

TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

ITHACA ARTHAUS, LLC

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Property Address:

130 Cherry Street
City of Ithaca
Tompkins County, New York

Tax Map Number:

77.-4-3

Affected Tax Jurisdictions:

Tompkins County
City of Ithaca
Ithaca City School District

Dated as of December 1, 2019

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of December 1, 2019 (the "PILOT Agreement"), by and between the TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation duly existing under the laws of the State of New York, having offices at 401 East State Street, Suite 402B, Ithaca, New York 14850 (the "Agency"), and ITHACA ARTHAUS, LLC, a limited liability company duly formed and validly existing under the laws of the State of Missouri and qualified to do business under the laws of the State of New York, with offices at 305 West Commercial Street, Springfield, Missouri 65803 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 535 of the Laws of 1971 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York (the "State"); and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project"), consisting of: (i) the acquisition by the Agency of a leasehold interest in approximately .82 acres of land located at 130 Cherry Street, in the City of Ithaca, Tompkins County, New York (the "Land") and the existing improvements located thereon consisting principally of an existing approximately 4,800 square-foot building (the "Existing Improvements"); (ii) the construction on the Land of an approximately 97,500 square-foot building, consisting of a five-story building containing approximately 124-unit affordable housing units (which will be rented to residents earning between 30%-80% of Area Median Income), forty (40) of such units which will be targeted to at-risk youth, including formerly foster care or homeless young people ages 19-26 with supportive services on-site and consisting more fully (a) on the first floor, approximately 8,000 square feet of amenity space and including tenant support services, a community room, fitness room and an approximately 3,500 flexible exhibition/performance/workspace/gathering area for artists, and (b) on the second through fifth floors, approximately 124 studio, one-bedroom and two-bedroom units (the "Improvements"); and (iii) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other items of tangible personal property (the "Equipment"; and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, in order to induce the Company to acquire, construct, reconstruct, renovate and equip the Facility, the Agency is willing to take a leasehold interest in the Facility and lease said Facility back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, dated as of December 1, 2019 (the "Leaseback Agreement"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and

service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Tompkins County (the "County"), the City of Ithaca (the "City") and the Ithaca City School District (the "School District"; and, collectively with the County, and the City, the "Affected Tax Jurisdictions").

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:

Section 1 - Payment in Lieu of Ad Valorem Taxes:

Section 1.1 A. Subject to the completion and filing by the Agency by the taxable status date March 1, 2020 (the "Taxable Status Date") of New York State Form RP-412-a "Application For Real Property Tax Exemption" (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law (the "RPTL") and Section 874 of the Act, the Facility shall be exempt from Real Estate Taxes (as defined hereafter) commencing with the (i) the 2020-2021 School District tax year, and (ii) the 2021 County and City tax year. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility, including the Land, the Existing Improvements and the Improvements, by the County, the City and the School District. The Company shall provide to the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes.

B. Agreement to Make Payments. As long as the Facility is owned by or subleased to the Agency, the Company agrees to pay annually to the Affected Tax Jurisdictions as a payment in lieu of taxes, on or before on or before October 1 of each year for School District taxes and on or before January 1 of each year for County and City taxes (collectively, the "Payment Date"), commencing on October 1, 2020 and January 1, 2021, respectively, an amount equal to the Total Tax Payment, as defined on Schedule A attached hereto. The Company shall make all such Total Tax Payments in the amounts and on the dates specified above, whether or

not any such Total Tax Payment is billed by the Agency, the Affected Tax Jurisdictions, or any other party.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the Land is not on the tax rolls.

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder, *if any*, within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to an alternative allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total Tax Payments among the Affected Tax Jurisdictions, the Company shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County and City purposes, the tax rates used to determine the allocation of the Total Tax Payment shall be the tax rates relating to the calendar year which includes the Payment Date. For School District purposes, the tax rates used to determine the Total Tax Payment shall be the rate relating to the School District year which includes the Payment Date. In the event the Company pays the full amount of the Total Tax Payment due on or prior to the applicable Payment Date but, in good faith, incorrectly determines the allocation of the Total Tax Payments due to the Affected Tax Jurisdictions, the Company shall not be deemed in default hereunder unless and until the Company fails to correct such misallocation within thirty (30) days written notice from any or all of the Affected Tax Jurisdictions.

