

HP UTICA PRESERVATION LLC,
as beneficial owner

and

HP UTICA HOUSING DEVELOPMENT FUND CORPORATION
as fee owner

and

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

City of Utica Industrial Development Agency
2024 Real Estate Lease
(Historical Park Apartments Facility)

Oneida County, City of Utica, Utica City School District

Tax Account No.: 318.58-2-21

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of September 1, 2024, 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"), **HP UTICA PRESERVATION LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 5272 River Road, Suite 450, Bethesda, Maryland 20816 (the "Company") and **HP UTICA HOUSING DEVELOPMENT FUND CORPORATION**, 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 5272 River Road, Suite 450, Bethesda, Maryland 20816 (the "HDFC"), as fee owner and nominee for the Company.

WITNESSETH:

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 the (i) acquisition and substantial renovation of an existing 12-story, 93,250± square foot multifamily affordable housing facility with 121 units and indoor and outdoor common areas known as the Historical Park Apartments (the "Improvements") situated on a 1.83± acre parcel of land located at 100 Rutger Street in the City of Utica, Oneida County, New York (collectively, the "Land") and (ii) acquisition and installation of furniture, fixtures and equipment in the Improvements (the "Equipment"), all to be beneficially owned and operated by the Company as a multifamily affordable housing facility to enhance economic development and retain employment in downtown Utica (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the acquisition, 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 and the housing study commissioned by the City of Utica by preserving the supply of adequate, safe and sanitary low rent housing accommodations for persons and families of low income and will promote

employment opportunities and prevent economic deterioration in the City of Utica; 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 portions of the Facility to residential tenants, to be identified from time to time (the "Residential Sublessees"); and

WHEREAS, the Company intends to further sublease portions of the Facility to commercial and/or retail tenants, to be identified (the "Commercial Sublessees" and together with the Residential Sublessees, the "Sublessees"); and

WHEREAS, KeyBank, National Association (the "Bank") intends to finance a portion of the costs of the Facility by extending a loan to the Company in the estimated principal sum of \$11,600,000.00 to be secured by a mortgage (the "Senior Mortgage") from the Company, Agency and the HDFC to the Bank; and

WHEREAS, the New York State Housing Finance Agency ("NYS HFA") intends to finance a portion of the costs of the Facility by extending a loan to the Company in the estimated principal sum of \$[14,900,000.00] to be secured by Subsidy Mortgages (the "HFA Mortgage") from the Company and HDFC to NYS HFA; 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 as of the date hereof (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, 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, 2025, 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, the period beginning with the first Exemption Year and ending upon the issuance of a Certificate of Substantial Completion from the architect for the Project ("Substantial Completion") is referred to as the "Construction Exemption Term;" and

WHEREAS, the period commencing on the day following Substantial Completion and ending with the last Exemption Year is referred to as the "EGI Exemption Term;" and

WHEREAS, the Exemption Years described on Schedule B assume a Certificate of Substantial Completion will be issued prior to December 31, 2025, and the parties agree that it may be necessary to amend the Exemption Years if a Certificate of Substantial Completion 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; and

(b) all special assessments and ad valorem taxes coming due and payable during the term of the Lease 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. The Company shall pay an amount in lieu of the Exempt Taxes (the "PILOT Payments") during each Exemption Year as follows:

(a) During the Construction Exemption Term, the Company shall pay to each Taxing Authority an amount equal to the Exempt Taxes for the Facility, such amount to be calculated using the assessment for the Facility as of the March 1, 2024 taxable status date.

(b) During the EGI Exemption Term, the Company shall pay to the City of Utica an amount in lieu of the Exempt Taxes equal to three percent (3.00%) of the Effective Gross Income of the Facility 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, 2027 using the EGI for calendar year 2026. The PILOT Payment remitted with this statement will be applied to School District year 2026-2027, County year 2027, and City year 2027-2028.

(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.

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 provided, however, that the Company must provide written notice to the Agency at least forty-five (45) days prior to filing for a change in assessment. 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 and 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: HP Utica Preservation LLC
5272 River Road, Suite 450
Bethesda MD 20816
Attn.: Eliot Reid

With a Copy to: Cannon Heyman & Weiss, LLP
726 Exchange Street, Suite 500
Buffalo NY 14210
Attn.: Tim Favaro, Esq.

