802772 Revised 4/14/16

# CHARITABLE DONATION AGREEMENT

This CHARITABLE DONATION AGREEMENT (this "Agreement") is made and entered into as of April __, 2016 (the "Effective Date"), by and between **ACI Senior Development Corp.** ("ACI") and the **County of Putnam** ("Recipient").

2016 APR 14 PM 2:23
LEGISLATURE
PUTNAM COUNTY
CARMEL, NY

## Background

A. ACI is a Delaware not-for-profit corporation exempt from taxation as a charitable organization under section 501(c)(3) of the Internal Revenue Code.

B. Recipient is a political subdivision of the State of New York.

C. Recipient desires to establish a senior citizen center (the "Center") in the Town of Philipstown in Putnam County, which will be operated by the County of Putnam Office for Senior Resources, to support the independence and social engagement of older adults in the surrounding area and to improve their health, general wellness and nutrition.

D. The Putnam County Legislature passed Resolution #__ on _____, 2016 which authorized the lease (the "Lease") by Recipient with Butterfield Realty LLC (the "Landlord") for the real property known as The Lahey Pavilion located at 1756 Route 9D, Cold Spring, New York (the "Premises") to house the Center.. A copy of the Lease is attached hereto as Exhibit A.

E. Landlord has agreed under the Lease to make the renovations to the Premises as set forth in Exhibit B attached hereto (the "Landlord Renovations").

F. ACI, in furtherance of its charitable goals, desires to contribute a partial renovation of the Premises, and Recipient desires to receive such renovation, pursuant to the terms and conditions of this Agreement.

THE PARTIES TO THIS AGREEMENT AGREE AS FOLLOWS:

1. Contributions by ACI.

1.1. ACI hereby agrees to contribute to the County the renovations of the Premises detailed in Exhibit C (the "ACI Renovations"). It is acknowledged that ACI will be hiring Mountainview Construction of Patterson, New York (Raymond Memmel, principal) as the construction manager for the ACI Renovations (the "CM").

1.2. To the extent that the total out of pocket expenses relating to this Agreement, including the ACI Renovations, insurance, legal and other professional costs, paid by ACI do not exceed Five Hundred Thousand Dollars ($500,000), ACI will donate the difference of $500,000 and such amount to the Recipient for the additional renovation and

furnishing of the Premises, including its build-out, technology features and built in furnishings.

2. Obligations of ACI.

2.1. The agreement between ACI and the CM for the ACI Renovations will include the following:

2.1.1. ACI shall require in its contract with CM, or otherwise in writing, for CM to: (i) keep in place during the renovation general liability insurance in the minimum amount of $1 million for each occurrence and $2 million in the aggregate. The general liability insurance policy maintained by CM will name ACI, the County and the Landlord as additional insured; and (ii) to the fullest extent provided by applicable law, to indemnify, defend and hold harmless ACI, the County, and the Landlord from any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of CM's performance of work and/or other services at the Premises.

2.1.2. ACI shall require all contractors and/or subcontractors performing ACI Renovations to: (i) keep in place during the renovation general liability insurance in the minimum amount of $1 million for each occurrence and $2 million in the aggregate. The general liability insurance policy maintained by said contractors and/or subcontractors will name ACI, the County and the Landlord as additional insured; and (ii) to the fullest extent provided by applicable law, to indemnify, defend and hold harmless ACI, the County, and the Landlord from any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of CM's performance of work and/or other services at the Premises.

2.1.3. The CM will use commercially reasonable efforts to use contractors and subcontractors from Putnam County and to employ trade persons residing in Philipstown and surrounding areas within Putnam County.

2.2. ACI shall be required to cooperate with County in a commercially reasonable manner for benefit of seniors.

2.3. ACI shall use commercially reasonable efforts to file for permits for the renovation of the Premises within fifteen (15) days of receiving the Final Plans (as such term is defined below).

2.4. Subject to receipt of the Final Plans (as that term in defined below) by June 30, 2016, ACI shall use commercially reasonable efforts to have the CM commence the

ACI Renovations by November 1, 2016. Subject to the Landlord completing its renovations in a timely manner and to Sections 6.2 and 11 below, the ACI Renovations shall be completed within six months from the commencement of same.

2.5. ACI shall not have any obligations to the County except as specifically set forth in this Agreement, including any responsibility for the operation of the Center.

2.6. If any mechanic's liens are filed against the Premises in connection with the ACI Renovations, ACI hall have no liability for same but will use commercially reasonable efforts to cause same to be cancelled and discharged by the CM, contractor or subcontractor within fifteen (15) days after notice by Landlord or County.

2.7. ACI shall refrain from taking any action(s) which causes the County to be in default of the Lease.

3. Architectural Plans.

3.1. The County, at its sole cost and expense has prepared initial architectural plans for the Premises.

3.2. The County and ACI have agreed on a final form of the architectural plans for the Premises.

3.3. The County will, at its sole cost and expense, prepare final construction drawings for the Premises in a manner and detail which shall be consistent with RFP # 2-2016 issued by the County on March 25, 2016 (or any subsequent RFP which may be necessary by the County) and which will permit the Landlord or ACI to obtain permits for the ACI Renovations and for the CM to supply to subcontractors that intend to bid on the project (the "Final Plans"). The County will consult with ACI on the hiring of an architect to prepare the Final Plans.

