

#12C

## DEVELOPER'S AGREEMENT

**THIS DEVELOPER'S AGREEMENT** (this "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2025, by and between the **TOWN OF NEWBURGH**, a municipal corporation of the State of New York, with principal offices located at 1496 Route 300, Newburgh, New York, 12550 (hereinafter the "Town"), and **YM & YH Developers, LLC**, New York limited liability company having an address at 1156 59<sup>th</sup> Street, Brooklyn, New York 11219 (hereinafter "YM&YH").

### WITNESSETH:

**WHEREAS**, YM&YH is the fee owner of certain real property located along New York State Route 300 in the Town of Newburgh, Orange County, New York, consisting of approximately 35 acres, presently designated as Town of Newburgh Tax ID No. 34-2-45, and acquired by YM&YH by deed from Farrell Building Company, Inc., dated February 14, 2022, and recorded in the Orange County Clerk's office on March 11, 2022, in Deed Book 15178 at Page 492, as Instrument No. 20220018717 (the "Site") and more particularly described in Schedule "A" hereto; and

**WHEREAS**, on November 18, 2021, Farrell Building Company (the "Prior Developer") previously received final site plan approvals from the Town Planning Board (the "Planning Board") to construct a 290,000 square foot warehouse distribution facility (the "2021 Approval").

**WHEREAS**, on July 6, 2023, YM&YH received amended site plan approval from the Planning Board, amending the 2021 Approval, including but not limited to the following changes: reducing the square footage of the building to 262,080 square feet, modifying the parking lot, stormwater design, location of the private watermain extension and the septic system (the "2023 Approval") (the 2021 Approval and the 2023 Approval will herein collectively be known as the "Prior Approvals"); and

**WHEREAS**, YM&YH has received final amended site plan approval, amending the Prior Approvals, from the Planning Board by resolution dated December 19, 2024 and filed with the Town Clerk on January 22, 2025 (the "Final Approval Resolution"), allowing it to develop on the Site a 262,080 square foot distribution center, with associated off-street car and truck parking and loading facilities, and related site work, including, among other things, lighting, signage, landscaping, utilities, stormwater management facilities and a wastewater treatment plant with surface discharge, known as the "Farrell Industrial Park" (the "Project"); and

**WHEREAS**, in addition to final amended site plan approval, YM&YH has also received the following permits and approvals from the Town, among others:

- (1) Architectural Review Board Approval from the Planning Board by resolution dated December 20, 2024; and
- (2) Clearing and Grading Permit No. 2023-009 dated January 16, 2025 (the "Clearing and Grading Permit").

**WHEREAS**, YM&YH now desires to enter into this Agreement, which is consistent with the specifics of the approved Project; and

**WHEREAS**, the Final Approval and Clearing and Grading Permit shall serve as the outer limit of all of the activities and uses that can be carried out on the Site, and in the event other activities or uses, other than those contemplated by the Final Approval Resolution and Clearing and Grading Permit, are proposed in the future at the Site, then YM&YH, or its successors or assigns, shall be required to apply for an amended site plan approval from the Planning Board; and

**WHEREAS**, prior to adopting its Final Approval Resolution for the Project, the Planning Board, on December 19, 2024, in its capacity as lead agency under the State Environmental Quality Review Act, Article 8 of the NYS Environmental Conservation Law and its implementing regulations as Part 617 of the New York State Code of Rules and Regulations (collectively "SEQRA") reaffirmed the Negative Declaration, and Determination of Consistency from the Prior Approvals dated October 20, 2021, (the "Negative Declaration"), which was also reaffirmed as part of the 2023 Approval. YM&YH agreed to incorporate all of the mitigation measures for the Project that were previously required under the Prior Approvals. The Negative Declaration incorporates the prior SEQRA documents and determinations, as set forth therein, by reference in comparing the potential adverse impacts evaluated as part of the Prior Approvals with the Project and, among other things, states that YM&YH will contribute its fair share of the cost of improvement of the intersections at (a) NYS Route 52 and NYS Route 300 and (b) NYS Route 300 and Gardnertown Road, in agreement with the Town Board (the "Traffic Improvement Contribution"); and

**WHEREAS**, YM&YH will undertake to complete all such improvements pursuant to the Final Approval Resolution and this Agreement; and

**WHEREAS**, in order to ensure that the ongoing operational conditions of the Planning Board's Final Approval Resolution are fully and properly complied with, YM&YH acknowledges that the Town requires that one entity shall be responsible and accountable to the Town for management and operation of the Project in accordance with the terms and conditions of the Final Approval Resolution notwithstanding the leasing of the Project to one or more tenants; and

**WHEREAS**, YM&YH desires to express by its execution of this Agreement its acceptance of the conditions, safeguards, and limitations under which the Site work and installation of improvements for the Project will proceed, subject to inspection by the Town and further subject to the terms and provisions of this Agreement; and

**WHEREAS**, YM&YH further desires to express by this Agreement its willingness to perform all of the mitigation measures set forth in the Negative Declaration and the conditions contained within the Final Approval Resolution and Clearing and Grading Permit; and

**NOW, THEREFORE**, in consideration of the approvals granted to YM&YH, and for the purpose of defining and specifying the obligations of YM&YH and to provide for the performance of said obligations and for enforcement of those obligations by the Town, the Town and YM&YH hereby agree as follows:

1. Responsible Entity. Until such time as there is a contrary agreement or designation, YM&YH Developers, LLC shall be the entity responsible and accountable to the Town for management and operation of the Project and its construction.

