

## INDUCEMENT AGREEMENT AND PROJECT AGREEMENT

THIS INDUCEMENT AGREEMENT AND PROJECT AGREEMENT RELATING TO THE **ARTSPACE UTICA LOFTS, L.P. FACILITY** (the "AGREEMENT") is 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"), **ARTSPACE UTICA LOFTS, L.P.**, a limited partnership duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 250 Third Avenue North, Suite 400, Minneapolis, Minnesota 55401, as beneficial owner, (the "Company") and **ARTSPACE UTICA LOFTS HOUSING DEVELOPMENT FUND COMPANY, INC.**, a housing development funding company to be formed pursuant to Article XI of the Private Housing Financing Law of the State of New York and Section 402 or the Not-For-Profit Corporation Law (the "HDFC"), as fee owner and nominee for the Company.

Article 1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of this AGREEMENT are the following:

1.01. The Agency is authorized and empowered by the provisions of Article 18-A of the General Municipal Law of the State of New York as amended, and Chapter 710 of the Laws of 1981 of the State of New York, as may be amended from time to time (collectively, the "Act") to undertake "Projects" (as defined in the Act) and to lease or sell the same upon such terms and conditions as the Agency may deem advisable.

1.02. The purposes of the Act are (i) to promote industry and develop trade by inducing manufacturing, industrial, warehousing, research, recreation and commercial enterprises to locate or remain in the State and (ii) to encourage and assist in the providing of industrial pollution control facilities and (iii) to promote the economic welfare and prosperity of the inhabitants of the State. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes.

1.03. (a) The Company has submitted to the Agency an Application for Financial Assistance dated July 27, 2022, which Application may be amended from time to time prior to closing of the lease-leaseback transaction described below (the "Application") requesting that the Agency assist in the (i) acquisition of that certain parcel of vacant land located at 1018 Park Avenue and a portion of those certain parcels of vacant land located at 1012 Park Avenue, 1016 Park Avenue and 1022 Park Avenue, in the City of Utica, Oneida County, New York (collectively, the "Land"); (ii) construction on the Land of a four-story building measuring approximately 42,640± square feet in the aggregate containing 43 live/work units, an outdoor plaza, approximately 43 parking spaces, utilities, landscaping, and a path and playground that will connect with the City of Utica planned multipurpose event space on the adjacent parcel (collectively, the "Improvements"); and (iii) acquisition and installation of furniture, fixtures and equipment in the Improvements (the "Equipment"), all to be used for the purpose of providing affordable housing and work spaces to artists and their families and to connect artists to the Utica community (the Land, the Improvements and the

Equipment are referred to collectively as the “Facility” and the acquisition, construction and equipping of the Facility is referred to collectively as the “Project”).

(b) The HDFC is (or will be) the fee owner of the Facility, as nominee for the Company pursuant to a [Nominee Agreement] (the “Nominee Agreement”) between the HDFC and the Company, and has consented that the Company, as beneficial owner, convey to the Agency a leasehold interest in the Facility. The Agency will lease the Facility back to the Company pursuant to a Leaseback Agreement (the “Leaseback Agreement”). The Company will further sublease portions of the Facility to residential tenants to be identified from time to time (the “Residential Sublessees”).

(c) Bank of America (“BOA”) intends to finance a portion of the costs of the Facility by extending a construction loan to the Company in the estimated principal sum of \$11,256,000 to be secured by a Mortgage (the “BOA Mortgage”) from the Company and HDFC to BOA. The New York State Low Income Housing Trust Fund (“NYS LIHTF”) intends to finance a portion of the costs of the Facility by extending a loan to the Company in the estimated principal sum of \$3,750,000.00 to be secured by a Mortgage (the “LIHTF Mortgage”) from the Company and HDFC to NYS LIHTF. The New York State Downtown Revitalization Initiative (“NYS DRI”) intends to finance a portion of the costs of the Facility by extending a loan to the Company in the estimated principal sum of \$650,000.00 to be secured by a Mortgage (the “DRI Mortgage”) from the Company and HDFC to NYS DRI. The City of Utica (“City”) intends to finance a portion of the costs of the Facility by extending a loan to the Company in the estimated principal sum of \$1,150,000.00 [to be secured by a Mortgage (the “City Mortgage”) from the Company and HDFC to the City.