1.4 Valuation of Future Additions to the Facility. If there shall be a future addition to the Facility constructed or added in any manner after the date of this PILOT Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total Tax Payment. The Agency shall notify the Company of any proposed increase in the Total Tax Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Addition made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased Total Tax Payment until a different Total Tax Payment shall be established. If a lesser Total Tax Payment is determined in any proceeding or by subsequent agreement of the parties, the Total Tax Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding Total Tax Payment(s).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2020-2021 School District tax year through the 2051-2052 School District tax year, (ii) the 2021 County tax year through the 2052 County tax year, and (iii) the 2021 City tax

year through the 2052 City tax year. This PILOT Agreement shall expire on December 31, 2052; *provided, however*, the Company shall pay (i) the 2052-2053 School District tax bill, (ii) the 2053 County tax bill, and (iii) the 2053 City tax bill on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this PILOT Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility while this PILOT Agreement is in effect which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the RPTL. It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section 2 - Payment in Lieu of Mortgage Recording Tax. The Company agrees to pay on the date of execution and delivery by the Agency of any mortgage on the Facility, as a payment in lieu of mortgage recording tax, a total amount of three-quarters of one percent (0.75%) of the maximum amount secured by such mortgage, except to the extent such amount reflects repayment of prior indebtedness, of which three-fourths (3/4) of such payment shall be allocated to the County and one-fourth (1/4) of such payment shall be allocated to the City using the last tax rate utilized for the levy of taxes by the City.

Section 3 - Special District Charges, Special Assessments and other Charges. Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.

Section 4 - Transfer of Facility. In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section 1 herein, or this PILOT Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section 5 - Assessment Challenges.

5.1 The Company shall not have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall not be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall not be entitled to take any and all

appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

5.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement, as if and to the same extent as if the Company were the owner of the Facility.

5.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company and (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section 6 - Changes in Law. To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section 7 - Events of Default.

7.1 The following shall constitute "Events of Default" hereunder: (a) the failure by the Company to: (i) make the payments described in Section 1 within thirty (30) days of the Payment Date (the "Delinquency Date") or (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; (b) the occurrence and continuance of any events of default under the Leaseback Agreement after any applicable cure periods; and (c) the determination of the Agency to suspend, discontinue and/or recapture any financial assistance previously conferred to the Company by the Agency in accordance with the Agency's Project Recapture Policy in effect as of the date hereof. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity or under the Agency's Recapture Policy in effect as of the date hereof, the Agency and/or the Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the Act and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

7.2 If payments pursuant to Section 1 herein are not made by the Delinquency Date, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section 1 herein, if said payment is not received by the Delinquency Date, the Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the

amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, the Company shall pay, in addition to said payment, the greater of the applicable penalties and interest as determined hereunder or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

Section 8 - Assignment. No portion of any interest in this PILOT Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed; provided, however, that in the event the holder of any mortgage acquires the Project Facility by deed-in-lieu, foreclosure, or otherwise, this PILOT Agreement and the rights and obligations hereunder shall, at the option of such mortgagee, be assigned to it or its designee. Any such assignment shall be conditioned on the assumption of the obligations hereunder by such mortgagee or its designee.

Section 9 - Miscellaneous.

9.1 This PILOT 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.

9.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Tompkins County Industrial Development Agency
401 E. State Street, Suite 402B
Ithaca, New York 14850
Attn: Heather McDaniel, Administrative Director

With a Copy To: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Russell E. Gaenzle, Esq.

