

## AGENT AND PROJECT AGREEMENT

*THIS AGENT AND PROJECT AGREEMENT* (“Agreement”), is effective as of the 16<sup>th</sup> day of August, 2021, by and between the COUNTY OF SULLIVAN 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 its principal offices at 548 Broadway, Monticello, New York 12701 (“Agency”) and 234 MAIN STREET, LLC, a New York limited liability company, having its principal offices at 390 Park Avenue, New York, New York 10022 (“Company”).

### WITNESSETH:

*WHEREAS*, the Agency was created by Chapter 560 of the Laws of 1970 of the State of New York ("State") pursuant to Title I of Article 18-A of the (General Municipal Law of the State of New York (collectively referred to as the “Enabling Act”) as a body corporate and politic and as a public benefit corporation of the State; and

*WHEREAS*, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

*WHEREAS*, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

*WHEREAS*, pursuant to and in connection with the provisions of the Enabling Act, the Agency is empowered under the Act to undertake the providing of financing and taking of title or a leasehold interest in the Project (as described below); and

*WHEREAS*, the Company holds a long term leasehold interest pursuant to a Ground Lease from The Center For Discovery, Inc., dated January 1, 2019 in a portion of a parcel of land consisting of approximately 1.03± acres located in the Hamlet of Hurleyville, County of Sullivan (“County”), State which is depicted on the Town of Fallsburg (“Town”) tax map as Section 34, Block 9, Lot 12.2, as depicted as Parcel 2A on the map prepared by Fulton Land Surveying, entitled 234 Main Street Hurleyville Subdivision, which subdivision was granted Final Approval by the Town of Fallsburg Planning Board on November 12, 2020 and which map was filed in the Office of the Clerk of Sullivan County on February 25, 2021 and is Map 15/363 (“Land”); and

*WHEREAS*, on or about July 13, 2020, the Company presented an application to the Agency (“Application”), which Application was amended on October 13, 2020 and further amended on April 5, 2021, a copy of all of which are on file at the office of the Agency, requesting

that the Agency consider undertaking a project consisting of the: (i) acquisition, construction, installation and equipping of an approximately 7,500 +/- square foot building to be used as a mixed-use retail and residential building (“Building”) situate on the Land; (ii) acquisition, construction and equipping of the Building; (iii) acquisition, construction and installation thereon and therein of certain furniture, fixtures, machinery, equipment and tools (“Equipment”); (iv) construction of improvements to the Building, the Land and the Equipment (collectively, the Building, the Land and the Equipment are referred to as the “Facility” or the “Project”); and (v) lease of the Facility from the Agency to the Company; and

*WHEREAS*, the total financial assistance being contemplated by the Agency is greater than \$100,000 and therefore the proposed action was subject to a public hearing; and

*WHEREAS*, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (“SEQR”), the Agency constitutes a “State Agency”; and

*WHEREAS*, to aid the Agency in determining whether the Project may have significant adverse effects on the environment, the Company presented a short Environmental Assessment Form (“EAF”) to the Agency with respect to the Project for its review; and

*WHEREAS*, the Agency determined that the Project is an Unlisted Action under SEQR; and

*WHEREAS*, the Agency gave due consideration to the Application of the Company and to representations by the Company that the proposed financial assistance is an inducement to the Company to undertake the Project; and

*WHEREAS*, the Agency considered the following matters as more fully set forth in its Uniform Tax Exemption Policies:

- A. Permanent private sector job creation and retention;
- B. Estimated value of the tax exemption;
- C. Whether the affected taxing jurisdictions shall be reimbursed by the Company if the Project does not fulfill the purposes for which the exemption was granted;
- D. Impact of Project on existing and proposed business or economic development projects;
- E. The amount of private sector investment generated or likely to be generated by the Project;
- F. Demonstrated public support for the Project;
- G. Likelihood of accomplishing the Project in a timely fashion;
- H. Environmental impact;
- I. Extent to which the Project will require additional services including, but not limited to educational, police, transportation, EMS and fire;
- J. Extent to which the Project will provide additional revenues; and

- K. Extent to which the Project will serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State;

; and

*WHEREAS*, on or about April 14, 2021, Jennifer Flad, Executive Director caused a Notice of Deviation from the Agency’s Uniform Tax Exemption Policy to be mailed to the County, Town and the Fallsburg Central School District (“School District”); and

*WHEREAS*, the County and Town supported the proposed deviation, and the School District stated no objection to the proposed deviation; and

*WHEREAS*, pursuant to a Resolution duly adopted by the Agency on August 16, 2021, the Agency agreed to (i) designate the Company as its agent for the purpose of acquiring, constructing, installing and equipping the Project; (ii) negotiate and enter into an Agent and Project Agreement, the Lease, the Leaseback and the PILOT Agreement with the Company; (iii) hold a leasehold interest in the Land and the improvements thereon which constitute the Project; and (iv) provide financial assistance to the Company in the form of (a) a real property tax abatement on increased value resulting from improvements to the Land through the PILOT Agreement; and (b) a mortgage tax exemption for financing related to the Project.

*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. 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 County of Sullivan, and to specifically promote the investment commitment, employment commitment, and other commitments of the Company contained herein and within the Company’s Application.
2. Scope of Agency. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution, and subject to applicable law, to acts reasonably related to the acquisition, construction, installation and equipping of the Project. The Agency did not authorize the Company to acquire goods and services related to the Project without payment of sales and use tax.
3. 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:
  - (a) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the

provisions of this 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.