1.04. The Company hereby represents to the Agency that the Project (a) will not result in the removal of an industrial or manufacturing plant from one area of the State to another area of the State or an abandonment of one or more plants of the Company located in the State; (b) is reasonably necessary to discourage the Company from removing such other plant or facility to a location outside the State, or (c) is reasonably necessary to preserve the competitive position of the Company in its industry. The Project has not/did not commence(d) as of August 17, 2022.

1.05. The Agency has determined that the Project as described in the Company’s Application will promote and further the purposes of the Act.

1.06. On August 17, 2022, the Agency adopted a resolution (the “Resolution” or the “Inducement Resolution”) agreeing to undertake the Project in order to assist the Company and to effectuate the purposes of the Act and, subject to the happening of all acts, conditions and things required precedent to such undertaking and the satisfactory completion of such additional acts and reviews as the Agency may deem appropriate, to undertake a lease-leaseback transaction in connection with the Project.

1.07. (a) In the Resolution, the Agency contemplates that it will provide financial assistance to the Company in the form of abatement of real property taxes on the Facility for a period of approximately 32 years during which time the Company will pay as PILOT Payments an amount equal to (i) all taxes with respect to the Facility prior to completion of the Project, provided that such payments shall not exceed the taxes for the Facility for the 2022 – 2023 tax year and (ii) after completion of the Project, seven percent (7.00%) of the effective gross income of the Facility for a period of 30 years, which represents a deviation from the Agency’s Uniform Tax Exemption Policy, to be more particularly described in a Final Authorizing Resolution to be adopted by the Agency prior to the closing of the transactions described herein (collectively, the “Financial Assistance”).

(b) Based upon representations made by the Company in the Application, the value of the Financial Assistance is described as follows:

Sales and use tax exemption	\$0
Mortgage recording tax exemption	\$0
Real property tax abatement	\$6,845,270.00 (approximately)

1.09. It is understood and agreed by the parties that the purpose of the Agency’s provision of Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project facility to advance job opportunities, health, general prosperity and economic welfare of the people of City of Utica and to otherwise accomplish the public purpose of the Act.

1.10. Attached as Exhibit A to this Agreement is a copy of the PILOT Agreement that reflects the Financial Assistance currently contemplated by the Agency in the Resolution. Except for the Financial Assistance described therein, the final form of PILOT Agreement is subject to revision prior to the closing of the lease-leaseback transaction between the Agency and the Company. The Company acknowledges that the Agency (a) reserves all rights to amend the PILOT Agreement to reflect the terms of the Financial Assistance for which the Agency grants final approval as it authorizes in the final authorizing resolution and (b) is under no obligation to enter into the PILOT Agreement unless all conditions described in Section 4.02 hereof are met to the reasonable satisfaction of the Agency.

Article 2. Undertakings on the Part of the Agency. Based upon the statements, representations and undertakings of the Company regarding the Facility and subject to the conditions set forth herein, the Agency hereby confirms and acknowledges:

2.01. Upon satisfactory completion of the conditions precedent set forth herein and in the Resolution and the satisfactory completion of such additional acts and reviews as the Agency may deem appropriate, the Agency will (A) adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be

necessary or advisable for (i) a lease-leaseback transaction between the Agency and the Company as set forth herein, (ii) the acquisition, construction and equipping of the Facility, and (iii) the leasing of the Facility to the Company pursuant to the Leaseback Agreement, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company and (B) shall enter into a lease-leaseback transaction pursuant to the terms of the Act, as then in force, for the purpose of financing certain costs of the Facility.

2.02. The Leaseback Agreement shall be for an approximately 32-year term and shall obligate the Company to make aggregate basic payments in the amount of \$1.00 and annual administrative fee payments of \$3,000.00. The Company shall be entitled to terminate the Agency's leasehold interest in the Facility for an aggregate amount of \$1.00, plus such additional amounts as shall be prescribed in the Leaseback Agreement. Specifically, the Leaseback Agreement shall contain a provision that will allow the Company to terminate the Leaseback Agreement at any time upon written notice to the Agency and upon payment by the Company of all applicable fees, penalties and recapture of benefits, if applicable. The Leaseback Agreement shall contain all provisions required by law and such other provisions as shall be mutually acceptable to the Agency and the Company.

2.03. That all services, costs and expenses of whatever nature incurred in connection with the acquisition, construction, equipping, installation, replacement, rebuilding, restoration, repair, maintenance and operation of the Facility have been and will continue to be undertaken by the Company.

2.04. That, in connection with any lease by the Agency to the Company that is, in turn, subleased or leased by the Company, it is the intent of all parties to the transactions that any sublease or lease is undertaken by the Company as agent for the Agency.

