

TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

BVSHF III ITHACA, LLC

TAX AGREEMENT

Property Address:

401 State Street East
City of Ithaca
Tompkins County, New York

Tax Map Number:

69.-6-3 (as may be subdivided and assigned a new tax
Parcel No. and address)

Affected Tax Jurisdictions:

Tompkins County
City of Ithaca
Ithaca City School District

Dated as of December 1, 2021

TAX AGREEMENT

THIS TAX AGREEMENT, dated as of December 1, 2021 (the "Tax Agreement"), by and between the **TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York, having offices at 401 East State Street, Suite 402B, Ithaca, New York 14850 (the "Agency"), and **BVSHF III ITHACA, LLC**, a limited liability company duly formed and validly existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with offices at 353 N. Clark Street, Suite 730, Chicago, Illinois 60654 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 535 of the Laws of 1971 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York (the "State"); and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project"), consisting of: (A) the acquisition by the Agency of a leasehold or other interest in certain real property located at 401 State Street East in the City of Ithaca, New York (the "Land", being more particularly identified as tax parcel No. 69.-6-3, as may be subdivided and assigned a new tax parcel No. and address) and the existing improvements located thereon, consisting principally of a parking lot (the "Existing Improvements"), (B) the planning, design, redevelopment and construction on the Existing Improvements of an approximately six-story building consisting of (i) approximately 321 residential apartments, (ii) a parking structure with a total of approximately 239 parking spaces, (iii) approximately 7,500 square feet of amenity space, including, but not limited to, outdoor courtyards and seating areas, and (iv) related amenity spaces, curbage and related site and exterior improvements (collectively, the "Improvements") and (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other items of tangible personal use (the "Equipment"; and, together with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, in order to induce the Company to acquire, construct, reconstruct, renovate and equip the Facility, the Agency is willing to take a leasehold interest in the Facility and lease said Facility back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, dated as of December 1, 2021 (the "Leaseback Agreement"); 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 ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for

the benefit of Tompkins County (the "County"), the City of Ithaca (the "City") and the Ithaca City School District (the "School District"; and, collectively with the County and the City, 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 1 - Payment in Lieu of Ad Valorem Taxes:

Section 1.1 A. Subject to the completion and filing by the Agency by the taxable status date **March 1, 2022** (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 (the "RPTL") and Section 874 of the Act, the Facility shall be exempt from Real Estate Taxes (as defined hereafter) commencing with the (i) the **2025/2026** School District tax year, and (ii) the **2026** County and City tax years. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility, including the Land, the Existing Improvements and the Improvements, by the County, the City and the School District. 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.

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 due and payable from the date hereof through the Taxable Status Date and any applicable time periods prior to those set forth within Section 1.5.

C. Agreement to Make Payments. As long as the Facility is owned by or subleased to the Agency, the Company agrees to pay annually to the Affected Tax Jurisdictions as a payment in lieu of taxes, on or before October 1 of each year for School District taxes and on or before January 1 of each year for County and City taxes (collectively, the "Payment Date"), commencing on October 1, 2025 and January 1, 2026, respectively, an amount equal to the Total Tax Payment, as defined on **Schedule A** attached hereto. The Company shall make all such Total Tax Payments in the amounts and on the dates specified above, whether or not any such Total Tax Payment is billed by the Agency, the Affected Tax Jurisdictions, or any other party.

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 Land is 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 an alternative allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total Tax Payments among the Affected Tax Jurisdictions, the Company shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County and City purposes, the tax rates used to determine the allocation of the Total Tax Payment shall be the tax rates relating to the calendar year which includes the Payment Date. For School District purposes, the tax rates used to determine the Total Tax Payment shall be the rate relating to the School District year which includes the Payment Date. In the event the Company pays the full amount of the Total Tax Payment due on or prior to the applicable Payment Date but, in good faith, incorrectly determines the allocation of the Total Tax Payments due to the Affected Tax Jurisdictions, the Company shall not be deemed in default hereunder unless and until the Company fails to correct such misallocation within thirty (30) days written notice from any or all of the Affected Tax Jurisdictions.

1.4 Valuation of Future Additions to the Facility. If there shall be a future addition to the Facility constructed or added in any manner after the date of this Tax Agreement that is not contemplated by this Tax 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 Tax Payment. The Agency shall notify the Company of any proposed increase in the Total Tax Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Addition 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 Tax Payment until a different Total Tax Payment shall be established. If a lesser Total Tax Payment is determined in any proceeding or by subsequent agreement of the parties, the Total Tax 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 Tax Payment(s).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the **2025/2026** School District tax year through the **2034/2035** School District tax year, and (ii) the **2026** County and City tax years through the **2035** County and City tax years. This Tax Agreement **shall expire on December 31, 2035**; *provided, however*, the Company shall pay (i) the 2035/2036 School District tax bill, and (ii) the 2036 County and City tax bills on

the dates and in the amounts as if the Agency were not in title on the tax status 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 Tax Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility while this Tax Agreement is in effect 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 of the 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 2 - Special District Charges, Special Assessments and other Charges. Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.

