

## **PAYMENT IN LIEU OF TAXES AGREEMENT**

**THIS PAYMENT IN LIEU OF TAXES AGREEMENT** (this "Agreement"), made as of the first day of October, 2007 by and among **NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State of New York, having its principal office at 1100 Franklin Avenue, Suite 300, Garden City, NY 11530 (the "Agency"), and **ROCKVILLE CENTRE HOUSING ASSOCIATES, L.P.**, a limited partnership duly organized and validly existing under the laws of the State of New York, having its principal office c/o Omni Housing Development LLC, 40 Beaver Street, Albany, NY 12207 (the "Obligor") (capitalized terms used in this Agreement but not defined herein shall have the meanings assigned to such terms in the Lease Agreement referred to below):

### **WITNESSETH:**

WHEREAS, the Agency was created by Chapter 1030 of the Laws of 1969 of the State of New York, being Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 674 of the Laws of 1975 of the State of New York, as amended (collectively, the "Act"); and

WHEREAS, the Agency has issued its Variable Rate Demand Housing Revenue Bonds (Rockville Centre Housing Associates, L.P. Project), Series 2007, in the aggregate principal amount of \$17,000,000 (the "Bonds") to finance a portion of the costs of the acquisition, renovation, installation and equipping of a commercial facility within Nassau County, New York (the "Facility") consisting of: (1) the acquisition of an interest in a parcel of land located at 160 North Centre Avenue, Village of Rockville Centre, Town of Hempstead, County of Nassau, New York (the "Land"), (2) the renovation and redevelopment of the multifamily housing structures located on the Land (collectively, the "Building"), together with related improvements to the Land, and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all of the foregoing to constitute a housing complex comprised of approximately 153 affordable low and moderate income rental housing units, together with associated superintendent's and security officer's units and parking areas (collectively, the "Project"); and

WHEREAS, the Agency has agreed to sub-sublease the Facility to the Obligor under a certain Lease Agreement, of even date herewith, between the Agency and the Obligor (as amended, modified, supplemented or restated, the "Lease Agreement"); and

WHEREAS, pursuant to Section 874 of the Act, the Agency is exempt from the payment of all taxes and assessments imposed upon real property and improvements acquired

by it or under its jurisdiction or control or supervision, other than special ad valorem levies and special assessments; and

WHEREAS, the Agency and the Obligor deem it necessary and proper to enter into an agreement making provision for payments in lieu of taxes and such assessments by the Obligor to all taxing jurisdictions in which any part of the Facility is or may be wholly or partially located, taking into account the provisions of law for abatements and exemptions and the benefits permitted under such law;

NOW, THEREFORE, in consideration of the issuance of the Bonds by the Agency for the purposes hereinabove stated and in consideration of the covenants herein contained, the parties hereto mutually agree as follows:

1. (a) As long as the Agency shall have an interest in the Facility, the Obligor agrees to make payments in lieu of all real estate taxes and assessments (in addition to paying all special ad valorem levies, special assessments and service charges against real property located in the Village of Rockville Centre, New York that are or may be imposed for special improvements or special district improvements) that would be levied upon or with respect to the Facility as if the Facility were owned by the Obligor and not by the Agency (the "Taxes on the Facility"). The amounts of such payments are set forth herein.

(b) From and after the date the Agency acquires an interest in the Facility through and including the Abatement Expiration Date (as hereinafter defined), the Obligor shall pay, as payments-in-lieu-of-taxes and assessments:

(1) for the balance of the 2007 calendar year, payments-in-lieu of taxes and assessments equal to 100 % of the unpaid taxes and assessments on the Facility through December 31, 2007, which shall be payable on the Closing Date;

(2) for calendar year 2008, \$171,000.00;

(3) for calendar year 2009, \$171,000.00;

(4) for calendar year 2010, \$178,100.00;

(5) for calendar year 2011, \$183,443.00;

(6) for calendar year 2012, \$188,946.00;

(7) for calendar year 2013, \$194,615.00;

(8) for calendar year 2014, \$200,453.00;

(9) for calendar year 2015, \$206,467.00;

(10) for calendar year 2016, \$212,661.00;

(11) for calendar year 2017, \$219,041.00;

(12) for calendar year 2018, \$225,612.00;

- (13) for calendar year 2019, \$232,380.00;
- (14) for calendar year 2020, \$239,352.00;
- (15) for calendar year 2021, \$246,532.00;
- (16) for calendar year 2022, \$253,925.00;
- (17) for calendar year 2023, \$261,546.00;
- (18) for calendar year 2024, \$269,392.00;
- (19) for calendar year 2025, \$277,474.00;
- (20) for calendar year 2026, \$285,798.00;
- (21) for calendar year 2027, \$294,372.00;
- (22) for calendar year 2028, \$303,203.00;
- (23) for calendar year 2029, \$312,299.00;
- (24) for calendar year 2030, \$321,668.00;
- (25) for calendar year 2031, \$331,318.00;
- (26) for calendar year 2032, \$341,258.00;
- (27) for calendar year 2033, \$351,496.00;
- (28) for calendar year 2034, \$362,041.00;
- (29) for calendar year 2035, \$372,902.00; and
- (30) for calendar year 2036, \$384,089.00.

