

311 MAIN STREET HOLDINGS LLC

and

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

City of Utica Industrial Development Agency
2022 Real Estate Lease
(311 Main Street Holdings LLC Facility)

Oneida County, City of Utica, Utica City School District

Tax Account Nos.: 318.044-1-2

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of November 29, 2022, is by and between the **CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at One Kennedy Plaza, Utica, New York 13502 (the "Agency"), and **311 MAIN STREET HOLDINGS LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 400 Oriskany Street West, Utica, New York 13502 (the "Company").

W I T N E S S E T H:

WHEREAS, the Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law, Chapter 99 of the Consolidated Laws of New York, as amended, (the "Enabling Act"), and Chapter 710 of the Laws of 1981 of the State of New York, as amended, constituting Section 901 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of, among others, industrial facilities for the purpose of promoting, attracting and developing economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Company desires to undertake a project consisting of the partial demolition, construction, rehabilitation and renovation of a six-story, 35,000± square foot historic building formerly known as the Utica Children's Museum to provide 11,000± square feet of retail space on the first floor and basement (the "Restaurant Facility") and 24,000± square feet of market rate housing on floors 2 – 5, consisting of twenty loft apartments (the "Residential Facility"), together with all infrastructure and amenities to service the same (collectively, the "Improvements"), all situated on a .377± acre parcel of land located at 311 Main Street, City of Utica, Oneida County, New York (the "Land"); and acquisition and installation of machinery, furniture, fixtures, appliances and equipment in the Improvements (the "Equipment"), all for the purpose of filling a demonstrated need for housing identified in the Oneida County Vision 2020 Study and in furtherance of the City of Utica Master Plan (the Land, Improvements and Equipment is referred to collectively as the "Facility" and the partial demolition, construction, rehabilitation, renovation and equipping of the Facility is referred to as the "Project"); and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to accept a leasehold interest in the Facility pursuant to a Lease Agreement dated of even date herewith and lease the Facility back to the Company pursuant to the terms and conditions contained in a Leaseback Agreement dated of even date herewith; and

WHEREAS, the Company will sublease the Restaurant Facility to Tailor & the Cook Utica, LLC (the "Restaurant Sublessee") for its operation pursuant to a lease agreement dated November 29, 2022 (the "Restaurant Sublease"); and

WHEREAS, the Company will sublease the individual housing units comprising the Residential Facility to residential sublessees to be identified from time to time (each a

"Residential Sublessee," collectively the "Residential Sublessees" and together with the Restaurant Sublessee, the "Sublessees"); and

WHEREAS, Adirondack Bank (the "Bank") intends to finance a portion of the costs of the Facility by way of a loan to the Company in the maximum principal amount of \$5,664,000.00 to be secured by (a) a Mortgage and Security Agreement dated November 29, 2022 (the "Mortgage") from the Agency and the Company to the Bank and (b) an Assignment of Leases and Rents dated November 29, 2022 (the "Assignment") from the Agency and the Company to the Bank; and

WHEREAS, the Agency has agreed to accept a leasehold interest in the Facility in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Facility will be exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company commencing March 1, 2023, the taxable status date, (the "Exempt Taxes"), because the Agency has a leasehold interest in the Facility and the Facility is used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including the Enabling Act, provided, however, such exemption does not extend to special assessments or ad valorem levies; and

WHEREAS, the Company understands that it, as lessee of the Facility leased by the Agency, will, in fact, have Exempt Taxes to pay under the provisions of the Leaseback Agreement from the first date of the Exemption Term (as that date is determined by the parties and described herein) through the term of the Leaseback Agreement (the "Exemption Term"); and

WHEREAS, each year of the Exemption Term is more particularly set forth on Schedule B attached hereto (each year being referred to as an "Exemption Year"); and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provision for payments-in-lieu-of-taxes and such assessments by the Company to the City of Utica, or any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be, wholly or partially located, Oneida County, Utica City School District and appropriate special districts (hereinafter each a "Taxing Authority" and collectively the "Taxing Authorities") in which any part of the Facility is or is to be located; and

WHEREAS, all defined terms herein as indicated by the capitalization of the first letter thereof and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Leaseback Agreement.

NOW, THEREFORE, to provide for certain payments to the Taxing Authorities, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Company shall pay to each Taxing Authority:

(a) all taxes that are due with respect to the Facility prior to the Exemption Term, no later than the last day during which such payments may be made without penalty; and

(b) all special assessments and ad valorem taxes coming due and payable during the term of the Leaseback Agreement and the Leaseback Agreement for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty.

