement; and

WHEREAS, by its Resolution, the Agency has conferred on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of an exemption benefit from all New York State and local sales and use tax exemption benefits 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 (collectively, the “Financial Assistance”); and

WHEREAS, pursuant to and in accordance with Sections 859-a and 874 of the Act, the Agency requires, as a condition and as an inducement for it to provide any Financial Assistance, that the Company enter into this Agent Agreement for the purposes of, among other things, to govern administration of and provide assurances with respect to the provision and recapture of said Financial Assistance upon the terms 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 agent status in favor of the Company or any subagent thereof, nor any amount of Financial Assistance shall be provided to the Company by the Agency prior to the effective date of this Agent 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 and Scope of Agency. The purpose of the Agency’s provision of Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project facility to advance job opportunities, health, general prosperity and economic welfare of the people of the Village of Port Chester, and to specifically promote the investment commitment, employment commitment, and other commitments of the Company contained herein and within the Company’s Application.

Pursuant to the Resolution, the Agency has appointed the Company as agent to undertake the Project, as defined herein and within the Resolution. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the construction and equipping of the Facility, including the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation thereof in and around the Facility. Pursuant to the Resolution and this Agent Agreement, the Company has the power to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses including but not limited to the individuals and entities described on Schedule A attached hereto (collectively, the “Subagent”). The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency. The Company’s right to appoint subagents is expressly conditioned upon updating of Schedule A, hereto, along with the timely filing of Form ST-60 (non-primary) for each subagent, with such updated Schedule A and a copy of and proof of filing of such ST-60 (non-primary) being immediately filed with the Agency. The right of the Company and all duly appointed subagents to act as agent of the Agency shall expire on December 31, 2021, unless extended as contemplated by the Resolution. The aggregate amount of work performed by the Company and all subagents as agent for the

Agency shall not exceed the amounts identified in the Resolution and Section 2(h)(i) of this Agreement.

All contracts entered into by the Company and all subagents thereof as agent for the Agency shall include the language contained within **Schedule B**, hereto. **Failure by the Company and/or any subagent thereof to include such language shall disqualify the agent status and sales tax exemptions derived by virtue of this Agent Agreement. The Company, for itself and on behalf of all duly appointed subagents, hereby agrees that all contracts entered into by the Company and any subagents thereof shall be available to the Agency for inspection and confirmation of the foregoing mandatory language.**

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

(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, has the authority to enter into this Agent Agreement, and has duly authorized the execution and delivery of this Agent Agreement.

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

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

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

(e) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) that the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto

any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Agency upon demand.

(f) Any personal property acquired by the Company in the name of the Agency shall be located in the Village of Port Chester, except for temporary periods during ordinary use.

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

(1) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the sales and use tax exemption benefits; or

(2) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or

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

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

(5) the Company fails to meet and maintain the thresholds and requirements representing certain material terms and conditions, said Material Term Commitment #1, and Material Term Commitment #2, all as further defined below, being the 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 the later of either: (i) two (2) years following the construction completion date or (ii) the termination of this Agent Agreement or the PILOT 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) Material Term Commitment #1: Capital Investment of \$28,000,000.00; and

(b) Material Term Commitment #2 – Creation of 57 Construction Jobs, Creation of 24 new full time equivalent ("FTE") jobs in year 1 after Certificate of Occupancy ("CO"), and retention of said 24 new FTE jobs in years 2 and 3 after CO.

In order to certify and verify the foregoing, the Company shall provide annually, to the Agency, a certified statement and documentation: i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the financial assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the project location, (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and (iii) such other information, as so requested from time to time, to enable the Agency to assess the progress of the Project toward achieving the investment, job retention, job creation, or other objectives of the Project indicated in the Application for Financial Assistance.

The Company shall annually complete and submit to the Agency the Annual Certification Report in the form attached hereto as **Exhibit F. Failure by the Company to complete and submit said form to the Agency by February 15 of each year during the Material Terms and Conditions Monitoring Period shall constitute an Event of Default hereunder, whereby the Agency, in its sole and absolute discretion, may terminate this Agreement and/or the PILOT Agreement and undertake a Recapture Event Determination.**

The findings made by the Agency with respect to Section 2(g)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 2(g)(5) with respect to the thresholds and requirements as identified in Section 2(g)(5), above, and/or failure to meet the thresholds and requirements as identified in Section 2(g)(5) above, may potentially be determined by the Agency, in accordance with the Agency's "Project Recapture and Termination Policy", to constitute a failure to comply with Section 875(3) of the New York General Municipal Law, and/or a failure to comply with a material term or condition to use property or services or Agency Financial Assistance in the manner approved by the Agency in connection with the Project, and/or a failure to comply with the Agency's policies and Resolution (collectively, findings and determinations made as described herein with respect to Section 2(g)(1), (2), (3) and/or (4) and/or the failure under Section 2(g)(5) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in

Section 2(g)(5) are hereby defined as a “Recapture Event Determination”). If the Agency makes a Recapture Event Determination, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner and/or local taxing authorities may assess and determine the Financial Assistance due from the Company, together with any relevant penalties and interest due on such amounts.

(h) In accordance with the Resolution and the Cost-Benefit Analysis (the “CBA”) disclosed by the Agency at its public hearing for the Project (the “Public Hearing”), the Company further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to **\$8,805,970.15**, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 2(g) of this Agent Agreement, cannot exceed **\$737,500.00**, (ii) confirms that the mortgage recording tax exemption amount shall not exceed **\$230,000.00**, and (iii) confirms that real property tax abatement benefits to be provided to the Company shall conform to those disclosed within the CBA at the Public Hearing for the Project and as contained within the PILOT Agreement, a copy of such CBA and PILOT Agreement are attached hereto as **Exhibit D**.

(i) The Company further covenants and agrees to complete “IDA Appointment of Project Operator or Agent For Sales Tax Purposes” (NYS Form ST-60), in the form attached hereto as **Exhibit A**, for each Subagent, if any, and such other parties as the Company chooses who provide materials, equipment, supplies or services and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(j) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using “IDA Agent or Project Operator Exempt Purchase Certificate” (NYS Form ST-123, a copy of which is attached hereto as **Exhibits B-1 and B-2**), and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill or invoice should state, “I, [NAME OF COMPANY OR SUBAGENT], certify that I am a duly appointed agent of the VILLAGE OF PORT CHESTER INDUSTRIAL DEVELOPMENT AGENCY and that I am purchasing the tangible personal property or services for use in the G&S PORT CHESTER UNIT 2B, LLC 2020 Project located at One North Main Street, Port Chester, New York, IDA Project Number **5505 20 01 A**”. For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described in the prior sentence, an “Invoice Rider” (a copy of which is attached hereto as **Exhibit B-3**) can be utilized for record keeping purposes.