To the Company: Ithaca Arthaus, LLC
c/o Vecino Group New York, LLC
305 West Commercial Street
Springfield, Missouri 65803
Attn: Richard Manzardo

With a Copy To: Spencer Fane LLP
2144 East Republic Road, Suite B300
Springfield, Missouri 65804
Attn: Shawn Whitney, Esq.

With a Copy To: BF Ithaca Arthaus, LLC
c/o Boston Financial Investment Management, LP
101 Arch Street
Boston, Massachusetts 02110
Attn: Asset Management Department, Ithaca Arthaus

With a Copy To: Holland & Knight LLP
10 St. James Avenue, 11th Floor
Boston, Massachusetts 02116
Attn: Dayna Hutchins, Esq.

To the Lender: New York State Housing Finance Agency
641 Lexington Avenue, 4th Floor
New York, New York 10022
Attention: Senior Vice President, MultiFamily Finance, and
Attention: Counsel

With a Copy To: Citibank, N.A.
388 Greenwich Street
New York, New York 10013
Attn: General Counsel's Office
Re: Ithaca Arthaus Deal # 26058

-and-

Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019
Attn: Aviva Yakren, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

9.3 This PILOT 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 and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in the Tompkins County, New York.

9.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. No member of the Agency nor any person executing this PILOT Agreement on its behalf shall be liable personally under this PILOT Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent,

servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this PILOT Agreement.

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


**TOMPKINS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Heather McDaniel
Title: Administrative Director

ITHACA ARTHAUS, LLC,

By: Ithaca Arthaus Manager, LLC,
as its managing member

 By: Vecino Group New York, LLC,
as its sole member

By: 
Name: Richard Manzardo
Title: Authorized Representative

SCHEDULE A

to
PILOT Agreement dated as of December 1, 2019
by and between
Tompkins County Industrial Development Agency
and
Ithaca Arthaus, LLC

"Total Tax Payment" shall mean an amount equal to the following:

<u>PILOT Year</u>	<u>City and County Tax Year</u>	<u>School District Tax Year</u>	<u>Total Tax Payment</u>
Year 1	2021	2020-2021	An amount equal to full taxes based on the assessed value of the Facility as of the date of this PILOT Agreement
Year 2	2022	2021-2022	An amount equal to full taxes based on the assessed value of the Facility as of the date of this PILOT Agreement
Year 3	2023	2022-2023	\$107,296
Year 4	2024	2023-2024	\$108,369
Year 5	2025	2024-2025	\$109,453
Year 6	2026	2025-2026	\$110,547
Year 7	2027	2026-2027	\$111,653
Year 8	2028	2027-2028	\$112,769
Year 9	2029	2028-2029	\$113,897
Year 10	2030	2029-2030	\$115,036
Year 11	2031	2030-2031	\$116,186
Year 12	2032	2031-2032	\$117,348
Year 13	2033	2032-2033	\$118,522
Year 14	2034	2033-2034	\$119,707
Year 15	2035	2034-2035	\$120,904
Year 16	2036	2035-2036	\$122,113
Year 17	2037	2036-2037	\$123,334
Year 18	2038	2037-2038	\$124,567
Year 19	2039	2038-2039	\$125,813
Year 20	2040	2039-2040	\$127,071
Year 21	2041	2040-2041	\$128,342
Year 22	2042	2041-2042	\$129,625
Year 23	2043	2042-2043	\$130,922
Year 24	2044	2043-2044	\$132,231
Year 25	2045	2044-2045	\$133,553
Year 26	2046	2045-2046	\$134,889
Year 27	2047	2046-2047	\$136,238
Year 28	2048	2047-2048	\$137,600
Year 29	2049	2048-2049	\$138,976
Year 30	2050	2049-2050	\$140,366
Year 31	2051	2050-2051	\$141,769
Year 32	2052	2051-2052	\$143,187

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The Total Tax Payment includes taxation of the Land, the Existing Improvements and the Improvements. Upon expiration of this PILOT Agreement, the Land, the Existing Improvements, and the Improvements shall be subject to full taxation by the Affected Tax Jurisdictions.