2. (a) The Company shall pay to each Taxing Authority as set forth on Schedule A attached hereto and made a part hereof an amount in lieu of the Exempt Taxes (the "PILOT Payments") during each Exemption Year as follows:

Exemption Year 1	No Exempt Taxes
Exemption Years 2 – 8	100% of Exempt Taxes on the assessed value on August 1, 2021 (the "Base Assessment")
Exemption Year 9	100% of Exempt Taxes on the Base Assessment plus 20% of Exempt Taxes on increase between Base Assessment and assessed value of the Facility upon completion of Project as determined by City of Utica Assessor (the "Final Assessment")
Exemption Year 10	100% of Exempt Taxes on the Base Assessment plus 40% of Exempt Taxes on increase between Base Assessment and Final Assessment
Exemption Year 11	100% of Exempt Taxes on the Base Assessment plus 60% of Exempt Taxes on increase between Base Assessment and Final Assessment
Exemption Year 12	100% of Exempt Taxes on the Base Assessment plus 80% of Exempt Taxes on increase between Base Assessment and Final Assessment
Exemption Year 13 and thereafter	100% of Exempt Taxes

(b) Anything herein to the contrary, notwithstanding, this Agreement shall terminate on the date on which the Leaseback Agreement shall terminate and the Agency shall terminate its leasehold interest in the Facility pursuant to the Leaseback Agreement.

(c) Anything herein to the contrary, notwithstanding, upon the failure of the Company in making any payment when due hereunder and upon failure to cure such default within thirty (30) days after receipt of notice as herein provided, shall constitute an Event of Default under Section 7.1(a)(vi) of the Leaseback Agreement, and the Agency may take any

one or all remedial steps afforded it in Section 7.2 of the Leaseback Agreement; provided, however, nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.

3. The Company will make PILOT Payments to each Taxing Authority hereunder for each Exemption Year by making the required payment to such Taxing Authority no later than the last day during which such Exempt Taxes could otherwise be made without penalty as if the Agency did not have a leasehold or other interest in the Facility. PILOT Payments that are delinquent under this Agreement shall be subject to a late penalty of five percent (5%) of the amount due which shall be paid by the Company to the affected Taxing Authority at the time the PILOT Payment is paid. For each month, or part thereof, that the PILOT Payment is delinquent beyond the first month, interest shall accrue to and be paid to the affected Taxing Authority on the total amount due plus a late payment penalty in the amount of one percent (1%) per month until the payment is made. Anything herein to the contrary, notwithstanding, upon the failure of the Company in making any payment (or causing any payment to be made) when due hereunder and upon failure to cure such default within thirty (30) days after receipt of notice as herein provided, the Agency shall have the right to terminate the Leaseback Agreement and this PILOT Agreement, and the Company shall henceforth pay one hundred (100%) percent of the Exempt Taxes, together with all costs of collection, including but not limited to reasonable attorneys' fees. Nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.

4. The PILOT Payments to be made by the Company pursuant to this Agreement are intended to be in lieu of all Exempt Taxes that would have to be paid on the Facility leased to the Company by the Leaseback Agreement if the Agency did not have a leasehold or other interest in the Facility.

5. If by reason of a change in the Constitution or laws of the State of New York, or an interpretation of the Constitution or the laws of the State of New York by the Court of Appeals (or such lower court from which the time to appeal has expired) of the State of New York, or for any other reason, the Company is required to pay any tax which the payments specified herein are intended to be in lieu of, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of such taxes and need only pay the difference. Furthermore, inasmuch as the PILOT Payments herein agreed to be made by the Company are intended to be in lieu of all Exempt Taxes, it is agreed that said payments shall not, as to any Exemption Year, be in an amount greater than would be payable for such year for such Exempt Taxes, in the aggregate, by a private corporation on account of its ownership of the Facility.

6. This Agreement shall be binding upon the successors and assigns of the parties.

7. It is the intent of the parties that the Company will have all the rights and remedies of a taxpayer with respect to any real property or other tax, service charge, special benefit, ad valorem levy, assessment or special assessment or service charge because of which, or in lieu of which, the Company is obligated to make a payment hereunder, as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility. It is the further intent of the parties that the Company will have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility with respect to any proposed assessment or change in assessment

concerning the property, or any portion thereof, whether through an assessor, board of assessment review, court of law, or otherwise and likewise will be entitled to protest before and be heard by such assessor, board of assessment review, court of law or otherwise and will 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 taxes that would have been payable but for the provisions hereof. In the event, however, that a court of competent jurisdiction shall enter an order or judgment determining or declaring that, by reason of the Agency's interest in the Facility, the Company does not have the right to bring a proceeding to review such assessment under the Real Property Tax Law or any other law, then the Company shall have the right to contest such assessment in the name and as the agent of the Agency, and the Agency agrees to cooperate with the Company in all respects in any such proceeding at the sole cost and expense of the Company. In any event, the Company agrees to notify the Agency in writing if the Company initiates any action with respect to any proposed assessment or change in assessment concerning the Facility, and shall provide the Agency with copies of all documents relating to a change in assessment concerning the Facility to allow the Agency to determine whether such change in assessment impacts the original intention of the parties under this Agreement. The Company hereby unconditionally and irrevocably waives its rights, if any, to apply for and/or receive the benefit of, any other real property tax exemption including, without limitation, any real property tax exemptions that may be available under Section 485-b and Section 485-e of the Real Property Tax Law for so long as the PILOT Agreement is in effect.

