

LOFTS AT GLOBE MILL, L.P.

and

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

City of Utica Industrial Development Agency
2019 Real Estate Lease
(Lofts at Globe Mill, L.P. Facility)

Oneida County, City of Utica, Utica City School District

Tax Account Nos.: 318.40-4-6
318.40-4-22
318.48-1-8

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of March 26, 2019, is by and between **LOFTS AT GLOBE MILL, L.P.**, a limited partnership duly organized and validly existing under the laws of the State of New York, having an address of 9333 N. Meridian Street, Suite 230, Indianapolis, Indiana 46260 (the "Company") and **CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at One Kennedy Plaza, Utica, New York 13502 (the "Agency").

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 (i) rehabilitate and renovate three vacant and historic four-story brick warehouse buildings to convert the same to a multi-family residential development consisting of 149 residential units, 9,000± square feet of commercial/retail space, and amenities and offices to service the same, all to be known as Globe Mill and (ii) construct all infrastructure to service the same (collectively, the "Improvements"), all such Improvements situated on a 5.374± acre parcel of land located at 933 Stark Street, 811-827 Court Street and 814 Warren Street, City of Utica, Oneida County, New York (the "Land") and (iii) acquire and install equipment in the Improvements (the "Equipment") (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the acquisition, construction, rehabilitation, renovation 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 low-income and market rate rental housing; and

WHEREAS, New York State Housing Finance Agency, a corporate governmental agency established pursuant to Article III of the New York State

Private Housing Finance Law, constituting a public benefit corporation, having its principal place of business at 641 Lexington Avenue, New York, New York 10022 (the "HFA") intends to finance a portion of the costs of the Facility by (a) issuing tax-exempt bonds to fund a mortgage loan (the "HFA First Mortgage Loan") in the principal amount of \$28,620,000.00 to be secured by a Fee Mortgage, Assignment of Leases and Rents and Security Agreement dated on or about March 26, 2019 (the "HFA First Mortgage") from the Company to the HFA; and (b) a subordinate loan to the Company in the aggregate principal amount of \$9,960,081.00 to be secured by a HCR Subsidy Mortgage dated on or about March 26, 2019 (the "HCR Subsidy Mortgage") from the Company to the HFA; and

WHEREAS, the State of New York Mortgage Agency ("SONYMA") has issued its Commitment to Insure and Certificate of Insurance to provide a mortgage insurance policy for the HFA First Mortgage Loan; and

WHEREAS, JPMorgan Chase Bank, N.A. (the "Bank") intends to issue an irrevocable letter of credit ("Letter of Credit") in the amount of the HFA First Mortgage Loan plus interest and fees to secure the loan during the Project's construction period; 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 intends to further sublease individual residential apartment units comprising the Facility to residential tenants (each a "Residential Sublessee" and collectively the "Residential Sublessees"); and

WHEREAS, the Company intends to enter into a Master Lease with KCG Development, LLC, a Florida limited liability company (the "Master Tenant"), relating to two commercial condominium units, and the Master Tenant will in turn further sublease the individual commercial condominium units to commercial and/or retail tenants (each a "Commercial Sublessee" and collectively the "Commercial Sublessees" and together with the Residential Sublessees, the "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 August 1, 2019, 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 sub-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, 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 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 an amount in lieu of the Exempt Taxes equal to 7.50% 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. 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 Jurisdictions in the same pro-rata proportion that the Taxing Jurisdictions 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, 2021 using the EGI for calendar year 2020. The PILOT Payment remitted with this statement will be applied to County year 2020, City year 2020-2021 and School District year 2020-2021. After Exemption Year 30, the Company shall pay as PILOT Payments 100% of the Exempt Taxes to the Taxing Jurisdictions, to be billed by the Taxing Jurisdictions as if the Agency did not own a leasehold interest in the Facility.

(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 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.

(e) The Company intends to further subdivide the Land such that sub-parcels are assigned to individual condominium units. It is the intention of the parties that the PILOT Payments to be made by the Company hereunder will include any sub-parcels that may be created from the original parcels following the execution of this Agreement.

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 Jurisdictions in the same pro-rata proportion that the Taxing Jurisdictions would have received taxes, if the Agency did not have a leasehold 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.

