

CLOSING ITEM NO. B-2

TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY

AND

KING THIEL SENIOR COMMUNITY LLC

OMNIBUS AMENDMENT TO BASIC DOCUMENTS

DATED AS OF MARCH 21, 2022

Record and Return to:

Barclay Damon LLP
80 State Street
Albany, New York 12207
Attention: Melissa C. Bennett, Esq.

OMNIBUS AMENDMENT TO BASIC DOCUMENTS

THIS OMNIBUS AMENDMENT TO BASIC DOCUMENTS (this “Omnibus Amendment”), dated as of the 21st day of March, 2022 is by and between the TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 347 Old Niskayuna Road, Latham, New York 12110 (the “Agency”), and KING THIEL SENIOR COMMUNITY LLC, a New York limited liability company organized and existing under the laws of the State of New York, having an office for the transaction of business located at 17 Elks Lane, Latham, New York 12110 (the “Company”).

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the “Enabling Act”) was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the “State”) and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of 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 purposes, in order to advance the job opportunities, health, general prosperity and 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 or sell any or all of its facilities and to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof to secure the payment of such bonds and interest thereon; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 232 of the Laws of 1977, as amended by Chapter 594 of the Laws of 1980 of the State, as amended (collectively, with the Enabling Act, the “Act”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, on or about May 10, 2016, the Agency undertook a project (the “Project”) on behalf of Colonie Senior Service Centers, Inc. (“CSSC”) consisting of the following: (A)(1) the acquisition of a leasehold interest in an approximately 14.13 acres of land located at 17 Elks Lane in the Town of Colonie, Albany County, New York (the “Land”), and the existing building

located thereon (the “Existing Building”), (2) the demolition of the Existing Building, (3) construction of a one 3-story building consisting of (a) 96 units of affordable senior housing for senior citizens of low and moderate income, and (b) an approximately 5,000 square foot senior center (collectively, the “Facility”), and (4) the acquisition and installation therein and thereon of various machinery and equipment (the “Equipment”) (the Land, the demolition of the Existing Building, the Facility and the Equipment being collectively referred to as 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, including potential exemptions from real estate transfer taxes and real property taxes; and (C) the lease (with an obligation to purchase) or sale of the Project Facility to CSSC or such other person as may be designated by CSSC and agreed upon by the Agency (collectively, the “Original Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to CSSC or such other person as may be designated by CSSC and agreed upon by the Agency; and

WHEREAS, in connection with the Project, the Agency and CSSC entered into the following documents (hereinafter collectively referred to as the “Basic Documents”): (A) an underlying lease agreement (and a memorandum thereof) dated as of May 1, 2016 (the “Underlying Lease”) by and between CSSC and the Agency, pursuant to which, among other things, the Agency acquired a leasehold interest in the Land and the improvements located on the Land; (B) a lease agreement (and a memorandum thereof) dated as of May 1, 2016 (the “Lease Agreement” and, collectively with the Underlying Lease, the “Leases”) by and between the Agency and CSSC, pursuant to which, among other things, CSSC agreed to undertake and complete the Project as agent of the Agency and CSSC further agreed to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency’s administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (C) a payment in lieu of tax agreement dated as of May 1, 2016 (the “Original PILOT Agreement”) by and between the Agency and CSSC, pursuant to which CSSC agreed to make payments in lieu of taxes; and (D) various certificates relating to the Project (collectively, the “2016 Transaction Documents”); and

WHEREAS, to secure its obligations under the Original PILOT Agreement, the Operating Company executed a mortgage in favor of the Agency dated as of May 1, 2016 (the “2016 PILOT Mortgage” and collectively with the 2016 Transaction Documents, the “2016 Basic Documents”); and

WHEREAS, a Memorandum of Underlying Lease was recorded on May 18, 2016 as Instrument Number R-2016-10598 in the records of the Clerk of Albany County; and

WHEREAS, a Memorandum of Lease Agreement was recorded on May 18, 2016 as Instrument Number R-2016-10599 in the records of the Clerk of Albany County; and

WHEREAS, the 2016 PILOT Mortgage was recorded on May 18, 2016 as Instrument Number R-2016-10603 in the records of the Clerk of Albany County; and

