

CLOSING ITEM NO.: A-8

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CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

AND

363 ONTARIO ST LLC

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PAYMENT IN LIEU OF TAX AGREEMENT

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DATED AS OF AUGUST 1, 2018

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RELATING TO THE PREMISES LOCATED AT 363 ONTARIO STREET  
IN THE CITY OF ALBANY, ALBANY COUNTY, NEW YORK.

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## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of August 1, 2018 (the "Payment in Lieu of Tax Agreement") by and between CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 21 Lodge Street, Albany, New York (the "Agency"), and 363 ONTARIO ST LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at P.O. Box 1366, Guilderland, New York (the "Company");

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 325 of the Laws of 1974 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in November, 2017, 363 Ontario St LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of New York, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in an approximately 1.8 acre parcel of land with an address of 363 Ontario Street (tax map no.: 64.76-4-47) in the City of Albany, Albany County, New York (the "Land"), together with the existing improvements containing in the aggregate approximately 140,000 square feet of space located thereon (the "Existing Facility"), (2) the demolition of the Existing Facility, (3) the construction on the Land of three (3) buildings to contain in the aggregate approximately 175,500 square feet of space (collectively, the "Facility") and (4) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the "Equipment") (the Land, the Existing Facility, the Facility, and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to constitute a residential apartment building containing approximately 109 units, with approximately 99 underground and approximately 44 surface parking spaces and first floor retail space to be owned and



operated by the Company, and any other directly and indirectly related activities; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on January 18, 2018 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on January 23, 2018 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Public Hearing to be posted on a public bulletin board on January 23, 2018 at Albany City Hall located at 24 Eagle Street in the City of Albany, Albany County, New York, as well as on the Agency’s website, (C) caused notice of the Public Hearing to be published on January 26, 2018 in the Albany Times Union, a newspaper of general circulation available to the residents of the City of Albany, New York, (D) conducted the Public Hearing on February 7, 2018 at 12:00 p.m., local time at offices of the Agency located at 21 Lodge Street, City of Albany, Albany County, New York, and (E) prepared a report of the Public Hearing (the “Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on March 1, 2018 (the “SEQR Resolution”), the Agency (A) concurred in the determination that the City of Albany Planning Board (the “Planning Board”) is the “lead agency” with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Planning Board issued on February 8, 2018 (the “Negative Declaration”), in which the Planning Board determined that the Project would not have a significant adverse environmental impact on the environment, and therefore, that an environmental statement need not be prepared with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on March 1, 2018 (the “Commercial/Retail Finding Resolution”), the Agency (A) determined that the Project constituted a “commercial project” within the meaning of the Act, (B) found that although the Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act because the Project Facility is located in a highly distressed area, (C) determined, following a review of the Hearing Report, that the Project would serve the public purposes of the Act by preserving permanent private sector jobs in the State of New York, and (D) determined that the Agency would proceed with the Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Project by the Agency unless and until the Mayor of City of Albany, as chief executive officer of City of Albany, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Project; and

WHEREAS, by resolution adopted by the members of the Agency on March 1, 2018 (the “Pilot Deviation Approval Resolution”), the members of the Agency determined to deviate from the Agency’s uniform tax exemption policy with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on March 1, 2018 (the “Approving Resolution”), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of August 1, 2018 (the “Lease Agreement”) between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the “Basic Documents”). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the “Closing”), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of August 1, 2018 (the “Lease to Agency”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”); (2) a certain license agreement dated as of August 1, 2018 (the “License to Agency”) by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (a) a license to enter upon the balance of the Land (the “Licensed Premises”) for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a certain bill of sale dated as of August 1, 2018 (the “Bill of Sale to Agency”), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver (1) a certain payment in lieu of tax agreement dated as of August 1, 2018 (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement (the “Section 875 GML Recapture Agreement”) by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes and (3) a certain uniform agency project agreement dated as of August 1, 2018 (the “Uniform Agency Project Agreement”) relating to the granting of the Financial Assistance by the Agency to the Company, (C) the Agency will file with the assessor and mail to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency will execute and deliver to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance, the Agency will file with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”) and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the “Additional Thirty-Day Project Report”), (E) the Agency and J. Luke Construction Co., LLC (the “Contractor”) will enter into (1) a certain agency indemnification agreement dated as of August 1, 2018 (the “Contractor Agency and Indemnification Agreement”) by and between the Agency and the Contractor and (2) a certain recapture agreement dated as of August 1, 2018 (the “Contractor Section 875 GML Recapture Agreement”) by and between the Agency and the Contractor, (F) the Agency will execute and deliver to the Contractor a sales tax exemption letter (the “Contractor Sales Tax Exemption Letter”) and (G) the Agency will file a Thirty-Day Sales Tax Report (the “Contractor Thirty-Day Sales Tax Report”) and any additional report to the

Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the “Additional Thirty-Day Project Report”); and

WHEREAS, by certificate dated April 10, 2018 (the “Public Approval”), the Mayor of the City of Albany confirmed the proposed action to be taken by the Agency with respect to the Project for the purposes of Section 862(2)(c) of the Act; and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the “Real Property Tax Law”), upon the filing by the Agency of the Real Property Tax Exemption Form, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to normal taxes, provided that, so long as this Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to that portion of the Project Facility which is covered by this Payment in Lieu of Tax Agreement; and

WHEREAS, all things necessary to constitute this Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement hereunder.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement, and by proper action of its members has been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of organization, operating agreement and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper action of its members, the Company has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not

conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization or operating agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.

## ARTICLE II

### COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF THE PROJECT FACILITY. (A) Assessment of the Project Facility. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of the Project Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a “Real Property Tax Exemption Form”) with respect to the Project Facility, and for so long thereafter as the Agency shall own the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the “Taxing Entities”, and each of such Taxing Entities being sometimes individually hereinafter referred to as a “Taxing Entity”) as exempt upon the assessment rolls of the respective Taxing Entities prepared for the first taxable status date subsequent to the acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease and the filing of the Real Property Tax Exemption Forms. The Company shall, promptly following acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an “Assessor”). For so long thereafter as the Agency shall own such leasehold interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency becomes the owner of record of such leasehold interest in the Project Facility and the Real Property Tax Exemption Forms are filed with the Assessors. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Project Facility.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the “Receivers of Taxes”) for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof.

(B) Valuation of the Project Facility. (1) The value of the Project Facility for purposes of determining payments in lieu of taxes due hereunder (hereinafter referred to as the "Assessed Value") shall be determined in accordance with the terms of Exhibit B attached hereto and this Section 2.02(B). The Company agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The parties hereto agree that the Assessors shall (a) appraise the Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law (collectively with the Facility, the "Improvements") in the same manner as other similar properties in the general area of the Improvements, and (b) place an Assessed Value upon the Improvements, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial determination of the Assessed Value of the Improvements and of any change in the Assessed Value of the Land or the Improvements.

(2) If the Company is dissatisfied with the amount of the Assessed Value of the Improvements as initially established or with the amount of the Assessed Value of the Land or the Improvements as changed, and if the Company shall have given written notice of such dissatisfaction to the appropriate Assessor and the Agency within thirty (30) days of receipt by the Company of written notice of the initial establishment of such Assessed Value of the Improvements, or of a change in such Assessed Value of the Land or the Improvements, then the Company shall be entitled to protest before, and to be heard by, the appropriate Assessor and the Agency. If the Agency, the Company and any Assessor shall fail to reach agreement as to the proper Assessed Value of the Project Facility for purposes of determining payments in lieu of taxes due under this Payment in Lieu of Tax Agreement, then such Assessor, the Company and the Agency shall each select one arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general area of the Project Facility, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Assessed Value has been properly established by the Assessor. It is understood that the arbitrators are empowered to confirm the Assessed Value or to determine a higher or a lower Assessed Value. Any payments in lieu of taxes due upon the Project Facility may not be withheld by the Company pending determination of the Assessed Value by the arbitrators.

(C) Amount of Payments in Lieu of Taxes. The payments in lieu of taxes to be paid by the Company to the Receivers of Taxes annually on behalf of each Taxing Entity pursuant to the terms of this Payment in Lieu of Tax Agreement shall be the amount computed separately for each Taxing Entity as set forth in Exhibit B attached.

(D) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities") the Company agrees to make additional annual payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as "Additional Payments") to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Additional Normal Tax") which would be payable to each Taxing Entity with respect to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (E) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such

Additional Facilities were owned by the Company and not the Agency, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency.

