



Tompkins County Clerk Recording Page

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HARRIS BEACH PLLC

Maureen Reynolds, County Clerk

Tompkins County Clerk
320 North Tioga Street
Ithaca, NY 14850
(607) 274-5431

Document Type: **LEASE**

Receipt Number: 23-374212

Grantor (Party 1)

TOMPKINS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

Grantee (Party 2)

BVSHF III ITHACA LLC

Fees

Recording Fee	\$20.00
TP-584 Form Fee	\$5.00
Pages Fee	\$40.00
State Surcharge	\$20.00
Total Fees Paid:	\$85.00

Transfer Amt: \$0.00

Instrument #: 2023-06216
Transfer Tax #: 002057

Property located in **City of Ithaca**

www.pdftron.com

State of New York
County of Tompkins

Recorded on July 20th, 2023 at 11:46:19 AM
with a total page count of **8**.

Tompkins County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

OMNIBUS AMENDMENT AGREEMENT

THIS OMNIBUS AMENDMENT AGREEMENT (herein, the "Agreement"), is made as of June 21, 2023, by and between the **TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 119 E. Seneca Street, Suite 200, Ithaca, New York 14850 (the "Agency"), and **BVSHF III ITHACA, LLC**, a Delaware limited liability company authorized to conduct business in the State of New York, having offices at 353 N. Clark Street, Suite 730, Chicago, Illinois 60654 (the "Company").

WITNESSETH:

WHEREAS, the Company previously submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to 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 seven-story building consisting of (i) approximately 353 residential apartments, (ii) a parking structure with a total of approximately 267 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 connection with the Project, the Agency and the Company entered into certain agreements consisting of: (i) a certain Project Agreement, dated as of December 29, 2021, as amended pursuant to that certain First Amendment to Project Agreement, dated as of March 31, 2022 (as amended, the "Project Agreement"), (ii) a certain Lease Agreement, dated as of December 1, 2021 (the "Lease Agreement"), a memorandum of which was recorded in the Office of the Tompkins County Clerk on June 6, 2023 as Instrument Number 2023-04703 (the "Lease Memorandum"), (iii) a certain Leaseback Agreement, dated as of December 1, 2022 (the "Leaseback Agreement"), a memorandum of which was recorded in the Office of the Tompkins County Clerk on June 6, 2023 as Instrument Number 2023-04704 (the "Leaseback Memorandum"), (iv) a certain Tax Agreement, dated as of December 1, 2022 (the "Tax Agreement"), (v) a certain Environmental Compliance and Indemnification Agreement, dated December 1, 2021 (the "Environmental Compliance Agreement"), and (vi) related documents (collectively, the "Agency Documents"); and

WHEREAS, the Company notified the Agency of a change in the Project scope; and

WHEREAS, pursuant to a certain resolution adopted by the Agency on May 10, 2023, the Agency (i) approved the modification of the change in scope of the Project; (ii) approved the modification of certain covenants set forth in the Agency Documents and (iii) authorized the increase in certain financial assistance; and

WHEREAS, in furtherance of the foregoing, the Agency and Company desire to undertake the amendment of the Agency Documents as set forth herein.

NOW THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. The definition of "Project" as contained within any of the Agency Documents shall be deleted in its entirety and replaced with the following:

(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.-6-3.1) 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 to seven-story building consisting of (i) approximately 372 residential apartments, (ii) a parking structure with a total of approximately 238 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").

Section 2. Section 4.3(b) of the Project Agreement is hereby deleted in its entirety and replaced with the following:

(b) The Company, as agent of the Agency, will undertake the Project. The Company hereby agrees to limit its activities as agent of the Agency under the authority of the Resolution to acts reasonably related to the acquisition, construction and equipping of the Facility. The right of the Company to act as agent of the Agency shall expire on the earlier of (x) the completion of the Project, or (y) **July 31, 2026** ("Termination Date"); provided, however, that the Agency, through its Administrative Director, may extend the Company's agent appointment at its discretion upon the written request of the Company if such activities and improvements are not completed by such time, and further provided that the Agency shall not unreasonably withhold its consent to the extension of such appointment.