WHEREAS, the Original PILOT Agreement was filed with the Assessor’s Office in the Town of Colonie; and

WHEREAS, CSSC and King Thiel Senior Community LLC (the “Company”) submitted an application (the “Application”) to the Agency, which Application described the refinancing of the Project by CSSC, including a transfer of ownership of the Project Facility from CSSC to the Company (which shall be 100% owned by CSSC), and which Application requested that the Agency (A) consent to the assignment of the 2016 Basic Documents from CSSC to the Company (the “Assignment”) and the amendment of the Original PILOT Agreement; and (B) approve additional financial assistance to the Company in the form of (i) additional real property tax exemption benefits; and (ii) a mortgage recording tax exemption (collectively, the “Original Additional Financial Assistance”); and

WHEREAS, by resolution duly adopted on June 21, 2021 (the “Public Hearing/Deviation Process Resolution”) authorized a public hearing in compliance with the provisions of Section 859-a of the Act and the deviation process in compliance with the provisions of Section 874(4)(b) of the Act and the Agency’s UTEP with respect to the Original Additional Financial Assistance; and

WHEREAS, pursuant to the authorization contained in the Public Hearing/Deviation Process Resolution, the Agency: (A) caused notice of public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Original Additional Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on July 7, 2021 to the chief executive officers of the county, the town and the school district in which the Project Facility is or is to be located (each an “Affected Tax Jurisdiction” and collectively, the “Affected Tax Jurisdictions”), (B) caused notice of the Public Hearing to be published on July 8, 2021 in the Times Union, a newspaper of general circulation available to the residents of the Town of Colonie, Albany County, New York, and (C) conducted the Public Hearing on July 19, 2021 at 6:00 p.m. at the Town of Colonie Memorial Town Hall, Town Hall Main Meeting Room, 534 New Loudon Road, Latham, New York 12110; and

WHEREAS, pursuant to the authorization contained in the Public Hearing/Deviation Process Resolution and in compliance with the provisions of Section 874(4)(b) of the Act and the UTEP, the Agency caused a letter (the “PILOT Deviation Letter”) to be mailed on July 7, 2021 to the chief executive officers of each Affected Tax Jurisdiction, informing said individuals that the Agency would, at its meeting to be held on July 19, 2021, consider a proposed deviation from the UTEP with respect to the Proposed Amended PILOT Agreement to be entered into by the Agency with respect to the Project Facility and the reasons for said proposed deviation; and

WHEREAS, pursuant to a resolution duly adopted on July 19, 2021 the Agency: (A) approved the transfer of the Project Facility by CSSC to the Company and consented to the assignment by CSSC and the assumption by the Company of the 2016 Transaction Documents; (B) determined to enter into any documents necessary to be executed and delivered by the Agency in connection with the Assignment (the “Assigned Documents”); (C) determined to grant to CSSC and the Company the Original Additional Financial Assistance with respect to the Project; and (D) determined to enter into the 2021 Transaction Documents (as hereinafter defined); and

WHEREAS, the Company has notified the Agency that the Company rescinds its request to the Agency for financial assistance in the form of mortgage recording tax exemption benefits (the Original Additional Financial Assistance as so modified, the “Additional Financial Assistance”); and

WHEREAS, CSSC has transferred all of its right, title and interest in and to the Mortgaged Property to the Company; and

WHEREAS, CSSC has assigned to the Mortgagor and the Company assumed from CSSC the obligations of CSSC under, among other documents, the Original PILOT Agreement and the 2016 PILOT Mortgage, pursuant to an omnibus assignment and assumption agreement dated March 21, 2022 (the “Assignment and Assumption”), and the Agency has consented to such Assignment and Assumption; and

WHEREAS, in order to consummate the granting of the Additional Financial Assistance, the Agency proposes to enter into the following documents (collectively, the “2021 Transaction Documents”): (A) this Omnibus Amendment; (B) an amended and restated payment in lieu of tax agreement (the “Amended PILOT Agreement”) by and between the Agency and the Company, pursuant to which the Company will agree to make payments in lieu of taxes in accordance with the terms set forth therein; (C) a project agreement (the “Project Agreement”) that complies with the requirements of Section 859-a(6) of the Act; and (D) various certificates relating to the Additional Financial Assistance; and

WHEREAS, to secure its obligations under the Amended PILOT Agreement, the Company will execute an amended and restated PILOT Mortgage (the 2016 PILOT Mortgage as so amended, the “Amended PILOT Mortgage”); and

WHEREAS, the Agency will file with the assessor and mail to the chief executive officers of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form RP-412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Amended PILOT Agreement;

NOW, THEREFORE, in consideration of the mutual 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 1. AMENDMENT OF EXISTING TRANSACTION DOCUMENTS.

