

THE CARLYLE BUILDING LLC

and

MERCURY RISING 1 LLC

and

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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ASSIGNMENT, ASSUMPTION AND FIRST AMENDMENT  
TO UNIFORM PROJECT AGREEMENT

September 28, 2021

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**ASSIGNMENT, ASSUMPTION AND FIRST AMENDMENT  
TO UNIFORM PROJECT AGREEMENT**

THIS ASSIGNMENT, ASSUMPTION AND FIRST AMENDMENT TO UNIFORM PROJECT AGREEMENT (this "Amendment") dated as of September 28, 2021 (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"), THE CARLYLE BUILDING LLC, a limited liability company organized and existing under the laws of the State of New York, having an office at 3505 Veterans Memorial Highway, Suite D, Ronkonkoma, NY 11779 (the "Assignor"), and Mercury Rising 1 LLC, a limited liability company duly organized and existing under the laws of the State of New York, having an office at 515 Broadhollow Road, Suite 800, Melville, NY 11747 (the "Company" or "Assignee").

RECITALS:

WHEREAS, on or about December 1, 2016, THE CARLYLE BUILDING LLC, a limited liability company organized and existing under the laws of the State of New York (the "Applicant"), presented an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in an approximately 0.79 acre parcel of land located at 776-780 Fulton Street, Incorporated Village of Farmingdale, Town of Oyster Bay, County of Nassau, New York (Section: 49; Block: 166; Lots: 56-57) (collectively, the "Land"), (2) the demolition of the existing structures on the Land, (3) the construction of an approximately 50,497 square foot building on the Land, together with parking and other related improvements to the Land (collectively, the "Building"), and (4) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment"), all of the foregoing for use by the Applicant as a residential rental facility consisting of approximately twenty-four (24) residential rental units which shall constitute "Housing for Older Persons" (i.e., intended and operated for occupancy by persons 55 years of age or older in accordance with the Fair Housing Act), of which two (2) units shall be affordable housing units (collectively, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, the Agency approved such request, pursuant to and subject to the terms and conditions set forth in its resolution 2017-37 ("Approving Resolution"), adopted August 16, 2017, and approved the Financial Assistance; and

WHEREAS, the Approving Resolution permitted the Agency to conclude the straight-lease with the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, the Applicant subsequently requested that the Agency consent to the amendment of the Approving Resolution and to allow the Applicant to enter into certain transaction documents evidencing the straight-lease and appointing the Applicant as the Agency's agent on or before the extension date of September 30, 2019; and

WHEREAS, on March 21, 2019, the Agency granted the request of the Applicant to allow the Applicant to enter into certain transaction documents and be appointed the Agency's agent on or before the extension date September 30, 2019; and

WHEREAS, pursuant to a notification and consent request letter, dated November 15, 2019, the Applicant requested the Agency to allow the Applicant to enter into certain transaction documents evidencing the straight-lease and appointing the Applicant as the Agency's agent on or before the extension date of March 16, 2020; and

WHEREAS, on November 21, 2019, the Agency granted the request of the Applicant to allow the Applicant to enter into certain transaction documents and be appointed the Agency's agent on or before the extension date March 16, 2020; and

WHEREAS, pursuant to a notification and consent request letter, dated April 1, 2020, the Applicant requested the Agency to allow the Applicant to enter into certain transaction documents evidencing the straight-lease and appointing the Applicant as the Agency's agent on or before the extension date of May 30, 2020; and

WHEREAS, the Agency granted the request of the Applicant to allow the Applicant to enter into certain transaction documents and be appointed the Agency's agent on or before the extension date May 30, 2020; and

WHEREAS, on May 29, 2020, the Agency granted the request of the Applicant to allow the Applicant an extension to enter into certain transaction documents and be appointed the Agency's agent on or before July 29, 2020; and

WHEREAS, the Applicant requested a final extension to enter into certain transaction documents evidencing the straight-lease and appointing the Applicant as the Agency's agent on or before the extension date of December 31, 2020; and

WHEREAS, on December 16, 2020, the Agency granted the request of the Applicant to allow the Applicant an extension to enter into certain transaction documents and be appointed the Agency's agent on or before December 31, 2020; and