3.4. The County will deliver the Final Plans to ACI by June 30, 2016, such date being time of the essence.

3.5. Any changes to the Final Plans may be made only upon the mutual written consent of ACI and the County.

4. Covenants by County. The County hereby Covenants as follows:

4.1. The County will complete renovation and furnishing of the Premises in accordance with the Final Plans plan in a commercially reasonable manner.

4.2. The full 6,000 square feet of the Premises will be used for senior center program services or to directly support the services provided at the Center, including program spaces, kitchen, bathrooms, etc. For the avoidance of doubt, administrative offices will be limited in number and size to the minimum amount required

for the effective operation for the Center as shall reasonably be determined by the County and the Center will not be used as general administrative offices for the Putnam County Office of Senior Resources.

4.3. The Center shall be named the "The Roger Ailes Senior Center." A sign to that effect will be placed in the lobby of the Center or other mutually agreed location at the Center in a size, type and format mutually acceptable to ACI and the County.

5. Survival of Covenants and Indemnification.

5.1. The covenants of the County in Section 4 above shall survive for fifteen (15) years from the effective date of the Lease.

5.2. The County will indemnify and hold harmless ACI from and against any costs or expenses (including reasonable attorneys' and disbursements and reasonable out-of-pocket expenses) incurred by ACI in connection with the enforcement of the County's covenants hereunder.

6. Conditions to Performance by ACI.

6.1. Subject to ACI continuing to act in good faith, the obligations of ACI under Section 1 above are conditioned upon the following:

6.1.1. The Lease is executed by the County and the Landlord.

6.1.2. The County delivering the Final Plans to ACI by June 30, 2016.

6.1.3. The Landlord substantially completing the Landlord Renovations.

6.1.4. The Landlord approving the Final Plans to the extent required under the Lease.

6.1.5. The proper authority issuing permits for the renovation of the Center pursuant to the Final Plans.

6.1.6. The County remaining in compliance with the covenants set forth in Section 4 above.

6.2. ACI's obligations pursuant to Section 1.1 above shall not include additional obligations incurred to address a material unknown factor with respect to the Premises, including environmental hazards and structural defects.

7. No Agency or Attribution. The parties acknowledge that (i) ACI is not an agent of CM; (ii) CM is not an agent of ACI; and (iii) ACI will not control the means and methods of the construction at the Premises and the subcontractors engaged for such

construction. The conduct of the CM or its subcontractors may not be attributed to ACI and ACI shall have no obligations to the County for any acts or negligence of CM or it subcontractors.

8. Limitation of Liability. Except with regards to ACI's failure to comply with its obligations under Section 1 above or fraudulent acts by ACI, the ACI Renovations shall be delivered as is without any warranty and ACI shall have no obligations to the County with respect to the ACI Renovations or the Center, including with respect to construction defects and claims by subcontractors for nonpayment. However, ACI shall remain available to use commercially reasonable efforts to work with the CM and any contractors and subcontractors to resolve any issues with the ACI Renovations for which it receives written notice within six (6) months of substantial completion of the ACI Renovations.

9. Indemnification for Third Party Claims. The County shall indemnify, defend and save harmless ACI and its directors, officers, employees and agents from and against costs, expenses and liabilities incurred in or in connection with bodily injury and property damage claims arising from the County's negligent acts and/or omissions under this Agreement.

10. Equitable Relief. Each party acknowledges that any remedy at law for any breach of any of the obligations contained in this Agreement may be inadequate. Accordingly, each party shall be entitled (without the necessity of showing any actual damage or posting a bond or furnishing other security) to specific performance or any other mode of injunctive and/or other equitable relief to enforce its rights under such section or any other relief a court might award, such rights to be cumulative with and not exclusive of any other remedy.

11. Force Majeure. Neither party shall have any liability for any failure to perform this Agreement if such failure arises out of unforeseeable causes beyond such party's control. Such unforeseeable causes may include acts of civil or military authority, war, terrorism, accidents, explosions, sabotage, riots, strikes, lockouts or other labor disturbances, or acts of God, including fires, floods, storms, earthquakes and natural disasters, or national emergency. If a party is unable to perform any provision of this Agreement for any of the reasons described in this Section 11, such provision shall be suspended for the duration, and to the extent of, such force majeure event. The party experiencing the force majeure event agrees to give the other party notice promptly following the occurrence of a force majeure event, and to use diligent efforts to re-commence performance as promptly as commercially practicable

12. Notice. Any notice or other communication given or made pursuant to this Agreement must be in writing and shall be delivered to the party to whom intended by personal delivery, by email, by nationally recognized courier (Federal Express, UPS, Express Mail, etc.) or by certified or registered mail, postage prepaid, and shall be deemed given when personally delivered or sent by email or two (2) business days after deposit with a courier or five (5) business days after mailing. The addresses to which any such

notice shall be sent shall be as follows (or at such other address as such party may designate by proper notice):