(A) All references to the terms “Bank”, “Company”, “Mortgage”, “Payment in Lieu of Tax Agreement”, “PILOT Mortgage” in the 2016 Transaction Documents shall be deemed to be references to the “Company”, “Lender”, “Mortgages”, “Payment in Lieu of Tax Agreement” and “PILOT Mortgage” and “Term” as defined in Section 4 of this Omnibus Agreement.

(B) All notices, certificates and other communications that must be delivered to the Company pursuant to any of the 2016 Transaction Documents shall be delivered as follows:

King Thiel Senior Community LLC
17 Elks Lane
Latham, New York 12110
Attention: Diane Conroy LaCivita, Executive Director

With a copy to:

Rowlands, LeBrou & Griesmer, PLLC
11 British American Boulevard
Latham, New York 12110
Attention: Richard E. Rowlands, Esq.

(C) The legal description in each of the 2016 Transaction Documents as of the date hereof is hereby deleted in its entirety and replaced with the legal description contained in Exhibit A attached to this Omnibus Agreement.

SECTION 2. AMENDMENT TO UNDERLYING LEASE. The following Section is hereby added to the Underlying Lease following Section 3.10 thereof:

SECTION 3.11. SUBORDINATION OF UNDERLYING LEASE. This Underlying Lease and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate (except with respect to the Unassigned Rights) to the Mortgage and any mortgage or mortgages that may be granted by the Company and the Agency on the Project Facility or any portion thereof, including and to any and all refinancings, modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

SECTION 3. AMENDMENT OF MEMORANDUM OF UNDERLYING LEASE. The text in the third paragraph of the Memorandum of Underlying Lease is hereby deleted in its entirety and replaced with the following:

The Underlying Lease provides for the rental of the Premises for a term (the "Term") commencing as of May 1, 2016 and expiring on the earlier to occur of (A) February 28, 2057, or (B) so long as neither the term of a lease agreement dated as of May 1, 2016 (the "Lease Agreement") by and between the Agency and the Company nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, the termination of the Lease Agreement. The Underlying Lease obligates the Agency, among other things, to pay rent of \$1.00 for the Term.

SECTION 4. AMENDMENT TO LEASE AGREEMENT.

(A) Section 1.1 of the Lease Agreement shall be amended to amend the definitions of "Basic Documents", "Company", "Mortgage", "Payment in Lieu of Tax Agreement", "PILOT Mortgage" and to add the definitions of "Lender", "Loan", "Loan Documents", "Mortgagee" and "Project Agreement", all as follows:

“Assignment and Assumption Agreement” means the Omnibus Assignment and Assumption Agreement dated March 21, 2022 (the “Assignment and Assumption Agreement”) by and between Colonie Senior Service Centers, Inc. and the Company, and consented to by the Agency.

“Basic Documents” means the Underlying Lease, the Lease Agreement, the Payment in Lieu of Tax Agreement, the PILOT Mortgage, the Project Agreement, the Mortgage, the Subordination Agreement, the Assignment and Assumption Agreement and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

“Company” means King Thiel Senior Community LLC, a New York limited liability company duly organized and existing under the laws of the State of New York, and its successors and assigns, to the extent permitted pursuant to Section 8.4 of the Lease Agreement.

“HUD Mortgage” means the Consolidated, Modified and Extended Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement (New York) (HUD-94000M) from the Company in favor of M&T Realty Capital Corporation dated March 21, 2022.

“Lender” shall mean a bank or other financial institution making a loan to the company, the proceeds of which will be used to finance the acquisition, construction, installation and equipping of the Project Facility, including any refinancing of the Project Facility.

“Loan” a loan made by a Lender to the Company to finance the construction, installation and equipping of the Project Facility, including any refinancing of the Project Facility.