2.05. That, at the request of the Company, and subject to the agreement between the Agency and the Company, any future transfers of fee or leasehold interest of any portion of real property upon which the Facility is located and not owned by the Agency, are hereby authorized, such transfers to be from the Company to the Agency, and there shall be no need for any further official action on behalf of the Agency other than the execution of the appropriate documents evidencing such transfer.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

Article 3. Undertakings on the Part of the Company. Based upon the statements, representations and undertakings of the Agency herein and in the Resolution and subject to the conditions set forth herein and in the Resolution, the Company agrees as follows:

3.01. In the Application, the Company represented that it will create (or cause to be created) one (1) full time equivalent position at the Facility two years after completion of the Project and maintain all for the duration of the Leaseback Agreement as a result of undertaking the Facility (the "Employment Obligation"). The Company also represented that the completion date of the Project is estimated to be May 2, 2024. The Company acknowledges that the Financial Assistance is conditioned upon the Company maintaining the Employment Obligation for the term of the Leaseback Agreement and completing the Project substantially as presented in the Application and failure to do so may result in the termination or recapture of Financial Assistance.

3.02. Contemporaneously with the closing of the lease-leaseback transaction the Company and the HDFC will enter into the Leaseback Agreement with the Agency containing, among other things, the terms and conditions described in Section 2.02 hereof.

3.03. (a) The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove (or bond the same if acceptable to the Agency and its counsel), any mechanics' or other liens against the Facility for labor or materials furnished in connection with the Project. Except to the extent caused by Agency's gross negligence or willful misconduct, the Company shall forever defend, indemnify and hold the Agency, its members, officers, employees, and agents, and anyone for whose acts or omissions the Agency or any of them may be liable, harmless from and against all costs, losses, expenses, claims, damages and liabilities of whatever kind or nature arising, directly or indirectly, out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the Project or arising out of any contract or other arrangement therefor (and including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the Company acting as agent for the Agency pursuant to this AGREEMENT or otherwise.

(b) Except to the extent caused by the Agency's gross negligence or willful misconduct, the Company shall forever defend, indemnify and hold harmless the Agency, its members, officers, employees and agents, and anyone for whose acts or omissions the Agency or any of them may be liable, from and against all claims, causes of action, liabilities and expenses (including without limitation attorneys' fees) howsoever arising for loss or damage to property or any injury to or death of any person (including, without limitation, death of or injury to any employee of the Company or any sublessee) that may occur subsequent to the date hereof by any cause whatsoever in relation to the Facility including the failure to comply with the provisions of Article 3.03 hereof, or arising, directly or indirectly, out of the ownership, acquisition, demolition, construction, equipping, operation, maintenance, repair or financing of the Facility, and including, without limitation, any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

(c) Except to the extent caused by the Agency's gross negligence or willful misconduct, the defense and indemnities provided for in this Article 3 shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by law. Without limiting the generality of the foregoing, the foregoing indemnifications shall apply to and encompass any action (or alleged failure to act) of the Agency pursuant to the SEQR Act.

(d) The Company shall provide and carry (or cause to be provided and carried) workers' compensation and disability insurance to the extent required by law and comprehensive liability insurance with such coverages (including, without limitation, owner's protective for the benefit of the Agency and contractual coverage covering the indemnities herein provided for), with such limits and with such companies as may be approved by the Agency. Upon the request of the Agency, the Company shall provide certificates of insurance in form satisfactory to the Agency evidencing such insurance.

3.04. With the exception of the authorizations required to be adopted by the Agency for the Agency to enter into the lease-leaseback transaction, the Company agrees that, as agent for the Agency or otherwise, it will comply with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or the Company with respect to the Facility, the acquisition, demolition, construction and equipping thereof, the operation and maintenance of the Facility and the financing thereof. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full; and upon the request of either party, this AGREEMENT shall be amended to specifically set forth any such provision or provisions. The Company certifies, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

3.05. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.06. If it should be determined that any State or local sales or compensatory use taxes or similar taxes however denominated are payable with respect to the acquisition, purchase or rental of machinery or equipment, materials or supplies in connection with the Project, or are in any manner otherwise payable directly or indirectly in connection with the Project, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

3.07. If the Facility is leased to another party by the Agency (upon agreement of the Company) and subleased to the Company, then in such event, the Company guarantees all of the covenants, undertakings and indemnities of such other party as set forth in this Article 3.