WHEREAS, on December 1, 2020, the Assignor executed and delivered or caused to be executed and delivered to the Agency a certain a uniform project agreement (the "Uniform Project Agreement") between the Assignor and the Agency, which appointed the Assignor as the Agency's agent and sets forth additional terms for the straight lease of the Project Facility, and (B) the Assignor executed and delivered or caused to be executed and delivered to the Agency a bill of sale, dated as of December 1, 2020 (the "Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of the Assignor in and to the Equipment identified in the Bill of Sale to the Agency; 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 that certain Sublease Agreement dated as of December 1, 2020 between the Applicant and the Agency (as amended, collectively, the “Lease”), and the other Transaction Documents (as defined in the Lease); and

WHEREAS, in connection with the Project, the Guarantors (as such term is defined the Lease) and Assignor made certain representations, covenants and indemnifications in favor of the Agency with respect to the environmental condition of the Land and the Building pursuant to a certain Environmental Compliance and Indemnification Agreement, dated as of December 1, 2020 (collectively, the “Environmental Indemnity”) made by the Guarantors and the Assignor in favor of the Agency; and

WHEREAS, pursuant to a joint notification and consent request letter from counsel to the Applicant and the Assignee (as defined hereinafter), dated May 22, 2021 (the “Consent Request”), the Applicant and the Assignee (as such term is hereinafter defined) have requested that the Agency consent to (a) the transfer of the Applicant’s interest in the Project Facility by the Applicant to Mercury Rising 1, LLC, a New York limited liability company (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 new guarantor(s) and indemnitor(s), to be determined and accepted by the Nassau County Industrial Agency at its sole discretion, respectively (the “Guarantor”), under the Guaranty and Environmental Indemnity in the place of the existing guarantors (collectively, the “Proposed Transaction”); and

WHEREAS, the Assignor and the Assignee have requested that the Agency (i) consent to the assignment by the Assignor of all of its right, title and interest in and to the Project Facility to Assignee, and (ii) amend the Lease and Uniform Project Agreement in certain respects in connection therewith; and

WHEREAS, the Agency is willing to consent to the transfer by the Assignor of its interests in and to the Project Facility 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 Lease and Uniform Project Agreement; and

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Assignor, the Assignee and the Agency mutually covenant, warrant and agree as follows:

## SECTION 1. DEFINITIONS.

SECTION 1.1 Interpretation. For purposes of this Amendment, unless otherwise defined herein, all capitalized terms used herein including, but not limited to, those capitalized terms used and/or defined in the recitals hereto, shall have the respective meanings assigned to such terms in the Transaction Documents.

## SECTION 2. ASSIGNMENT AND ASSUMPTION.

SECTION 2.1      Assignment. Assignor hereby assigns, conveys and transfers to Assignee all of Assignor's right, title and interest in, to and under the Uniform Project Agreement.

SECTION 2.2      Assumption. Assignee hereby accepts the assignment of and assumes and agrees to perform, fulfill and comply with all covenants and obligations to be performed, fulfilled or complied with by Assignor under the Uniform Project Agreement from and after the Effective Date.

SECTION 2.3      Assignor's Indemnification of Assignee and the 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 Uniform Project Agreement or any other Transaction Document directly based upon or arising out of any breach or alleged breach of the Uniform Project Agreement or any other Transaction Document by the Assignor occurring or alleged to have occurred before the Effective Date.

SECTION 2.4      Assignee's Indemnification of Assignor and the 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 Uniform Project Agreement or any other Transaction Document based upon or arising out of any breach or alleged breach of the Uniform Project Agreement or any other Transaction Document by the Assignee occurring or alleged to have occurred on or after the Effective Date.

SECTION 2.5      Consent to Assignment. The Agency hereby consents to the foregoing assignment and assumption pursuant to Section 2.1 of the Uniform Project Agreement and Sections 9.1 and 9.3 of the Lease and acknowledges that all requirements of Section 2.1 of the Uniform Project Agreement and Sections 9.1 and 9.3 of the Lease have been complied with or compliance has been waived by the Agency. The parties agree that any provisions of the Uniform Project Agreement and Lease prohibiting or restricting the assignment and assumption contemplated hereby shall be deemed complied with for this transaction only, but shall continue to apply to any future assignment, assumption or transfer by the Assignee.

