

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

AND

DAYSPRING COMMONS, L.P.

TAX AGREEMENT

Dated as of November 1, 2019

Affected Tax Jurisdictions:

Westchester County

City of Yonkers

Street Address:

227 Elm Street and 205 Elm Street (f/k/a 320 Walnut Street)

City of Yonkers

Westchester County, New York

Tax Map No(s):

Section 1, Block 440, Lots 32 and 42

(N.B.: Lot 42 includes former Lot 39)

TAX AGREEMENT

THIS TAX AGREEMENT (the "Agreement"), dated as of November 1, 2019, by and between **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with its offices located at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 (the "Agency") and **DAYSRING COMMONS, L.P.**, a New York limited liability partnership having offices c/o Westhab, Inc., 8 Bashford Street, Yonkers, New York 10701 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 83 of the Laws of 1982 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; and

WHEREAS, DAYSRING COMMONS, L.P., for itself or on behalf of an entity to be formed (the "Company") has submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of: (A) the acquisition of certain land located at 227 Elm Street and 205 Elm Street (f/k/a 320 Walnut Street) in the City of Yonkers, New York (collectively, the "Land"); (B)(i) the construction of sixty three units of new affordable and supportive housing for low income and formerly homeless families and one superintendent unit; and (ii) the renovation and repurposing of a deteriorating church into an approximately 27,474 square foot community center that offers housing, employment, counseling, and food pantry services (collectively, (B)(i) and (ii) are the "Improvements"); and (iii) the acquisition and installation in and around the Improvements of certain items of equipment and other tangible personal property (the "Equipment"; and, collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to hold title and/or a leasehold interest in the Land, Improvements and personal property constituting the Facility and continue to lease its interest in said Land, Improvements and personal property back to the Company pursuant to the terms and conditions contained in that certain Leaseback Agreement, dated as of November 1, 2019, by and between, among others, the Agency and the Company (the "Leaseback Agreement"); and

WHEREAS, the Agency has determined that providing the Facility will accomplish, in part, its public purposes; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, construct and equip the Facility in accordance with the Application filed with the Agency; 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 by Section 2.1 which

shall be paid by the Company outside this Tax Agreement as billed by the respective third parties; 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 Westchester County and the City of Yonkers, inclusive of the City of Yonkers Dependent School District (collectively, the “Affected Tax Jurisdictions”); and

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:

Section 1.1 Exemption Application. A.) Subject to the completion and filing by the Agency or its designee at the direction of the Agency on or before the taxable status date **October 15, 2020** (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 Facility shall be exempt from Real Estate Taxes for the periods set forth in Section 1.3. For purposes of the foregoing, “Real Estate Taxes” means all general levy real estate taxes levied against the Facility by the County and City, including Real Estate Taxes levied by the City for its Dependent School District. The Company shall provide 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, specifically including but not limited to Real Estate Taxes for years prior to and after the tax years covered by this Tax Agreement. 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.) Agreement to Make Payments. The parties agree and acknowledge that payments made under this Agreement are for purposes of obtaining revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are exempt from the payment of real property taxes pursuant to Section 412-a

of the Real Property Tax Law and Section 874 of the General Municipal Law. The Company shall pay to the Agency, on September 1 ("Payment Date") of each year beginning on September 1, 2021 (for the benefit of the Affected Tax Jurisdictions), as an in lieu of tax payment, an amount equal to the Tax Payments as set forth on Schedule A (the "Tax Payments") for the periods described in Section 1.3.

All Tax Payments shall be mailed to the Agency at: 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701, or as otherwise directed by the Agency. The Company hereby agrees to make all such Tax Payments without further notice or invoice from the Agency or the Affected Tax Jurisdictions. All checks shall be made payable as directed by the Agency from time to time.

(i) The Company hereby waives any and all rights it may have to any refund of prior tax payments for the periods prior to the periods described in Section 1.3.

(ii) The Agency and the Company intend to establish a fixed payment schedule of Tax Payments that are in lieu of real estate taxes with respect to the Facility that, absent a default by the Company or a change in law, shall provide tax certainty for the Company and revenue certainty for the Affected Tax Jurisdictions. The parties hereto acknowledge that the Company shall have all of the rights and remedies of a taxpayer, including the right to institute a grievance with respect to Real Estate Taxes. The Company hereby agrees for the benefit of the Affected Tax Jurisdictions to not seek a refund of any taxes paid or to be paid for periods prior to the periods described in Section 1.3. Notwithstanding the foregoing, the right of the Company to institute a grievance with respect to Real Estate Taxes shall be strictly limited by the terms of this Agreement; and the Company shall only be entitled to institute a grievance which would cause an adjustment of the Special Charges (as defined in Section 2.1) and the Company shall be limited to the right to refunds related to grievances involving Special Charges. Except as set forth herein, the Tax Payments as set forth at Schedule A shall not be contested, grieved or refuted during and for the term of this Agreement and the Company shall not seek a refund of any taxes paid or to be paid.