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. 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 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 or the Company, 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:

Lofts at Globe Mill, L.P.
9333 N. Meridian Street, Suite 230
Indianapolis, IN 46260
Attn.: RJ Pasquesi, President

With a Copy to:

Cannon Heyman and Weiss, LLP
726 Exchange Street, Suite 500
Buffalo, New York 14210
Attn.: Stephen L. Yonaty, Esq.

and

Winthrop & Weinstine, P.A.
Capella Tower
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402
Attn: John D. Nolde, Esq.

If to HFA: New York State Housing Finance Agency

641 Lexington Avenue
New York, New York 10022
Attention: Senior Vice President, MultiFamily Finance, and
Attention: Counsel

If to SONYMA: State of New York Mortgage Agency
Mortgage Insurance Fund
641 Lexington Avenue
New York, New York 10022
Attention: Senior Vice President, Mortgage Insurance Division

If to the Investor:
Alliant Credit Facility II, LLC
340 Royal Poinciana Way, Suite 338
Palm Beach, Florida 33480
Attention: Brian Goldberg
Telephone: (561) 833-5795
Telecopy: (561) 833-3694

With a Copy to:

c/o Alliant Asset Management Company LLC
21600 Oxnard Street, Suite 1200
Woodland Hills, California 91367
Attention: General Counsel
Telephone: (818) 668-6800
Telecopy: (818) 668-2828

And a Copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP
633 W. Fifth Street, Suite 6400
Los Angeles, CA 90071
Attention: Kyle Arndt, Esq.
Telephone: (213) 239-8048
Telecopy: (213) 559-0704

provided, that the Agency, HFA, SONYMA, the Investor 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.

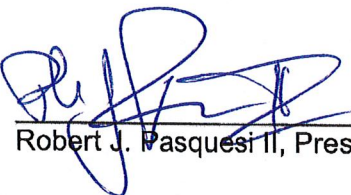
[Signature page follows]

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

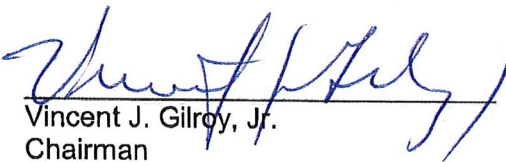
LOFTS AT GLOBE MILL, L.P.,
A New York limited partnership

By: LOFTS AT GLOBE MILL GP, LLC
A New York limited liability company
its General Partner

By: KCG Holdings, LLC, a Florida limited liability
company, its sole member

By: 
Robert J. Pasquesi II, President

CITY OF UTICA INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Vincent J. Gilroy, Jr.
Chairman

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
106 Memorial Parkway
Utica, New York 13501
Attn.: Pamela Backman, Treasurer

SCHEDULE B

Exemption Year	EGI Certification Due	County Tax Year	City Tax Year	School Tax Year
1	2021	2020	2020-21	2020-21
2	2022	2021	2021-22	2021-22
3	2023	2022	2022-23	2022-23
4	2024	2023	2023-24	2023-24
5	2025	2024	2024-25	2024-25
6	2026	2025	2025-26	2025-26
7	2027	2026	2026-27	2026-27
8	2028	2027	2027-28	2027-28
9	2029	2028	2028-29	2028-29
10	2030	2029	2029-30	2029-30
11	2031	2030	2030-31	2030-31
12	2032	2031	2031-32	2031-32
13	2033	2032	2032-33	2032-33
14	2034	2033	2033-34	2033-34
15	2035	2034	2034-35	2034-35
16	2036	2035	2035-36	2035-36
17	2037	2036	2036-37	2036-37
18	2038	2037	2037-38	2037-38
19	2039	2038	2038-39	2038-39
20	2040	2039	2039-40	2039-40
21	2041	2040	2040-41	2040-41
22	2042	2041	2041-42	2041-42
23	2043	2042	2042-43	2042-43
24	2044	2043	2043-44	2043-44
25	2045	2044	2044-45	2044-45
26	2046	2045	2045-46	2045-46
27	2047	2046	2046-47	2046-47
28	2048	2047	2047-48	2047-48
29	2049	2048	2048-49	2048-49
30	2050	2049	2049-50	2049-50