

COUNTY OF FRANKLIN INDUSTRIAL DEVELOPMENT AGENCY

AND

CHURCH STREET NY LLC

PAYMENT IN LIEU OF TAX AGREEMENT

Project

Church Street NY LLC - 2022 Project

Premises:

**15 Church Street in the Village of Tupper Lake, New York
Approx. .94 acre parcel - TMID No. 490.75-2-1
IDA Project No. 1601-22-01A**

Taxing Jurisdictions

Franklin County
Town of Tupper Lake
Village of Tupper Lake
Tupper Lake Central School District

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the “Agreement”), dated as of May 23, 2022, by and between the **COUNTY OF FRANKLIN INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 355 West Main Street, Suite 428, Malone, New York 12953 (the “Agency”) and **CHURCH STREET NY LLC**, a New York limited liability company having offices at c/o 11 CTL, LLC, 546 Fifth Avenue, 6th Floor, New York, New York 10036 (the “Company”).

WITNESSETH:

WHEREAS, the Agency was created by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 453 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the “Act”) as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company previously submitted an application to the Agency requesting the Agency’s assistance with a certain project (the “Project”) consisting of consisting of: (i) the acquisition by the Agency of a leasehold interest in approximately .94 acres of real property located at 15 Church Street in the Village of Tupper Lake, New York (the “Land”, being more particularly described as tax parcel No. 490.75-2-1) along with the existing improvements thereon consisting principally of an approximately 41,000 square foot residential apartment building consisting of approximately fifty (50) one bedroom units, all of which are HUD Section 8 subsidized (the “Existing Improvements”); (ii) the renovation, reconstruction, rehabilitation and operation of the Existing Improvements, together with other related site work, exterior access and egress improvements, curbage, signage, utility and related exterior improvements (collectively, the “Improvements”); (iii) the acquisition of and installation in and around the Land, the Existing Improvements, and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the “Equipment” and, collectively with, the Land, the Existing Improvements and the Improvements, the “Facility”); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the “Straight Lease Transaction”); and

WHEREAS, in order to induce the Company to acquire, renovate, construct and equip the Facility, the Agency is willing to acquire and retain a leasehold interest in the Land, the Existing Improvements, the Improvements and personal property constituting the Facility pursuant to a Lease Agreement, and thereafter the Agency will lease back the Facility to the Company pursuant to the terms and conditions of a certain Leaseback Agreement to be dated on or about the date hereof (the “Leaseback Agreement” and together with the Lease Agreement, the “Lease Agreements”); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its

jurisdiction, control or supervision, other than Special Charges as defined in Section 2.1 which shall be paid by the Company outside this Agreement as billed by respective third parties; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into this Agreement to make provisions for payments in lieu of taxes by the Company to the Agency relative to the Facility for the benefit of Franklin County (the "County"), the Town of Tupper Lake (the "Town"), the Village of Tupper Lake (the "Village") and the Tupper Lake Central School District (hereinafter the "School District" or "School" and, collectively with the County, the Town and the Village, the "Affected Tax Jurisdictions").

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section I - Payment in lieu of Ad Valorem Taxes:

1.1 A. Subject to the completion and filing by the taxable status date of **March 1, 2023** (the "Taxable Status Date") of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Land (along with the Improvements once constructed by the Company, as agent of the Agency) shall be exempt from Real Estate Taxes for the periods set forth in Section 1.5. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County, Town, Village, and the School. The Company shall provide to the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Interim Real Estate Taxes. To the extent imposed by any of the Affected Tax Jurisdictions, the Company shall pay all Real Estate Taxes relating to the Land and Existing Improvements due and payable from the date hereof through the Taxable Status Date.

C. Payee. As long as the Facility is owned by the Agency or leased by the Company to the Agency, or under the Agency's jurisdiction, control or supervision, the Company agrees to pay annually to the Agency as a payment in lieu of taxes, on or before February 1 of each year beginning February 1, 2024, and thereafter February 1 of each year during the term hereof (collectively, the "Payment Date") for School, County, Town and Village Taxes, respectively, an amount equal to the Total PILOT Payment, which is defined and set forth within **Schedule A**, hereto.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder, if any, within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County, Town and/or any special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the Total PILOT Payment due date. For Village and School District purposes, the tax rates used to determine the Total PILOT Payment shall be the rate relating to the Village and School fiscal year which includes the Total PILOT Payment due date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility that has not been described in the Application constructed or added in any manner after the date of this Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total PILOT Payment. The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased Total PILOT Payment until a different Total PILOT Payment shall be established. If a lesser Total PILOT Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding Total PILOT Payment(s).