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

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

(m) The Company covenants and agrees that at all times during the Material Terms and Conditions Monitoring Period, it will (i) maintain its existence and not dissolve, (ii) continue to be a limited liability company subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its property, business or assets. This Agreement may not be assigned in whole or part without the prior written consent of the Agency

(n) The Company confirms and acknowledges under the penalty of perjury that as of the date hereof, the Company, as owner, occupant, or operator of the Project receiving Financial Assistance from the Agency in connection with the Project, is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations. The Company agrees that it will, throughout the term of this Agent Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. Notwithstanding the foregoing, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to this Section 2(p). In such event, the Company, with the prior written consent of the Agency (which shall not be unreasonably conditioned, delayed or withheld) may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency shall notify the Company that it must comply with such requirement or requirements.

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

4. Insurance Required. Insurance Required. Effective as of the date hereof and until the Agency consents in writing to a termination, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

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

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

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than \$5,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

5. Additional Provisions Respecting Insurance. (a) 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. All policies evidencing such insurance shall provide for payment of the losses of the Company and the Agency as their respective interests may appear. The Company shall advise all contractors and agents of the Company undertaking the Project to carry and provide evidence of insurance as required within Section 4(a) and 4(b) of this Agreement, with the Agency named as an additional insured.

(b) All such certificates of insurance of the insurers indicating that such insurance is in force and effect, and all policies (if applicable), shall be deposited with the Agency on the date hereof. At least thirty (30) days prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agent Agreement.

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

7. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, or by a nationally-recognized overnight courier, addressed as follows:

To the Agency: Village of Port Chester Industrial Development Agency
222 Grace Church Street
Port Chester, New York 10573
Attn: Chairman

With copies to: Harris Beach PLLC
677 Broadway, Suite 1101
Albany, New York 12207
Attn: Justin S. Miller, Esq.

To the Company: G&S Port Chester Unit 2B, LLC
c/o G&S Investors
211 East 43rd Street
New York, New York 10017
Attn: Gregg Wasser

With copies to: Tartaglia Law Group
800 Westchester Avenue – N307
Rye Brook, New York 10573
Attn: Daniel Tartaglia, Esq.

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

8. This Agent Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Westchester County, New York.

9. The warranties, representations, obligations and covenants of the Company under this Agent Agreement shall be absolute and unconditional and shall remain in full force and effect during the term of this Agent Agreement, shall be deemed to have been relied upon by the Agency, and shall survive the delivery and termination of this Agent Agreement to the Agency, regardless of any investigation made by the Agency.

10. The parties are contemplating that unless the Agency and Company enter into a Lease Agreement (the "Lease Agreement"), and related Leaseback Agreement (the "Leaseback Agreement"), the Company agrees not to take title to any real property as agent for the Agency. The Agency will provide the Company with a bill of sale (a form of which is attached hereto as **Exhibit E**) which sells, transfers and delivers unto the Company and its successors and assigns, all Equipment which were acquired and installed and/or are to be acquired and installed by the Company as agent for the Agency pursuant to this Agent Agreement which Equipment is located or intended to be located within and used exclusively in furtherance of the operations of the Facility.

11. By executing this Agent Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (a) legal services, including but not limited to those provided by the Agency's general counsel or bond/transaction counsel, (b) other consultants retained by the Agency, if any, in connection with the Project; and (c) with respect to Agency's enforcement of any event of default or failure to comply with the terms of this Agent Agreement (including reasonable attorney fees). The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (i) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

(Remainder of page intentionally left blank)

[Signature Page to Agent and Financial Assistance and Project Agreement]

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

**VILLAGE OF PORT CHESTER INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____

Name: Frank Ferrara

Title: Chairman

G&S PORT CHESTER UNIT 2B, LLC

By: _____

Name: Gregg Wasser

Title: President

[Signature Page to Agent and Financial Assistance and Project Agreement]

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

**VILLAGE OF PORT CHESTER INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Frank Ferrara
Title: Chairman

G&S PORT CHESTER UNIT 2B, LLC

By: _____
Name: Gregg Wasser
Title: President

[Acknowledgment Page to Agent and Financial Assistance and Project Agreement]

STATE OF NEW YORK)

COUNTY OF WESTCHESTER)

) ss.:

On the 16 day of June in the year 2020, before me, the undersigned, personally appeared **FRANK FERRARA**, 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

JANUSZ R. RICHARDS
Notary Public, State of New York
No. 01RI624277
Qualified in Westchester County
Term Expires June 6, 2023

STATE OF NEW YORK)

COUNTY OF NEW YORK)

) ss.:

On the _____ day of June in the year 2020, before me, the undersigned, personally appeared **GREGG WASSER**, 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 Agent and Financial Assistance and Project Agreement]

STATE OF NEW YORK)

COUNTY OF WESTCHESTER)

) ss.:

On the ___ day of June in the year 2020, before me, the undersigned, personally appeared **FRANK FERRARA**, 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

STATE OF NEW YORK)

COUNTY OF ~~NEW YORK~~ ^{Suffolk})

) ss.:

On the 15 day of June in the year 2020, before me, the undersigned, personally appeared **GREGG WASSER**, 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.

Monica Draser

Notary Public

Monica A Draser
Notary Public, State of New York
No. 01DR5070927
Qualified in Suffolk County
Commission Expires Jan. 6, 2023

SCHEDULE A

LIST OF APPOINTED AGENTS¹

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

¹ FOR EACH AGENT APPOINTED BY THE COMPANY, A NYS FORM ST-60 MUST BE COMPLETED AND FILED BY THE COMPANY WITH THE NYS DEPARTMENT OF TAXATION AND FINANCE IDA UNIT INDICATING THE APPOINTMENT OF SUCH AGENT OF THE COMPANY.

SCHEDULE B

MANDATORY AGENT AND SUBAGENT CONTRACT LANGUAGE

“This contract is being entered into by **[NAME OF COMPANY OR NAME OF SUBAGENT]** (the “Agent”), as agent for and on behalf of the **VILLAGE OF PORT CHESTER INDUSTRIAL DEVELOPMENT AGENCY** (the “Agency”), in connection with a certain project of the Agency for the benefit of G&S Port Chester Unit 2B, LLC, consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at One North Main Street (the “Premises”). The acquisition of the machinery, equipment and building materials to be incorporated and installed in the Premises and all services and rentals of equipment related to the acquisition, construction and equipping of the Project shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption information letter of the Agency; and the Agent hereby represents that this contract is in compliance with the terms of the Agent and Financial Assistance Agreement by and between G&S PORT CHESTER UNIT 2B, LLC and the Agency dated as of June 19, 2020. This contract 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, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