To ACI:

c/o Peter James Johnson
Leahey & Johnson, P.C.
120 Wall Street
New York, New York 10005

Email:
Pjohnsonjr@leaheyandjohnson.com

with a copy to:

Schwartz Sladkus Reich Greenberg
Atlas LLP
270 Madison Avenue, 9th Floor
New York, New York 10016
Attn: Eli D. Greenberg

Email:
egreenberg@ssrga.com

To Recipient:

MaryEllen Odell
Putnam County Executive
40 Gleneida Avenue
Carmel, New York 10512

Email:
MaryEllen.ODell@putnamcountyny.gov

with a copy to:

Jennifer S. Bumgarner
County Attorney
Putnam County Department of Law
48 Gleneida Avenue
Carmel, New York 10512

Email:

jennifer.bumgarner@putnamcountyny.gov

13. Miscellaneous.

13.1. Entire Agreement. This Agreement (including the exhibits hereto) represents the entire agreement between the parties regarding the subject matter hereof and supersedes in all respects any and all prior oral or written agreements or understandings between them pertaining to the subject matter of this Agreement. This Agreement cannot be modified or terminated, nor may any of its provisions be waived, except by a written instrument signed by the party against which enforcement is sought.

13.2. Governing Law. This Agreement has been made and entered into in the State of New York and shall be governed by and construed and enforced in accordance with the internal substantive laws of the State of New York. Any and all disputes and/or legal actions or proceedings arising out of this Agreement shall be venued in Putnam County, New York.

13.3. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective parties, their successors, assigns, heirs, legatees, executors, administrators and legal representatives, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party without the prior written consent of the other party.

13.4. Interpretation. Headings contained in this Agreement have been inserted for reference purposes only and shall not be considered part of this Agreement in construing this Agreement. This Agreement shall not be construed more strictly against one party than another merely by virtue of the fact that this Agreement, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that this Agreement is the result of arm's-length negotiations between the parties and all parties have contributed substantially and materially to the preparation of this Agreement.

13.5. Counterparts. This Agreement may be executed and delivered (including by facsimile transmission or by electronic mail with a .pdf scanned attachment) in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.6. No Third-Party Beneficiaries. This Agreement is not intended to, and does not, create any rights or benefits of any party other than the parties.

13.7. Relationship of the Parties. This Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between parties hereto. Neither party will have the power to bind the other party or to incur any obligations on its behalf, without the other party's prior written consent.

13.8. Terminology. Unless the context clearly indicates otherwise, as used in this Agreement (1) terms used in the masculine, feminine or the neuter include the others, (2) terms used in the singular or the plural include the other, (3) the terms "include," "includes" and "including" (or similar terms) are intended to convey non-exclusivity, and are to be deemed followed by "without limitation," "but not limited to" or words of similar import, and (4) the term "person" is intended to be interpreted broadly to include any natural person (an individual), any entity, including any corporation, partnership, limited liability company, investment company, business trust, cooperative, joint venture, estate, trust, association or organization, or any governmental or administrative body.

**IN WITNESS WHEREOF**, the parties have signed and thereby caused this Agreement to be duly executed effective as of the date written above.

| **ACI Senior Development Corp.** | **County of Putnam** |
|---|---|
| By: _____ | By: _____ |
| Roger Ailes, President | MaryEllen Odell, |
| | Putnam County Executive |

# EXHIBIT A

## LEASE

# EXHIBIT B

## LANDLORD RENOVATION OBLIGATIONS

The Landlord shall be obligated to renovate the Premises at Landlord's expense as summarized below and in accordance with the terms and conditions of the Lease Agreement attached as Exhibit "A":

1. Asbestos Assessment.
2. Front Entrance.
3. Renovation of demising wall and door.
4. Construction of outdoor patio.
5. Supply and install emergency doors as may be required by applicable codes.
6. Install 200 amp dedicated underground feeder line to 200 amp meter on the Premises.
7. Evaluate heating and air conditioning zones and how to efficiently service each zone.

# EXHIBIT C

## ACI RENOVATIONS

1. Install 16 new windows. (Windows to be supplied by others.)
2. Plumbing rough in PVC Drains and Pex water.
3. Install up to 20 plumbing fixtures (i.e., toilets, sinks, urinals). (Fixtures to be supplied by others.)
4. New flooring, tile, hardwood, linoleum, carpet.
5. Demo concrete for new plumbing and electric.
6. Demo old walls, bathrooms, ceiling, dumpsters.
7. Demonstration Kitchen.
8. Commercial kitchen. (Appliances, cabinets, fixtures and demonstration kitchen to be supplied by others).
9. Five new bathrooms.
10. New dropped ceiling and soffits.
11. Electrical rough-in and finish.
12. $7,000 fixture allowance.
13. Paint and stain.
14. New front entrance awning.
15. HVAC.
16. Soundproofing, insulation.
17. Install 15 interior doors and hardware. (Doors and hardware to be supplied by others.)
18. Carpentry, woodwork.
19. Sheetrock and taping, 5/8" firecode.
20. Framing new walls.