Section 3 - Transfer of Facility. In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section 1 herein, or this Tax 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 4 - 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 or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this Tax Agreement, as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the

Facility were owned by the Company and (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section 5 - Changes in Law. 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 6 - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder: (a) the failure by the Company to: (i) make the payments described in Section 1 within thirty (30) days of the Payment Date (the "Delinquency Date") or (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; (b) the occurrence and continuance of any events of default under the Leaseback Agreement after any applicable cure periods; and (c) the determination of the Agency to suspend, discontinue and/or recapture any financial assistance previously conferred to the Company by the Agency in accordance with the Agency's Project Recapture Policy in effect as of the date hereof. 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 or under the Agency's Recapture Policy in effect as of the date hereof, the Agency and/or the 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 Act 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.

6.2 If payments pursuant to Section 1 herein are not made by the Delinquency 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 1 herein, if said payment is not received by the Delinquency Date, the 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, the Company shall pay, in addition to said payment, the greater of the applicable penalties and interest as determined hereunder or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

Section 7 - Assignment.

7.1 This Tax Agreement may not be assigned, in whole or in part, except to a Related Person of the Company (as that term is defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the Internal Revenue Code of 1986, as amended, hereinafter "Related Person"), without the prior written consent of the Agency, which shall not be unreasonably withheld, conditioned or delayed. A transfer of the equity interests of the Company (x) in conjunction with the recapitalization of the Company in which a Blue Vista Entity (as defined below) retains a majority equity interest or (y) which constitutes a Permitted Transfer (as defined below) shall not be deemed an assignment and shall not require the prior written consent of the Agency. Any assignment shall be on the following conditions, as of the time of each assignment:

(i) the assignee shall assume the obligations of the Company hereunder to the extent of the interest assigned;

(ii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment and the instrument of assumption;

(iii) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act; and

(iv) if the Agency shall so request, as of the purported effective date of any assignment pursuant to subsection (a) of this Section 7.1, the Company at its cost shall furnish to the Agency with a certification, in form and substance reasonably satisfactory to the Agency, as to items (i) and (iii) above.

7.2 Any such assignment that is not otherwise permitted herein is subject to the review and approval, not to be unreasonably withheld, conditioned or delayed, by the Agency and its counsel (at no cost to the Agency; any such cost to be paid by the Company, including reasonable attorneys' fees), and shall contain such terms and conditions as reasonably required by the Agency and its counsel pursuant to the terms hereof.

7.3 Notwithstanding anything in this Tax Agreement to the contrary, Permitted Transfers shall be permitted without notice to (except as set forth below) or consent from the Agency and without any changes in any terms of the Tax Agreement. "Permitted Transfers" shall mean: (a) any transfer, directly as a result of the death of a natural person, of stock, membership interests or other ownership interests previously held by the decedent in question to the person or persons lawfully entitled thereto; (b) a transfer by an individual of any direct or indirect interest in the Company in connection with the estate planning of such individual transferor to (1) an immediate family member (*i.e.*, a sibling, parent, spouse, child (or step-child), grandchild or other lineal descendant of the Related Person) of such interest holder, (2) a trust established for the benefit of such immediate family member, or (3) partnerships or limited liability companies of which the partners or members, respectively, are comprised entirely of the transferor and immediate family members of the transferor; (c) transfers or pledges of direct or indirect interests in the Company to a wholly owned subsidiary of the transferor; (d) transfers of direct or indirect interests in the Company resulting solely from the sale, transfer or issuance of shares of common

stock in a publicly traded entity, provided such shares of common stock are listed on the New York Stock Exchange or another recognized stock exchange; and (e) other transfers or pledges of direct or indirect interests in the Company, provided that if any such transfer under this clause (e) would cause any transferee to hold a 30% or greater direct or indirect ownership interest (cumulative) in the Company (which transferee did not previously hold a 30% or greater ownership interest), the Company shall give notice to the Agency of such transfer not less than ten (10) days prior to the date of such transfer; so long as, in each case of clauses (a) through (e) above, after giving effect to any and all such transfers, there is not a Change of Control.

“Change of Control” shall mean the failure of a Blue Vista Entity to Control the Company.

“Control” shall mean the power, directly or indirectly, to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling”, “controlled by” and “under common control with” have meanings correlative thereto.

“Blue Vista Entity” shall mean Blue Vista Capital Management, LLC, or any entity that is directly or indirectly Controlled by Blue Vista Capital Management, LLC, or its successor by merger or similar business reorganization event.

