

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of December 22, 2016, is by and between **ASTERI UTICA, LLC**, a limited liability company duly organized and validly existing under the laws of the State of Missouri, having an address c/o Vecino Group New York, LLC, 305 W Commercial, Springfield, Missouri 65803 (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) renovate an existing six-story, 45,500± square foot historic building to convert the same to a multi-family residential development consisting of forty-nine (49) rental units and amenities and offices to service the same to be known as Asteri Utica, (ii) demolish the adjacent 5,109± square foot building and construct a parking lot thereon, (iii) demolish the adjacent 2,464± square foot building and construct a parking lot thereon and (iv) construct all infrastructure to service the same (collectively, the "Improvements"), all such existing buildings situated on a .71± acre parcel of land located at 327 - 331 Bleecker Street, City of Utica, Oneida County, New York (the "Land") and acquire and install equipment in the Improvements (the "Equipment"), all to be used for the purpose of providing residential housing for persons and families of low-income and developmental disabilities (the Land, the Improvements and the Equipment is referred to collectively as the "Facility" and the acquisition, demolition, construction, renovation and equipping of the Facility is referred to collectively as the "Project"); and

WHEREAS, based upon information provided by the Company, the Agency determined that the acquisition, demolition, construction, renovation and equipping of the Facility will promote employment opportunities and prevent economic deterioration in the area served by the Agency; 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 making (a) a first mortgage loan to the Company in the principal amount of \$5,360,000.00 to be secured by a Fee and Leasehold

Mortgage, Assignment of Leases and Rents and Security Agreement dated on or about December 22, 2016 (the "First Mortgage") from the Agency and the Company to the HFA; and (b) a subordinate loan to the Company in the aggregate principal amount of \$3,400,235.00 to be secured by a HCR Subsidy Mortgage dated on or about December 22, 2016 (the "HCR Subsidy Mortgage") from the Agency and the Company to the HFA; and

WHEREAS, the City of Utica, acting by and through its HOME Program, a New York municipal corporation having its principal place of business at 1 Kennedy Plaza, Utica NY 13502 (the "City") intends to finance a portion of the costs of the Facility by making a loan to the Company in the principal amount of \$200,000.00 to be secured by a City of Utica HOME Program Mortgage dated on or about December 22, 2016 (the "City Mortgage") from the Agency and the Company to the City; and

WHEREAS, in lieu of the Company and the Agency granting to the Agency a PILOT Mortgage to secure payments to be made under this Agreement, the HFA has agreed to make provision in the First Mortgage to establish an escrow account for the collection and remittance of all payments required hereunder; 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 (the "Lease Agreement") and lease the Facility back to the Company pursuant to the terms and conditions contained in a Leaseback Agreement dated of even date herewith (the "Leaseback Agreement"); 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, 2017, 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 in the form of PILOT Payments (defined below) 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 (the "PILOT Payments") during each Exemption Year as follows:

(i) One hundred percent (100%) of Exempt Taxes during Exemptions Year 1 through and including 2;

(ii) One-third (1/3) of Exempt Taxes during Exemption Years 3 through and including 32; and

(iii) One hundred percent (100%) of Exempt Taxes after year 32.

(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, the Company shall

henceforth pay as PILOT Payments one hundred (100%) percent of the Exempt Taxes together with interest at the rate of nine (9%) percent per annum on any delinquent PILOT Payments together with expenses of collection, including but not limited to, payment of attorneys' fees; 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 Agency hereby directs the Company to make (or will cause the HFA to 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.

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 mailed by United States registered or certified mail, postage prepaid, return receipt requested, 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:

Asteri Utica, LLC
305 W Commercial
Springfield, Missouri 65803
Attn.: Rick Manzardo, Member

With a Copy to:

Spencer Fane, LLP
2144 E. Republic Road, Suite B300
Springfield, MO 65804
Attn.: Shawn Whitney, Esq.

With a Copy to:

New York State Housing Finance Agency
641 Lexington Avenue
New York, New York 10022
Attention: President, Finance and Development, and
Attention: Senior Vice President and Counsel

With a Copy to:

City of Utica
One Kennedy Plaza
Utica, New York 13502
Attn.: HOME Program

provided, that the Agency, the Company, the HFA or the City 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.

ASTERI UTICA, LLC,
By Asteri Utica Management, LLC,
Its Managing Member

By: 

Rick Manzardo
Manager

CITY OF UTICA INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Joseph H. Hobika, Sr.
Chairman

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

ASTERI UTICA, LLC,
By Asteri Utica Management, LLC,
Its Managing Member

By: _____
Rick Manzardo
Manager

CITY OF UTICA INDUSTRIAL
DEVELOPMENT AGENCY

By: Joseph H. Hobika Sr.
Joseph H. Hobika, Sr.
Chairman