EXHIBIT A

**FORM OF NYS FORM ST-60 TO BE COMPLETED BY COMPANY AND FILED WITH
THE NYS TAX DEPARTMENT IDA UNIT FOR EACH OF ITS SUBAGENTS WITHIN
THIRTY (30) DAYS OF APPOINTMENT**

[Attached Next Page]



IDA Appointment of Project Operator or Agent For Sales Tax Purposes

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 Village of Port Chester Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 5505-20-01A
Street address 222 Grace Church Street			Telephone number (914) 939-5200
City Port Chester	State NY	ZIP code 10573	Email address (optional)

Project operator or agent information

Name of IDA project operator or agent		Mark an X in the box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or Social Security number
Street address		Telephone number ()	Primary operator or agent? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
City	State	ZIP code	Email address (optional)

Project information

Name of project G&S Port Chester Unit 2B, LLC Project			
Street address of project site One North Main Street			
City Port Chester	State NY	ZIP code 10573	Email address (optional)
Purpose of project The planning, design, construction, operation and leasing by the Company of a multi-tenanted, mixed use redevelopment project that will include a newly constructed 5-story building containing approximately 72,000 square feet with approximately 12,000 square feet of commercial/retail space located on the first floor and 79 apartment units located on upper floors			

Description of goods and services intended to be exempted from New York State and local sales and use taxes		
Date project operator or agent appointed (mmdyy) 	Date project operator or agent status ends (mmdyy) 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: 8,805,970.15		Estimated value of New York State and local sales and use tax exemption provided: 737,500.00

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 Frank Ferrara		Print title Chairman	
Signature	Date	Telephone number (914) 939-5200	

Instructions

When to file

An IDA must file this form within 30 days of the date they appoint any project operator or other person as agent of the IDA, for purposes of extending any sales and use tax exemptions.

Requirements to file

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA should not file this form if they do not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, they must, within 30 days of the change, file a new form with the new information.

If the information on this form changes

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA, within 30 days, must send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. They must attach to the letter a copy of the form it originally filed. The IDA should not send a letter for a form that is not valid merely because the *Completion date of project* has passed.

Mailing instructions

Mail completed form to:

**NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866**

Private delivery services – See Publication 55, *Designated Private Delivery Services*.

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?



Visit our website at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

EXHIBIT B-1

**NYS FORM ST-123
FOR
COMPANY**

[Attached Next Page]



IDA Agent or Project Operator

Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, IDA Agent or Project Operator Exempt Purchase Certificate for Fuel.

Form with fields: Name of seller, Name of agent or project operator, Street address, City, town, or village, State, ZIP code, Agent or project operator sales tax ID number.

Mark an X in one: [] Single-purchase certificate [X] Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Form with fields: Name of IDA, Name of project, IDA project number, Street address of project site, City, town, or village, State, ZIP code, Date that you were appointed agent or project operator, Date that agent or project operator status ends.

Exempt purchases

(Mark an X in boxes that apply)

- [] A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
[] B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
[] C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence.

Form with fields: Signature of purchaser or purchaser's representative, Date, Type or print the name, title, and relationship that appear in the signature box

Instructions

To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

Agent or project operator sales tax ID number — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.

Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?



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- check for new online services and features



Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082

EXHIBIT B-2

**NYS FORM ST-123
FOR
SUBAGENTS OF COMPANY**

[Attached Next Page]

Instructions

To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

Agent or project operator sales tax ID number — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.

Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

Privacy notification

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(for persons with hearing and
speech disabilities using a TTY): (518) 485-5082

EXHIBIT B-3

INVOICE RIDER FORM

I, _____, the
_____ of _____ certify
that I am a duly appointed agent of the Village of Port Chester Industrial Development
Agency (“Agency”) and that I am purchasing the tangible personal property or services
for use in the following Agency Project and that such purchases qualify as exempt from
sales and use taxes under the Agent and Financial Assistance Agreement, dated as of
June 19, 2020, by and between the Agency and G&S PORT CHESTER UNIT 2B, LLC.

Name of the Project: G&S Port Chester Unit 2B, LLC Project

Street address of the Project Site: One North Main Street
Village of Port Chester,
Westchester County, New York

IDA OSC project number: **5505 20 01 A**

EXHIBIT C

**NYS FORM ST-340 TO BE COMPLETED BY THE COMPANY AND FILED
ANNUALLY WITH THE NYS TAX DEPARTMENT IDA UNIT NO LATER THAN
FEBRUARY 15TH OF EACH YEAR**

[Attached Next Page]



Department of Taxation and Finance

Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

ST-340

(1/18)

For period ending December 31, _____ (enter year)

Project information

Name of IDA agent/project operator		Employer identification number (EIN)	
Street address		Telephone number ()	
City		State	ZIP code
Name of IDA (V) of Port Chester Industrial Development Agency	Name of project G&S Port Chester Unit 2B, LLC Project	IDA project number 5505-20-01A	
Street address of project site One North Main Street			
City Port Chester		State NY	ZIP code 10573
Date project began		Completion date of project Actual <input type="checkbox"/> Expected <input type="checkbox"/>	
Total sales and use tax exemptions (actual tax savings; not total purchases)			\$

Representative information (not required)

Authorized representative, if any	Title
Street address	Telephone number ()
City	State ZIP code

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, employee, or authorized representative	Title of person signing
Signature	Date

If you do not annually file a complete report, we may remove your authority to act as an IDA agent/project operator.

Mail completed report to:
**NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866**

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Instructions

General information

Who must file

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as the *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person **directly** appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operators directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operators should **not** themselves file Form ST-340. However, the agent/project operators must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

What you must report

The report must show the **total value** of all state and local **sales and use taxes exempted** during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions the agent/project operator (you) obtained; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

Include only the **total combined** exemptions obtained by the above people. A breakdown of the total is not required. However, since the report must include the value of the exemptions they obtained, you must keep records of the amounts others report to you.

You must make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available, so that you can comply with the annual reporting requirements.

Do not include on this report the amount of any sales and use tax exemptions from other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

When the report is due

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

Name of IDA agent/project operator: Enter your name, address, employer identification number (EIN), and telephone number.

Name of IDA and IDA project number: Enter the name and address of the IDA. If more than one IDA is involved in a particular project, you must file a separate report for the tax exemptions attributable to each IDA. Also enter the ID project number.

Name of project: Enter the name of the project and the address of the project site. If you are involved in more than one project, you

must file a separate report for each project, even if authorized by the same IDA.

Date project began: Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

Completion date of project: Enter the date installation, lease, or rental of property (for example, machinery or computers) on the project ended, or the date the project is expected to be completed. Mark an **X** in the appropriate box to indicate if the date entered is actual or expected.

Total sales and use tax exemptions: Enter the total amount of New York State and local sales and use taxes exempted during the reporting period as a result of the project's receipt of IDA financial assistance (*if none, enter 0*). This includes exemptions obtained at the time of purchase, as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do **not** enter total purchases.