“Loan Documents” means, collectively, a Mortgage, and any construction or permanent loan documents as may be reasonably requested by any Lender in connection with a Loan.

“Mortgage” means (i) one or more mortgages from the Agency and the Company to a Mortgagee, to be recorded in the Albany County Clerk’s office contemporaneously with, or subsequent to the filing and recording of a memorandum of Lease Agreement, securing financing for the Project Facility, executed in accordance with this Lease Agreement, and (ii) the HUD Mortgage.

“Mortgagee” means one or more Lenders providing financing relative to the costs of construction, installation and equipping of the Project Facility, including any refinancing of the Project Facility.

“Payment in Lieu of Tax Agreement” means the Amended and Restated Payment in Lieu of Taxes Agreement dated as of March 1, 2022 between the Agency and the Company, as amended or supplemented from time to time.

“PILOT Mortgage” means the Amended and Restated PILOT Mortgage dated as of March 1, 2022 from the Company to the Agency to secure the Company’s obligations under the Payment in Lieu of Tax Agreement, as such mortgage may be amended from time to time.

“Project Agreement” means the project agreement, dated as of March 1, 2022 by and between the Company and the Agency, as amended from time to time.

“Subordination Agreement” means the subordination agreement with respect to the Underlying Lease and this Lease Agreement made as of the 21st day of March, 2022, by and among the Company, the Agency and the Lender, in connection with the HUD Mortgage.

(B) Section 2.2 of the Lease Agreement is hereby amended (i) to delete in their entirety paragraphs (A) and (B) and replace with the following paragraphs (A) and (B) and (ii) to add the following paragraph (I):

(A) The Company is a limited liability company duly organized and validly existing under the laws of the State, is qualified and authorized to do business in the State and all other jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into this Lease Agreement and the other Basic Documents to which the Company is a party and to carry out its obligations hereunder and thereunder. By proper action of its members, the Company has been duly authorized to execute, deliver and perform this Lease Agreement and the other Basic Documents to which the Company is a party.

(B) Neither the execution and delivery of this Lease Agreement or the other Basic Documents to which the Company is a party, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the provisions of this Lease Agreement or the other Basic Documents to which the Company is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Company’s articles of organization or operating agreement or any other restriction, order, judgment, agreement or instrument to which the Company is a party or by which the Company or any of its Property is bound, or constitute a default by the Company under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon any Property of the Company under the terms of any such instrument or agreement, other than the Permitted Encumbrances, (2) require consent (which has not been heretofore received) under any restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (3) require consent (which has not been heretofore obtained) under or conflict with or violate any existing law, rule, regulation judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

(I) The Company covenants that the Company shall determine whether the Project is a “covered project” pursuant to Section 224-a of Article 8 of the New York Labor Law and, if applicable, the Company shall comply with Section 224-a of Article 8 of the New York Labor Law; and the Company further covenants that the Company shall provide such evidence of the foregoing as requested by the Agency

(C) The following Section is hereby added to the Lease Agreement following Section 3.5 therein:

SECTION 3.6. PUBLIC AUTHORITIES LAW REPRESENTATIONS. The parties hereto hereby acknowledge and agree that the Project Facility and the interest therein to be conveyed by this Lease Agreement are not “Property” as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Project Facility and the interests therein are securing the financial obligations of the Company. The Project Facility and the interests therein secure the obligations of the Company to the Agency under the Payment in Lieu of Tax Agreement and this Lease Agreement, including the Company’s obligation to acquire, construct, equip and maintain the Project Facility on behalf of the Agency and the Company’s obligation to indemnify and hold harmless the Agency.

(D) Section 4.1 of the Lease Agreement is hereby amended (i) to delete Paragraph (E) in its entirety and replaced with the following Paragraph (E) and (ii) to add the following Paragraph (H):

(E) To the extent required by Applicable Law, the Company, on its own behalf or as agent of the Agency (as applicable), will cause (1) compliance with the requirements of Article 8 of the State Labor Law, and (2) any contractor, subcontractor and other person involved in the acquisition, construction and installation of the Project Facility to comply with Article 8 of the State Labor Law. The covenant in this subsection is not intended as a representation that Article 8 of the State Labor Law applies to the Project.