(2) In each fiscal tax year during the term of this Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity) if such Additional Facilities were owned by the Company and not the Agency, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

(E) Valuation of Additional Facilities. (1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due under Section 2.02(D) hereof shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the "Additional Assessed Value") upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company is dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, and if the Company shall have given written notice of such dissatisfaction to the appropriate Assessor and the Agency within thirty (30) days of receipt by the Company of written notice of the initial establishment of such Additional Assessed Value, or of a change in such Additional Assessed Value, then the Company shall be entitled to protest before, and to be heard by, the appropriate Assessor and the Agency. If the Agency, the Company and any Assessor shall fail to reach agreement as to the proper Additional Assessed Value of the Additional Facilities for purposes of determining payments in lieu of taxes due under this Payment in Lieu of Tax Agreement, then such Assessor, the Company and the Agency shall each select one arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general area of the Project Facility, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Additional Assessed Value of the Additional Facilities has been properly established by the Assessor. It is understood that the arbitrators are empowered to confirm the Additional Assessed Value or to determine a higher or lower Additional Assessed Value. Any payments in lieu of taxes due upon such Additional Facilities pursuant to Section 2.02(D) hereof may not be withheld by the Company pending determination of the Additional Assessed Value by the arbitrators.

(F) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due



each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(G) Time of Payments. The Company agrees to pay the amounts due hereunder to the Receivers of Taxes for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments.

(H) Method of Payment. All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall meet the qualifications set forth in Section 2.02(B) hereof, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.04. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due,

the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

## ARTICLE III

### LIMITED OBLIGATION

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. (A) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants, and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Agency.

(B) Limited Obligation. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or City of Albany, New York, and neither the State of New York nor City of Albany, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation. Notwithstanding any provision of this Payment in Lieu of Tax Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

## ARTICLE IV

### EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms “Event of Default” or “default” shall mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

(A) Failure of the Company to pay when due any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(C) Any warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

SECTION 4.02. REMEDIES ON DEFAULT. (A) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Payment in Lieu of Tax Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Payment in Lieu of Tax Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Payment in Lieu of Tax Agreement.

(D) No Waiver. In the event any provision contained in this Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) December 31, 2040 or (2) the date on which the Project Facility is reconveyed by the Agency to the Company pursuant to Article X or Article XI of the Lease Agreement.

(B) Extended Term. In the event that (1) the Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining title to the Agency's interest in the Project Facility shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Payment in Lieu of Tax Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company to the respective Taxing Entities if the Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, properly addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by a Taxing Entity under Article II hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

(C) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

363 Ontario St LLC  
P.O. Box 1366  
Guilderland, New York 12084  
Attention: Ryan Jankow, President

WITH A COPY TO:

Columbia Development Companies  
302 Washington Avenue Extension  
Albany, New York 12203  
Attention: Debra J. Lambek, Esq.

IF TO THE AGENCY:

City of Albany Industrial Development Agency  
21 Lodge Street  
Albany, New York 12207  
Attention: Chair

WITH A COPY TO:

Office of Corporation Counsel  
City Hall, Eagle Street – Room 106  
Albany, New York 12207  
Attention: William G. Kelly, Jr., Esq.

and

Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207  
Attention: A. Joseph Scott, III, Esq.

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

(E) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in Lieu of Tax Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.



IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: T. Metzger  
Chair

363 ONTARIO ST LLC

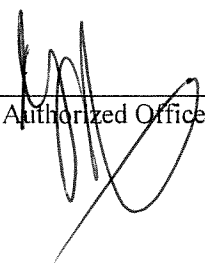
BY: \_\_\_\_\_  
Authorized Officer

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

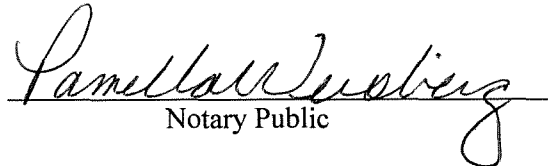
BY: \_\_\_\_\_  
Chair

363 ONTARIO ST LLC

BY:  \_\_\_\_\_  
Authorized Officer

STATE OF NEW YORK       )  
  )ss:  
COUNTY OF ALBANY       )

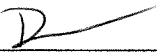
On the 21<sup>st</sup> day of August, in the year 2018, before me, the undersigned, personally appeared TRACY L. METZGER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she 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

Pamella Weisberg  
Notary Public, State of New York  
Qualified in Rensselaer County  
No. 01WE4943734  
Commission Expires October 31, 2018

STATE OF NEW YORK     )  
                                      )ss:  
COUNTY OF ALBANY     )

On the 22 day of August, in the year 2018, before me, the undersigned, personally appeared RYAN JANKOW, 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

DEBRA J. LAMBEK  
Notary Public, State of New York  
02LA5032616  
Qualified in Saratoga County  
Commission Expires August 29, 2020

## EXHIBIT A

### DESCRIPTION OF THE LEASED LAND

A leasehold interest created by a certain lease to agency dated as of August 1, 2018 (the “Lease to Agency”) between 363 Ontario St LLC (the “Company”), as landlord, and City of Albany Industrial Development Agency (the “Agency”), as tenant, in an approximately 1.8 acre parcel of land (the “Leased Land”) located at 363 Ontario Street in the City of Albany, Albany County, New York, said Leased Land being more particularly described below), together with any improvements now or hereafter located on the Leased Land (the Leased Land and all such improvements being sometimes collectively referred to as the “Leased Premises”):

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND situate, lying and being in the City of Albany, Albany County, New York, bounded and described as follows:

**- SEE ATTACHED -**

SCHEDULE "A"

Property Description

ALL THAT CERTAIN LOT, PIECE OR PARCEL OF LAND with the buildings and improvements thereon, situate, lying and being in the City of Albany, County of Albany, and State of New York and designated as 363 Ontario Street, being more particularly bounded and described as follows:

BEGINNING at the southwest corner of Park Avenue and Ontario Street and running thence westerly along the southerly side of Park Avenue three hundred and twenty-five (325) feet six (6) inches and thence southerly and parallel with the westerly side of Ontario Street one hundred and fifteen (115) feet six (6) inches and thence westerly and parallel with the southerly side of Park Avenue ten (10) feet and thence southerly and again parallel with the westerly side of Ontario Street one hundred and fifteen (115) feet six (6) inches to the northerly side of Warren Street; and thence easterly along the northerly side of Warren Street three hundred and thirty-five (335) feet and six (6) inches to the northwest corner of Warren and Ontario Streets; and thence northerly along the westerly side of Ontario Street two hundred and thirty-one (231) feet to the point or place of beginning; be the said several distances and dimensions more or less.

## EXHIBIT B

### PILOT PAYMENT TERMS

#### I. Defined Terms:

“Applicable Fiscal Year” means the fiscal year of the Company ending no later than one hundred and twenty (120) days prior to the January 1 payment date in question. For example, assuming that the Company uses the calendar year for its fiscal year, and the payment date in question is January 1, 2030, the Applicable Fiscal Year for the Company for the January 1, 2030 payment date is the fiscal year of the Company ending December 31, 2028.

“Gross Revenue” means the total amount of income generated at the Project Facility, including tenant rent, unreturned security deposits (to the extent applied to rental payments due and owing and not to damages to a rental unit), lease cancellation/termination payments (net of damage), parking fees, any payments in kind, and other miscellaneous revenue generated at the site (e.g., vending machines, washing machines and other landlord services paid by the tenant); provided, however, that Gross Revenue shall not include any Pass Through Revenue.

“Person” means an individual, partnership, corporation, trust, or unincorporated organization.

“Pass Through Revenue” means revenue generated at the Project Facility relating to parking fees for tenant parking at a parking facility or parking lot not included in or on the Land. Revenue for such activities shall be considered Pass Through Revenue only if (1) the Company serves as a pass-through for such revenues between the tenant and the actual vendor, (2) the payee or recipient of the fees is not a Related Person to the Company, and (3) there is no “mark-up” or “profit” accruing to the Company relating to such fees (except as hereinafter provided). In connection with the determination of Pass Through Revenue, Gross Revenue will be subject to further adjustment as described as follows: if there is any “mark-up” or “profit” accruing to the Company, the amount of such “mark-up” or “profit” shall be included in the determination of Gross Revenue.

“Related Person” means, with respect to the Company, (1) a group of entities subject to “direct control” or “indirect control” by the same entity or group of entities, determined on the basis of all relevant facts and circumstances, (2) any organization under common management or control with the Company, (3) a Person which is a related person as defined in Section 144(a)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), by reference to Sections 267, 707(b) and 1563(a) of the Code, except that (a) one percent (1%) is substituted for fifty percent (50%) for purposes of applying Sections 267 and 707(b), and (b) one percent (1%) is substituted for eighty percent (80%) for purposes of applying Section 1563(a).