(c) After the expiration of the approximately twenty-nine (29) year period of exemption set forth above (i.e., December 31, 2036) (such date, the “Abatement Expiration Date”), the Obligor shall make payments-in-lieu of taxes and assessments, equal to 100 % of the taxes and assessments that would be levied upon the Facility by the respective taxing authorities computed as if the Facility were owned by the Obligor, until such time as the Agency shall no longer have any estate or interest in the Facility and the Facility has been returned to the tax rolls as taxable property.

(d) The Obligor shall pay, or cause to be paid, the amounts set forth in Sections 1 (a), (b) and (c) hereof, as applicable. Failure to receive a tax bill shall not relieve the Obligor of its obligation to make payment of the same no later than the due dates provided herein. Payments shall be made directly to the Treasurer of the County of Nassau (the “Treasurer”). In the event the Obligor shall fail to make any such installments of payments in lieu of real estate taxes, the amount or amounts so in default shall continue as an obligation of

the Obligor until fully paid and the Obligor agrees to pay the same to such taxing authorities as the Agency may designate to the Obligor in writing. The Obligor shall pay a late payment penalty of five percent (5%) of any amount which is not paid when due hereunder (subject to the grace period set forth in Section 8 of this Agreement). In addition, for each month or part thereof that a payment hereunder is delinquent beyond the first month, interest shall accrue and be payable by the Obligor on the total amount due as provided above plus a late payment penalty in the amount of one percent (1%) per month for each month or part thereof until the payment is made. Anything contained in this subparagraph (d) to the contrary notwithstanding, the Obligor shall have the obligation to make all annual payments required by this subparagraph (d) (other than payments of penalties, if any) in one (1) annual installment on or prior to June 1 for the Village Tax, and two (2) equal semiannual installments on or prior to January 1 and July 1 for the General Tax, and April 1 and October 1 for the School Tax, as applicable, of each year of the term of the Lease Agreement or on such other due dates as may be established from time to time by the Agency (if permitted by the affected tax jurisdictions) during the term of the Lease Agreement.

(e) During the term of this Agreement, the Obligor shall continue to pay all special ad valorem levies, special assessments and service charges levied against the Facility for special improvements or special district improvements.

(f) Intentionally omitted.

(g) Intentionally omitted.

(h) In the event any structural additions shall be made to the building or buildings included in the Facility or any additional building or improvement shall be constructed on the real property (such structural additions, buildings and improvements being referred to hereinafter as "Additional Facilities"), the Obligor hereby agrees to increase its payments in lieu of taxes in an amount equal to the increased tax payments that would have been due and payable on such increase if this Agreement were not in effect. All other provisions of this Agreement shall apply to this obligation for additional payments.

2. In the event that the Agency's interest in the Facility, or any part thereof, is transferred from the Agency to the Obligor at such time, in reference to any taxable status date, as to make it impossible to place the Facility, or part thereof, on the tax rolls of the taxing authorities or appropriate special districts, as the case may be, within which the Facility is, or may be, wholly or partially located by such taxable status date, the Obligor hereby agrees to pay, at the first instance taxes or assessments are due following the taxable status date at which the Facility, or part thereof, is placed on the tax rolls, an amount equal to the taxes or assessments that would have been levied on the Facility, or part thereof, had it been on the tax rolls from the time the Obligor took such interest until the date of the tax rolls following the taxable status date as of which the Facility, or part thereof, is placed on the tax rolls. There shall be deducted from such amount any amounts previously paid pursuant to this Agreement by the Agency or the Obligor to the Treasurer relating to any period of time after the date of transfer of the Agency's interest in and to the Obligor. The provisions of this Section 2 shall survive the termination or expiration of the Lease Agreement.

3. In the event the Facility, or any part thereof, is declared to be subject to taxation for taxes or assessments by an amendment to the Act, other legislative change or a final judgment of a court of competent jurisdiction, the obligations of the Obligor hereunder shall, to such extent, be null and void.