(H) In accordance with Section 224-a(8)(d) of Article 8 of the New York Labor Law, the Agency has identified that the “financial assistance” (within the meaning of Section 858 of the General Municipal Law) requested by the Company in the approximate amount of **\$4,788,156**, consisting of real property tax exemption benefits of approximately \$4,788,156 of the “Additional Financial Assistance” as approved by the Agency pursuant to a resolution of the Agency adopted July 19, 2021 (the remaining request for mortgage recording tax exemption having been rescinded by the Company), constitutes “public funds” within the meaning of Section 224-a(2)(b) of Article 8 of the New York Labor Law and such funds are not excluded under Section 224-a(3) of Article 8 of the New York Labor Law. The Agency hereby notifies the Company of the Company’s obligations under Section 224-a(8)(a) of Article 8 of the New York Labor Law. Notwithstanding anything herein to the contrary, the amount of real property tax exemption benefits comprising the financial assistance reflects the total estimated real property tax exemptions for the Project Facility (which constitute those taxes that would have been paid if the Project Facility were on the tax rolls and not subject to the straight-

lease documents) of approximately \$5,608,937 less the payments in lieu of taxes of \$820,781 to be made by the Company to the affected tax jurisdictions with respect to the Project Facility during the term of this Lease Agreement. The approximate amount of estimated real property tax exemptions are estimated based on an assumed assessed value of the Project Facility and assumed future tax rates of the affected tax jurisdictions. The actual amount of real property tax abatement benefit is subject to change over the term of this Lease Agreement depending on any changes to assessed value and/or tax rates of the affected taxing jurisdictions.

(E) Paragraph (B) of Section 5.2 of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

(B) Except as otherwise provided in Article X hereof, the leasehold estate created hereby shall terminate on the earlier to occur of (1) February 28, 2057 or (2) the date that this Lease Agreement shall terminate pursuant to Article X or Article XI hereof.

(F) Paragraph (A) of Section 6.4 of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

(A) **ADDITIONAL PROVISIONS RESPECTING INSURANCE.** (A) All insurance required by Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and satisfactory and having a Best rating satisfactory to the Agency. 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 name the Company as insured and the Agency as additional insured, as their interests may appear, and provide for at least thirty (30) days' written notice to the Company and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. The policy evidencing the insurance required by Section 6.3(C) hereof shall name the Agency as an additional insured on a primary and noncontributory basis with any coverage held by the Agency, if any. All insurance required hereunder shall be in form, content and coverage satisfactory to the Agency. Certificates and policies satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. The Company shall deliver to the Agency on or before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4 hereof. At least thirty (30) days prior to the expiration of any such policy, the Company shall furnish to the Agency evidence that the policy has been renewed or replaced, or is no longer required by this Lease Agreement.

(G) Section 8.2 of the Lease Agreement is hereby amended to add the following paragraphs (E) and (F):

(E) Notwithstanding anything contained in this Lease Agreement to the contrary, whenever the Company is obligated under this Lease Agreement to indemnify and hold harmless the Agency, its directors, members, officers, agents (except the Company), or employees, the Company shall be given prompt notice of any matter that arises requiring indemnification, but failure to give such notice shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section provided that such failure does not materially prejudice the Company in its ability to defend the Agency or materially impair the Company defense. The Company shall have the right to defend the Agency its directors, members, officers, agents (except the Company), and employees, and provided the Company promptly and continuously thereafter defends the Agency, its directors, members, officers, agents (except the Company), and employees, no other attorney's fees of the Agency its directors, members, officers, agents (except the Company), and employees shall be payable by the Company.

(F) Notwithstanding the provisions of subsection (E) hereof, the Agency retains the right to defend itself in any action or actions covered by the indemnities in this Lease Agreement, which in the reasonable opinion of the Agency, its directors, members, officers, agents (except the Company), or employees, independent counsel is necessary to protect the interests of the Agency due to the failure or inability of the Company to defend the Agency consistent with contemporary legal standards. In any such defense of itself, the Agency shall select its own counsel, and any and all reasonable out-of-pocket costs of such defense, including, without limitation, reasonable attorney and disbursement fees, court costs, and litigation expenses shall be paid by the Company.