Section 3. The definition of "Maximum Mortgage Principal Amount" in Schedule A to the Original Project Agreement shall be replaced in its entirety and shall read as follows:

"Maximum Mortgage Principal Amount" shall mean \$99,820,434.00.

Section 4. The definition of "Maximum Sales Tax Exemption" in Schedule A to the Original Project Agreement shall be replaced in its entirety and shall read as follows:

"Maximum Sales Tax Exemption" shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Company and all Subagents acting on behalf of the Company are permitted to receive under this Project Agreement, which shall equal \$4,443,971.00 or such maximum dollar amount as may be determined by the Agency pursuant to such additional documents as may be required by the Agency for such increase.

Section 5. Section 3 of the Lease Memorandum is amended as follows:

3. Term of Lease: Commencing December 1, 2021 and ending December 31, 2037.

Section 6. Section 5 of the Lease Memorandum is amended as follows:

5. Date of Termination: December 31, 2037.

Section 7. Section 2.5(b) of the Leaseback Agreement is hereby deleted in its entirety and replaced with the following:

(b) The leasehold estate created hereby shall, without any further action of the parties hereto, terminate at 11:59 P.M. on December 31, 2037, or on such earlier date as may be permitted by Section 8.1 hereof.

Section 8. Section 1.2(j) of the Leaseback Agreement is hereby deleted in its entirety and replaced with the following:

(j) The Company covenants to pay to Tompkins County, for deposit in the Tompkins County Community Housing Development Fund, an amount equal to \$1,860,000.00; such payment to be made simultaneously with the Agency's provision of a certain partial mortgage recording tax exemption.

Section 9. Section 3 of the Leaseback Memorandum is hereby deleted in its entirety and replaced with the following:

3. Term of Leaseback: Commencing December 1, 2021 and ending December 31, 2037.

Section 10. Section 5 of the Leaseback Memorandum is hereby deleted in its entirety and replaced with the following:

5. Date of Termination: December 31, 2037.

Section 11. All other provisions of the Agency Documents shall remain in full force and effect.

[Signature Page to Omnibus Amendment Agreement]

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

BVSHF III ITHACA, LLC

By: 

Name: Jason Schwartz

Title: Managing Principal

**TOMPKINS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____

Name: Heather McDaniel

Title: Administrative Director

[Signature Page to Omnibus Amendment Agreement]

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

BVSHF III ITHACA, LLC

By: _____

Name: Jason Schwartz

Title: Managing Principal

**TOMPKINS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____

Name: Heather McDaniel

Title: Administrative Director

[Acknowledgment Page to Omnibus Amendment Agreement]

STATE OF NEW YORK)
 COUNTY OF TOMPKINS) SS.:

On the ____ day of June in the year 2023, before me, the undersigned, personally appeared **HEATHER MCDANIEL**, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
 COUNTY OF TOMPKINS) SS.:

On the 13 day of June in the year 2023, before me, the undersigned, personally appeared **JASON SCHWARTZ**, 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.

Carmel M. Gutzwiller

Notary Public

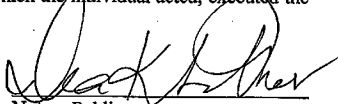


[Acknowledgment Page to Omnibus Amendment Agreement]

STATE OF NEW YORK)
COUNTY OF TOMPKINS) SS.:

On the 20 day of June in the year 2023, before me, the undersigned, personally appeared **HEATHER MCDANIEL**, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

INA K. ARTHUR
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01AR6197562
Qualified in TOMPKINS COUNTY
Commission Expires December 31, 2024


Notary Public

STATE OF NEW YORK)
COUNTY OF TOMPKINS) SS.:

On the ___ day of June in the year 2023, before me, the undersigned, personally appeared **JASON SCHWARTZ**, 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