4. In the event the Obligor shall enter into a subsequent Payment in Lieu of Taxes Agreement or Agreements with respect to the Taxes on the Facility directly with any or all taxing authorities under whose jurisdiction the Facility is located, the obligations of the Obligor hereunder that are inconsistent with such future agreement or agreements shall be superseded and shall, to such extent, be null and void.

5. The Obligor in recognition of the benefits provided under the terms of this Agreement, and from the date hereof through the Abatement Expiration Date, hereby expressly waives the right to institute judicial review of an assessment of the real estate with respect to the Facility and the Additional Facilities pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time.

6. The Obligor, in recognition of the benefits provided under the terms of this Agreement, and for so long as the Agency shall have an interest in the Facility or any part thereof, hereby expressly waives any rights it may have for any exemption under Section 485-b of the Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Article 18-A of the General Municipal Law) with respect to the Facility. The Obligor, however, reserves any such rights with respect to all special ad valorem levies, special assessments and service charges levied against the Facility referred to in Section 1(e) hereof and against the Additional Facilities referred to in Section 1(h) hereof and with respect to the assessment and/or exemption of the Additional Facilities.

7. (a) Failure by the Agency in any instance to insist upon the strict performance of any one or more of the obligations of the Obligor under this Agreement, or to exercise any election herein contained, shall in no manner be or be deemed to be a waiver by the Agency of any of the Obligor's defaults or breaches hereunder or of any of the rights and remedies of the Agency by reason of such defaults or breaches, or a waiver or relinquishment of any and all of the Obligor's obligations hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing. Further, no payment by the Obligor or receipt by the Agency of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency may accept any check or payments as made without prejudice to the right to recover the balance or pursue any other remedy in this Agreement or otherwise provided at law or in equity.

(b) In the event the Obligor should fail to make any payments in lieu of taxes required to be made hereunder within any applicable grace period, the amount or amounts so in default shall continue as an obligation of the Obligor until fully paid, and the Obligor agrees to pay the same with interest thereon as provided in Section 1(d) hereof. The Obligor and the Agency agree that the respective taxing authorities and their officials shall be deemed third party beneficiaries of this Section 7 and are authorized by the parties hereto to enforce the

provisions hereof relating to amount and payment of taxes and payments in lieu of taxes. However, the respective taxing authorities are not authorized to enforce any other provisions of this Agreement.

(c) In the event the Agency's interest in the Facility is conveyed to the Obligor or any other entity prior to the Abatement Expiration Date, this Agreement shall become null and void and any remaining tax abatement shall be canceled.

8. Amounts due and payable for a calendar year under subparagraphs (a), (b) and (c) of Section 1 hereof shall be due and payable to the Treasurer of the County of Nassau, One West Street, Mineola, New York 11501, on or before June 1 for the Village Tax, on or before January 1 and July 1 for the General Tax, and on or before April 1 and October 1 for the School Tax, as applicable, such amounts to be payable without penalty within forty (40) days of said due date, or such other dates and grace period as would apply if the Facility were owned by the Obligor and not by the Agency.

9. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, and may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10. Whenever the Obligor fails to comply with any provision of this Agreement, the Agency may, but shall not be obligated to, take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Obligor under this Agreement.

11. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, as the same may be in effect from time to time, without regard to its principles of conflicts of laws.

12. The Obligor agrees to hold the Agency harmless from and against any liability arising from any default by the Obligor in performing its obligations hereunder or any expense incurred hereunder, including, without limitation, any expenses of the Agency and attorneys' fees and disbursements.

13. This Agreement may be modified only by written instrument duly executed by the parties hereto.

14. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, heirs, distributees and assigns.

15. If any provision of this Agreement shall for any reason be held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision 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.

16. If the Obligor fails to make any payment when due, the Agency, in addition to any remedy or right it or any taxing authority may have pursuant to this Agreement, shall have the rights and remedies set forth in the Lease Agreement.

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

NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By

  
Joseph Gioino  
Executive Director

ROCKVILLE CENTRE HOUSING  
ASSOCIATES, L.P.

By: Rockville Centre I Housing Development  
Fund Company, Inc., its General Partner

By

\_\_\_\_\_  
Name: Gary Kondor  
Title: President

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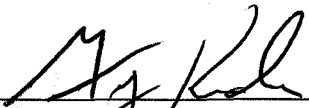
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Joseph Gioino  
Executive Director

ROCKVILLE CENTRE HOUSING  
ASSOCIATES, L.P.

By: Rockville Centre I Housing Development  
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By  \_\_\_\_\_  
Name: Gary Kondor  
Title: President