(H) Section 8.5 of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

SECTION 8.5. AGREEMENT TO PROVIDE INFORMATION. The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Company, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation. Without limiting the foregoing, the Company further agrees whenever requested by the Agency to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, as amended from time to time, or any other reports required by the New York State Authorities Budget Office or the Office of the State Comptroller or any of the Basic Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

(I) The following Section 8.12 is hereby added to the Lease Agreement:

SECTION 8.12. MORTGAGE. The Agency and the Company agree to grant a mortgage in the Project Facility to the extent financed with the proceeds of a loan to the

lender of such loan (in which event the Lien thereby created shall be deemed a Permitted Encumbrance), if the mortgage is in a standard form and substance acceptable to the Agency in its sole and absolute discretion and pre-approved by the Agency (and the Agency agrees to not unreasonably withhold or delay its approval of such standard form mortgage) and if the mortgage contains the following provisions:

Section __. No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of the loan or any amount due and owing under the loan or the mortgage. The lender will not look to the Agency or any principal, member, director, officer or employee of the Agency with respect to the indebtedness evidenced by this mortgage or the loan documentation or any covenant, stipulation, promise, agreement or obligation contained herein or therein. In enforcing its rights and remedies under this mortgage or the loan documentation, the lender will look solely to the collateral covered by the security interest granted by this mortgage and/or the Company for the payment of the indebtedness secured by this mortgage or the loan documentation and for the performance of the provisions hereof or thereof. The lender will not seek a deficiency or other money judgment against the Agency or any principal, member, director, officer or employee of the Agency (except the Company) and will not institute any separate action against the Agency by reason of any default that may occur in the performance of any of the terms and conditions of this mortgage or the loan documentation. This agreement on the part of the lender shall not be construed in any way so as to effect or impair the lien of this mortgage or the lender's right to foreclose or collect hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the lender in any foreclosure or collection proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants, stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Company) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent (except the Company) of the Agency or any natural person executing this mortgage on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York or the Town of Colonie, New York and neither the State of New York nor the Town of Colonie, New York shall be liable on any covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Agency.

No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first

have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

Section _____. Hold Harmless Provisions. (a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents (except the Company) and employees 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, directly or indirectly, any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the use thereof or under this mortgage or any of the loan documentation, or (ii) liability arising from or expense incurred by the Agency's acquisition, installation, owning, leasing or financing of the Project Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein or under any of the loan documentation and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of the mortgage (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees.

The foregoing indemnities shall apply irrespective of the breach of a statutory obligation on the part of the Agency, or any of its members, directors, officers, agents, or employees or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this mortgage, the obligations of the Company pursuant to this Section ___ shall remain in full force and effect after the satisfaction of this mortgage until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents (except the Company) and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its members, directors, officers, agents (except the Company) or employees by any employee or contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit act.

(d) Notwithstanding anything contained in this mortgage to the contrary, whenever the Company is obligated under this mortgage to indemnify and hold harmless the Agency, its directors, members, officers, agents (except the Company), or employees, the Company shall be given prompt notice of any matter that arises requiring indemnification, but failure to give such notice shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section provided that such failure does not materially prejudice the Company in its ability to defend the Agency or materially impair the Company's defense. The Company shall have the right to defend the Agency, its directors, members, officers, agents (except the Company), and employees, and provided the Company promptly and continuously thereafter defends the Agency, its directors, members, officers, agents (except the Company), and employees, no other attorneys' fees of the Agency, its directors, members, officers, agents (except the Company), and employees shall be payable by the Company.

(e) Notwithstanding the provisions of subsection (d) hereof, the Agency retains the right to defend itself in any action or actions covered by the indemnities in this mortgage, which in the reasonable opinion of the Agency, its directors, members, officers, agents (except the Company), or employees, independent counsel is necessary to protect the interests of the Agency due to the failure or inability of the Company to defend the Agency consistent with contemporary legal standards. In any such defense of itself, the Agency shall select its own counsel, and any and all reasonable out-of-pocket costs of such defense, including, without limitation, attorney and disbursement fees, court costs, and litigation expenses shall be paid by the Company.

