

M.P.A. OWNERS, LLC

and

157-161 Post Avenue, LLC

and

AX3 Capital LLC

and

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY

ASSIGNMENT AND ASSUMPTION
OF PILOT AGREEMENT

Dated as of March 25, 2022

**ASSIGNMENT AND ASSUMPTION OF
PILOT AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF PILOT AGREEMENT (this “Assignment Agreement”) dated as of March 25, 2022 (the “Effective Date”), by and among the NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at One West Street, 4th floor, Mineola, NY 11501 (the “Agency”), M.P.A. OWNERS, LLC, a limited liability company duly organized and existing under the laws of the State of New York, having an office at 157 Gazza Boulevard, Farmingdale, NY 11735 (the “Applicant”) and the overlandlord, 157-161 Post Avenue, LLC, a limited liability company duly organized and existing under the laws of the State of New York, having an office at 157 Gazza Boulevard, Farmingdale, NY 11735 (together with the Applicant, collectively, the “Assignor”), and AX3 Capital LLC, a limited liability company duly organized and existing under the laws of the State of New York, having an office at 127 North Broadway, Hicksville, NY 11801 (collectively, the “Company” or “Assignee”).

RECITALS:

WHEREAS, the Applicant submitted an application for financial assistance (the “Application”) to the Agency requesting that the Agency consider undertaking a project (the “Project”) consisting of the following: (A)(1) the acquisition of an interest in a parcel of land located at 157-161 Post Avenue, Incorporated Village of Westbury, Town of North Hempstead, County of Nassau, New York (Section: 10; Block: 99; Lot: 76, 78, 177 & 182) more fully set forth on Schedule A attached hereto (collectively, the "Land"), (2) the demolition of two (2) existing buildings on the Land and the construction of a new approximately 20,700 square foot building on the Land, together with related improvements to the Land (collectively, the "Building"), and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all of the foregoing for use by the Applicant as a mixed-use commercial/residential rental facility (collectively, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, sales and use taxes and mortgage recording taxes (collectively, the "Financial Assistance"); (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency and the sublease thereof to one or more subtenants designated by the Applicant and agreed upon by the Agency; and

WHEREAS, the Applicant proposed that it, which holds a leasehold to the Land and the Building, be the sublessee of the Project Facility under the Lease (as hereinafter defined), and the Agency has approved such proposal; and

WHEREAS, the Applicant leased the Project Facility to the Agency pursuant to the terms and conditions set forth in the Company Lease Agreement dated as of October 1, 2013 between the Applicant, as sublessor, and the Agency, as sublessee (the “Company Lease”); and

WHEREAS, the Agency appointed the Applicant as agent of the Agency to undertake the acquisition, construction, installation and equipping of the Project Facility and the Agency subleased the Project Facility to the Applicant, all pursuant to the terms and conditions set forth in two (2) certain Sublease Agreements each dated as of October 1, 2013 between the Applicant and the Agency relating to the Project Facility (as otherwise amended, modified, supplemented or restated from time to time, and collectively, the “Lease”) and the other Transaction Documents (as defined in the Lease); and

WHEREAS, pursuant to a notification and consent request letter dated January 25, 2022 from the Assignee (as such term is hereinafter defined) and pursuant to a notification and consent request letter dated February 17, 2022 from the Applicant (collectively, the “Consent Request”), the Applicant and Assignee have requested that the Agency consent to (a) the sale and transfer of the Applicant’s 100% ownership of the Project Facility to Rahul K. Nabe / Lotus Management Group Inc. or a new entity or entities to be formed thereby, including, but not limited to, AX3 Capital LLC (collectively, the “Assignee”), (b) the assignment of the Lease and the other Transaction Documents by the Applicant to the Assignee (including the assignment, amendment or restatement of finance mortgages) and (c) to the substitution of a new guarantor(s) and indemnitor(s), to be determined and accepted by the Nassau County Industrial Agency at its sole discretion, respectively (the “New Guarantor”), under the Guaranty and Environmental Indemnity in the place of the existing guarantors (collectively, the “Proposed Transaction”); and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement dated as of October 1, 2013 (the “PILOT Agreement”), by and between the Assignor and the Agency, the Assignor agreed to make certain payments in lieu of real property taxes with respect to the Land and the improvements thereon, and such obligation is secured by a certain Mortgage and Assignment of Leases and Rents, dated as of October 1, 2013 (the “PILOT Mortgage”), made by the Agency and the Assignor, as mortgagors, in favor of the County of Nassau, as mortgagee (in such capacity, the “PILOT Mortgagee”), pursuant to which the Agency and the Assignor granted a first mortgage lien on the Land and the improvements thereon to the PILOT Mortgagee; and

WHEREAS, the Assignor desires to assign all of its right, title and interest in and to the PILOT Agreement to the Assignee and the Assignee desires to assume all of the obligations of the Assignor under the PILOT Agreement; and

WHEREAS, the Agency is willing to consent to the assignment of the Assignor’s interest in the PILOT Agreement to the Assignee only if the Assignee agrees to be bound by and comply with each of the terms and conditions set forth in the PILOT Agreement;

AGREEMENTS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignor, the Assignee and the Agency mutually covenant, warrant and agree as follows:

1. Assignment. The Assignor hereby assigns, conveys and transfers to the Assignee all of the Assignor’s right, title and interest in, to and under the PILOT Agreement.