3.08. The Company shall provide annually, to the Agency, a certified statement and documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. Exhibit B contains the form of annual certification as well as additional Project assessment information that the Agency requires, on an annual basis, to be submitted to the Agency by the Company.

3.09. In accordance with the policies of the Agency, and the Resolution, the Company covenants and agrees that it may be subject to recapture of any and all Financial Assistance if it is determined by the Agency that:

(a) the Company has knowingly made a material false or misleading statement, or knowingly omitted any information which, if included, would have rendered any information in the Application or supporting documentation false or misleading in any material respect, on its Application; or

(b) the Company fails to meet and maintain the Employment Obligation or to complete the Project substantially as presented in the Application; or

(c) the Company fails to submit to the Agency its annual report so that the Agency can confirm that the Project is achieving the Employment Obligation and other objectives of the Project.

If the Agency determines to recapture any Financial Assistance, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s), unless agreed to otherwise by any tax jurisdiction(s).

3.10. The Company acknowledges that the Agency's Financial Assistance is considered to be public funds under Section 224-a of the New York State Labor Law ("Prevailing Wage Requirements"). The Agency has determined that the Financial

Assistance amounts to \$6,845,270.00 in the aggregate. The Company is obligated under Subdivision 8(a) of the Prevailing Wage Requirements to certify under penalty of perjury within five (5) days of commencement of construction work whether the Project is subject to the provisions of the Prevailing Wage Requirements. Compliance with Prevailing Wage Requirements, if applicable, is wholly the obligation of the Company, and failure to comply may result in a stop-work order.

#### Article 4. General Provisions.

4.01. This AGREEMENT sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; no Financial Assistance shall be provided to the Company prior to the effective date of this Agreement. This AGREEMENT shall remain in effect until the Leaseback Agreement becomes effective. It is the intent of the Agency and the Company that this AGREEMENT be superseded in its entirety by the Leaseback Agreement, except for the indemnities and guarantee of indemnities contained herein, which shall survive.

4.02. It is understood and agreed by the Agency and the Company that entering into the lease-leaseback transaction and the execution of the Leaseback Agreement and related documents are subject to (i) obtaining all necessary governmental approvals, (ii) approval of the members of the Company, (iii) approval of the members of the Agency, (iv) satisfactory completion of the environmental review of the Facility by the Agency in compliance with the State Environmental Quality Review Act, (v) agreement by the Agency and the Company upon mutually acceptable terms and conditions for the Leaseback Agreement and other documentation usual and customary to transactions of this nature, (vi) the condition that there are no changes in New York State Law which prohibit or limit the Agency from fulfilling its obligation and commitment as herein set forth to enter into the lease-leaseback transaction and (vii) payment by the Company of the Agency's transaction fee and the fees and disbursements of bond counsel or transaction counsel.

4.03. The Company agrees that it will reimburse the Agency for all reasonable and necessary direct out-of-pocket expenses that the Agency may incur as a consequence of executing this AGREEMENT or performing its obligations hereunder. Examples of such expenses include, but are not limited to, photocopies, phone and fax charges, postage and other shipping charges incurred in connection with closing the lease-leaseback transaction or complying with any requests after closing relating to the lease-leaseback transaction, including but not limited to requests under the Freedom of Information Act, or requests relating to the Project.

4.04. If for any reason the lease-leaseback transaction does not close on or before twelve (12) months from the execution hereof, the provisions of this AGREEMENT (other than the provisions of Articles 3.05, 3.06, 3.07 and 3.08 above, which shall survive) shall, unless extended by agreement of the Agency and the Company (whether before or after such original expiration date), terminate and be of no



further force or effect, and following such termination neither party shall have any rights against the other party except:

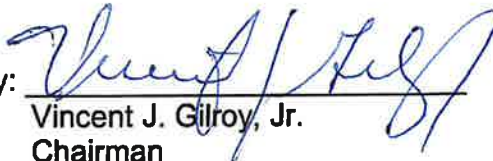
(a) The Company shall pay the Agency for all expenses incurred by the Agency in connection with the acquisition, construction and equipping of the Facility;

(b) The Company shall assume and be responsible for any contracts for construction or purchase of equipment entered into by the Agency at the request of or as agent for the Company in connection with the Project, if any; and

(c) The Company will pay the out-of-pocket expenses of members of the Agency, counsel for the Agency and Transaction Counsel actually incurred in connection with the Project and will pay the reasonable fees of counsel for the Agency and Transaction Counsel for legal services relating to the Project or the proposed financing thereof.