1.5 Period of Benefits. The tax benefits provided for herein shall be deemed to include (i) the 2024 County and Town tax year through the 2058 County and Town Tax years, (ii) the 2023/2024 School tax year through the 2057/2058 School tax year, and the 2024/2025 Village tax year through the 2057/2058 Village tax year. This PILOT Agreement shall expire on December 31, 2058; *provided, however*, the Company shall pay the 2059 County and Town tax bills and the 2058/2059 Village and School tax bills on the dates and in the amounts as if the Agency were not in title on the tax lien date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b, 485-e, 581 and 577 of the New York Real Property Tax Law (“RPTL”). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section II - Special District Charges, Special Assessments and other charges.

2.1 Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to any fire district charges or “curb charges”), and pure water charges and sewer charges (collectively, the “Special Charges”) are to be paid in full in accordance with normal billing practices.

Section III - Transfer of Facility.

3.1 In the event that this Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment. The foregoing rights shall not include the ability to lower or modify the Total PILOT Payments payable hereunder.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any Special Charges as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers and provide information to the Agency as requested from time to time.

Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section VI – Job Creation.

6.1 As specific inducement for Agency entering into this PILOT Agreement with the Company, the Company shall retain and create the full-time or equivalent jobs set forth within the Company's Application for Financial Assistance (the "Application"), during the term of this PILOT Agreement at the Facility. Further, the Company pledges commercially reasonable efforts to hire persons from the Franklin County, New York work force. The Company shall promptly provide employment figures to the Agency as requested.

Section VII - Events of Default.

7.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I on or before the Payment Date; (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; (iii) the occurrence and continuance of any events of default under the Lease Agreements after delivery of any required notice and the expiration of any applicable cure periods which results in the termination thereof; (iv) create the jobs set forth in Section 6.1 above; or (v) to exercise commercially reasonable efforts to recruit and hire new employees from the Franklin County, New York work force. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

7.2 If payments pursuant to Section I herein are not made by the Payment Date, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Payment Date defined in Section 7.1 herein, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

7.3 Prior to exercising any remedy hereunder, the Agency shall deliver to any Lender and the Investor Member (as defined in the Leaseback Agreement) a copy of any default notice delivered to the Company, and any Lender and the Company shall have 30 days for a monetary default and 60 days in the case of any other default, after notice to a Lender and the Investor Member of such default, to cure or cause to be cured the default, and the Agency shall accept such performance by a Lender or the Investor Member as if the same had been done by the Company.

Section VIII - Assignment.

8.1 No portion of any interest in this Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior approval and written consent of the Agency, which shall be governed by the applicable provisions of the Leaseback Agreement.

Section IX - Miscellaneous.

9.1 This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

9.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, or by nationally-recognized overnight courier, as follows:

To the Agency: County of Franklin Industrial Development Agency
355 West Main Street, Suite 428
Malone, New York 12953
Attn: Chief Executive Officer

And to: Harris Beach PLLC
677 Broadway, Suite 1101

Albany, New York 12207
Attn: Justin S. Miller, Esq.

And to: Fischer, Bessette, Muldowney & McArdle, LLP
43 Golf Course Road
P.O. Box 420
Malone, New York 12953
Attn: Matthew H. McCardle, Esq.

To the Company: Church Street NY LLC
c/o 11 CTL, LLC
546 Fifth Avenue, 6th Floor
New York, New York 10036
Attn: Mark E. Carbone

With a Copy to: Levitt & Boccio, LLP
423 W. 55th Street, 8th Floor
New York, New York 10019
Attn: David Boccio, Esq.