(iii) 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 taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.2 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 evidence 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 Tax Payment. The Agency shall notify the Company of any

proposed increase in the Tax 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 Tax Payment until a different Tax Payment shall be established. If a lesser Tax Payment is determined in any proceeding or by subsequent agreement of the parties, the 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 Tax Payment(s).

1.3 Period of Benefits.

The tax benefits provided for herein shall be deemed to include: (i) the 2021 County tax year through the 2035 County tax year and (ii) the 2020-2021 City tax year through the 2034-2035 City tax year. **This Tax Agreement shall expire on June 30, 2036** (with the understanding that the Company will be making a payment hereunder for the 2036 County tax year and the 2035-2036 City tax year 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 of the New York Real Property Tax Law ("RPTL"); provided, the foregoing shall not be interpreted to limit the Company and Agency from subsequently agreeing to additional benefits based upon commitments to make additional improvements or changes in use from time to time between the Agency and the Company. 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 and other payments:* Special district charges, special assessments, special ad valorem levies specifically including but not limited to charges imposed by the City of Yonkers for frontage fees ("CC001"); Housing Units ("CC002"); ETPA Charge ("CC003"); and a Safety Inspection Fee ("CC004") and district charges including but not limited to pure water charges and Westchester County sewer district charges (collectively the "Special Charges"), are not included in the amount of the Tax Payment and are to be paid in full in accordance with normal billing practices.

Section III - Transfer of Facility.

3.1 In the event 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.

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 - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I within thirty (30) days of the Payment Date (the "Delinquency 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; or (iii) the occurrence and continuance of any events of default under the Leaseback Agreement after the expiration of any applicable cure periods. 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.

6.2 If payments pursuant to Section I herein are not made by the Delinquency Dates, 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 Delinquency Date defined in Section 6.1 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.

6.3 Prior to exercising any remedy hereunder, any Mortgagee, as defined in the Leaseback Agreement dated the date hereof, between the Agency and the Company, shall be afforded notice and the cure rights set forth in such section, as if such section were set forth in full herein.

Section VII - Assignment.

7.1 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 written consent of the Agency, which shall not be unreasonably withheld or delayed.

Section VIII – Miscellaneous.

8.1 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.

8.2 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, or to a nationally recognized courier such as Federal Express, addressed as follows:

To the Agency:

City of Yonkers Industrial Development Agency
470 Nepperhan Avenue, Suite 200
Yonkers, New York 10701
Attention: President/CEO

With Copies To:

Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534

Attention: Shawn M. Griffin, Esq.

To the Company:

Dayspring Commons, L.P.
c/o Westhab, Inc.
8 Bashford Street
Yonkers, New York 10701
Attention: Andrew Germansky, Vice President

With a Copy To:

Nixon Peabody LLP
55 West 46th Street
New York, New York 10036
Attention: Meghan C. Altidor, Esq.

With a Copy To:

Raymond James Housing Opportunities Fund 59 L.L.C.
c/o Raymond James Tax Credit Funds, Inc.
880 Carillon Parkway
St. Petersburg, Florida 33716
Attention: Steven J. Kropf, President

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. Any notice hereunder may be given by counsel for a party with the same force and effect as if given by such party.

8.3 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 Westchester 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. 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.

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[Signature Page to Tax Agreement]

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

**CITY OF YONKERS INDUSTRIAL DEVELOPMENT
AGENCY**

By: Wilson Kimball
Name: Wilson Kimball
Title: Secretary

DAYSPRING COMMONS, L.P.

By: DAYSPRING COMMONS GP, LLC, its General
Partner

By: WESTHAB, INC., its Sole Member

By: _____
Name: Richard Nightingale
Title: President & CEO

[Signature Page to Tax Agreement]

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

**CITY OF YONKERS INDUSTRIAL DEVELOPMENT
AGENCY**

By: _____
Name: Wilson Kimball
Title: Secretary

DAYSPRING COMMONS, L.P.

By: DAYSPRING COMMONS GP, LLC, its General
Partner

By: WESTHAB, INC., its Sole Member

By: _____
Name: Richard Nightingale
Title: President & CEO

SCHEDULE A

to

Tax Agreement

Dated as of November 1, 2019

by and between

City of Yonkers Industrial Development Agency
and Dayspring Commons, LP

Pursuant to the terms of Section 1.1 of this Tax Agreement, "Tax Payments" shall mean an amount per annum equal to the following amounts for the period designated:

