

B240 LLC

and

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Oneida County Industrial Development Agency
2020 Real Estate Lease
(B240 LLC – Air City Lofts Phase 2 Facility)

Oneida County, City of Rome, Rome City School District

Tax Account No.: 224.000-1-14.4

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (this "Agreement"), dated as of December 28, 2020, is by and between **B240 LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with an address of 18 Division Street, Suite 401, Saratoga Springs, New York 12866 (the "Company") and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 584 Phoenix Drive, Rome, New York 13441 (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 372 of the Laws of 1970 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 that the Agency assist in Phase 2 of a multi-phased mixed-use community which consists of the acquisition of a 6.655± acre parcel of land located at 129 & 143 Air City Boulevard, Griffiss Business and Technology Park, City of Rome, Oneida County, New York (the "Land"); construction on the Land of two, four-story mixed-use buildings comprised of 26,000± square feet of retail/commercial space on the first floor and 72 market rate residential one- and two-bedroom apartments on the second through fourth floors, together with sidewalks and infrastructure to service the same (collectively, the "Improvements"); and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing housing and amenities within the community for existing employees of the Griffiss Business and Technology Park, and to enhance talent recruitment and economic development in the region (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"); and

WHEREAS, Community Bank, National Association (the "Bank") has agreed to finance a portion of costs of the Project by making a loan to the Company in

the principal sum not to exceed \$17,229,782.00 to be secured by a Mortgage (the "Mortgage") from the Agency and the Company to the Bank; and

WHEREAS, Griffiss Local Development Corporation ("GLDC") owned fee title to the Land and leased the Land to the Agency, pursuant to a Lease Agreement dated as of July 1, 2014 as amended on August 31, 2016 (the "GLDC Lease"), and the Agency leased the Land back to GLDC for its development pursuant to a Leaseback Agreement dated as of July 1, 2014 as amended on August 31, 2016 (the "GLDC Leaseback"); and

WHEREAS, the Land has been 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 pursuant to the terms of a Payment-In-Lieu-of-Tax Agreement dated as of July 1, 2014 (the "GLDC PILOT"), because the Agency has a leasehold interest in the Land and the Land has been 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, GLDC conveyed the Land to the Company on December 28, 2020, subject in all respects to the GLDC Lease, GLDC Leaseback and the GLDC PILOT Agreement; and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to maintain its leasehold interest in the Land, acquire a leasehold interest in the Improvements and Equipment, pursuant to a Lease Agreement dated of even date herewith between the Agency and the Company 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, upon the Agency acquiring a leasehold interest in the Facility from the Company, GLDC and the Agency shall release the Land from the GLDC Lease, GLDC Leaseback and GLDC PILOT Agreement; and

WHEREAS, the Company will further sublease individual residential units to residential tenants, to be identified from time to time (each a "Residential Sublessee" and collectively, the "Residential Sublessees"); and

WHEREAS, the Company will further sublease individual commercial and/or retail units to commercial or retail tenants, to be identified from time to time (each a "Sublessee" and collectively, the "Sublessees"); and

WHEREAS, the Agency has agreed to maintain an interest in 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 will continue to be 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 (the "Exempt Taxes"), because the Agency is maintaining its 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 the Company, as lessee of the Facility leased by the Agency, will, in fact, have Exempt Taxes to pay under the provisions of this Agreement in the form of PILOT Payments (defined below) from the first date of the Exemption Term (as that date is determined by the parties and described herein) commencing with the first taxable status date following the issuance of a Certificate of Occupancy for the Project 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"), which is based on the anticipated Completion Date of the Facility and may be adjusted based on the actual Completion Date of the Facility; and

WHEREAS, it is the intention of the parties that the First Exemption Year shall begin on the January 1 following the issuance of the first Certificate of Occupancy for the Project; the Exemption Years described on Schedule B assume the first Certificate of Occupancy will be issued in 2021, and the parties agree that it may be necessary to amend the Exemption Years if the first 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 Rome 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, the Rome 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, 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) no taxes or PILOT Payments 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. (a) The Company shall pay an amount in lieu of the Exempt Taxes (the "PILOT Payments") during each Exemption Year as follows:

Exemption Year 1	No Exempt Taxes
Exemption Year 2	No Exempt Taxes
Exemption Year 3	No Exempt Taxes
Exemption Year 4	\$43,887.84
Exemption Year 5	\$53,455.39
Exemption Year 6	\$63,300.09
Exemption Year 7	\$73,428.11
Exemption Year 8	\$83,845.72
Exemption Year 9	\$94,559.34
Exemption Year 10	\$105,575.51
Exemption Year 11	\$116,900.88
Exemption Year 12	\$128,542.26
Exemption Year 13 and thereafter	100% of Exempt Taxes

The PILOT Payments shall be billed by each Taxing Authority as set forth on Schedule A attached hereto and made a part hereof in the same proportion as taxes would have been billed but for the Agency's involvement, unless the Taxing Authorities have consented in writing to a specific allocation (For the purposes of calculating the allocation, each Taxing Authority shall use the tax rate for the prior Exemption Year).