#### II. Assessed Value:

(A) The Assessed Value of the Project Facility shall consist of two components, the base Assessed Value (the “Project Base Assessed Value”) and the additional Assessed Value (the “Project Improvements Assessed Value”).

(B) The Project Base Assessed Value shall equal the value of the Land and Existing Facility prior to the undertaking of the Project. The Project Base Assessed Value shall be established pursuant to the terms of Section 2.02(B) of this Payment in Lieu of Tax Agreement.

(C) The Project Improvements Assessed Value shall equal the value of the Facility improved pursuant to the undertaking and completion of the Project (the "Improvements"). The Project Improvements Assessed Value shall be established pursuant to the terms of Section 2.02(B) of this Payment in Lieu of Tax Agreement.

(D) The parties hereto understand and agree that the Project Based Assessed Value and the Project Improvements Assessed Value shall change during the term of this Payment in Lieu of Tax Agreement as the Assessors appraise and re-appraise, as the case may be, the Project Facility during the term of this Payment in Lieu of Tax Agreement, as provided in Section 2.02(B) of this Payment in Lieu of Tax Agreement.

### III. Amount of Payments in Lieu of Taxes:

(A) The amount of payments in lieu of taxes shall be the sum of the following: (1) the amount of payments in lieu of taxes payable with respect to the Land and Existing Facility based on the Project Base Assessed Value, and (2) the amount of payments in lieu of taxes payable with respect to the Improvements based on the Project Improvements Assessed Value.

(1) Payments - Project Base Assessed Value. (a) First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if the Land and the Existing Facility were owned by the Company and not the Agency by multiplying (i) the Project Base Assessed Value (as set forth in II(B) above) by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Land and the Existing Facility if the Land and the Existing Facility were owned by the Company and not the Agency.

(b) Then, in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Land and the Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Land and the Existing Facility shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to the Land and the Existing Facility for such tax year.

(2) Payments - Project Improvements Assessed Value. (a) First, determine the Normal Tax which would be payable to each Taxing Entity if the Improvements were owned by the Company and not the Agency by multiplying (i) the Project Improvements Assessed Value determined pursuant to Section 2.02(B) of this Payment in Lieu of Tax Agreement, by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Improvements if the Improvements were owned by the Company and not the Agency.

(b) Then, in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Improvements shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Improvements shall be the product of: (i) the amount set forth in Section III(A)(2)(a) above and (ii) the applicable percentage of the Normal Tax due each Taxing Entity with respect to the Improvements for such tax year, as shown in the following table:



<u>Tax Year Commencing in Calendar Year</u>	<u>County/ City Percentage of Normal Tax on Assessed Value of the Improvements</u>	<u>School Percentage of Normal Tax on Assessed Value of the Improvements</u>
2018	100%	100%
2019	100%	100%
2020	100%	10%
2021	10%	10%
2022	10%	10%
2023	10%	10%
2024	10%	10%
2025	10%	10%
2026	10%	10%
2027	10%	10%
2028	10%	10%
2029	10%	10%
2030	10%	15%
2031	15%	25%
2032	25%	35%
2033	35%	40%
2034	40%	50%
2035	50%	60%
2036	60%	70%
2037	70%	80%
2038	80%	80%
2039	80%	80%
2040	80%	100%
2041 and thereafter during the term of this Payment in Lieu of Tax Agreement	100%	100%

(c) The parties acknowledge that the tax years shown in the table above do not reflect assessment roll years. For example, the 2018 assessment roll will be used to generate the 2018-19 School payment in lieu of tax bill and the 2019 City/County payment in lieu of tax bill.

(B) Except as otherwise provided in Section IV below, in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which any portion of the Project Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Project Facility shall be the sum of (1) the amount due each Taxing Entity with respect to the Land and the Existing Facility for such tax year, as determined pursuant to subsection (A)(1) hereof, **plus** (2) the amount due each Taxing Entity with respect to the Improvements for such tax year, as determined pursuant to subsection (A)(2) hereof.

IV. Alternative Determination of Amount of Payments in Lieu of Taxes:

(A) Beginning on January 1, 2033, the Company will pay payments in lieu of taxes in an amount equal to the greater of (1) the amount determined pursuant to Section III above, or (2) 11.5% of the Gross Revenue for the Applicable Fiscal Year of the Project Facility.

(B) On each September 1, beginning on September 1, 2032, the Company will provide the Treasurer of the City of Albany with a complete and executed copy of the Company Affidavit, a form of which is attached as Exhibit C.

(C) The Company agrees to provide to the Treasurer of the City of Albany and the CEO of the Agency, within thirty (30) days of their written request, with a copy of the Company's unaudited financial statement verified by the Company or such other person as may be authorized by the Company to verify said statement supporting the Company's calculation of the Gross Revenue. In the event that the Company's unaudited financial statement is not prepared in accordance with GAAP, the Company agrees to provide such additional information regarding the Company's calculation of Gross Revenue as reasonably requested by the Agency.

(D) Notwithstanding the foregoing, the Company agrees to provide financial statements audited in accordance with GAAP if the Company prepares audited statements for delivery to its lender.

EXHIBIT C

COMPANY AFFIDAVIT REGARDING  
GROSS REVENUE

STATE OF NEW YORK                    )  
  )Ss:  
COUNTY OF ALBANY                 )

I, the undersigned, an Authorized Officer of 363 Ontario St LLC (the "Company"), do hereby depose and state as follows:

1. The City of Albany Industrial Development Agency (the "Agency") and the City of Albany may rely on the contents of this Affidavit in determining the amount of payments in lieu of taxes payable by the Company for the year commencing January 1, 20\_\_.

2. Initial capitalized words used in this Affidavit shall have the meanings ascribed to such terms in the payment in lieu of tax agreement dated as of August 1, 2018 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company.

3. The Applicable Fiscal Year of the Company is the fiscal year of the Company ending on \_\_\_\_\_.

4. Attached hereto as Schedule A is a summary memorandum/report describing the Gross Revenue of the Company for the Applicable Fiscal Year.

5. The Gross Revenue of the Company for the Applicable Year has been determined in accordance with the terms of the Payment in Lieu of Tax Agreement.

6. 11.5% of the Gross Revenue equals \$\_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned has set forth their hand as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

363 ONTARIO ST LLC

BY: \_\_\_\_\_  
Authorized Representative

Sworn to before me this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

SCHEDULE A

SUMMARY MEMORANDUM/REPORT  
DESCRIBING GROSS REVENUE

[To Be Completed By The Company]

CLOSING ITEM NO.: A-7

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CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

AND

760 BROADWAY LLC

---

PAYMENT IN LIEU OF TAX AGREEMENT

---

DATED AS OF APRIL 1, 2018

---

RELATING TO THE PREMISES LOCATED AT 776 (A/K/A 760)  
BROADWAY IN THE CITY OF ALBANY, ALBANY COUNTY, NEW  
YORK (TAX MAP NO. 65.82-6-15).

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## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of April 1, 2018 (the "Payment in Lieu of Tax Agreement") by and between CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 21 Lodge Street, Albany, New York (the "Agency"), and 760 BROADWAY LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at PO Box 6515, Albany, New York (the "Company");

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 325 of the Laws of 1974 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in May, 2015, 760 Broadway LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of New York, presented an application (the "Original Application") to the Agency which Original Application requested that the Agency consider undertaking a project (the "Original Project") for the benefit of the Company, said Original Project to include the following: (A) (1) the acquisition of an interest in a parcel of land containing approximately 1.40 acres and located at 776 (a/k/a 760) Broadway in the City of Albany, Albany County, New York (the "Land"), (2) the construction on the Land of a multi-story building to contain approximately 130,000 square feet of space (the "Original Facility") and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property, including without limitation, tenant improvement and finish (collectively, the "Original Equipment") (the Land, the Original Facility, and the Original Equipment being collectively referred to as the "Original Project Facility"), all of the foregoing to be owned by the Company and to constitute a commercial/residential facility containing approximately 100 residential apartments, approximately 1,250 square feet of rentable retail space and approximately 110 interior parking spaces to be leased by the Company to various commercial and residential tenants and other



directly and indirectly related activities; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Original Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on September 17, 2015 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Original Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the “Initial Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Original Project and the financial assistance being contemplated by the Agency with respect to the Original Project, to be mailed on September 23, 2015 to the chief executive officers of the county and of each city, town, village and school district in which the Original Project is or is to be located, (B) caused notice of the Initial Public Hearing to be posted on September 24, 2015 on a public bulletin board located at the Albany City Hall located at 24 Eagle Street in the City of Albany, Albany County, New York, as well as on the Agency’s website, (C) caused notice of the Initial Public Hearing to be published on September 26, 2015 in the Albany Times Union, a newspaper of general circulation available to the residents of the City of Albany, Albany County, New York, (D) conducted the Initial Public Hearing on October 7, 2015 at 12:00, local time at the offices of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York, and (E) prepared a report of the Initial Public Hearing (the “Initial Hearing Report”) fairly summarizing the views presented at such Initial Public Hearing and caused copies of said Initial Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on October 20, 2016 (the “Resolution Confirming SEQR Determination”), the Agency (A) concurred in the determination that the City of Albany Planning Board (the “Planning Board”) is the “lead agency” with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Planning Board issued on October 5, 2016 (the “Negative Declaration”), in which the Planning Board determined that the Original Project would not have a significant adverse environmental impact on the environment, and therefore, that an environmental statement need not be proposed with respect to the Original Project; and