Section _____. Termination of Lease Agreement. Upon the termination of the Lease Agreement for any reason whatsoever, and at the sole cost and expense of the Company, the lender shall prepare, execute and deliver to the Agency and the Company, and the Agency and the Company shall execute, any documents necessary to amend this mortgage to remove the Agency as a party hereto.

(J) The following Section 8.13 is hereby added to the Lease Agreement:

SECTION 8.13. FINANCING AND REFINANCING OF THE PROJECT FACILITY. Over the term of this Lease Agreement, the Agency, with prior approval of the Agency, agrees to reasonably cooperate with the Company in connection with any refinancing of the indebtedness encumbering the Project Facility. In connection with any refinancing by the Company of such indebtedness, the Agency will execute and deliver all such documents and/or instruments reasonably required by the Company's lender in connection with such refinancing, provided that such documents or instruments are those to which the Agency is typically a party; and further provided, that such documents or instruments include the Agency's standard non-recourse/special obligation language that is contained in Section 8.12, and further subject to the approval of the Agency and the Agency's legal counsel as to form and content of the document. In all cases any mortgage executed in accordance with this Section 8.13 shall be subordinate to the PILOT Mortgage. In all cases the Company shall pay any reasonable out-of-pocket expenses and fees of the Agency in connection with any refinancing of the Loan including, without limitation, any Agency administrative fee and any reasonable attorney's fees.

(K) Article XIII of the Lease Agreement is hereby deleted in its entirety .

SECTION 5. AMENDMENT OF MEMORANDUM OF LEASE AGREEMENT. The text in the third paragraph of the Memorandum of Lease Agreement is hereby deleted in its entirety and replaced with the following:

The Lease Agreement provides for the sublease (with an obligation to purchase) of the Project Facility by the Agency to the Company for a term commencing on the date of execution delivery of the Lease Agreement and terminating on the earlier to occur of (A)

February, 28, 2057, or (B) the date that the Lease Agreement shall be terminated pursuant to Article X thereof (entitled “Events of Default and Remedies”) or Article XI thereof (entitled “Options and Obligation to Purchase”).

SECTION 6. REPRESENTATIONS BY COMPANY. (A) The Company represents that (1) the Company has the legal authority to enter into this Omnibus Amendment, and (2) the Company has authorized the execution, delivery and performance of this Omnibus Amendment.

(B) The Company further represents that neither the execution and delivery of this Omnibus Amendment, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the provisions of this Omnibus Amendment requires the approval of any governmental authority or will conflict with or result in a breach of any of the terms, conditions or provisions of or 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 whatsoever upon any of the properties of the Company under the terms of any such instrument or agreement.

(C) No Event of Default specified in any of the Basic Documents, as amended to the date hereof, has occurred and no event which with notice or lapse of time or both would become such an Event of Default has occurred and is continuing.

(D) Each of the representations of the Company set forth in each of the Basic Documents, as amended to the date hereof, is true and correct as of the date hereof.

SECTION 7. PROVISIONS OF THIS OMNIBUS AMENDMENT CONSTRUED WITH BASIC DOCUMENTS. All of the covenants, agreements and provisions of this Omnibus Amendment shall be deemed to be and construed as part of the applicable Basic Documents and vice versa to the same extent as if fully set forth verbatim therein and herein. In the event of any variation or inconsistency between any covenant, agreement or provision contained in this Omnibus Amendment and any covenant, agreement or provision contained in the applicable Basic Documents, the covenant, agreement or provision contained herein shall govern.

SECTION 8. BASIC DOCUMENTS AS AMENDED TO REMAIN IN EFFECT. Except as amended by this Omnibus Amendment, each of the Basic Documents shall remain in full force and effect and the terms and conditions thereof are hereby confirmed.


SECTION 9. CAPITALIZED TERMS. Capitalized terms used herein but not otherwise defined herein shall have the meaning set forth in the Lease Agreement.

SECTION 10. EXECUTION OF COUNTERPARTS. This Omnibus Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company and the Agency have caused this Omnibus Amendment to Basic Documents to be executed in their respective names by their duly authorized representatives, all as of the date first above written.