IN WITNESS WHEREOF, the parties hereto have entered into this AGREEMENT to be effective as of August 17, 2022.

CITY OF UTICA INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Vincent J. Gilroy, Jr.  
Chairman

ARTSPACE UTICA LOFTS, L.P.

By:   
Gregory Handberg  
Authorized Signatory

ARTSPACE UTICA LOFTS  
HOUSING DEVELOPMENT FUND  
COMPANY, INC., as Nominee

By:   
Name: *Gregory B. Handberg*  
Title: *Director*

**[Certification of Project Operator on Following Page]**

**Certification of Project Operator**

STATE OF MINNESOTA )  
COUNTY OF HENNEPIN ) ss.:

Gregory Handberg, being first duly sworn, deposes and says:

1. That I am the Senior Vice President and Authorized Signatory of Artspace Projects, Inc., the Sole Member of Artspace Utica GP, LLC, the General Partner of Artspace Utica Lofts, L.P. (the "Company") and that I am duly authorized on behalf of the Company to bind the Company and to execute this Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

  
\_\_\_\_\_  
(Signature of Officer)

Subscribed and affirmed to me under penalties of perjury  
this 22 day of ~~September~~ <sup>December</sup> 2022.



\_\_\_\_\_  
(Notary Public)

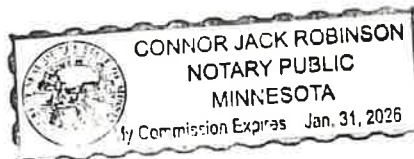


EXHIBIT A  
FORM OF PILOT AGREEMENT

Transcript Document No. [ ]

ARTSPACE UTICA LOFTS, L.P.,  
as beneficial owner  
and  
ARTSPACE UTICA LOFTS  
HOUSING DEVELOPMENT FUND COMPANY, INC.,  
as fee owner  
and

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

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PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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City of Utica Industrial Development Agency  
2022 Real Estate Lease  
(Artspace Utica Lofts, L.P. Facility)

Oneida County, City of Utica, Utica City School District

Tax Account Nos.: [TO BE PROVIDED BY COMPANY]

## PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of \_\_\_\_\_, 2022, is by and among **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"), **ARTSPACE UTICA LOFTS, L.P.**, a limited partnership duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 250 Third Avenue North, Suite 400, Minneapolis, Minnesota 55401, as beneficial owner, (the "Company") and **ARTSPACE UTICA LOFTS HOUSING DEVELOPMENT FUND COMPANY, INC.**, a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 250 Third Avenue North, Suite 400, Minneapolis, Minnesota 55401 (the "HDFC"), as fee owner and nominee for 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 is undertaking a project consisting of (i) acquisition of that certain parcel of vacant land located at 1018 Park Avenue and a portion of those certain parcels of vacant land located at 1012 Park Avenue, 1016 Park Avenue and 1022 Park Avenue, in the City of Utica, Oneida County, New York (collectively, the "Land"); (ii) construction on the Land of a four-story building measuring approximately 42,640± square feet in the aggregate containing 43 live/work units, an outdoor plaza, approximately 43 parking spaces, utilities, landscaping, and a path and playground that will connect with the City of Utica planned multipurpose event space on the adjacent parcel (collectively, the "Improvements"); and (iii) acquisition and installation of furniture, fixtures and equipment in the Improvements (the "Equipment"), all to be used for the purpose of providing affordable housing and work spaces to artists and their families and to connect artists to the Utica community (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the acquisition,

construction and equipping of the Facility is referred to collectively as the "Project"); and

WHEREAS, the Facility will help satisfy the need for housing identified in Oneida County's Vision 20/20 Initiative by providing affordable live/work apartments for artists, creative businesses and their families; and

WHEREAS, the HDFC is the fee owner of the Facility, as nominee for the Company pursuant to a Declaration of Interest and Nominee Agreement dated \_\_\_\_\_ (the "Nominee Agreement") between the HDFC and the Company, and is entering into this PILOT Agreement for the limited purpose of its capacity as fee owner of the Facility; 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 and HDFC pursuant to the terms and conditions contained in a Leaseback Agreement dated of even date herewith; and

WHEREAS, the Company intends to further sublease individual residential units comprising the Facility to residential tenants (each a "Residential Sublessee" and collectively the "Residential Sublessees"); and