If to the HDFC: HP Utica Housing Development Corporation

5272 River Road, Suite 450
Bethesda MD 20816
Attn.: Lauren Lischke

With a Copy to: Cannon Heyman & Weiss, LLP
726 Exchange Street, Suite 500
Buffalo NY 14210
Attn.: Tim Favaro, Esq.

provided, that the Agency 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.

(f) A memorandum of this Agreement shall be recorded or filed, as the case may be, in the Office of the Clerk of Oneida County, New York or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

[Signature page follows]

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

HP UTICA PRESERVATION LLC, as beneficial owner

By: 
Name: Eliot Reid
Title: Authorized Signatory

Maryland
STATE OF VIRGINIA
Montgomery, MD : ss.:
COUNTY OF FAIRFAX)

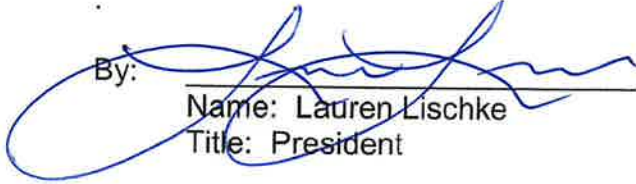
On the 28 day of August 2024 before me, the undersigned a notary public in and for said state, personally appeared **Eliot Reid**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.


Notary Public



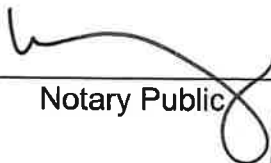
SIGNATURE PAGE OF HDFC
(PILOT AGREEMENT)

**HP UTICA HOUSING DEVELOPMENT FUND
CORPORATION, as Nominee**

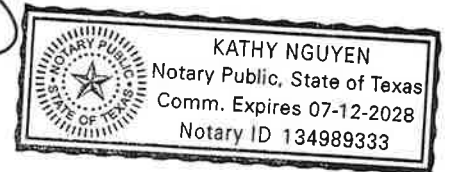
By: 
Name: Lauren Lischke
Title: President

STATE OF Texas)
COUNTY OF Travis ; ss.:

On the 28 day of August 2024 before me, the undersigned a notary public in and for said state, personally appeared **Lauren Lischke**, 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/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

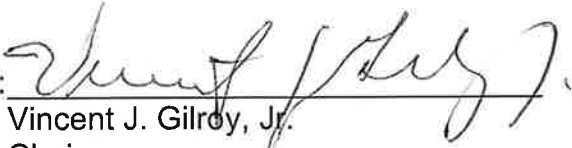


Notary Public



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 25th day of August 2024 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.: District Treasurer

SCHEDULE B

ASSUMING CERTIFICATE OF SUBSTANTIAL COMPLETION IS ISSUED ON OR BEFORE
DECEMBER 2025, TO BE ADJUSTED BASED ON ACTUAL SUBSTANTIAL COMPLETION

Exemption	EGI Certification	School Tax	County Tax	
Year	Due	Year	Year	City Tax Year
1	N/A	2025-26	2026	2026-27
2	2027	2026-27	2027	2027-28
3	2028	2027-28	2028	2028-29
4	2029	2028-29	2029	2029-30
5	2030	2029-30	2030	2030-31
6	2031	2030-31	2031	2031-32
7	2032	2031-32	2032	2032-33
8	2033	2032-33	2033	2033-34
9	2034	2033-34	2034	2034-35
10	2035	2034-35	2035	2035-36
11	2036	2035-36	2036	2036-37
12	2037	2036-37	2037	2037-38
13	2038	2037-38	2038	2038-39
14	2039	2038-39	2039	2039-40
15	2040	2039-40	2040	2040-41
16	2041	2040-41	2041	2041-42
17	2042	2041-42	2042	2042-43
18	2043	2042-43	2043	2043-44
19	2044	2043-44	2044	2044-45
20	2045	2044-45	2045	2045-46
21	2046	2045-46	2046	2046-47
22	2047	2046-47	2047	2047-48
23	2048	2047-48	2048	2048-49
24	2049	2048-49	2049	2049-50
25	2050	2049-50	2050	2050-51
26	2051	2050-51	2051	2051-52
27	2052	2051-52	2052	2052-53
28	2053	2052-53	2053	2053-54
29	2054	2053-54	2054	2054-55
30	2055	2054-55	2055	2055-56
31	2056	2055-56	2056	2056-57
32	2057	2056-57	2057	2057-58
33	2058	2057-58	2058	2058-59
34	2059	2058-59	2059	2059-60
35	2060	2059-60	2060	2060-61