Representative information

If applicable, enter the name, address, title (for example, attorney or accountant), and telephone number of the individual you authorize to submit this report. This section is not required.

Certification

Enter the name and title of the person signing on your behalf (for example, the IDA agent/project operator's officer, employee, or other authorized representative). Your officer, employee, or authorized representative must sign and date the report.

Mail completed report to:

**NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866**

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

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EXHIBIT D

COST BENEFIT ANALYSIS AND PILOT AGREEMENT

[attached]



**Village of Port Chester
Industrial Development Agency**
222 Grace Church Street, Port Chester, New York 10573

PCIDA - G&S - 20-year PILOT ASSUMPTIONS - Fixed Payment Model - closing by May 1, 2020 Tax Status Date

Base Value = \$1,453,100
As-built Asses: \$15,760,000

PILOT Year	CALENDAR YEAR:	PILOT Base Assessed Valuation	Estimated Mill Rate	Abatement Schedule for Added Value	Estimated PILOT Payments for Base Value	Estimated Abated Assessment	Estimated Full Taxes with No PILOT	Estimated PILOT Payments for Added Value	MINIMUM FIXED Total PILOT Payments *	per unit (\$1,000 sq')	per rentable sq (60,000 sq')
Interim	2019	\$ 1,453,100	\$ 36.73	-	\$ 53,372	-	\$ 53,372	-			
Interim	2020	\$ 1,453,100	\$ 37.10	-	\$ 53,906	-	\$ 53,906	-			
Interim	2021	\$ 1,453,100	\$ 37.47	-	\$ 54,445	-	\$ 54,445	-			
Year 1	2022	\$ 1,453,100	\$ 37.84	58%	\$ 54,990	\$ 8,309,759	\$ 596,405	\$ 195,010	\$ 250,000	\$ 2,690	\$ 4.17
Year 2	2023	\$ 1,453,100	\$ 38.22	56%	\$ 55,539	\$ 8,072,248	\$ 602,369	\$ 206,961	\$ 262,500	\$ 2,824	\$ 4.38
Year 3	2024	\$ 1,453,100	\$ 38.60	55%	\$ 56,095	\$ 7,825,331	\$ 608,393	\$ 219,530	\$ 275,625	\$ 2,966	\$ 4.59
Year 4	2025	\$ 1,453,100	\$ 38.99	53%	\$ 56,656	\$ 7,568,635	\$ 614,477	\$ 232,750	\$ 289,406	\$ 3,114	\$ 4.82
Year 5	2026	\$ 1,453,100	\$ 39.38	51%	\$ 57,222	\$ 7,301,773	\$ 620,621	\$ 246,654	\$ 303,877	\$ 3,270	\$ 5.06
Year 6	2027	\$ 1,453,100	\$ 39.77	49%	\$ 57,795	\$ 7,024,343	\$ 626,828	\$ 261,276	\$ 319,070	\$ 3,433	\$ 5.32
Year 7	2028	\$ 1,453,100	\$ 40.17	47%	\$ 58,373	\$ 6,735,925	\$ 633,096	\$ 276,651	\$ 335,024	\$ 3,605	\$ 5.58
Year 8	2029	\$ 1,453,100	\$ 40.57	45%	\$ 58,956	\$ 6,436,084	\$ 639,427	\$ 292,819	\$ 351,775	\$ 3,785	\$ 5.86
Year 9	2030	\$ 1,453,100	\$ 40.98	43%	\$ 59,546	\$ 6,124,368	\$ 645,821	\$ 309,818	\$ 369,364	\$ 3,974	\$ 6.16
Year 10	2031	\$ 1,453,100	\$ 41.39	41%	\$ 60,141	\$ 5,800,308	\$ 652,279	\$ 327,691	\$ 387,832	\$ 4,173	\$ 6.46
Year 11	2032	\$ 1,453,100	\$ 41.80	39%	\$ 60,743	\$ 5,631,860	\$ 658,802	\$ 338,724	\$ 399,467	\$ 4,298	\$ 6.66
Year 12	2033	\$ 1,453,100	\$ 42.22	38%	\$ 61,350	\$ 5,460,077	\$ 665,390	\$ 350,101	\$ 411,451	\$ 4,427	\$ 6.86
Year 13	2034	\$ 1,453,100	\$ 42.64	37%	\$ 61,964	\$ 5,284,893	\$ 672,044	\$ 361,831	\$ 423,795	\$ 4,560	\$ 7.06
Year 14	2035	\$ 1,453,100	\$ 43.07	36%	\$ 62,583	\$ 5,106,239	\$ 678,765	\$ 373,925	\$ 436,508	\$ 4,697	\$ 7.28
Year 15	2036	\$ 1,453,100	\$ 43.50	34%	\$ 63,209	\$ 4,924,048	\$ 685,552	\$ 386,395	\$ 449,604	\$ 4,838	\$ 7.49
Year 16	2037	\$ 1,453,100	\$ 43.93	33%	\$ 63,841	\$ 4,738,249	\$ 692,408	\$ 399,251	\$ 463,092	\$ 4,983	\$ 7.72
Year 17	2038	\$ 1,453,100	\$ 44.37	32%	\$ 64,480	\$ 4,548,771	\$ 699,332	\$ 412,505	\$ 476,985	\$ 5,132	\$ 7.95
Year 18	2039	\$ 1,453,100	\$ 44.82	30%	\$ 65,124	\$ 4,355,540	\$ 706,325	\$ 426,170	\$ 491,294	\$ 5,286	\$ 8.19
Year 19	2040	\$ 1,453,100	\$ 45.27	29%	\$ 65,776	\$ 4,158,484	\$ 713,388	\$ 440,257	\$ 506,033	\$ 5,445	\$ 8.43
Year 20	2041	\$ 1,453,100	\$ 45.72	28%	\$ 66,433	\$ 3,957,525	\$ 720,522	\$ 454,780	\$ 521,214	\$ 5,608	\$ 8.69
			1% multiple		\$ 1,210,816		\$ 13,132,244	\$ 6,513,099	\$ 7,723,915		
	Total PILOT Payments	\$ 7,723,915									
	Taxes w/o Improvements	\$ 1,210,816									
	Full Taxes no PILOT	\$ 13,132,244									
	Estimated Real Estate Tax Savings	\$ 5,408,329									
	Estimated Mortgage Tax Savings	\$ 230,000									
	Estimated Sales Tax Savings	\$ 681,450	based on 60% of est. const. matls cost								
	Estimated Savings	\$ 6,319,779									
	TIDA Administrative Fee	\$ 190,000									

assumption of a \$15,760,000 assessment once project is completed

* - Proposed payments are a minimum amount, which may increase in any given year if 10% of gross income exceeds the fixed payment
Date of actual first PILOT payment depends on closing date between VoPC IDA and the applicant