WHEREAS, the Agency has agreed to accept a leasehold interest to 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 is 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 sublessee 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, it is the intention of the parties that the First Exemption Year shall begin on the January 1 following the issuance of a Certificate of Occupancy for the Project; the Exemption Years described on Schedule B assume a Certificate of Occupancy will be issued prior to December 31, 2024, and the parties agree that it may be necessary to amend the Exemption Years if a Certificate of Occupancy is not issued on the anticipated schedule; 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 described on Schedule A attached hereto (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, the PILOT Payments (as defined below) represent a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"); and

WHEREAS, pursuant to Section 874 of the Act, the Agency sent a notice to the chief executive officer of each Taxing Authority providing a description of the PILOT Payments, the Agency's reasons for deviating from the Policy as well as the time and location of the meeting during which the Agency would consider a resolution approving the deviation from its Policy and the PILOT Payments; 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 with respect to the Facility prior to the Exemption Term, provided that such payments shall not exceed the taxes for the Facility for the 2022 – 2023 tax year; 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 an amount in lieu of the Exempt Taxes equal to seven percent (7.00%) of the Effective Gross Income of the Facility (the "PILOT Payments") during each Exemption Year as described on Schedule B attached hereto. For the purposes of calculating PILOT Payments, "Effective Gross Income" or "EGI" shall be defined as the Potential Gross Income of the Facility, less vacancy losses. "Potential Gross Income" shall be defined as the maximum amount of rental income the Facility can collect in any given year. The Company shall submit to the Agency annually, no later than February 28 (i) a certified statement attesting to the EGI for the Facility for the prior calendar year, including a calculation of the PILOT Payment based on the EGI; and (ii) a check payable to "City of Utica" for the full amount of the PILOT Payment. The City shall allocate the PILOT Payment among the Taxing Authorities in the same pro-rata proportion that the Taxing Authorities would have received taxes, if the Agency did not have a leasehold interest. For purposes of apportioning the PILOT Payment, the City shall use the tax rates for the prior Exemption Year. As an example, for Exemption Year 1, the Company shall submit a statement to the Agency no later than February 28, 2026 using the EGI for calendar year 2025. The PILOT Payment remitted with this statement will be applied to County year 2025, City year 2025-2026 and School District year 2025-2026.

(b) Anything herein to the contrary, notwithstanding, this Agreement shall terminate on the date on which the Leaseback Agreement terminates and the Agency shall terminate its leasehold interest in the Facility pursuant to the Leaseback Agreement. Notwithstanding anything to the contrary, the Company shall have the right to terminate this Agreement without penalty if the Company determines, in its sole discretion, that termination of this Agreement will result in a more beneficial tax treatment for the Company. The right of the Company to terminate this Agreement is subject in all respects to the provisions of Article 8 of the Leaseback Agreement, and the Lease Agreement and Leaseback Agreement shall terminate concurrently.

(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 of 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.

(d) Anything herein to the contrary, notwithstanding, in the event of any default by the Company, the Company's Investor Limited Partner (as defined in the Amended and Restated Operating Agreement of the Company) shall have fifteen (15) days for a monetary default and thirty (30) days in the case of any other default, after notice to the Company and the Investor Limited Partner of such default, to cure or to cause to be cured the default complained of; and the Agency shall accept such



performance by or at the instigation of the Investor Limited Partner as if same had been done by the Company. If however such default cannot reasonably be expected to be cured within such period, then the Investor Limited Partner will have reasonable additional time to cure such default provided the Investor Limited Partner has commenced and continues to diligently pursue a cure.

3. The Company will make PILOT Payments to each Taxing Authority hereunder for each Exemption Year by making the required payment to the City of Utica no later than February 28 of each Exemption Year. 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 City at the time the PILOT Payment is paid, and the City shall allocate the penalty among the Taxing Authorities in the same pro-rata proportion that the Taxing Authorities would have received taxes, if the Agency did not have a leasehold interest. 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.

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 using an assessed value calculated pursuant to 581-A of the Real Property Tax Law. The Company shall have the ability, in its sole discretion, to challenge such 581-A assessment.

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 (581-A or otherwise), 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. 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, provided that nothing herein shall preclude the Company's rights pursuant to Section 581-a of the Real Property Tax Law. Notwithstanding anything herein to the contrary, for so long as this Agreement is in effect, the Company shall not consolidate any other tax parcels into the tax parcels that are the subject of this Agreement, without the prior written consent of the Agency in each instance.