WHEREAS, by resolution adopted by the members of the Agency on October 20, 2016 (the “Pilot Deviation Approval Resolution”), the members of the Agency determined to deviate from the Agency’s uniform tax exemption policy with respect to the Original Project; and

WHEREAS, by further resolution adopted by the members of the Agency on October 20, 2016 (the “Commercial/Retail Finding Resolution”), the Agency (A) determined that the Original Project constituted a “commercial project” within the meaning of the Act, (B) found that although the Original Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Original Project, the Agency is authorized to provide financial assistance in respect of the Original Project pursuant to Section 862(2)(a) of the Act because the Original Project Facility is located in a highly distressed area, (C) determined, following a review of the Initial Public Hearing Report, that the Original Project would serve the public purposes of the Act by preserving permanent private sector jobs in

the State of New York and (D) determined that the Agency would proceed with the Original Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Original Project by the Agency unless and until the Mayor of City of Albany, as chief executive officer of City of Albany, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Original Project; and

WHEREAS, by further resolution adopted by the members of the Agency on October 20, 2016 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Original Project (collectively with the Lease Agreement, the "Basic Documents"); and

WHEREAS, by certificate dated March 14, 2017 (the "Public Approval"), the Mayor, as chief executive officer of the City of Albany, New York, approved the proposed action to be taken by the Agency with respect to the Original Project for purposes of Section 862(2)(c) of the Act; and

WHEREAS, by further resolution adopted by the members of the Agency on September 21, 2017 (the "Approving Extension of Approval Resolution"), the Agency determined to extend the expiration date of the Approving Resolution; and

WHEREAS, the Agency received a revised application (the "Amended Application"), which Amended Application request the Agency to undertake the following project, which Amended Application amends the Original Project (the "Project"), for the benefit of the Company: (A) (1) the acquisition of an interest in a parcel of land containing approximately 1.40 acres and located at 776 (a/k/a 760) Broadway in the City of Albany, Albany County, New York (the "Land"), (2) the construction on the Land of a new multi-story building to contain approximately 125,00 square feet of space (the "Facility"), and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property, including without limitation, tenant improvement and finish (collectively, the "Equipment") (the Land, the Facility, and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned by the Company and to constitute a commercial/residential facility containing approximately 90 residential apartments, approximately 2,000 square feet of rentable retail space and approximately 110 interior parking spaces to be leased by the Company to various commercial and residential tenants and other directly and indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, as the Amended Application increased the amount of Financial Assistance beyond \$100,000, pursuant to Section 859-a of the Act, prior to the Agency providing any "financial assistance" (as defined in the Act) of more than \$100,000 to any project, the Agency, among other things, must hold a public hearing pursuant to Section 859-a of the Act with respect to said project; and

WHEREAS, subsequent to the adoption of the Amended Approving Resolution, the Company informed the Agency that the current scope of the Project now consists of 88 residential apartments, no retail space and 95 indoor/outdoor/covered parking spaces; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on December 21, 2017 (the "Public Hearing Resolution - Second"), the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the "Public Hearing") pursuant to Section

859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on December 28, 2017 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted on (1) December 28, 2017 on a public bulletin board located in City Hall located at 24 Eagle Street in the City of Albany, Albany County, New York, and (2) December 28, 2017 on the Agency's website, (C) caused notice of the Public Hearing to be published on December 31, 2017 in The Daily Gazette, a newspaper of general circulation available to the residents of the City of Albany, Albany County, New York, (D) conducted the Public Hearing on January 10, 2018 at 12:00 p.m., local time at the offices of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York, and (E) prepared a report of the Public Hearing (the "Public Hearing Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to the Amended Application, the Agency adopted a resolution on January 18, 2018 (the "Amended Approving Resolution") amending the Approving Resolution; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of April 1, 2018 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises"); (2) a certain license agreement dated as of April 1, 2018 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (a) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a certain bill of sale dated as of April 1, 2018 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver (1) a certain payment in lieu of tax agreement dated as of April 1, 2018 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes and (3) a certain uniform agency project agreement dated as of April 1, 2018 (the "Uniform Agency Project Agreement") relating to the granting of the Financial Assistance by the Agency to the Company, (D) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (E) the Agency will execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (F) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "Real Property Tax Law"), the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to normal taxes, provided that, so long as this Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to that portion of the Project Facility which is covered by this Payment in Lieu of Tax Agreement; and

WHEREAS, all things necessary to constitute this Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement hereunder.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement, and by proper action of its members has been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of organization, operating agreement and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper action of its members, the Company has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not

conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization or operating agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.

ARTICLE II  
COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF THE PROJECT FACILITY. (A) Assessment of the Project Facility. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of the Project Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility, and for so long thereafter as the Agency shall own the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease and the filing of the Real Property Tax Exemption Forms. The Company shall, promptly following acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall own such leasehold interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency becomes the owner of record of such leasehold interest in the Project Facility and the Real Property Tax Exemption Forms are filed with the Assessors. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Project Facility.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the "Receivers of Taxes") for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof.

(B) Valuation of the Project Facility. (1) The value of the Project Facility for purposes of determining payments in lieu of taxes due hereunder (hereinafter referred to as the "Assessed Value") shall be determined in accordance with the terms of Exhibit B attached hereto and this Section 2.02(B). The Company agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The parties hereto agree that the Assessors shall (a) appraise the Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law (collectively with the Facility, the "Improvements") in the same manner as other similar properties in the general area of the Improvements, and (b) place an Assessed Value upon the Improvements, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial determination of the Assessed Value of the Land or the Improvements and of any change in the Assessed Value of the Land or the Improvements.

(2) If the Company is dissatisfied with the amount of the Assessed Value of the Project Facility as initially established or as changed by the Assessors, the Company shall be entitled to challenge the Assessed Value in accordance with the terms and conditions contained in Article 7 of the Real Property Tax Law. The Company shall be entitled to take any actions under Article 7 of the Real Property Tax Law notwithstanding the fact that the Agency has an interest in the Land pursuant to the Lease to Agency.

(3) Any payments in lieu of taxes due upon such Project Facility pursuant to Section 2.02(C) hereof may not be withheld by the Company pending determination of the Assessed Value.

(4) The parties hereto understand and agree that any challenge to an Assessed Value under this Payment in Lieu of Tax Agreement shall relate to the Project Improvements Assessed Value, as described and defined in Schedule B attached. The Project Base Assessed Value, as described and defined in Schedule B attached, is for purposes of this Payment in Lieu of Tax Agreement set at a fixed amount equal to \$750,000 and, except as provided in Schedule B, is not intended to be subject to modification during the term of this Payment in Lieu of Tax Agreement.

(C) Amount of Payments in Lieu of Taxes. The payments in lieu of taxes to be paid by the Company to the Receivers of Taxes annually on behalf of each Taxing Entity pursuant to the terms of this Payment in Lieu of Tax Agreement shall be the amount computed separately for each Taxing Entity set forth in Exhibit B attached hereto.

(D) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities") the Company agrees to make additional annual payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as "Additional Payments") to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Additional Normal Tax") which would be payable to each Taxing Entity with respect to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (E) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency, and (c) reduce the amount



so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency.

(2) In each fiscal tax year during the term of this Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity) if such Additional Facilities were owned by the Company and not the Agency, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

(E) Valuation of Additional Facilities. (1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due under Section 2.02(D) hereof shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the "Additional Assessed Value") upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company is dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, the Company shall be entitled to challenge the Additional Assessed Value in accordance with the terms and conditions contained in Article 7 of the Real Property Tax Law. The Company shall be entitled to take any actions under Article 7 of the Real Property Tax Law notwithstanding the fact that the Agency has an interest in the Land pursuant to the Lease to Agency.