SECTION 2.6      Limited Release of Assignor. Effective from and after the Effective Date, the Agency hereby releases the Assignor from all of its obligations, liabilities and duties relating to the Project Facility, including, without limitation, its obligations, liabilities and duties arising under the Project Agreement, the PILOT Agreement and the other Transaction Documents, except that the Assignor is not hereby released from any obligations, liabilities or duties under the Uniform Project Agreement, Lease, the PILOT Agreement or any other Transaction Document arising prior to the Effective Date (collectively, the "Prior Obligations"), including, without limiting the generality of the foregoing, the obligations of the Assignor to indemnify and defend

the Agency and to hold the Agency harmless under the Project Agreement, the PILOT Agreement and the other Transaction Documents with respect to the Prior Obligations and irrespective of whether a particular cause of action in connection with such Prior Obligations was commenced or commences before or after the Effective Date.

### SECTION 3. AMENDMENTS.

SECTION 3.1 Effective as of the Effective Date, Section 8.3 of the Uniform Project Agreement is hereby amended and restated in its entirety to read as follows:

“Section 8.3 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:

IF TO THE COMPANY:

Mercury Rising 1 LLC  
c/o Realterm Logistics Income Properties, L.P.  
515 Broadhollow Road, Suite 800  
Melville, NY 11747

WITH A COPY TO:

Forchelli Deegan Terrana, LLP  
333 Earle Ovington Blvd  
Suite 1010  
Uniondale, NY 11553  
Attn: Daniel P. Deegan, Esq.

IF TO THE AGENCY:

Nassau County Industrial Development Agency  
One West Street, 4th floor  
Mineola, NY 11501  
Attn: Executive Director

WITH A COPY TO:

Harris Beach PLLC  
333 Earle Ovington Blvd  
Suite 901  
Uniondale, NY 11553  
Attn: Andrew Komaromi, 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.”

SECTION 3.2 Effective as of the Effective Date, Schedule “A” of the Uniform Project Agreement is hereby amended by deleting the defined term “Guarantor” or “Guarantors” and replacing it with the following:

SECTION 3.3 ““Guarantor” or “Guarantors” means, individually or collectively, as the context may require, George Condos and Philip Palmetto, each a natural person have an address c/o Mercury Rising 1, LLC, 515 Broadhollow Road, Suite 800, Melville, NY 11747.”

#### SECTION 4. CONDITIONS.

SECTION 4.1 Conditions Precedent. This Amendment shall only become effective upon the fulfillment, prior to or contemporaneously with the delivery hereof, of the following conditions precedent:

(A) the execution and delivery by the Assignor, the Assignee and the Agency of an original or counterpart originals of this Amendment;

(B) the Assignor and the Assignee shall execute and/or deliver such other documents, instruments and agreements as the Agency may reasonably require in connection with the transactions contemplated by this Amendment; and

(C) the Assignee shall pay all fees and expenses (including the Agency’s consent fee and all attorneys’ fees and expenses) incurred by the Agency in connection with the preparation, execution and delivery of this Amendment and the closing of the transactions contemplated herein.

#### SECTION 5. MISCELLANEOUS.

##### SECTION 5.1 Representations and Warranties.

(A) All terms, conditions, covenants, representations and warranties of the Assignor contained in the Transaction Documents, 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 Amendment.

(B) The Assignee represents and warrants to the Agency that it has the necessary power and has taken all necessary action to make this Amendment the valid and enforceable obligation it purports to be, and that this Amendment constitutes the legal, valid and binding obligation of the Assignee, enforceable against the Assignee in accordance with its terms.

(C) The Assignor represents and warrants to the Agency that it has the necessary power and has taken all necessary action to make this Amendment the valid and enforceable obligation it purports to be, and that this Amendment constitutes the legal, valid and binding obligation of the Assignor, enforceable against the Assignor in accordance with its terms.

(D) The Assignor represents and warrants to the Agency that no Event of Default specified in any of the Transaction Documents has occurred and, to its actual knowledge after diligent inquiry, no event which with notice or lapse of time or both would become such an Event of Default has occurred and is continuing.

SECTION 5.2 Additional Matters. All other documents and legal matters in connection with this Amendment and the transactions contemplated by the Uniform Project Agreement as amended by this Amendment shall be reasonably satisfactory in form and substance to the Agency.