To the Lender: M&T Realty Capital Corporation
1 Light Street, 12th Floor
Baltimore, Maryland 21202
Attention: Wendy LeBlanc
Email: wleblanc@mtb.com and MTRCC_Legal_Notices@mtb.com

And to: Federal Home Loan Mortgage Corporation
8100 Jones Branch Drive, MS B4P
McLean, Virginia 22102
Attention: Multifamily Operations Loan Accounting
Email: mfla@freddiemac.com
Telephone: (703) 714-4177

And to: Federal Home Loan Mortgage Corporation
8200 Jones Branch Drive, MS 210
McLean, Virginia 22102
Attention: Managing Associate General Counsel – Multifamily Legal
Division
Email: guy_nelson@freddiemac.com
Telephone: (703) 903-2000

And to: Red Stone - Fund 29 Limited Partnership
c/o Red Stone Equity Partners, LLC
1100 Superior Avenue, Suite 1640
Cleveland, OH 44114

Attention: General Counsel

With a copy to: Nixon Peabody LLP
Exchange Place
53 State Street
Boston, MA 02109
Attention: Roger W. Holmes

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

9.3 This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Franklin County, New York.

9.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

9.5 The Company acknowledges receipt of the Agency's Uniform Tax Exemption Policy and Project Recapture and Termination Policy, the terms of which are incorporated by reference. The Company acknowledges and agrees that, in addition to any other remedies that may be available to the Agency, all or part of the benefits conferred on the Company hereunder may be subject to recapture pursuant to the provisions of such Uniform Tax Exemption Policy and Project Recapture and Termination Policy.

[Signature Page to PILOT Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**COUNTY OF FRANKLIN INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____

Name:  Jeremy Evans

Title: Chief Executive Officer

CHURCH STREET NY LLC

By: 11 CTL, LLC, its managing member

By: _____

Name: Mark E. Carbone

Title: Member/Manager


[Signature Page to PILOT Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**COUNTY OF FRANKLIN INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Jeremy Evans
Title: Chief Executive Officer

CHURCH STREET NY LLC
By: 11 CTL, LLC, its managing member

By:  _____
Name: Mark E. Carbone
Title: Member/Manager

SCHEDULE A

“Total PILOT Payment” shall be calculated as follows:

<u>PILOT Year</u>	<u>County/Town Tax Year</u>	<u>Village/School Tax Year</u>	<u>Total PILOT Payment</u>
Interim	2022 and 2023	2022/2023	Full Taxes
Year 1	2024	2023/2024	\$38,000.00
Year 2	2025	2024/2025	\$38,760.00
Year 3	2026	2025/2026	\$39,535.00
Year 4	2027	2026/2027	\$40,326.00
Year 5	2028	2027/2028	\$41,132.00
Year 6	2029	2028/2029	\$41,955.00
Year 7	2030	2029/2030	\$42,794.00
Year 8	2031	2030/2031	\$43,650.00
Year 9	2032	2031/2032	\$44,523.00
Year 10	2033	2032/2033	\$50,000.00
Year 11	2034	2033/2034	\$51,000.00
Year 12	2035	2034/2035	\$52,020.00
Year 13	2036	2035/2036	\$53,060.00
Year 14	2037	2036/2037	\$54,122.00
Year 15	2038	2037/2038	\$55,204.00
Year 16	2039	2038/2039	\$56,308.00
Year 17	2040	2039/2040	\$57,434.00
Year 18	2041	2040/2041	\$58,583.00
Year 19	2042	2041/2042	\$59,755.00
Year 20	2043	2042/2043	\$65,000.00
Year 21	2044	2043/2044	\$66,300.00
Year 22	2045	2044/2045	\$67,626.00
Year 23	2046	2045/2046	\$68,979.00
Year 24	2047	2046/2047	\$70,358.00
Year 25	2048	2047/2048	\$71,765.00
Year 26	2049	2048/2049	\$73,201.00
Year 27	2050	2049/2050	\$74,665.00
Year 28	2051	2050/2051	\$76,158.00
Year 29	2052	2051/2052	\$77,681.00
Year 30	2053	2052/2053	\$79,235.00
Year 31	2054	2053/2054	\$80,819.00
Year 32	2055	2054/2055	\$82,436.00
Year 33	2056	2055/2056	\$84,084.00
Year 34	2057	2056/2057	\$85,766.00
Year 35	2058	2057/2058	\$87,481.00