2. Assumption. The Assignee accepts the assignment of and hereby assumes and agrees to perform, fulfill and comply with all covenants and obligations to be performed, fulfilled or complied with by the Assignor under the PILOT Agreement arising from and after the Effective Date.

3. The Assignee's Indemnification of the Assignor and Agency. The Assignee shall and does hereby indemnify the Assignor and the Agency against, and agrees to defend (with counsel reasonably selected by the indemnified party) and hold the Assignor and the Agency harmless from, all liabilities, obligations, actions, suits, proceedings or claims and all costs and expenses (including without limitation, reasonable attorneys' fees), incurred by the Assignor or the Agency, as the case may be, in connection with the PILOT Agreement based upon or arising out of any breach or alleged breach of the PILOT Agreement by the Assignor occurring or alleged to have occurred on or after the Effective Date.

4. The Assignor's Indemnification of the Assignee and Agency. The Assignor shall and does hereby indemnify the Assignee and the Agency against and agrees to defend (with counsel reasonably selected by the indemnified party) and hold the Assignee and the Agency harmless from, all liabilities, obligations, actions, suits, proceedings or claims and all costs and expenses (including, without limitation, reasonable attorneys' fees), incurred by the Assignee or the Agency, as the case may be, in connection with the PILOT Agreement based upon or arising out of any breach or alleged breach of the PILOT Agreement by the Assignor occurring or alleged to have occurred before the Effective Date.

5. Consent to Assignment. The Agency hereby consents to the foregoing assignment and assumption of the PILOT Agreement and acknowledges that all requirements of the PILOT Agreement with respect to the assignment thereof have been complied with or compliance has been waived by the Agency. The parties agree that any provision of the PILOT Agreement prohibiting or restricting the transfer and assumption contemplated hereby shall be deemed waived for this transaction only, but shall continue to apply to any future assignment, assumption or transfer by the Assignee.

6. Representations, Covenants and Warranties. All terms, conditions, covenants, representations and warranties of the Assignor contained in the PILOT Agreement, except as expressly modified hereby, are hereby adopted, ratified and confirmed by the Assignee as of the date hereof, remain in full force and effect as of the date hereof, and are subject to the terms of this Assignment Agreement.

7. Governing Law. This Assignment Agreement, the transactions described herein and the obligations of the parties hereto shall be construed under, and governed by, the laws of the State of New York, as in effect from time to time, without regard to principles of conflicts of laws.

8. Successors and Assigns. The Assignor, the Company and the Agency, as such terms are used herein, shall include the legal representatives, successors and assigns of those parties. This Assignment Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

9. Counterparts. This Assignment Agreement may be executed in any number of counterparts and by the Assignor, the Company and the Agency on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same Assignment Agreement.

10. Severability. Any provision of this Assignment Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Assignment Agreement and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

11. Conflicting Provisions. In the event of any conflict in the terms and provisions of this Assignment Agreement and the terms and provisions of the PILOT Agreement, the terms and provisions of this Assignment Agreement shall govern.

12. Entire Agreement. This Assignment Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior negotiations, understandings, and agreements between such parties with respect to such transaction.

(Remainder of Page Intentionally Left Blank – Signature Pages Follow)

IN WITNESS WHEREOF, this Assignment Agreement has been duly executed by the parties hereto as of the day and year first above written.

Assignor:

**M.P.A. OWNERS, LLC, a New York
Limited Liability Company**

By: 

Name: PHILIP A. BONADONNA
Title: MEMBER

Assignor:

**157-161 Post Avenue LLC, a New York
Limited Liability Company**

By: 

Name: PHILIP A. BONADONNA
Title: MEMBER

Assignee:

**AX3 Capital LLC, a New York Limited Liability
Company**

By: _____

Rahul Nabe
Managing Member

Agency:

**NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____

Harry Coghlan
Executive Director

(Signature Page to Assignment of PILOT)

IN WITNESS WHEREOF, this Assignment Agreement has been duly executed by the parties hereto as of the day and year first above written.

Assignor: **M.P.A. OWNERS, LLC, a New York Limited Liability Company**

By: _____
Name:
Title:

Assignor: **157-161 Post Avenue LLC, a New York Limited Liability Company**

By: _____
Name:
Title:

Assignee: **AX3 Capital LLC, a New York Limited Liability Company**

By: _____
Rahul Nabe
Managing Member

Agency: **NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By: _____
Harry Coghlan
Executive Director

(Signature Page to Assignment of PILOT)

IN WITNESS WHEREOF, this Assignment Agreement has been duly executed by the parties hereto as of the day and year first above written.