TAX AGREEMENT YEAR	CITY YEAR	COUNTY YEAR	PAYMENT DATE	TOTAL TAX PAYMENTS
1	2021	2021	September 1, 2021	\$75,436
2	2022	2022	September 1, 2022	\$77,699
3	2023	2023	September 1, 2023	\$80,030
4	2024	2024	September 1, 2024	\$82,431
5	2025	2025	September 1, 2025	\$84,904
6	2026	2026	September 1, 2026	\$87,451
7	2027	2027	September 1, 2027	\$90,074
8	2028	2028	September 1, 2028	\$92,777
9	2029	2029	September 1, 2029	\$95,560
10	2030	2030	September 1, 2030	\$98,427
11	2031	2031	September 1, 2031	\$101,380
12	2032	2032	September 1, 2032	\$104,421
13	2033	2033	September 1, 2033	\$107,554
14	2034	2034	September 1, 2034	\$110,780
15	2035	2035	September 1, 2035	\$114,104

EXHIBIT A

Block 440 Tax Lot 32:

All that certain plot, piece or parcel of land, situate, lying and being in the City of Yonkers, County of Westchester and State of New York, being a portion of the combined lands as described in a deed to Westhab, Inc. from City of Yonkers dated June 29, 2017 and recorded in the Westchester County Clerk's Office July 6, 2017 as Deed Control No. 571793201 and a deed to Westhab, Inc. from Good Shepherd Presbyterian Church dated December 31, 2015 and recorded in the Westchester County Clerk's Office January 7, 2016 as Deed Control No. 553643278 and being more particularly bounded and described as follows:

BEGINNING at a point along the northeasterly line of Elm Street, said point being 83.37 feet measured from the intersection of said northeasterly line of Elm Street with the northwesterly line of William Street;

THENCE northwesterly along said northeasterly line of Elm Street, 127.39 feet to an angle point;

THENCE continuing northwesterly along said northeasterly line of Elm Street on a line forming an interior angle of 180 degrees 37 minutes 30 seconds with the last described line, 106.24 feet to a point;

THENCE through the aforesaid combined lands as described in Deed Control No. 571793201 and Deed Control No. 553643278 the following three courses and distances:

1. Northeasterly on a line forming an interior angle of 89 degrees 54 minutes 20 seconds with the last described line, 88.10 feet to a point;
2. Southeasterly on a line forming an interior angle of 90 degrees 00 minutes 00 seconds with the last described line, 70.00 feet to a point;
3. Northeasterly on a line forming an interior angle of 270 degrees 00 minutes 00 seconds with the last described line, 56.45 feet to a point along the northeasterly line of the said combined lands as described in deed recorded in Control No. 571793201 and in deed recorded in Control No. 553643278;

THENCE southeasterly on a line forming an interior angle of 88 degrees 41 minutes 18 seconds with the last described line, 101.43 feet to a point;

THENCE southwesterly on a line forming an interior angle of 114 degrees 47 minutes 35 seconds with the last described line, 156.16 feet to the point or PLACE of BEGINNING and forming an interior angle of 65 degrees 59 minutes 17 seconds with the first described course.

Block 440 Tax Lot 42: (formerly known as Block 440 Tax Lots 39 and 42)

All that certain plot, piece or parcel of land, situate, lying and being in the City of Yonkers, County of Westchester and State of New York, being a portion of the combined lands as described in a deed to Westhab, Inc. from City of Yonkers dated June 29, 2017 and recorded in the Westchester County Clerk's Office July 6, 2017 as Deed Control No. 571793201 and a deed to Westhab, Inc. from Good Shepherd Presbyterian Church dated December 31, 2015 and recorded in the Westchester County Clerk's Office January 7, 2016 as Deed Control No. 553643278 and being more particularly bounded and described as follows:

BEGINNING at a point along the northeasterly line of Elm Street at its point of intersection with the southeasterly line of Walnut Street;

RUNNING THENCE northeasterly along said southeasterly line of Walnut Street on a line forming an interior angle of 114 degrees 28 minutes 10 seconds with the said northeasterly line of Elm Street, 136.06 feet to a point;

RUNNING THENCE southeasterly on a line forming an interior angle of 73 degrees 39 minutes 08 seconds with the last described line, 169.08 feet to an angle point;

THENCE continuing southeasterly on a line forming an interior angle of 170 degrees 28 minutes 20 seconds with the last described line, 134.30 feet to a point;

THENCE through the aforesaid combined lands as described in Deed Control No. 571793201 and Deed Control No. 553643278 the following three courses and distances:

1. Southwesterly on a line forming an interior angle of 91 degrees 18 minutes 42 seconds with the last described line, 56.45 feet to a point;
2. Northwesterly on a line forming an interior angle of 90 degrees 00 minutes 00 seconds with the last described line, 70.00 feet to a point;
3. Southwesterly on a line forming an interior angle of 270 degrees 00 minutes 00 seconds with the last described line, 88.10 feet to a point along the aforesaid northeasterly line of Elm Street;

THENCE northwesterly along said northeasterly line of Elm Street on a line forming an interior angle of 90 degrees 05 minutes 40 seconds with the last described line, 175.05 feet to the point or PLACE of BEGINNING.