(F) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(G) Time of Payments. The Company agrees to pay the amounts due hereunder to the Receivers of Taxes for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments.

(H) Method of Payment. All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this

Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall meet the qualifications set forth in Section 2.02(B) hereof, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.04. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

ARTICLE III  
LIMITED OBLIGATION

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. (A) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants, and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Agency.

(B) Limited Obligation. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or City of Albany, New York, and neither the State of New York nor City of Albany, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation. Notwithstanding any provision of this Payment in Lieu of Tax Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

## ARTICLE IV

### EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

(A) Failure of the Company to pay when due any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of thirty (30) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(C) Any material warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

SECTION 4.02. REMEDIES ON DEFAULT. (A) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Payment in Lieu of Tax Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Payment in Lieu of Tax Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Payment in Lieu of Tax Agreement.

(D) No Waiver. In the event any provision contained in this Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) December 31, 2040 or (2) the date on which the Project Facility is reconveyed by the Agency to the Company pursuant to Article X or Article XI of the Lease Agreement.

(B) Extended Term. In the event that (1) the Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining title to the Agency's interest in the Project Facility shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Payment in Lieu of Tax Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company to the respective Taxing Entities if the Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, properly addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by a Taxing Entity under Article II hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

(C) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

760 Broadway LLC  
PO Box 6515  
Albany, New York 12206  
Attention: David Sarraf

WITH A COPY TO:

Phillips Lytle LLP  
340 Madison Avenue, 17th Floor  
New York, New York 10173  
Attention: Milan K. Tyler, Esq.

IF TO THE AGENCY:

City of Albany Industrial Development Agency  
21 Lodge Street  
Albany, New York 12207  
Attention: Chair

WITH A COPY TO:

City of Albany  
City Hall, Eagle Street - Room 106  
Albany, New York 12207  
Attention: William G. Kelly, Jr., Esq.

and

Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207  
Attention: A. Joseph Scott, III, Esq.

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

(E) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in Lieu of Tax Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

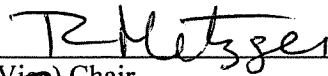
SECTION 5.08. COUNTERPARTS. This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.



IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY:   
(Vice) Chair

760 BROADWAY LLC

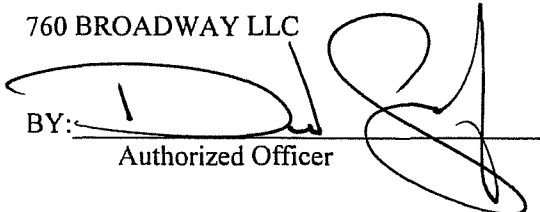
BY: \_\_\_\_\_  
Authorized Officer

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

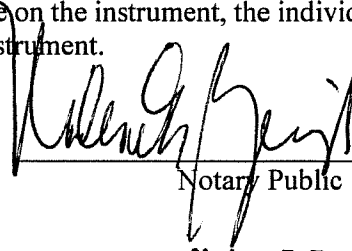
BY: \_\_\_\_\_  
(Vice) Chair

760 BROADWAY LLC

BY:  \_\_\_\_\_  
Authorized Officer

STATE OF NEW YORK       )  
                                      )ss:  
COUNTY OF ALBANY       )

On the 26<sup>th</sup> day of April, in the year 2018, before me, the undersigned, personally appeared TRACY L. METZGER, 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.

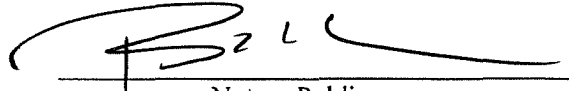


Notary Public

**Nadene E. Zeigler**  
**Notary Public, State of New York**  
**No. 02ZE5050898**  
**Qualified in Albany County**  
**Commission Expires October 23, 2021**

STATE OF NEW YORK       )  
  )ss:  
COUNTY OF Albany       )

On the 25<sup>th</sup> day of April, in the year 2018, before me, the undersigned, personally appeared David Sarraf, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

**BENJAMIN M. FARBER**  
No. 02FA6089374  
Notary Public, State of New York  
Qualified in Albany County  
My Commission Expires March 24, 2019

## EXHIBIT A

### DESCRIPTION OF THE LEASED LAND

A leasehold interest created by a certain lease to agency dated as of April 1, 2018 (the "Lease to Agency") between 760 Broadway LLC (the "Company"), as landlord, and City of Albany Industrial Development Agency (the "Agency"), as tenant, in an approximately 1.40 acre parcel of land (the "Leased Land") located at 776 (a/k/a 760) Broadway in the City of Albany, Albany County, New York, said Leased Land being more particularly described below), together with any improvements now or hereafter located on the Leased Land (the Leased Land and all such improvements being sometimes collectively referred to as the "Leased Premises"):

- SEE ATTACHED -



## SCHEDULE A - CONTINUED

Commitment No. C4715T

ALL that parcel of land situate in the City of Albany, County of Albany and State of New York, being bounded and described as follows:

BEGINNING at the intersection between the southerly bounds of Livingston Avenue and the westerly bounds of Broadway; thence southerly, along the westerly bounds of Broadway the following five courses and distances:

1. Southerly, along the westerly bounds of Broadway a distance of 71.13 feet to a point;
  2. Southerly, making an interior angle of  $185^{\circ} 04' 12''$  with the last described course a distance of 47.03 feet to a point;
  3. Southerly, making an interior angle of  $180^{\circ} 48' 51''$  with the last described course a distance of 103.07 feet to a point;
  4. Southerly, making an interior angle of  $181^{\circ} 32' 00''$  with the last described course a distance of 136.43 feet to a point;
  5. Southerly, making an interior angle of  $184^{\circ} 06' 18''$  with the last described course a distance of 59.49 feet to a point;
- thence westerly, making an interior angle of  $89^{\circ} 29' 42''$  with the last described course a distance of 102.44 feet to a point; thence southerly, making an interior angle of  $269^{\circ} 16' 25''$  with the last described course a distance of 4.50 feet to a point; thence westerly, making an interior angle of  $90^{\circ} 43' 35''$  with the last described course a distance of 20.98 feet to a point; thence northerly, making an interior angle of  $90^{\circ} 35' 30''$  with the last described course a distance of 33.07 feet to a point; thence westerly, making an interior angle of  $269^{\circ} 24' 30''$  with the last described course a distance of 12.18 feet to a point; thence northerly, making an interior angle of  $89^{\circ} 11' 00''$  with the last described course a distance of 30.92 feet to a point; thence easterly, making an interior angle of  $90^{\circ} 41' 00''$  with the last described course a distance of 15.80 feet to a point; thence northerly, making an interior angle of  $265^{\circ} 57' 34''$  with the last described course a distance of 15.05 feet to a point; thence westerly, making an interior angle of  $274^{\circ} 05' 00''$  with the last described course a distance of 100.87 feet to a point on the easterly bounds of North Pearl Street; thence northerly, along the easterly bounds of North Pearl Street and making an interior angle of  $89^{\circ} 11' 00''$  with the last described course a distance of 120.54 feet to a point; thence easterly, making an interior angle of  $91^{\circ} 03' 12''$  with the last described course a distance of 113.43 feet to a point; thence northerly, making an interior angle of  $268^{\circ} 36' 48''$  with the last described course a distance of 102.83 feet to a point; thence westerly, making an interior angle of  $271^{\circ} 09' 00''$  with the last described course a distance of 14.82 feet to a point; thence northerly, making an interior angle of  $91^{\circ} 06' 45''$  with the last described course a distance of 34.85 feet to a point; thence easterly, making an interior angle of  $88^{\circ} 53' 12''$  with the last described course a distance of 37.71 feet to a point; thence northerly, making an interior angle of  $258^{\circ} 59'$



## SCHEDULE A - CONTINUED

Commitment No. C4715T

00" with the last described course a distance of 67.77 feet to a point; thence easterly, making an interior angle of  $101^{\circ} 01'$  with the last described course a distance of 59.50 feet to a point: thence northerly, making an interior angle of  $244^{\circ} 54' 00''$  with the last described course a distance of 36.33 feet to a point on the southerly bounds of Livingston Avenue; thence easterly, along the southerly bounds of Livingston Avenue and making an interior angle of  $82^{\circ} 54' 00''$  with the last described course a distance of 33.15 feet to the point and place of beginning, the last described course making an interior angle of  $111^{\circ} 11' 00''$  with the first course of the parcel herein described.

## EXHIBIT B

### PILOT PAYMENT TERMS

#### I. Defined Terms:

“Applicable Fiscal Year” means the fiscal year of the Company ending no later than one hundred and twenty (120) days prior to the January 1 payment date in question. For example, assuming that the Company uses the calendar year for its fiscal year, and the payment date in question is January 1, 2027, the Applicable Fiscal Year for the Company for the January 1, 2027 payment date is the fiscal year of the Company ending December 31, 2025.