8. All amounts payable by the Company hereunder will be paid to the City on behalf of the Taxing Authorities 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. Notwithstanding anything to the contrary, the Company shall have the right to terminate this Agreement without penalty if the Company determines, in its sole discretion, that termination of this Agreement will result in a more beneficial tax treatment for the Company.

(c) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (i) 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 HDFC, the Company and the Investor Limited Partner, 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: Artspace Utica Lofts, L.P.  
250 Third Avenue North, Suite 400  
Minneapolis, Minnesota 55401  
Attn.: President/COO/Sr. VP Properties

With a Copy to: Cannon Heyman & Weiss, LLP  
726 Exchange Street, Suite 500  
Buffalo, New York 14210  
Attn.: Steven J. Weiss, Esq.

If to the HDFC: Artspace Utica Lofts Housing Development  
Fund Company, Inc.  
250 Third Avenue North, Suite 400  
Minneapolis, Minnesota 55401  
Attn.: President/COO/Sr. VP Properties

With a Copy to: Cannon Heyman & Weiss, LLP  
726 Exchange Street, Suite 500  
Buffalo, New York 14210  
Attn.: Steven J. Weiss, Esq.

If to the Investor  
Limited Partner: Bank of America, N.A.  
MA5-100-04-11  
100 Federal Street  
Boston, MA 02110  
Attn: Asset Manager for Artspace Utica Lofts

With a copy to:

Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116  
Attn: Sara C. Heskett, Esq.

provided, that the Agency, the HDFC, the Company or the Investor Limited Partner 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.

ARTSPACE UTICA LOFTS, L.P.,  
as beneficial owner

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

ARTSPACE UTICA LOFTS  
HOUSING DEVELOPMENT FUND  
COMPANY, INC., as Nominee

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

STATE OF MINNESOTA     )  
  : ss.:  
COUNTY OF HENNEPIN     )

On the \_\_\_\_ day of \_\_\_\_\_ 2022 before me, the undersigned a notary public in and for said state, personally appeared \_\_\_\_\_, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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

SIGNATURE PAGE OF AGENCY  
(PILOT AGREEMENT)

CITY OF UTICA INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Vincent J. Gilroy, Jr.  
Chairman

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

On the \_\_\_\_ day of \_\_\_\_\_ 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  
Attn.: Haylee Lallier, Treasurer

**SCHEDULE B**

ASSUMING CERTIFICATE OF OCCUPANCY IS ISSUED  
ON OR BEFORE DECEMBER 31, 2024,  
TO BE ADJUSTED BASED ON ACTUAL COMPLETION DATE

<b>Exemption Year</b>	<b>EGI Certification Due</b>	<b>County Tax Year</b>	<b>City Tax Year</b>	<b>School Tax Year</b>
1	2026	2025	2025-26	2025-26
2	2027	2026	2026-27	2026-27
3	2028	2027	2027-28	2027-28
4	2029	2028	2028-29	2028-29
5	2030	2029	2029-30	2029-30
6	2031	2030	2030-31	2030-31
7	2032	2031	2031-32	2031-32
8	2033	2032	2032-33	2032-33
9	2034	2033	2033-34	2033-34
10	2035	2034	2034-35	2034-35
11	2036	2035	2035-36	2035-36
12	2037	2036	2036-37	2036-37
13	2038	2037	2037-38	2037-38
14	2039	2038	2038-39	2038-39
15	2040	2039	2039-40	2039-40
16	2041	2040	2040-41	2040-41
17	2042	2041	2041-42	2041-42
18	2043	2042	2042-43	2042-43
19	2044	2043	2043-44	2043-44
20	2045	2044	2044-45	2044-45
21	2046	2045	2045-46	2045-46
22	2047	2046	2046-47	2046-47
23	2048	2047	2047-48	2047-48
24	2049	2048	2048-49	2048-49
25	2050	2049	2049-50	2049-50
26	2051	2050	2050-51	2050-51
27	2052	2051	2051-52	2051-52
28	2053	2052	2052-53	2052-53
29	2054	2053	2053-54	2053-54
30	2055	2054	2054-55	2054-55