Added Value \$ 14,306,900
Project Cost \$ 28,000,000
Estimated Const Matls Cost \$ 15,400,000
Finished Val \$ 15,760,000
Base Value \$ 1,453,100
(NDC independent analysis)

DRAFT

VILLAGE OF PORT CHESTER INDUSTRIAL DEVELOPMENT AGENCY

AND

G&S PORT CHESTER UNIT 2B, LLC

PAYMENT IN-LIEU-OF-TAX AGREEMENT

G&S Port Chester Unit 2B, LLC Project
One North Main Street
Port Chester, New York 10573

TMID:
142.31-1-46

IDA Project Number 5505-20-01A

Dated as June 19, 2020

Affected Tax Jurisdictions:

**Westchester County
Town of Rye
Village of Port Chester
Port Chester-Rye Union Free School District**

PAYMENT IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT IN-LIEU-OF TAX AGREEMENT, dated as of June 19, 2020 (herein, this "Agreement" or "PILOT Agreement"), is by and between the **VILLAGE OF PORT CHESTER INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York (the "State") with offices at 222 Grace Church Street, Port Chester, New York, 10573 (the "Agency") and **G&S PORT CHESTER UNIT 2B, LLC**, a New York limited liability company having offices at c/o G&S Investors, 211 East 43rd Street, New York, New York 10017 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 688 of the Laws of 1970 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law ("GML") 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, in furtherance of a certain Modified Marina Redevelopment Project (the "MUR Project"), G&S Port Chester LLC ("G&S"), the Agency and the Village entered into a Land Acquisition and Disposition Agreement, dated as of July 14, 1999, and amendments thereto (collectively, the "LADA"), wherein the parties thereto memorialized their respective rights and obligations in connection with the MUR Project; and

WHEREAS, in furtherance of the MUR Project and applicable provisions of the LADA, the Agency, by and through the Village, acquired certain parcels of real estate within the Village (the "Land") to be incorporated into the MUR Project, with the Land being divided into several units (the Land, as divided, together with any improvements thereon, a "Unit") and thereafter developed by G&S and/or the several Unit Lessees into a multi-tenanted waterfront retail complex within which the Unit Lessees have leased commercial retail space to various subtenants (the "Subtenants"); and

WHEREAS, the Agency and G&S, by and through the Company, entered into a certain Unit Lease, dated as of December 30, 2003 (the "Unit 2B Lease" or "Unit Lease", memorandum of which, dated October 23, 2003, was recorded on August 23, 2006 in the Westchester County Clerk's Office as Control No. 462220314), and relating to Unit 2B of the Project (the "Unit 2B Project", containing lots 142.31-1-3; 142.31-1-4; 142.31-1-5; 142.31-1-6; 142.31-1-20; 142.31-1-21; 142.31-1-22; 142.31-1-23; and 142.31-1-24, as merged into: 142.31-1-46 (the "Land", as further defined herein); and

WHEREAS, in furtherance of the LADA and Unit 2B Lease, the Agency, Unit 2B LLC and the Village entered into a certain Payment in Lieu of Taxes Agreement, dated as of December 30, 2003, and relating to the Unit 2B Project (the "Unit 2B PILOT", as amended December 12, 2012, and along with the Unit 2B Lease and related documents, the "Unit 2B Documents"); and

WHEREAS, the Company previously submitted an application to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) the retention by the Agency of a leasehold interest in certain real property located at the corner of North Main Street

and Westchester Avenue, Port Chester, New York (the "Land", being more particularly described as tax parcel numbers 142.31-1-3, 4, 5, 6, 20, 21, 23, and 24, along with adjacent realty, as may be merged) along with the existing parking, site and underground infrastructure improvements located within and thereon (the "Existing Improvements"); (ii) the rehabilitation and reconstruction of portions of the Existing Improvements and the planning, design, construction, operation and leasing by the Company of a multi-tenanted, mixed use redevelopment project that will include a newly constructed 5-story building containing approximately 72,000 square feet with approximately 12,000 square feet of commercial/retail space located on the first floor and 79 apartment units located on upper floors, along with related utility improvements, signage, curbage, sidewalks, and landscaping improvements (collectively, the "Improvements"); (iii) the acquisition of and installation in and around the Existing Improvements and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land, the Existing Improvements and the Improvements, the "Facility"); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the "Straight Lease Transaction"); and

WHEREAS, by resolution adopted April 10, 2019, the Agency authorized (i) the undertaking of the Project and the appointment of the Company as agent of the Agency to undertake same; (ii) the execution and delivery of a Deed to the Land back to the Company (the "Deed", which reserves a leasehold interest in favor of the Agency), an Agent and Financial Assistance and Project Agreement (the "Agent Agreement"), Lease Agreement (the "Lease Agreement"), Leaseback Agreement (the "Leaseback Agreement"), Payment-in-lieu-of-Tax agreement (the "PILOT Agreement"), and PILOT Mortgage to be entered into with respect to the Project, along with related documents; and (iii) the provision of the Financial Assistance to the Company, which shall include (a) an exemption from all state and local sales and use taxes with respect to the qualifying personal property included in or incorporated into the Facility or used in the construction and equipping of the Facility, (b) mortgage recording tax exemptions in connection with financings undertaken by the Company for the Project, and (c) a partial real property tax abatement through the execution of the PILOT Agreement regarding payments in lieu of real property taxes to be made for the benefit of the Affected Tax Jurisdictions (as defined herein); and

WHEREAS, as of the date hereof, (i) the Agency has transferred fee title to the Land to the Company, subject to the continued leasehold interest of the Agency pursuant to the Lease Agreement, (ii) the Agency and Company have terminated the Unit 2B Lease Agreement and entered into the Leaseback Agreement, and (iii) this Agreement shall fully amend and restate the Unit 2B PILOT; and

WHEREAS, the Agency and Company desire to enter into this Agreement to require and make provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Village of Port Chester (the "Village"), the County of Westchester (the "County"), the Town of Rye (the "Town"), and the Port Chester-Rye Union Free School District (hereinafter the "School District" or "School" and, collectively with the Village, County and Town, the "Affected Tax Jurisdictions"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

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:

Section I – Amendment and Restatement of Unit 2B PILOT Agreement; Payment in lieu of Ad Valorem Taxes. The Agency and Company agree that this PILOT Agreement shall amend, restate and replace in entirety the Unit 2B PILOT.