“Gross Revenue” means the total amount of income generated at the Project Facility, including tenant rent, unreturned security deposits (to the extent applied to rental payments due and owing and not to damages to a rental unit), lease cancellation/termination payments, any receivables (including past due rent), parking fees, any payments in kind, and other miscellaneous revenue generated at the site (e.g., vending machines, washing machines and other landlord services paid by the tenant); provided, however, that Gross Revenue shall not include any Pass Through Revenue.

“Person” means an individual, partnership, corporation, trust, or unincorporated organization.

“Pass Through Revenue” means revenue generated at the Project Facility relating to parking fees for tenant parking at a parking facility or parking lot not included in or on the Land. Revenue for such activities shall be considered Pass Through Revenue only if (1) the Company serves as a pass-through for such revenues between the tenant and the actual vendor, (2) the payee or recipient of the fees is not a Related Person to the Company, and (3) there is no “mark-up” or “profit” accruing to the Company relating to such fees. In connection with the determination of Pass Through Revenue, Gross Revenue will be subject to further adjustment as described as follows: if there is any “mark-up” or “profit” accruing to the Company, the amount of such “mark-up” or “profit” shall be included in the determination of Gross Revenue.

“Related Person” means, with respect to the Company, (1) a group of entities subject to “direct control” or “indirect control” by the same entity or group of entities, determined on the basis of all relevant facts and circumstances, (2) any organization under common management or control with the Company, (3) a Person which is a related person as defined in Section 144(a)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), by reference to Sections 267, 707(b) and 1563(a) of the Code, except that (a) one percent (1%) is substituted for fifty percent (50%) for purposes of applying Sections 267 and 707(b), and (b) one percent (1%) is substituted for eighty percent (80%) for purposes of applying Section 1563(a).

#### II. Assessed Value:

(A) The Assessed Value of the Project Facility shall consist of two components, the base Assessed Value (the “Project Base Assessed Value”) and the additional Assessed Value (the “Project Improvements Assessed Value”).

(B) For purposes of calculating the payment in lieu of taxes due hereunder, the Project Base Assessed Value shall be set at a fixed amount equal to \$750,000, and shall represent the value of the Land and the Facility without taking into account the undertaking and completion of the Project.

(C) The Project Improvements Assessed Value shall equal the value of the Facility improved pursuant to the undertaking and completion of the Project, and such value shall not include the Project Base



Assessed Value. The Project Improvements Assessed Value shall be established pursuant to the terms of Section 2.02(B) of this Payment in Lieu of Tax Agreement.

(D) The parties hereto understand and agree that, except as provided by (E) below, for purposes of calculating the payment in lieu of taxes due hereunder, the Project Base Assessed Value is intended to remain fixed at an amount equal to \$750,000 during the term of this Payment in Lieu of Tax Agreement. The parties hereto further understand and agree that the Project Improvements Assessed Value shall change during the term of this Payment in Lieu of Tax Agreement as the Assessors appraise and re-appraise, as the case may be, the Project Facility during the term of this Payment in Lieu of Tax Agreement, as provided in Section 2.02(B) of this Payment in Lieu of Tax Agreement.

(E) Commencing on the first tax year following the tax status date on which any Taxing Entity switches from its present system of "fractional assessment" (i.e., valuing real property for taxing purposes at a percentage of full value significantly below 100% of full value) to a system of "full value assessment" (i.e., a system of valuing real property for taxing purposes at a percentage of full value approximately equal to 100% of the full value), the Project Base Assessed Value of the Land and the Facility for purposes of determining payments in lieu of property taxes due such Taxing Entity hereunder shall be in such new amounts as shall be determined by multiplying the Project Base Assessed Value by a fraction, the numerator of which is 100% and the denominator of which is the state equalization rate for the assessment roll of such Taxing Entity completed immediately prior to such switch to a system of "full value assessment".

### III. Amount of Payments in Lieu of Taxes:

(A) The amount of payments in lieu of taxes shall be the sum of the following: (1) the amount of payments in lieu of taxes payable with respect to the Land and Facility based on the Project Base Assessed Value, and (2) the amount of payments in lieu of taxes payable with respect to the Improvements based on the Project Improvements Assessed Value.

(1) Payments - Project Base Assessed Value. (a) First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if the Land and the Facility were owned by the Company and not the Agency by multiplying (i) the Project Base Assessed Value (as set forth in II(B) above) of the Land and the Facility by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Land and the Facility if the Land and the Facility were owned by the Company and not the Agency.

(b) Then, in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Land and the Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Land and the Facility shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to the Land and the Facility for such tax year.

(2) Payments - Project Improvements Assessed Value. (a) First, determine the Normal Tax which would be payable to each Taxing Entity if the Improvements were owned by the Company and not the Agency by multiplying (i) the Project Improvements Assessed Value determined pursuant to Section 2.02(B) of this Payment in Lieu of Tax Agreement, by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Improvements if the Improvements were owned by the Company and not the Agency.

(b) Then, in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Improvements shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Improvements shall be an amount equal to the applicable percentage of the Normal Tax due each Taxing Entity with respect to the Improvements for such tax year, as shown in the following table:

<u>Tax Year Commencing in Calendar Year</u>	<u>County/ City Percentage of Normal Tax on Assessed Value of the Improvements</u>	<u>School Percentage of Normal Tax on Assessed Value of the Improvements</u>
2018	N/A	N/A
2019	0%	0%
2020	0%	0%
2021	0%	0%
2022	0%	0%
2023	0%	0%
2024	0%	0%
2025	0%	0%
2026	0%	0%
2027	0%	0%
2028	0%	0%
2029	0%	5%
2030	5%	5%
2031	5%	10%
2032	10%	35%
2033	35%	36%
2034	36%	37%
2035	37%	38%
2036	38%	39%
2037	39%	40%
2038	40%	41%
2039	41%	42%
2040	42%	100%
2041 and thereafter during the term of this Payment in Lieu of Tax Agreement	100%	100%

(B) Except as otherwise provided in Section IV below, in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which any portion of the Project Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Project Facility shall be the sum of (1) the amount due each Taxing Entity with respect to the Land and the Facility for such tax year, as determined pursuant to subsection (A)(1) hereof, **plus** (2) the amount due each Taxing Entity with respect to the Improvements for such tax year, as determined pursuant to subsection (A)(2) hereof.

IV. Alternative Determination of Amount of Payments in Lieu of Taxes:

(A) Beginning on January 1, 2033, the Company will pay payments in lieu of taxes in an amount equal to the greater of (1) the amount determined pursuant to Section III above, or (2) 11.5% of the Gross Revenue for the Applicable Fiscal Year of the Project Facility.

(B) On each September 1, beginning on September 1, 2032, the Company will provide the Treasurer of the City of Albany with a complete and executed copy of the Company Affidavit, a form of which is attached as Exhibit C.

(C) The Company agrees to provide to the Treasurer of the City of Albany and the CEO of the Agency, within thirty (30) days of their written request, with a copy of the Company's unaudited financial statement verified by the Company or such other person as may be authorized by the Company to verify said statement supporting the Company's calculation of the Gross Revenue. Notwithstanding the foregoing, the Company agrees to provide financial statements audited in accordance with GAAP if the Company prepares audited statements for delivery to its lender. The Company's financial statements, unaudited or audited, may at the request of the Company and the consent of the Agency, be revised to omit any information not available to the public under the Freedom of Information Law.

EXHIBIT C

COMPANY AFFIDAVIT REGARDING  
GROSS REVENUE

STATE OF NEW YORK                    )  
  )Ss:  
COUNTY OF ALBANY                 )

I, the undersigned, an Authorized Officer of 760 Broadway LLC (the "Company"), do hereby depose and state as follows:

1. The City of Albany Industrial Development Agency (the "Agency") and the City of Albany may rely on the contents of this Affidavit in determining the amount of payments in lieu of taxes payable by the Company for the year commencing January 1, 20\_\_.

2. Initial capitalized words used in this Affidavit shall have the meanings ascribed to such terms in the payment in lieu of tax agreement dated as of April 1, 2018 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company.

3. The Applicable Fiscal Year of the Company is the fiscal year of the Company ending on \_\_\_\_\_.

4. Attached hereto as Schedule A is a summary memorandum/report describing the Gross Revenue of the Company for the Applicable Fiscal Year.

5. The Gross Revenue of the Company for the Applicable Year has been determined in accordance with the terms of the Payment in Lieu of Tax Agreement.