“Person” shall mean an individual, sole proprietorship, joint venture, association, trust, estate, business trust, corporation, nonprofit corporation, partnership, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

Section 8 - Miscellaneous.

8.1 This Tax 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.

8.2 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, as follows:

To the Agency: Tompkins County Industrial Development Agency
401 E. State Street, Suite 402B
Ithaca, New York 14850
Attn: Heather McDaniel, Administrative Director

With a Copy To: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Russell E. Gaenzle, Esq.

To the Company: BVSHF III Ithaca, LLC
353 N. Clark Street, Suite 730

Chicago, Illinois 60654
Attn: General Counsel

With a Copy To: Costello, Cooney & Fearon, PLLC
211 W. Jefferson Street
Syracuse, New York 13202
Attn: Robert Smith, Esq.

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.

8.3 This Tax 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 the Tompkins County, New York.


8.4 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. No member of the Agency nor any person executing this Tax Agreement on its behalf shall be liable personally under this Tax 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 Tax Agreement.

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[Signature Page to Tax Agreement]

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

**TOMPKINS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

Name: Heather McDaniel

Title: Administrative Director

BVSHF III ITHACA, LLC

By: _____

Name: Jason Schwartz

Title: Managing Principal


[Signature Page to Tax Agreement]

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

**TOMPKINS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Heather McDaniel
Title: Administrative Director

BVSHF III ITHACA, LLC

By:  _____
Name: Jason Schwartz
Title: Managing Principal

SCHEDULE A

To

Tax Agreement

Dated as of December 1, 2021

By and Between

Tompkins County Industrial Development Agency

and

BVSHF III Ithaca, LLC

"Total Tax Payment" shall mean an amount equal to the following:

Tax Year	City and County Tax Year	School District Tax Year	Total Taxable Valuation
Interim	2022; 2023; 2024 and 2025	2021/2022; 2022/2023; 2023/2024 and 2024/2025	Base Valuation multiplied by the respective tax rate for each Affected tax Jurisdiction (after application of any applicable equalization rate)
1	2026	2025/2026	Base Valuation, plus (Added Value of Improvements x .00)
2	2027	2026/2027	Base Valuation, plus (Added Value of Improvements x .00)
3	2028	2027/2028	Base Valuation, plus (Added Value of Improvements x .10)
4	2029	2028/2029	Base Valuation, plus (Added Value of Improvements x .20)
5	2030	2029/2030	Base Valuation, plus (Added Value of Improvements x .30)
6	2031	2030/2031	Base Valuation, plus (Added Value of Improvements x .40)
7	2032	2031/2032	Base Valuation, plus (Added Value of Improvements x .40)
8	2033	2032/2033	Base Valuation, plus (Added Value of Improvements x .50)
9	2034	2033/2034	Base Valuation, plus (Added Value of Improvements x .60)
10	2035	2034/2035	Base Valuation, plus (Added Value of Improvements x .70)
11	2036	2035/2036	100% (no abatement; full taxes paid)

During the term of this Tax Agreement, the Base Valuation shall be frozen at \$1,595,463.

The Total Tax Payment shall be calculated such that a graduated abatement factor ("Abatement Factor") shall be applied to the increased assessed valuation attributable to the Improvements made to the Facility by the Company, as an agent of the Agency (the "Added Value"). The abatement schedule shall allow for a one-hundred percent (100%) exemption from taxation for the Added Value of the Improvements in Tax Years 1 through 2; a ninety percent (90%) exemption from taxation for the Added Value of the Improvements in Tax Year 3; an eighty percent (80%) exemption from taxation for the Added Value of the Improvements in Tax Year 4; a seventy percent (70%) exemption from taxation for the Added Value of the Improvements in Tax Year 5; a sixty percent (60%) exemption from taxation for the Added Value of the Improvements in Tax Years 6 through 7; a fifty percent (50%) exemption from taxation for the Added Value of the Improvements in Tax Year 8; a forty percent (40%) exemption from taxation for the Added Value of the Improvements in Tax Year 9; and a thirty percent (30%) exemption from taxation for the Added Value of the Improvements in Tax Year 10.

Once the Total Taxable Valuation of the Facility is established using the Abatement Factor, the Total Tax Payment for the Facility shall be determined by multiplying the Total Taxable Valuation of the Facility by the respective tax rate for each affected tax jurisdiction (after application of any applicable equalization rate). After Tax Year 10, the Facility shall be subject to full taxation by the Affected Tax Jurisdictions.

Total Taxable Valuation = Base Valuation + (Added Value of Improvements x Abatement Factor)

Total Tax Payment = Total Taxable Valuation of the Facility (after equalization) x Tax Rate