1.1 A. Prior Exemption Continued. Pursuant to the Unit 2B Lease Agreement, the Agency has retained a continual and uninterrupted fee interest in the Land since December 30, 2003. Therefore, the Facility shall remain on the exempt roll (Section 8) until the Agency's interests in the Land and Facility are terminated. The Agency and Company shall circulate a copy of this Agreement to the Affected Tax Jurisdictions within fifteen (15) days of the date hereof, along with an updated New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act to be filed with the Assessor of the Town for information purposes only. The Land and the Facility shall continue to be exempt from Real Estate Taxes as of the date hereof, such exemption to include the current tax years, including the remaining portions of the 2020 Town and County tax year and the 2019-2020 Village and School Tax Years, and prospectively, the 2021 Town and County Tax Year and 2020-2021 Village and School tax years through the Termination Date, as defined herein. For purposes of the foregoing, "Real Estate Taxes" means all general levy real estate taxes levied against the Land and Facility by the Village, Town, County and School District. The Company shall provide the Agency with the information necessary for the completion and filing of the Exemption Application for information purposes only and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to accept the Exemption Application. Notwithstanding anything contained herein or in the Unit 2B Lease Agreement to the contrary, in the event the exemption from Real Estate Taxes is not accepted for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due, including any and all Real Estate Taxes levied upon the Facility by the Affected Tax Jurisdictions for tax years preceding the effective date of the exemption, outlined above, and those tax years outlined within the Period of Benefits, as defined within Section 1.3 hereof, to which any revocation period applies. After giving written notice to the Agency, the Company may in good faith contest the revocation of any exemption by the appropriate assessors or Board of Assessment Review and any related loss of exempt status of the Facility, provided that (i) the Facility continues to qualify as a "project" under the Act; (ii) the Company has not been declared to be in default with respect to the provisions of any applicable Agency Documents; (iii) neither the Facility nor any part of or interest therein has been declared in default under any document for which the Facility could be sold, forfeited or lost; and (iv) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action

against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application for information purposes only with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. As long as the Facility is owned by the Agency or under its jurisdiction, control or supervision, the Company agrees to pay annually to the Agency, on behalf of the Affected Tax Jurisdictions, as a payment in-lieu-of-taxes, on or before **October 1** of each year during the term hereof (each a "Payment Date"), commencing on **October 1, 2020** an amount equal to the Total PILOT payment (the "Total PILOT Payment") as described on **Schedule A** attached hereto. The Agency shall submit an invoice to the Company on or about September 1 of each PILOT Year covered by this Agreement for the Total PILOT Payment due for such PILOT Year (each a "PILOT Invoice"), however, the Company shall timely pay all Total PILOT Payments on or before October 1 in each PILOT Year even in the absence of transmittal and/or receipt of a PILOT Invoice. Each PILOT Invoice will identify the Total PILOT Payment, with a separate statement of the amount of any Future Addition PILOT Payment, if applicable.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

The Company acknowledges and agrees that the Company shall timely pay all Special District Taxes (as each are defined herein) accruing and payable during the Term hereof.

1.2 Allocation. In accordance with Section 874 of the Act, the Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation. The Company shall have no obligation to ensure appropriate distributions of any Total PILOT Payment (including any applicable penalties or interest to the extent paid late) to the Affected Tax Jurisdictions by the Agency and shall be deemed released from any further obligations for timely distribution of any such payments made by the Company to the Agency.

1.3 Tax Rates. For purposes of determining the calculation and allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County, Village, and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date. For School District purposes, the tax rates used to determine the PILOT payment shall be the rate relating to the school year which includes the PILOT payment due date.

1.4 Valuation of and PILOT Payments for Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this Agreement (apart from the Project described herein), the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information

that the Agency may thereafter request. Unless otherwise incorporated as an amendment hereto or through a supplemental PILOT Agreement entered into by the Agency upon application by the Company, beginning with the first PILOT Year after May 1 following the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payments in lieu of taxes related to such Future Addition (“Future Addition PILOT Payment”) which shall be separate and apart from the Total PILOT Payment and which shall be equal each year to the assessment of such Future Addition by the Town Assessor(s) less any applicable exemption other than the Agency’s exemption, multiplied by the then current tax rates of the Affected Tax Jurisdictions. PILOT Invoices shall reflect any Future Addition PILOT Payments. The applicable assessor shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Assessor, the Company may challenge such assessment in accordance with Article IV hereof. Notwithstanding any disagreement between the Company and the assessor, the Company shall pay the Future Addition PILOT Payment as a component of Total PILOT payment until a different Future Addition PILOT Payment shall be established. If a lesser Future Addition PILOT Payment is determined in any proceeding or by subsequent agreement of the parties, the Future Addition PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency’s sole discretion, such excess payment shall be applied as a credit against the next succeeding Future Addition PILOT Payment(s).

1.5 Period of Benefits. The prospective tax benefits provided for herein should be deemed to include (i) the remainder of the 2020 Town and County tax year, and the 2021 Town and County tax year through the 2041 Town and County tax year; (ii) the remainder of the 2019-2020 Village tax year, and the 2020-2021 Village tax year through the 2040-2041 Village tax year; and (iii) the remainder of the 2019-2020 School tax year, and the 2020-2021 School tax year through the 2040-2041 School tax year. This PILOT Agreement shall expire on December 31, 2041, or earlier pursuant to the terms hereof (the “Termination Date”), *provided, however*, the Company shall pay the 2042 County and Town tax bill and the 2040-2041 School and Village tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years (and in accordance with RPTL Section 520, the Company shall also timely pay all applicable Village and School taxes accruing after December 31, 2029 following the termination of this PILOT Agreement). In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by any other applicable section of the New York Real Property Tax Law (“RPTL”). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section II - Special District Charges, Special Assessments, and other charges.

2.1 Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to any fire district charges or “curb charges”), applicable

pure water charges, and all sewer charges (all of the foregoing, collectively, "Special District Charges") are to be paid in full by the Company to the applicable Affected Tax Jurisdiction and/or applicable special district in accordance with normal billing practices. No such payment by the Company for Special District Charges shall serve to offset the amount of Total PILOT Payments due hereunder.

Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Agency to the Company (the Lease Agreement and Leaseback Agreement are terminated, and herein, a "Transfer"), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I herein, or this Agreement terminates and the property is not timely transferred back to the Company, the provisions of RPTL Sections 302 and 520 shall be deemed to apply, and the Company agrees to pay to each of the Affected Tax Jurisdictions no later than (i) the next tax levy date (plus any applicable grace period), or (ii) the date required pursuant to any invoice issued pursuant to RPTL Section 520, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

3.2 Credit and Pro-ration of PILOT Payments upon Transfer. In the event of any Transfer, there shall be no credit provided for prior PILOT Payments made toward taxes assessed in connection with RPTL Section 520 or otherwise. However, in the event of Transfer at the end of the Term thereof, the Agency shall allow for the pro-ration of PILOT Payments to be made by the Company immediately prior to the end of the Term hereof. Any such pro-ration of PILOT Payments shall be measured upon the number of days accrued within the tax year of each Affected Tax Jurisdiction through and including the date of such Transfer. In the event that a Transfer shall occur by virtue of voluntary termination by the Company, and the Company provides at least One Hundred Twenty (120) days' notice prior to an Annual Payment Date, the Agency shall allow for the pro-ration of PILOT Payments to be made by the Company. Any such pro-ration of PILOT Payments shall be measured upon the number of days accrued within the tax year of each Affected Tax Jurisdiction through and including the date of such Transfer. In the event that that a Transfer of Facility Realty may occur by virtue of termination of the Leaseback Agreement and this Agreement by the Agency due to an uncured Event of Default under the Leaseback Agreement and/or hereunder, and a PILOT Payment Date falls within the period of pendency for such Transfer, the Agency and/or Village may issue quarterly invoices for PILOT Payments.

Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions with respect to Special District Charges only, as defined herein, and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings

to review the validity or amount of assessment on the Special District Charges or the validity or amount of any tax equivalent relative thereto. The Company, on its own behalf, and on behalf of its tenants, heirs, successors and assigns, hereby acknowledges and agrees that any such challenge shall not impact or reduce the amount of Total PILOT Payment due hereunder, which may not be challenged or reduced in any fashion during the term hereof. The foregoing forbearance from any challenge or protest relating to the amount of Total PILOT Payment shall survive the assignment or termination of this Agreement and/or the Leaseback Agreement and shall be enforceable by the Agency or any of the Affected Tax Jurisdictions for the contemplated term of this Agreement (December 31, 2041). Further, and in accordance with Section 2.5(a) of the LADA, in the event that the Company shall default under this Agreement beyond any applicable notice or grace period and this Agreement is terminated, the Company shall not be permitted until the earlier to occur of (i) the date which is ten (10) years after the date of termination, or (ii) the date upon which this Agreement would have expired pursuant to its terms (December 31, 2041), to commence or prosecute any tax certiorari or other tax review proceedings for any portion of the Facility.

4.2 Notwithstanding the foregoing, the Company's rights reserved pursuant to Section 4.1, above, shall be limited during the term hereof to challenging any assessed value of (i) the Facility as same relates the imposition and payment of Special District Charges, as defined herein, and of Real Estate Taxes which may be levied after the expiration or termination of the term hereof, and (ii) any Future Addition, as the same relates to any Real Estate Taxes, PILOT Payments, Special District Charges or other charges or impositions, and the Company hereby agrees that an assessment challenge or other revision to the assessed value of the Facility will not affect or change the amount of Total PILOT Payment (including any Supplemental PILOT Payment) payable by the Company to the Agency as set forth within **Schedule A**, hereto.

4.3 The Company shall (i) use reasonable efforts to cause the appropriate real estate tax assessment office and tax levy officers to assess any Future Addition and apply tax rates to the respective assessments as if the Future Addition were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I by the Annual Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Leaseback Agreement after the expiration of any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax

Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to GML Section 874(6) and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I herein are not made by the Delinquency Date, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

6.3 A Permitted Mortgagee or Lender (as defined within the Leaseback Agreement) shall be granted the right, but shall be under no obligation, to cure or cause to be cured any event of default hereunder within applicable cure periods. The Agency shall accept such performance by or at the instigation of Lender as if the same had been done by the Company.

Section VII - Assignment.

7.1 No portion of any interest in this Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency as applicable and in accordance with Section 6.3 of the Leaseback Agreement. The assignment, mortgage, collateral assignment, or grant of security interest in all or any part of Agency's interests in the Facility, including the Company's rights and obligations pursuant to this Agreement, or any part or parts thereof, in connection with the Company's financing of the Facility, shall be governed pursuant to Section 6.1 of the Leaseback Agreement. In connection with any such assignment, mortgage, collateral assignment or grant of security interest, the Agency agrees to execute an estoppel certificate regarding the status of this Agreement, and such further documents as are reasonably requested by any person providing debt, equity, or other financing for the Facility. Other than by operation of law in accordance with the Act, the Agency shall not assign or cause the assignment of this Agreement to any other party without the Company's written consent.

Section VIII - Miscellaneous.

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

8.2 Notices. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, or by nationally recognized courier, such as Federal Express, as follows:

To the Agency: Village of Port Chester Industrial Development Agency
222 Grace Church Street
Port Chester, New York 10573
Attn: Chairman

With copies to: Harris Beach PLLC
677 Broadway, Suite 1101
Albany, New York 12207
Attn: Justin S. Miller, Esq.

To the Company: G&S Port Chester Unit 2B, LLC
c/o G&S Investors
211 East 43rd Street
New York, New York 10017
Attn: Greg Wasser

With copies to: Tartaglia Law Group
800 Westchester Avenue – N307
Rye Brook, New York 10573
Attn: Daniel Tartaglia, Esq.

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

8.3 Applicable Law. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Westchester County, New York.

8.4 No Recourse. Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent,

servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

8.5 Agency Financial Assistance Recapture Provisions. In accordance with the Agency's Project Recapture and Termination Policy (the "Recapture Policy"), and notwithstanding anything contained herein to the contrary, the Agency, at its sole but reasonable discretion and on a case-by-case basis, may determine during the term hereof, (but shall not be required to do so) that the Project has failed to meet its intended capital investment and job creation goals as set forth within the Agent and Financial Assistance and Project Agreement, dated as of the date hereof and entered into by the Agency and the Company, or failed to cause the Facility to be constructed, as described herein, and to require the Company to agree to the recapture by the Agency of the value of any or all exemptions from taxation granted with respect to the project by virtue of the Agency's involvement. Events that the Agency may determine will trigger recapture (each a "Recapture Event") may include, but not limited to (i) closure of the Facility; (ii) Significant employment reduction, which shall mean a material employment reduction of Full Time Equivalents ("FTEs") or more after commencement of operations of the Facility by the Company below the minimum number of FTEs identified in the Application; (iii) Significant change in use in facility, which shall mean a change in use of the Facility from its use as of the date hereof, or such other use as may be consented to by the Agency in writing; (iv) Significant change in business activities or project applicant or operator, which shall mean a change in the business activities from the intended use of the Facility as of the date hereof, or such other use as may be consented to by the Agency in writing; or (v) Material noncompliance with or breach of terms of Agency transaction documents (including any Event of Default as defined herein or within the Leaseback Agreement) or of zoning or land use laws or regulations or federal, state or local environmental laws or regulations. If the Agency determines to provide for the recapture with respect to a particular project, the Agency also shall, in its sole but reasonable discretion and on a case-by-case basis, determine the timing and percentage of recapture. The Agency shall notify the Company in writing within thirty (30) days of any such Recapture Event and/or Event of Default of its intent to recapture any financial assistance provided by the Agency to the Company, including PILOT Benefits (or any portion thereof, and collectively, a "Recapture"), and in accordance with the Recapture Policy, the Company will be afforded a hearing at which the Company will be provided with an opportunity to provide a valid explanation for the Recapture Event. Following said hearing, and upon the Agency's final determination for a Recapture, the Company agrees to pay same within thirty (30) days of demand therefor.