8. All amounts payable by the Company hereunder will be paid to the respective Taxing Authority and will be payable in such lawful money of the United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money.

9. (a) If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such term or provision will be deemed separate and independent and the remainder hereof will remain in full force and effect and will not be invalidated, impaired or otherwise affected by such holding or adjudication.

(b) This Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

(c) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given (i) when mailed by United States registered or certified mail, postage prepaid, return receipt requested or (ii) when delivered by a commercial overnight courier that guarantees next day delivery and provides a receipt, to the Agency, the Company or the Bank, as the case may be, addressed as follows:

If to the Agency:

City of Utica Industrial Development Agency
One Kennedy Plaza
Utica, New York 13502
Attn.: Executive Director

With a Copy to:

Bond, Schoeneck & King, PLLC
501 Main Street
Utica NY 13501
Attn.: Linda E. Romano, Esq.

If to the Company:

311 Main Street Holdings LLC
400 Oriskany Street West
Utica, New York 13502
Attn.: Robert Esche, Manager

With a Copy to:

Kowalczyk & Deery, LLP
185 Genesee Street, 12th Floor
Utica, New York 13501
Attn.: Andrew S. Kowalczyk III, Esq.

If to the Bank:

Adirondack Bank
185 Genesee Street
Utica, New York 13501
Attn.: Commercial Lending Department

With a Copy to:

Mazzotta & Vagianelis, P.C.
9 Washington Square
Albany, New York 12205
Attn.: John N. Vagianelis, Esq.

provided, that the Agency, the Bank or the Company may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this **PILOT Agreement** as of the date first above written.

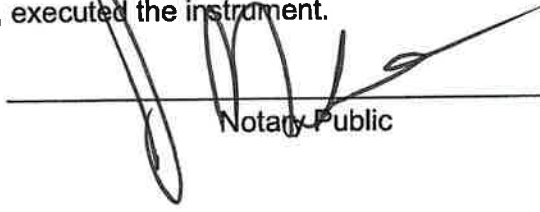
311 MAIN STREET HOLDINGS LLC

By: 
Robert Esche
Authorized Representative

STATE OF NEW YORK)
 : ss.:
COUNTY OF ONEIDA)

JEFFREY M. STONE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01ST6367769
Qualified in Herkimer County
My Commission Expires 11-27-2025

On the 8th day of November 2022 before me, the undersigned a notary public in and for said state, personally appeared **Robert Esche**, 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

SECOND SIGNATURE PAGE TO PILOT AGREEMENT
(311 MAIN STREET HOLDINGS LLC FACILITY)

CITY OF UTICA INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Vincent J. Gilroy, Jr.
Chairman

STATE OF NEW YORK)
 : ss.:
COUNTY OF ONEIDA)

On the 2nd day of November 2022 before me, the undersigned a notary public in and for said state, personally appeared **Vincent J. Gilroy, Jr.**, 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



SCHEDULE A

COUNTY OF ONEIDA
Receiver of Taxes
800 Park Avenue
Utica, New York 13501

CITY OF UTICA
Receiver of Taxes
City Hall
One Kennedy Plaza
Utica, New York 13502
Attn.: City Treasurer

UTICA CITY SCHOOL DISTRICT
Receiver of Taxes
929 York Street
Utica, New York 13502

SCHEDULE B

Exemption Year	Tax Status Date	City Tax Year	School Tax Year	County Tax Year
1	3/1/2023	04/01/2023 - 03/31/2024	07/01/2023 - 06/30/2024	01/01/2024 - 12/31/2024
2	3/1/2024	04/01/2024 - 03/31/2025	07/01/2024 - 06/30/2025	01/01/2025 - 12/31/2025
3	3/1/2025	04/01/2025 - 03/31/2026	07/01/2025 - 06/30/2026	01/01/2026 - 12/31/2026
4	3/1/2026	04/01/2026 - 03/31/2027	07/01/2026 - 06/30/2027	01/01/2027 - 12/31/2027
5	3/1/2027	04/01/2027 - 03/31/2028	07/01/2027 - 06/30/2028	01/01/2028 - 12/31/2028
6	3/1/2028	04/01/2028 - 03/31/2029	07/01/2028 - 06/30/2029	01/01/2029 - 12/31/2029
7	3/1/2029	04/01/2029 - 03/31/2030	07/01/2029 - 06/30/2030	01/01/2030 - 12/31/2030
8	3/1/2030	04/01/2030 - 03/31/2031	07/01/2030 - 06/30/2031	01/01/2031 - 12/31/2031
9	3/1/2031	04/01/2031 - 03/31/2032	07/01/2031 - 06/30/2032	01/01/2032 - 12/31/2032
10	3/1/2032	04/01/2032 - 03/31/2033	07/01/2032 - 06/30/2033	01/01/2033 - 12/31/2033
11	3/1/2033	04/01/2033 - 03/31/2034	07/01/2033 - 06/30/2034	01/01/2034 - 12/31/2034
12	3/1/2034	04/01/2034 - 03/31/2035	07/01/2034 - 06/30/2035	01/01/2035 - 12/31/2035