Assignor: **M.P.A. OWNERS, LLC, a New York Limited Liability Company**

By: _____
Name:
Title:

Assignor: **157-161 Post Avenue LLC, a New York Limited Liability Company**

By: _____
Name:
Title:

Assignee: **AX3 Capital LLC, a New York Limited Liability Company**

By: _____
Rahul Nabe
Managing Member

Agency: **NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By:  _____
Harry Coghlan
Executive Director

(Signature Page to Assignment of PILOT)

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

On the 24TH day of APRIL, 2022, before me, the undersigned, personally appeared PHILIP A. BONADONNA, 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
JOSEPH JOHN LICATA
NOTARY PUBLIC, STATE OF NEW YORK
No. : 02L16092565
NASSAU COUNTY
COMMISSION EXP 9/13/23

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

On the ___ day of April, 2022, before me, the undersigned, personally appeared _____, 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)

On the ___ day of April, 2022, before me, the undersigned, personally appeared **Rahul Nabe**, 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)

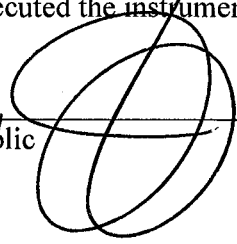
On the ___ day of March, 2022, before me, the undersigned, personally appeared
, personally known to me or proved to me on the basis of satisfactory evidence to
be the individual whose name is subscribed to the within instrument and acknowledged to me
that he executed the same in his capacity, and that 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 Nassau)

Rahul Nabe On the 25 day of March, 2022, before me, the undersigned, personally appeared
, 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.

JAMES M CHECKOSKY
Notary Public, State of New York
No. 01CH6085871
Qualified in Richmond County
Commission Expires January 7, 2023



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

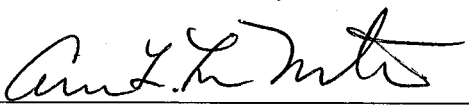
On the ___ day of March, 2022, before me, the undersigned, personally appeared
Rahul Nabe, personally known to me or proved to me on the basis of satisfactory evidence to be
the individual whose name is subscribed to the within instrument and acknowledged to me that
he executed the same in his capacity, 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 NASSAU)

On the 23rd day of March, 2022, before me, the undersigned, personally appeared **Harry Coghlan**, 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.

ANNE L. LAMORTE
Notary Public - State of New York
No. 01LA6085378
Qualified in Nassau County
My Commission Expires March 9, 2023



Notary Public

(Acknowledgment Page to Assignment of PILOT)

SCHEDULE A

See Attached

SCHEDULE A

As to Lot 182:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Incorporated Village of Westbury in the Town of North Hempstead, County of Nassau and State of New York, known as part of Lots Numbered 52 and 80 on Map No. 2 of Westbury Court, filed July 11, 1910, Map No. 318, Case No. 2225 and more particularly described as follows:

BEGINNING at a point on the southerly side of Butler Street, distant 113.43 feet westerly when measured from the intersection of the southerly side of Butler Street with the westerly side of Post Avenue;

RUNNING THENCE southerly at right angles to Butler Street, 25.00 feet;

RUNNING THENCE westerly parallel with Butler Street, 5.00 feet;

RUNNING THENCE southerly at right angles to the preceding course, 54.00 feet;

RUNNING THENCE westerly parallel with Butler Street, 11.00 feet;

RUNNING THENCE northerly at right angles to the preceding course 79.00 feet to the southerly side of Butler Street;

RUNNING THENCE easterly along the southerly side of Butler Street, 16.00 feet to the point or place of BEGINNING.

As to Lots 76,78, 177:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Incorporated Village of Westbury, Town of North Hempstead, County of Nassau and State of New York, known as Lots Numbers 76, 77, and 78 and part of Lot No. 52 as shown on a certain map entitled, "Map No. 2 of Westbury Court, property belonging to G.F. Purser Co. at Westbury Station, Nassau County, New York and filed in the Office of the Clerk of the County of Nassau on July 11, 1910, as Map No. 318" which said lots and part of lot are more particularly bounded and described as follows:

BEGINNING at a point on the westerly side of Post Avenue, distant 50.84 feet southerly from the corner formed by the intersection of the westerly side of Post Avenue with the southerly side of Butler Street;

RUNNING THENCE westerly along the northerly line of Lot No. 78 on said map 109.04 feet to the easterly line of lot No.52 on said map;

THENCE RUNNING southerly along the easterly line of said Lot No. 52, 29 feet;

THENCE RUNNING westerly and parallel with the southerly side of Butler Street 14 feet;

THENCE RUNNING southerly and parallel to the easterly line of said Lot 52, 21 feet to the northerly line of Lot 76, as shown on said map;

THENCE RUNNING westerly along the northerly line of said Lot 76, 11 feet to the northwesterly corner of said Lot No. 76;

THENCE RUNNING southerly along the westerly line of Lot No. 76, 25 feet to the northerly line of Lot No. 75, on said map;

THENCE RUNNING easterly along the northerly line of said Lot No. 75, 119.96 feet to the westerly side of Post Avenue;

THENCE RUNNING northerly along the westerly side of Post Avenue, 76.25 feet to the point or place of BEGINNING.