6. 11.5% of the Gross Revenue equals \$ \_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned has set forth their hand as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

760 BROADWAY LLC

BY: \_\_\_\_\_  
Authorized Officer

Sworn to before me this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

SCHEDULE A

SUMMARY MEMORANDUM/REPORT  
DESCRIBING GROSS REVENUE

[To Be Completed By The Company]

CLOSING ITEM NO.: A-6

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CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

AND

CLINTON AVENUE APARTMENTS HOUSING DEVELOPMENT FUND CORPORATION AND  
CLINTON AVENUE APARTMENTS L.P.

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PAYMENT IN LIEU OF TAX AGREEMENT

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DATED AS OF JUNE 28, 2018

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RELATING TO THE PREMISES GENERALLY LOCATED ON  
CLINTON AVENUE AND TEN BROECK STREET IN THE CITY OF  
ALBANY, ALBANY COUNTY, NEW YORK.

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## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of June 28, 2018 (the "Payment in Lieu of Tax Agreement") by and between CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 21 Lodge Street, Albany, New York (the "Agency"), and CLINTON AVENUE APARTMENTS HOUSING DEVELOPMENT FUND CORPORATION, a New York not-for-profit corporation and CLINTON AVENUE APARTMENTS L.P., a New York limited partnership (collectively, the "Company") both organized and existing under the laws of the State of New York having an office for the transaction of business located at 180 Clinton Square, Rochester, New York (the "Company");

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 325 of the Laws of 1974 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in October, 2017, the Company, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in approximately 72 parcels of land generally located on Clinton Avenue and Ten Broeck Street in the City of Albany, Albany County, New York (collectively, the "Land") together with approximately 70 rowhouses and the construction and rehabilitation of same into approximately 210 affordable and supportive housing units with ancillary supporting office and related facilities (collectively, the "Facility"), (2) the renovation and revitalization of the Facility and (3) the acquisition and installation therein and thereon of certain machinery, equipment and other personal property (collectively, the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from real property taxes and real property transfer taxes (collectively, the

“Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, prior to the submission of the Application, the Company submitted a draft application to the Agency (the “Draft Application”). Pursuant to the Draft Application, the Agency adopted a resolution on August 17, 2017 (the “Interim Lease Resolution”) authorizing the Agency to enter into an interim lease agreement with respect to the Project in order to assist the Company in maintaining the status of the Land and the Facility as exempt from real property taxes and on the “exempt” tax roll of the City of Albany, New York; and

WHEREAS, pursuant to the Interim Lease Resolution, the Agency and the Company entered into an interim lease agreement dated as of August 31, 2017 (the “Interim Lease Agreement”) by and between the Agency and the Company, which Interim Lease Agreement terminated on November 15, 2017. By resolution adopted by the members of the Agency on April 19, 2018 (the “Interim Lease Extension Resolution”), the Agency determined to extend the term of the Interim Lease Agreement from November 15, 2017 to October 15, 2018; and

WHEREAS, by resolution adopted by the members of the Agency on October 19, 2017 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on October 26, 2017 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Public Hearing to be posted on October 27, 2017 on a public bulletin board located at the Albany City Hall located at 24 Eagle Street in the City of Albany, Albany County, New York, as well as on the Agency’s website, (C) caused notice of the Public Hearing to be published on October 29, 2017 in the Albany Times Union, a newspaper of general circulation available to the residents of the City of Albany, Albany County, New York, (D) conducted the Public Hearing on November 8, 2017 at 12:00, local time at the offices of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York, and (E) prepared a report of the Public Hearing (the “Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on December 21, 2017 (the “SEQR Resolution”), Agency determined that the Project constitutes a “Type II Action”(as such quoted term is defined under SEQRA), and therefore that no further action with respect to the Project was required under SEQRA; and

WHEREAS, by further resolution adopted by the members of the Agency on December 21, 2017 (the “Commercial/Retail Finding Resolution”), the Agency (A) determined that the Project constituted a “commercial project” within the meaning of the Act, (B) found that although the Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project

pursuant to Section 862(2)(a) of the Act because the Project Facility is located in a highly distressed area, (C) determined, following a review of the Hearing Report, that the Project would serve the public purposes of the Act by preserving permanent private sector jobs in the State of New York, and (D) determined that the Agency would proceed with the Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Project by the Agency unless and until the Mayor of City of Albany, as chief executive officer of City of Albany, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Project; and

WHEREAS, by resolution adopted by the members of the Agency on December 21, 2017 (the "Pilot Deviation Approval Resolution"), the members of the Agency determined to deviate from the Agency's uniform tax exemption policy with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on December 21, 2017 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of June 28, 2017 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, (2) as agent of the Agency, to undertake and complete the Project, and (3) to supersede the Interim Lease Agreement, and (B) the Agency has leased the Project Facility to the Company. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, by certificate dated May 4, 2018 (the "Public Approval"), the Mayor of the City of Albany confirmed the proposed action to be taken by the Agency with respect to the Project for the purposed of Section 862(2)(c) of the Act; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of June 28, 2017 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises"); and (2) a certain license agreement dated as of June 28, 2017 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (a) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; (B) the Company and the Agency will execute and deliver (1) a certain payment in lieu of tax agreement dated as of June 28, 2017 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility; and (2) a certain uniform agency project agreement dated as of June 28, 2017 (the "Uniform Agency Project Agreement") by and between the Agency and the Company relating to the terms of the granting by the Agency of the Financial Assistance to the Company; and (C) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement; and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "Real Property Tax Law"), upon the filing by the Agency of the Real

Property Tax Exemption Form, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to normal taxes, provided that, so long as this Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to the Project Facility covered by this Payment in Lieu of Tax Agreement; and

WHEREAS, all things necessary to constitute this Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement hereunder.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. (1) Clinton Avenue Apartments Housing Development Fund Corporation is a New York not-for-profit corporation and (2) Clinton Avenue Apartments L.P. is a limited partnership, both duly organized and validly existing under the laws of the State of New York, are duly authorized to do business in the State of New York and have the power under the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement, and by proper action of its partners and board of directors has been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.

(B) Authorization. The Company is authorized and has the power under its certificate of incorporation, by-laws, limited partnership certificate, limited partnership agreement and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper action of its partners and board of directors, the Company has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under

and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its organizational documents or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.

## ARTICLE II

### COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF THE PROJECT FACILITY. (A) Assessment of the Project Facility. (1) The parties understand and acknowledge that the Project Facility has been listed as exempt status and not subject to real property taxation on the tax rolls of the county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity").

(2) In the event that the Project Facility does not have exempt status on the tax rolls of the Taxing Entities, pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of a leasehold interest in the Project Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to a leasehold interest in the Project Facility, and for so long thereafter as the Agency shall own the leasehold interest in the Project Facility, the Project Facility shall be assessed by the Taxing Entities as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease and the filing of the Real Property Tax Exemption Forms. The Company shall, promptly following acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall own such leasehold interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity.

(3) The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Project Facility.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the "Receivers of Taxes") for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof.

(B) Valuation of the Project Facility. (1) The value of the Project Facility for purposes of determining payments in lieu of taxes due hereunder (hereinafter referred to as the "Assessed Value") shall be determined by the appropriate Assessors. The Company agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The parties hereto agree that the Assessors shall (a) appraise the Land in the same manner as other similar properties in the general area of the Land, (b) place an Assessed Value upon the Land, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes, (c) appraise the Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law (collectively with the Facility, the "Improvements") in the same manner as other similar properties in the general area of the Improvements, and (d) place an Assessed Value upon the Improvements, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial determination of the Assessed Value of the Improvements and of any change in the Assessed Value of the Land or the Improvements.

(2) If the Company is dissatisfied with the amount of the Assessed Value of the Project Facility as initially established or as changed, the Company shall be entitled to challenge the Assessed Value in accordance with the terms and conditions contained in Article 7 of the Real Property Tax Law. The Company shall be entitled to take any actions under Article 7 of the Real Property Tax Law notwithstanding the fact that the Agency has an interest in the Land pursuant to the Lease to Agency.

(3) Any payments in lieu of taxes due upon such Project Facility pursuant to Section 2.02(C) hereof may not be withheld by the Company pending determination of the Assessed Value.