Anything herein to the contrary, notwithstanding, this Agreement and the Agency's leasehold interest in the Facility shall terminate on the date on which the Leaseback Agreement shall terminate. The benefits under this Agreement are subject to the terms and conditions of a certain Project Obligation and Recapture Agreement dated as of December 28, 2020.

(b) 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 after 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 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. 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. Anything herein to the contrary, notwithstanding, upon the failure of the Company in making any payment (or causing any payment to be made) when due hereunder and upon failure to cure such default within thirty (30) days after receipt of notice as herein provided, the Agency shall have the right to terminate the Leaseback Agreement and this PILOT Agreement, and the Company shall henceforth pay one hundred (100%) percent of the Exempt Taxes, together with all costs of collection, including but not limited to reasonable attorneys' fees. Nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.

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. Notwithstanding anything herein to the contrary, for so long as this Agreement is in effect, the Company hereby unconditionally and irrevocably waives its right, if any, to apply for and/or receive the benefit of any other real property tax exemption with respect to the Facility, including, without limitation, any real property tax exemption that may be available under Sections 485-a, 485-b and 485-e of the Real Property Tax Law.

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, the Bank or the Company, as the case may be, addressed as follows:

To the Agency: Oneida County Industrial Development Agency
584 Phoenix Drive
Rome, New York 13441-4105
Attn.: Chairman

With a Copy To: Bond, Schoeneck & King, PLLC
501 Main Street
Utica, New York 13501
Attn.: Linda E. Romano, Esq.

To the Company: B240 LLC
18 Division Street, Suite 401
Saratoga Springs, New York 12866
Attn.: Alfio Bonacio, Jr., Manager

With a Copy To: Barclay Damon LLP
2000 Five Star Bank Plaza
100 Chestnut Street
Rochester, New York 14604
Attention: Steven J. Tranelli, Esq.

To the Bank: Community Bank, National Association
8 Southwoods Boulevard, Suite 201
Albany, New York 12211
Attention: Commercial Lending

With a Copy to: Lemery Greisler LLC
60 Railroad Place, Suite 502
Saratoga Springs, New York 12866
Attention: James A. Carminucci, Esq.

provided, that the Agency, the Bank 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.

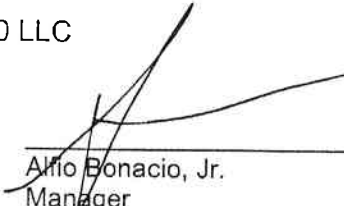
(e) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this **PAYMENT-IN-LIEU-OF-TAX AGREEMENT** as of the date first above written.

B240 LLC

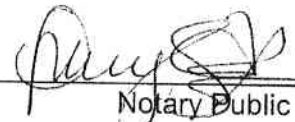
By:



Alfio Bonacio, Jr.
Manager

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

On the 29th day of December 2020 before me, the undersigned a notary public in and for said state, personally appeared **Alfio Bonacio, 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



SECOND SIGNATURE PAGE TO
PILOT AGREEMENT BETWEEN B240 LLC AND
ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
David C. Grow
Chairman

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

On the 18 day of December 2020 before me, the undersigned a notary public in and for said state, personally appeared **David C. Grow**, 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

LORI L. PATRICK
Notary Public, State of New York
No. 01PA6034055
Qualified in Oneida County
My Commission Expires Dec. 6, 2021

SCHEDULE A

COUNTY OF ONEIDA

Receiver of Taxes
800 Park Avenue
Utica, New York 13501

CITY OF ROME

Receiver of Taxes
Rome City Hall
198 North Washington Street
Rome, New York 13440
Attn.: City Treasurer

ROME CITY SCHOOL DISTRICT

409 Bell Street
Rome, New York 13440
Attn.: David Dreidel, District Treasurer

SCHEDULE B

EXEMPTION YEARS

ASSUMING THE FIRST CERTIFICATE OF OCCUPANCY IS ISSUED ON OR BEFORE DECEMBER 2021,
TO BE ADJUSTED BASED ON ACTUAL COMPLETION DATE

Exemption Year	County/City Taxes	School Taxes
Year One	01/01/2022 – 12/31/2022	07/01/2022 – 06/30/2023
Year Two	01/01/2023 – 12/31/2023	07/01/2023 – 06/30/2024
Year Three	01/01/2024 – 12/31/2024	07/01/2024 – 06/30/2025
Year Four	01/01/2025 – 12/31/2025	07/01/2025 – 06/30/2026
Year Five	01/01/2026 – 12/31/2026	07/01/2026 – 06/30/2027
Year Six	01/01/2027 – 12/31/2027	07/01/2027 – 06/30/2028
Year Seven	01/01/2028 – 12/31/2028	07/01/2028 – 06/30/2029
Year Eight	01/01/2029 – 12/31/2029	07/01/2029 – 06/30/2030
Year Nine	01/01/2030 – 12/31/2030	07/01/2030 – 06/30/2031
Year Ten	01/01/2031 – 12/31/2031	07/01/2031 – 06/30/2032
Year Eleven	01/01/2032 – 12/31/2032	07/01/2032 – 06/30/2033
Year Twelve	01/01/2033 – 12/31/2033	07/01/2033 – 06/30/2034