2. Outside Agency Approvals. YM&YH shall obtain all outside agency approvals required for the Project, including, but not limited to, all permits and approvals identified during the SEQRA review process.

3. Additional Improvements to be Constructed by YM&YH. YM&YH will also undertake the construction and completion of all significant improvements lawfully required by any governmental agency, board, department, bureau, or other governmental entity having jurisdiction over the improvements prior to the full completion of the Project, including any off-Site improvements identified herein.

4. Traffic Improvement Contribution; Obligations in Accordance with Project Findings.

(a) The intersections of (a) NYS Route 52 and NYS Route 300 and (b) NYS Route 300 and Gardnertown Road have been identified as existing constrained intersections during the SEQRA review process, which this Project will increase. In order to assist the Town to defray the costs to improve said intersections, YM&YH agrees to contribute an amount of Two Hundred Thousand and No/100 Dollars (\$200,000.00) toward the design of plans for the needed intersection improvements (to be conducted by the Town Engineer) and the costs to construct any such improvements to said intersections, which such amount shall be paid by YM&YH to the Town prior to issuance of the building permit for the Project.

(b) YM&YH shall coordinate with all jurisdictional emergency services for the provision of keys for the emergency access gates shown on the Stamped Plan.

5. Notification of Commencement of Work. At least ten (10) days prior to the commencement of construction requiring a building permit, YM&YH shall notify the Town Engineer of the commencement in writing. The notice shall specify the name, address and telephone number of the contractor and contractor's representative, the proposed date of start of construction, and the estimated date of completion of construction.

6. Changes from Final Plans. In the event it becomes necessary to make any field change from the final Project Plans in order to secure the proper function of any items specified, or otherwise, no such change shall be made or attempted until after YM&YH obtains approval in writing by the Town Engineer or his Designee. The burden of applying for and obtaining such approval and of obtaining all other associated approvals, permits and consents shall rest solely upon YM&YH. If during the course of development of the Site, field conditions or sound engineering practices indicate that the improvements shown or described during the Planning Board approval proceedings are inadequate to service the drainage requirements, or are inadequate to appropriately address subsurface water conditions affecting the Site, or are inadequate to protect adjacent properties from surface or subsurface water drainage problems, YM&YH agrees to take whatever remedial action to solve such drainage problems as may be necessary. Such remedial action shall be done in accordance with sound engineering practices, shall be done in accordance with engineering plans previously furnished to the Town Engineer or inspector retained by the

Town for this purpose (a "Designee"), and shall be subject to the inspection and approval of the Town Engineer or its Designee. The decision as to the necessity for such action shall lie within the sole discretion of the Town Engineer or its Designee, subject, however to an appeal to the Town Board. As built drawings required to be submitted to the Town pursuant to the Town's Municipal Code shall accurately depict all field changes. YM&YH shall make reasonable attempts to obtain all of the necessary agreements or easements from adjoining property owners or other property owners, as the case may be, in order to perform the required remedial action, or in the event of the inability to procure such agreements or easements relating to the other lands, to reimburse the Town for all awards, costs, expenses and reasonable legal and engineering fees incurred in such eminent domain proceedings as the Town may undertake to obtain such agreements or easements.

7. Notice to Town Engineer of Changes. No utility or any part of, appurtenance thereof, including basins, buffers, valve boxes, curb boxes, hydrants, swales and drains which are a part of the Project shall be materially raised, lowered or otherwise changed, altered or relocated except after YM&YH has given to the Town Engineer or his Designee notice of such changes, alterations and relocation, at least 48 hours before the work is scheduled to be performed and except upon attendance and supervision by a person or official designated by the Town for the inspection of the performance of such work. YM&YH agrees that in the performance of such work, it will comply with all additional orders made or issued by the Town Engineer.

8. Inspection of Private Site Improvements and Site Work. YM&YH agrees that certain private improvements and temporary measures installed pursuant to the SWPPP at the Site may be inspected at all times during construction for compliance with approved plans and applicable specifications, codes, rules and regulations by the Town Engineer, a Town consulting engineer, landscape architect, building inspector or other designee retained by the Town (collectively such parties retained by the Town other than employees of the Town are the "Town's Consulting Inspectors"). Such private improvements shall include the following: Landscaping; the Stormwater Management Measures, including but not limited to any culverts, catch basins, detention and retention basis and compliance with the SWPPP, and other erosion and sediment control measures; driveways, parking areas and sidewalks and appurtenant lighting fixtures and curbing; water lines; Clearing and Grading; Tree Protection; the wastewater treatment plant; and connecting lines (collectively, the "Private Improvements"). YM&YH shall reimburse the Town for the costs of such inspections in accordance with Section 20 hereof. YM&YH covenants to meet as reasonably requested with the Town Engineer, the On-Site Inspector and/or Town Consulting Inspectors (collectively, the "Town Inspectors") during construction in order to address any concerns arising from YM&YH's construction activities. Building inspection shall be performed by the Town's Code Compliance Department.