- (b) The Project and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Project, 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 (b).
- (c) 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 Agreement.
- (d) The Company covenants (i) that the Project will comply in all respects with all environmental laws and regulations, (ii) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Project, except in compliance with all applicable laws, (iii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Project or onto any other property, (iv) that no asbestos will be incorporated into or disposed of on the Project, (v) that no underground storage tanks will be located on the Project, except in full compliance at all times with all applicable laws, rules, and regulations, and (vi) 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 3(d) 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 directors, officers, employees, members, agents (except the Company), representatives, their respective successors and assigns and personal representatives 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 3(d). 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 Project, the Company agrees to pay the expenses of same to the Agency upon demand.

- (e) The Company acknowledges and agrees that 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.
  - (f) In accordance with Section 874(10) and (11) of the Enabling Act and the Agency's Project Recapture and Termination Policy, the Company covenants and agrees that it may be subject to suspension, termination, modification or recapture of any or all Financial Assistance in the sole discretion of the Agency if (i) an event of a material violation of the Material Terms occur or (ii) the Company made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the Application or supporting documents false or misleading in any material respect, on the application for Financial Assistance. For purposes of this Section 3, Material Terms shall mean completing the Project as described herein and on the Application.
  - (g) In accordance with Section 859-a(6)(b) of the Enabling Act, the Company covenants and agrees to annually provide a certified statement (i) enumerating the full time equivalent jobs retained and created as a result of the Financial Assistance, by category, including independent contractors or employees of independent contractors that work at the Project location and (ii) indicating the salary and fringe benefit averages or ranges for categories of jobs retained and created that was provided in the Application is still accurate and if not, providing revised information.
  - (h) In accordance with Section 859-a(6)(b) of the Enabling Act, the Company confirms and acknowledges under the penalty of perjury that as of the date hereof, the Company is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.
  - (i) The Company acknowledges and agrees that a failure by the Company to provide any certification, form or other reporting information required by this Agreement shall constitute an event of default hereunder, whereby the Agency, in its sole and absolute discretion, may suspend, terminate, modify or recapture of any or all Financial Assistance.
4. 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 directors, officers, employees, members, agents (except the Company), representatives, their respective successors and assigns and personal representatives 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 Project or arising by reason of or in connection with the occupation or the use thereof or the

presence on, in or about the Project or breach by the Company of this Agreement or (ii) liability arising from or expense incurred by the Agency's acquiring, constructing, installing, equipping, owning and leasing of the Project, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expense, 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 its respective directors, officers, employees, members, agents (except the Company), and representatives, their respective successors and assigns and personal representatives 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.

5. 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) 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 Project, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company.
- (b) Worker's 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 Project.
- (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 Worker's Compensation Law; and a blanket excess liability policy in the amount not less than \$2,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

6. Additional Provisions Respecting Insurance.

- (a) All insurance required by Section 5 shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company (and

reasonably satisfactory to the Agency) and authorized to write such insurance in the State. Such insurance may be written with deductible amounts not exceeding \$2,500.00. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days written notice of the cancellation thereof to the Company and the Agency.

(b) All such certificates of insurance of the insurers that such insurance is in force and effect, shall be deposited with the Agency on or before the commencement of the term of this Agreement. 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 Agreement.

7. Counterpart Signatures. 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. Notices. All notices provided for by this Agreement shall be made in writing, and shall be deemed to have been given on the date of delivery if personally served on the party to whom notice is to be given, or on the next day after mailing if mailed to the party to whom notice is to be given by overnight courier of national reputation providing evidence of receipt and properly addressed, or on the third day after mailing if mailed to the party to whom notice shall be given by First Class, Certified mail, postage prepaid and properly addressed to the following:

To the Agency:

County of Sullivan Industrial Development Agency  
548 Broadway  
Monticello, New York 12701  
Attn: Chief Executive Officer

with a copy to:

GARIGLIANO LAW OFFICES, LLP  
449 Broadway  
P.O. Drawer 1069  
Monticello, New York 12701  
Attn: Agency Counsel

To the Company:

234 Main Street, LLC  
390 Park Avenue  
New York, New York 10022

with a copy to:

Brown Duke & Fogel, LLP  
Steven Vegliante, Esq., of Counsel  
449 Broadway  
Monticello, New York 12701

or at such other addresses and/or addressees as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section 8.

9. Governing 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. The parties hereto designate a court of proper jurisdiction located in Sullivan County, New York as the sole venue for resolution of any disputes, which may arise under or by reason of this Agreement.

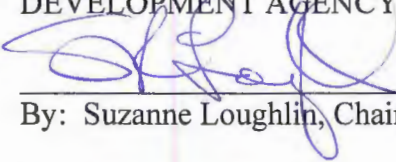
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*IN WITNESS WHEREOF*, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF SULLIVAN INDUSTRIAL  
DEVELOPMENT AGENCY



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By: Suzanne Loughlin, Chairperson

234 MAIN STREET, LLC

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By: Jeffrey Stevenson, Manager

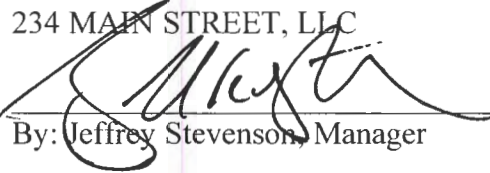
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COUNTY OF SULLIVAN INDUSTRIAL  
DEVELOPMENT AGENCY

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By: Suzanne Loughlin, Chairperson

234 MAIN STREET, LLC



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By: Jeffrey Stevenson, Manager