EXHIBIT B  
FORM OF ANNUAL REPORT TO AGENCY



# 2022 ANNUAL PROJECT REPORT



**DUE BY: Friday, February 17, 2023**  
**Utica Industrial Development Agency**

<b>A. Business Information:</b> <i>Please fill in blanks or change as necessary</i>				
Organization Name:		Organization Name Change: (if applicable)*		
Project Address:		Address Change (if applicable)*		
Contact Person:		Contact Person Change: (if applicable)		
Name:		Name:		
Phone:		Phone:		
Fax:		Fax:		
E-mail:		E-mail		
Mailing Address (if different from Organization Address):		Mailing Address Change: (if applicable)		
<b>B. Project Information:</b>				
Project Name:		Project ID:		
Project Description:				
<b>C. Tax Exemptions:</b> <i>Please fill in blanks</i>				
<b>If you claimed exemption from New York State Sales Tax or Mortgage Tax during 2022, please answer the following questions. If not applicable to your project, please indicate by responding with an "N/A" in the blanks provided.</b>				
Total Sales Tax exemption from 1/1/22 –12/31/22 (Actual tax savings, NOT total purchases):		<b>Attach a copy of NYS Form ST-340 on which you reported the value of sales and use tax exemptions for your project.</b> <i>New York State requires that a company receiving sales tax exemptions file an ST-340 no later than the end of February following the year in which the exemption was claimed.</i>		
Value of 2022 Mortgage Recording Tax Exemption (0.75% of the mortgage amount):				
<b>D. Employment Data:</b> <i>2022 employment (only for the location that is receiving UIDA benefits) PLEASE REFER TO the definition of Full-Time Equivalent Jobs.</i>				
Job Classification	Number of Full-Time Equivalent Employees (as of 12/31/22).	Indicate Owner (O) or Tenant (T) jobs	Average annual salary of Full-Time Equivalent employees <small>(Reported in prior column)</small>	Average annual salary range of Full-Time Equivalent employees
Executive Management (Owner / CEO / Management)				
Production / Manufacturing				
Clerical / Administrative				
Other				
<b>Definition of Full Time Equivalent Jobs:</b> Full-time jobs, plus the combination of two or more part-time jobs that, when combined together, constitute the equivalent hours of a full-time position (35 or more hours).				

Please attach copies of your NYS-45 Quarterly Combined Withholding, Wage Reporting & Unemployment Insurance for each quarter in 2022. (Please note that benefits will be terminated if these reports are not submitted.) Report the total number of full-time and part-time covered employees for the third month of the fourth quarter as shown on the NYS-45: \_\_\_\_\_.

If you are a new Company and a NYS-45 is not available, please check here \_\_\_\_\_

Number of Full-Time Equivalent Construction Jobs created during 2022: \_\_\_\_\_

If the NYS-45 includes multiple locations, please attach a separate sheet that certifies the job information specific to the project location.

**E. Housing Projects:** Please complete this section if your project involves housing.

Number of rental/housing units projected in original application:	_____
Number of rental/housing units actually created as a result of the project:	_____

**F. Capital Investments:**

Please list investments directly related to the project described in Section B made during the period of January 1 – December 31, 2022. Do not include investments from previous reporting periods or operating expenses.

	As Reported on original Application	Actual Expense in 2022 (Related to the project defined in section B)		As Reported on original Application	Actual Expense in 2022 (Related to the project defined in section B)
<b>Building Cost:</b> <i>(Construction)</i>			<b>Other:</b> <i>(Renovations of existing space)</i>		
<b>Land &amp; Building:</b> <i>(Real Estate.)</i>			<b>Total Investment:</b>		
<b>Production Equip.:</b> <i>(Not Sales Taxable)</i>			<b>Total Amount Financed:</b>		
<b>Other Equipment:</b> <i>(Sales taxable equip.)</i>			<b>Mortgage Amount:</b>		

Please reference the original project application and explain any variances from the original project estimates: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Do you anticipate relocating, expanding your business or purchasing equipment within the next 12 months?  
 YES \_\_\_\_\_ NO \_\_\_\_\_

If yes, please explain \_\_\_\_\_  
 \_\_\_\_\_

**G. Signature:** Report will not be considered complete unless signature is provided

An Authorized Company Official must certify the information provided by completing the following:

Termination of benefits is possible if the information submitted is determined to be incorrect or if the information is not submitted by the requested date. The UIDA reserves the right to complete an examination of back-up documentation related to the company's reported project information at any time should the UIDA have reasonable cause to do so.

I hereby attest that the information contained in this report is true and correct to the best of my knowledge.

Signature (Authorized Company Official) \_\_\_\_\_

Date \_\_\_\_\_

Please Print (Name and Title) \_\_\_\_\_