8.6 Consents to be Reasonable. Any approval, consent, opinion or judgment of the parties hereto provided for herein shall not be unreasonably withheld, conditioned or delayed, except as may be specifically provided for otherwise herein.

8.7 Successors and Assigns. This Agreement shall inure to the benefit of, and shall be binding upon the parties hereto and their respective successors and assigns as permitted hereunder and within the Leaseback Agreement.

8.8 Severability. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent, and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

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

8.10 No Waiver. In the event any agreement herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

8.11 Amendment. This Agreement may not be amended, changed, modified or altered except in writing executed by the parties hereto.

8.12 Complete Agreement. Unless supplemented or otherwise amended in writing by the Company and the Agency in accordance with the laws of the State of New York, this Agreement constitutes the parties' entire agreement with respect to the subject set forth herein except as may be provided for in the Leaseback Agreement and no other agreements or policies, written or unwritten, implied or express, will be deemed effective.

(Remainder of page intentionally left blank)

[Signature Page to PILOT Agreement]

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

**VILLAGE OF PORT CHESTER INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____

Name: Frank Ferrara

Title: Chairman

G&S PORT CHESTER UNIT 2B, LLC

By: _____

Name: Gregg Wasser

Title: President

[Acknowledgment Page to PILOT Agreement]

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

On the ____ day of June in the year 2020, before me, the undersigned, personally appeared **FRANK FERRARA**, 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

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

On the ____ day of June in the year 2020, before me, the undersigned, personally appeared **GREGG WASSER**, 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

SCHEDULE A

“Total PILOT Payment” shall be calculated as follows:

<u>PILOT Year</u>	<u>Calendar Year</u>	<u>Total PILOT Payment</u>
Interim	2020	\$ 53,906
Interim	2021	\$ 54,445
Year 1	2022	\$ 250,000
Year 2	2023	\$ 262,500
Year 3	2024	\$ 275,625
Year 4	2025	\$ 289,406
Year 5	2026	\$ 303,877
Year 6	2027	\$ 319,070
Year 7	2028	\$ 335,024
Year 8	2029	\$ 351,775
Year 9	2030	\$ 369,364
Year 10	2031	\$ 387,832
Year 11	2032	\$ 399,467
Year 12	2033	\$ 411,451
Year 13	2034	\$ 423,795
Year 14	2035	\$ 436,508
Year 15	2036	\$ 449,604
Year 16	2037	\$ 463,092
Year 17	2038	\$ 476,985
Year 18	2039	\$ 491,294
Year 19	2040	\$ 506,033
Year 20	2041	\$ 521,214

The Company agrees to pay annually to the Agency, on behalf of the Affected Tax Jurisdictions, as a payment in-lieu-of-taxes, on or before **October 1** of each year during the term hereof (each a “Payment Date”), commencing on **October 1, 2020** an amount equal to the Total PILOT payment (the “Total PILOT Payment”).

This Agreement expires as of December 31, 2041.

EXHIBIT E

BILL OF SALE

VILLAGE OF PORT CHESTER INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York with offices at 222 Grace Church Street, Port Chester, New York 10573 (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 G&S Port Chester Unit 2B, LLC, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at c/o G&S Investors, 211 East 43rd Street, New York, New York 10017 (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, the Equipment as defined in the Agent and Financial Assistance and Project Agreement, dated June 19, 2020 (the "Agent Agreement"), as may be amended from time to time, which were acquired and installed and/or are to be acquired and installed by the Grantee as agent for the Grantor pursuant to the Agent Agreement, which Equipment is located or intended to be located at the Grantee's Facility located at One North Main Street, Port Chester, New York 10573.

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 OF 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__.

**VILLAGE OF PORT CHESTER INDUSTRIAL
DEVELOPMENT AGENCY**

Form Only - Do Not Sign

By: _____

Name:

Title:

EXHIBIT F

FORM OF ANNUAL EMPLOYMENT AND
FINANCIAL ASSISTANCE CERTIFICATION LETTER

Company name and address:

Project Name:

Job Information

Current number of full time equivalent employees ("FTE") retained at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

Category	FTE	Average Salary and Fringe Benefits or Ranges
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____
Other	_____	_____

Current number of full time equivalent employees ("FTE") created at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

Category	FTE	Average Salary and Fringe Benefits or Ranges
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____
Other	_____	_____

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 payroll report verifying

the total jobs by employment category as outlined above at the location is required with this submission.

Financing Information

Has the Agency provided project financing assistance (generally 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 as of December 31 _____
- Outstanding principal balance of such bond or note as of December 31 _____

Final maturity date of the bond or note _____

Sales Tax Abatement Information

Did your Company or any appointed subagents receive Sales Tax Abatement for your Project During the prior year? Yes No

If so, please provide the amount of sales tax savings received by the Company and all appointed subagents _____

(Attach copies of all ST-340 sales tax reports that were submitted to New York State by the Company and all subagents for the reporting period. Please also attached all ST-60's filed for subagents for the reporting period)

Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project During the prior year? Yes No

(note this would only be applicable to the year that a mortgage was placed upon the Project, so if the Agency did not close a mortgage with you during the reporting period, the answer should be no)

The amount of the mortgage recording tax that was exempted during the reporting period: _____

PILOT INFORMATION:

County Real Property Tax without PILOT	\$ _____
City/Town Property Tax without PILOT	\$ _____
School Property Tax without PILOT	\$ _____
TOTAL PROPERTY TAXES WITHOUT PILOT	\$ _____
Total PILOT Payments made for reporting period:	\$ _____

Whether paid separately or lump sum to Agency for distribution, please provide break down of allocation of PILOT Payment to individual taxing jurisdictions:

County PILOT	\$ _____
City/Town PILOT	\$ _____
Village PILOT	\$ _____
School PILOT	\$ _____
TOTAL PILOTS	\$ _____

Net Exemptions \$ _____
(subtract Total PILOTS from TOTAL property taxes without PILOT)

I certify that to the best of my knowledge and belief all of the information on this form is correct. I further certify that the salary and fringe benefit averages or ranges for the categories of jobs retained and the jobs created that was provided in the Application for Financial Assistance is still accurate and if not, I hereby attach a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. I also understand that failure to report completely and accurately may result in enforcement of provisions of my agreement, including but not limited to voidance of the agreement and potential claw back of benefits.

Signed: _____

Name: _____

Title: _____

(authorized company representative)

Date: _____