TOWN OF COLONIE INDUSTRIAL
DEVELOPMENT AGENCY

BY: 
John Kearney
Chairman

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

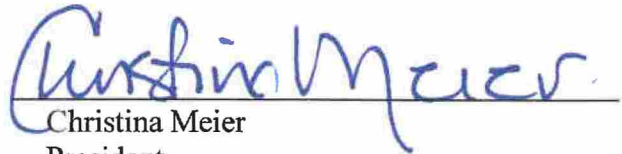
On the 14th day of March in the year 2022 before me, the undersigned, a notary public in and for the State of New York, personally appeared John Kearney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument 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

MELISSA C BENNETT
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02BE6266734
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES 8/06/2024

KING THIEL SENIOR COMMUNITY LLC

By: Colonie Senior Service Centers, Inc., a New York not-for-profit corporation, its sole Member

By: 
Christina Meier
President

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

On the 14th day of March in the year 2022 before me, the undersigned, a notary public in and for the State of New York, personally appeared Christina Meier, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Connor Brown
Notary Public, State of New York
No. 01BR6369488
Qualified in Otsego County
Commission Expires January 8, 2026

EXHIBIT A

DESCRIPTION OF THE LAND

All that parcel of land situate in the Town of Colonie, County of Albany, and State of New York being more particularly bounded and described as follows:

BEGINNING at a point in the southeasterly terminus of Elks Lane as described in Instrument No.R2017-9640; said point being located on the northerly division line of the lands now or formerly of Colonie Senior Service CTRS as described in Instrument No.R2016-10597 at its intersection with the lands now or formerly of Schuyler Meadows Golf Club to the southeast;

THENCE from said **POINT OF BEGINNING** along the division line between the lands now or formerly of Colonie Senior Service CTRS as described in Instrument No.R2016-10597 to the northwest, the herein described parcel, and the lands now or formerly of Schuyler Meadows Golf Club to the southeast, S.16°19'24"W., a distance of 907.22 feet to a point;

THENCE along the division line between the lands now or formerly of Schuyler Meadows Golf Club to the southwest and the herein described parcel to the northeast the following two (2) courses and distances:

1. N.77°23'00"W., a distance of 323.25 feet to a point;
2. N.59°23'00"W., a distance of 552.44 feet to a point;

THENCE along the division line between the lands now or formerly of Goodrich Heights as described in Map No.4748 filed in Drawer 166 in the Albany County Clerk's Office to the northwest and the herein described parcel to the southeast, N.40°32'00"E., a distance of 867.94 feet to a point;

THENCE along the division line between the lands now or formerly of King Thiel II Senior Community, LLC as described in Instrument No.R2022-3219, and Elks Lane as described in Instrument No.R2017-9640 to the north and the herein described parcel to the south, S.73°41'29"E., 501.98 feet to the **POINT OF BEGINNING**.

TOGETHER WITH an Ingress and Egress & Utility Easement described as follows:

BEGINNING at a point in the division line between the lands now or formerly of Colonie Senior Service CTRS as described in Instrument No.R2016-10597 to the south and the lands now or formerly King Thiel II Senior Community, LLC as described in Instrument No.R2022-3219 to the north; said **POINT OF BEGINNING** being the southwesterly most point of an Right of Way extension granted to the Town of Colonie as described in Instrument No.R2017-9640; said point being further located N.73°41'29"W., a distance of 176.94 feet from the Point of Beginning of No.17 Elks Lane, the lands now or formerly of Colonie Senior Service CTRS as described in Instrument No.R2016-10597;

THENCE from said **POINT OF BEGINNING** along the aforementioned division line, N.73°41'29"W., a distance of 78.49 feet to a point on a circular curve having a radius of 127.00 feet;

THENCE through the lands now or formerly of King Thiel II Senior Community, LLC as described in Instrument No.R2022-3219 the following two (2) courses and distances:

1. thence northeasterly along a curve to the right having a radius of 127.00 being subtended by an angle of 20°23'02" and creating an arc distance of 45.18 feet;
2. S.85°02'41"E. a distance of 32.99 feet to a point in the westerly Right-of-Way terminus of Elks Lane as described in Instrument No.R2017-9640;

THENCE along the westerly Right-of-Way of Elks Lane terminus, S.05°36'37"W., a distance of 23.42 feet to the **POINT OF BEGINNING**.