9. Certificate of Completion. Upon completion of construction of the Private Improvements which are the subject of this Agreement YM&YH shall obtain and cause to be filed in the Office of the Town Clerk, a certification of completion made and signed by the Town Engineer, certifying that all work required to be performed under this Agreement has been fully performed in accordance with the terms and conditions of this Agreement.

10. No Waiver. No waiver by the Town of any default by YM&YH in the performance of its

obligations shall operate as a waiver of any other default or the same default on a future occasion.

11. Assignment and Assumption. YM&YH shall have the right to sell, assign or transfer this Agreement to any private person, firm or corporation acquiring YM&YH's interest in the Site. YM&YH shall provide the Town at least ten (10) days written notice in advance of such action. Express written assumption by such purchaser, assignee or transferee of the obligations and other terms and conditions of this Agreement in form acceptable to the Attorney for the Town shall relieve YM&YH of the obligations under this Agreement, provided however that nothing herein shall be deemed to relieve YM&YH of its secured performance and maintenance obligations hereunder until substitute Performance Security and maintenance security satisfactory to the Attorney for the Town is delivered to the Town.

12. Indemnification. YM&YH shall indemnify the Town and hold it harmless against all liabilities, claims and demands for personal injury or property damage arising out of or caused by any act or omission of YM&YH, its employees or agents arising on or about the Site at any time until completion and acceptance of the work and installation. The Town shall indemnify YM&YH and hold it harmless against all liabilities, claims and demands for personal injury or property damage arising out of or caused by any act or omissions of Town, its employees or agents arising out of or related to the Town's obligations under this Agreement.

13. Notices. Every notice, demand, consent, request, approval or other document or instrument ("Notice") required or permitted to be served upon any of the parties hereto shall be in writing and shall be deemed to have been duly served, if personally delivered or if mailed on the date of mailing (it being agreed, however, that the time period in which a response must be given to any such notice shall commence to run on the date on which the addressee thereof has received or has refused to receive the same). Mailing shall be by registered or certified United States Mail, postage prepaid, return receipt requested, addressed to the respective parties at the addresses state below or such other address for which the parties may subsequently give notice from time to time:

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|-----------------|--|
| a. To the Town: | Town of Newburgh<br>Attn: Supervisor<br>1496 Route 300<br>Newburgh, New York 12550                       |
| with copy to:   | Rider, Weiner & Frankel, P.C.<br>Attn: Mark C. Taylor, Esq.<br>P.O. Box 2280<br>Newburgh, New York 12550 |
| b. To YM&YH:    | YM&YH Developers, LLC,<br>1156 59th Street<br>Brooklyn, New York 11219                                   |

with copy to: Whiteman Osterman & Hanna LLP  
Attn: David R. Everett, Esq.  
One Commerce Plaza  
Albany, New York 12260

14. Governing Law. This Agreement is in addition to and not in limitation of any other rights and remedies the Town may have by virtue of any other instrument, by law or otherwise. This Agreement is executed in and shall be construed in accordance with the laws of the State of New York.

15. Modifications. This agreement may only be modified by a writing executed by both parties.

16. Headings. The headings of the sections hereof are inserted for convenience only and are not intended to define or limit the provisions or intent of this Agreement.

17. Multiple Counterparts. This Agreement and its amendments may be executed in multiple counterparts, with each counterpart to be deemed an original, but all multiple copies together constituting one and the same instrument.

18. Severability. The invalidity or unenforceability of any provision(s) of this Agreement will not affect the validity or enforceability of any other provision(s).

19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

*[Remainder of Page Intentionally Left Blank; Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals the day and year first above written.

**TOWN OF NEWBURGH**

**By:** \_\_\_\_\_  
**Name:** Gilbert J. Piaquadio  
**Title:** Supervisor

**YM&YH Developers, LLC,**  
a New York limited liability company

**By:** \_\_\_\_\_  
**Name:**  
**Title**

[Acknowledgements Follow]

STATE OF NEW YORK     )  
  ) ss.  
COUNTY OF ORANGE     )

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2025, before me, the undersigned, personally appeared Supervisor Gilbert J. Piaquadio, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature (s) on the instrument, the individual (s), or the person upon behalf of which the individual (s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK     )  
  ) ss.  
COUNTY OF ORANGE     )

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2025, before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature (s) on the instrument, the individual (s), or the person upon behalf of which the individual (s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public



**SCHEDULE "A"**

**Property Description**