SECTION 5.3 Survival of Representations and Warranties. All representations and warranties made in this Amendment or any other documents furnished in connection with this Amendment shall survive the execution and delivery of this Amendment and no investigation by the Agency or any closing shall affect the representations and warranties or the right of the Agency to rely upon them.

SECTION 5.4 Reference to Uniform Project Agreement. The Uniform Project Agreement, the Transaction Documents and any and all other agreements, documents, or instruments heretofore, now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Uniform Project Agreement, as amended hereby, are hereby amended so that any reference to the "Uniform Project Agreement" in the Lease, Uniform Project Agreement, the Transaction Documents or such other agreements, documents or instruments executed in connection with the Uniform Project Agreement shall mean a reference to the Uniform Project Agreement, as amended hereby.

SECTION 5.5 Governing Law. This Amendment, 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.

SECTION 5.6 Successors and Assigns. The Assignor, the Assignee and the Agency, as such terms are used herein, shall include the legal representatives, successors and assigns of those parties. This Amendment shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

SECTION 5.7 Counterparts. This Amendment may be executed in any number of counterparts and by the Assignor, the Assignee 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 Amendment.

SECTION 5.8 Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

SECTION 5.9 Conflicting Provisions. In the event of any conflict in the terms and provisions of this Amendment and the terms and provisions of the Front Street Lease, the terms and provisions of this Amendment shall govern.

SECTION 5.10      Entire Agreement.      This Amendment 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 Amendment has been duly executed by the parties hereto as of the day and year first above written.

Assignor:

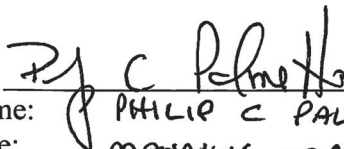
**THE CARLYLE BUILDING LLC**

By: 

Robert A. Lee, Jr.  
Managing Member

Assignee:

**MERCURY RISING 1 LLC**

By: 

Name: PHILIP C PALMOTTO  
Title: MANAGING MEMBER

Agency:

**NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

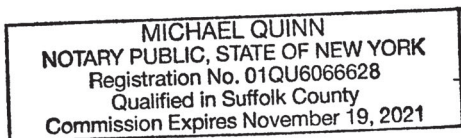
By: 

Harry Coghlan  
Chief Executive Officer/Executive Director

*(Signature Page to Assignment of Uniform Project Agreement)*

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

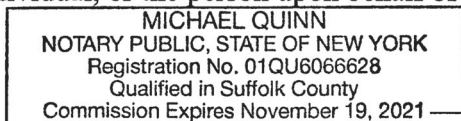
On the 14 day of July, 2021, before me, the undersigned, personally appeared **Robert A. Lee, Jr.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



[Signature]  
Notary Public

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

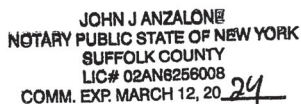
Philip C. Palmetto On the 14<sup>th</sup> day of July, 2021, before me, the undersigned, personally appeared Philip C. Palmetto, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that 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.



[Signature]  
Notary Public

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

On the 15<sup>th</sup> day of July, 2021, 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.



[Signature]  
Notary Public

## SCHEDULE A

ALL that certain plot piece or parcel of land, situate, lying and being in the Town of Oyster Bay, Village of Farmingdale, County of Nassau and State of New York bounded and described as follows:

BEGINNING at a point on the Southerly side of Fulton Street (new line) where the same is intersected by the Easterly boundary of land now or formerly of Grossman, which point is distant 231.76 feet Easterly from the connecting the Southerly side of Fulton Street with the Easterly side of Main Street;

RUNNING THENCE along the Southerly side of Fulton Street, South 60 degrees 04 minutes 40 seconds East, a distance of 148.92 feet;

THENCE South 28 degrees 06 minutes 00 seconds West, a distance of 249.79 feet to land of the Long Island Railroad;

THENCE along said land, North 61 degrees 20 minutes 00 seconds West, a distance of 103.00 feet;

THENCE North 08 degrees 33 minutes 11 seconds East, a distance of 132.72 feet;

THENCE North 27 degrees 27 minutes 40 seconds East, a distance of 128.40 feet to the Southerly side of Fulton Street at the point or place of BEGINNING.