(C) Amount of Payments in Lieu of Taxes. (1) (a) For a period ending on the earlier to occur of (I) December 31, 2050, or (II) the date on which the City of Albany (the "City") shall determine that the Project Facility no longer is being used as housing facilities for persons of low income, the Company will pay to the Treasurer of the City, for distribution among the Albany City School District, the County of Albany and the City, annual payments in lieu of taxes in an amount equal to five percent (5%) of the aggregate collected annual tenant paid rents generated by the Project Facility (the "Rent"). The Rent shall include tenant paid rent and rent supplements and subsidies received from the federal government, the State, or a municipality on behalf of such tenants, less the aggregate annual owner paid utilities, such payments to be payable on April 15 of each year, in an amount calculated pursuant to the previous sentence for the prior calendar year, commencing on April 15, 2019. The Company shall provide to Treasurer of the City, along with each payment, an annual statement of tenant paid income and Project expenses verified by the Company or such other person as may be authorized by the Company to verify said statement.

(b) The Agency and the Company recognize and agree that during the period beginning on the Closing Date and ending on the Completion Date (the "Construction Period"), the Company will be undertaking the Project and the amount of payments in lieu of taxes payable by the Company during such Construction Period may be affected by the construction, reconstruction and renovation occurring at and it the Project Facility.

(2) Commencing on the earlier to occur of (a) January 1, 2051, or (b) the date on which the City shall determine that the Project Facility no longer is being used as housing facilities for persons of low income, the Company will pay to the Treasurer of the City, for distribution among the Albany City School District, the County of Albany and the City, annual payments in lieu of taxes in an amount equal to as follows:

(a) First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity



if the Project Facility was owned by the Company and not the Agency by multiplying (i) the Assessed Value of the Project Facility determined pursuant to Section 2.02(B) hereof, by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Project Facility if the Project Facility was owned by the Company and not the Agency.

(b) On April 15 in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the earlier of (i) April 15, 2051 or (ii) the first April 15 following the date on which the City shall determine that the Project Facility no longer is being used as housing facilities for persons of low income, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Project Facility shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to the Project Facility for such tax year.

(D) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities") the Company agrees to make additional annual payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as "Additional Payments") to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Additional Normal Tax") which would be payable to each Taxing Entity with respect to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (E) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency.

(2) In each fiscal tax year during the term of this Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity) if such Additional Facilities were owned by the Company and not the Agency, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

(E) Valuation of Additional Facilities. (1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due under Section 2.02(D) hereof shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the "Additional Assessed Value") upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice

of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company is dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, the Company shall be entitled to challenge the Additional Assessed Value in accordance with the terms and conditions contained in Article 7 of the Real Property Tax Law. The Company shall be entitled to take any actions under Article 7 of the Real Property Tax Law notwithstanding the fact that the Agency has an interest in the Land pursuant to the Lease to Agency.

(3) The Agency and the Company expressly agree that any such structural additions and/or additional buildings and other structures comprising the Additional Facilities shall consist of structural additions and additional buildings and other structures being undertaken by the Company following the Completion Date of the Project.

(F) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(G) Time of Payments. The Company agrees to pay the amounts due hereunder to the Receivers of Taxes for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments.

(H) Method of Payment. All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing

Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall meet the qualifications set forth in Section 2.02(B) hereof, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.04. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

### ARTICLE III

#### LIMITED OBLIGATION

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. (A) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants, and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Agency.

(B) Limited Obligation. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or City of Albany, New York, and neither the State of New York nor City of Albany, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation. Notwithstanding any provision of this Payment in Lieu of Tax Agreement to the contrary, the Agency shall not be obligated to take any action that the Agency has not expressly agreed to undertake pursuant to an express provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

## ARTICLE IV

### EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms “Event of Default” or “default” shall mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

(A) Failure of the Company to pay when due any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(C) Any warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

(D) Notwithstanding anything to the contrary contained herein, the New York State Housing Finance Agency, the State of New York Mortgage Agency and the Company’s Investor Limited Partner shall have the right but not the obligation to cure an Event of Default hereunder and the Agency agrees to accept such cure as if provided by the Company itself.

SECTION 4.02. REMEDIES ON DEFAULT. (A) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to terminate this Payment in Lieu of Tax Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Payment in Lieu of Tax Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Payment in Lieu of Tax Agreement.

(D) No Waiver. In the event any provision contained in this Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) December 31, 2050 or (2) the date on which the Project Facility is reconveyed by the Agency to the Company pursuant to Articles X or XI of the Lease Agreement.

(B) Extended Term. In the event that (1) the Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining title to the Agency's interest in the Project Facility shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Payment in Lieu of Tax Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company to the respective Taxing Entities if the Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility, subject to the Company's right under Section 2.02 (B) hereof.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, properly addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by a Taxing Entity under Article II hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

(C) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Clinton Avenue Apartments Housing Development Fund Corporation  
and Clinton Avenue Apartments L.P.  
c/o Home Leasing, LLC  
180 Clinton Square  
Rochester, New York 14604

WITH A COPIES TO:

Nixon Peabody LLP  
1300 Clinton Square  
Rochester, New York 14604  
Attention: John F. D'Amanda, Esq.

RBC Tax Credit Equity, LLC  
600 Superior Avenue, Suite 2300  
Cleveland, Ohio 44114  
Attention: President & General Counsel

Nixon Peabody LLP  
100 Summer Street  
Boston, MA 02110  
Attention: Roger W. Holmes, Esq.

New York State Housing Finance Agency  
641 Lexington Avenue  
New York, New York 10022  
Attention: Senior Vice President Multifamily Finance  
Senior Vice President and Counsel

IF TO THE AGENCY:

City of Albany Industrial Development Agency  
21 Lodge Street  
Albany, New York 12207  
Attention: Chair

WITH A COPY TO:

Office of Corporation Counsel  
City Hall, Eagle Street - Room 106  
Albany, New York 12207  
Attention: William G. Kelly, Jr., Esq.

and



Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207  
Attention: A. Joseph Scott, III, Esq.

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

(E) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

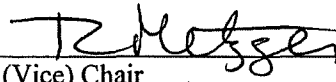
SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in Lieu of Tax Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY:   
(Vice) Chair

CLINTON AVENUE APARTMENTS L.P., a New  
York limited partnership

By: Clinton Avenue GP, LLC its general partner  
By: Home Leasing, LLC, its manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CLINTON AVENUE APARTMENTS HOUSING  
DEVELOPMENT FUND CORPORATION, a housing  
development fund company formed pursuant to Article  
XI of the Private Housing  
Finance Law of the State of New York and Section  
402 of the Not-For-Profit Corporation Law

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

CLINTON AVENUE APARTMENTS L.P., a New  
York limited partnership

By: Clinton Avenue GP, LLC its general partner

By: Home Leasing, LLC, its manager

By: \_\_\_\_\_

Name: Adam Driscoll

Title: Owner's Representative

CLINTON AVENUE APARTMENTS HOUSING  
DEVELOPMENT FUND CORPORATION, a housing  
development fund company formed pursuant to Article  
XI of the Private Housing  
Finance Law of the State of New York and Section  
402 of the Not-For-Profit Corporation Law

By: \_\_\_\_\_

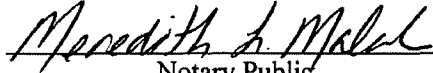
Name: Adam Driscoll

Title: Owner's Representative

STATE OF NEW YORK       )  
                                      )ss:  
COUNTY OF ALBANY       )

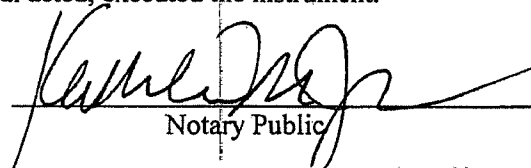
On the 19<sup>th</sup> day of June, in the year 2018, before me, the undersigned, personally appeared Tracy L. Metzger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

MEREDITH L. MALARK  
Notary Public, State of New York  
No. 01MA6212870  
Qualified in Schoharie County  
Commission Expires October 26, 20 21

  
\_\_\_\_\_  
Notary Public

STATE OF NEW YORK     )  
                                      )ss:  
COUNTY OF MONROE     )

On the 20 day of June, in the year 2018, before me, the undersigned, personally appeared Adam Driscoll, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

KATHLEEN M. JONES  
Notary Public, State of New York  
Registration #: 01JO4854252  
Qualified in Monroe County  
Certificate Filed in Monroe County  
Commission Expires: 3/3/2022

## EXHIBIT A

### DESCRIPTION OF THE LEASED LAND

A leasehold interest created by a certain lease to agency dated as of June 28, 2018 (the “Lease to Agency”) between Clinton Avenue Apartments Housing Development Fund Corporation and Clinton Avenue Apartments L.P. (collectively, the “Company”), as landlord, and City of Albany Industrial Development Agency (the “Agency”), as tenant, in approximately 72 parcels of land (the “Leased Land”) generally located on Clinton Avenue and Ten Broeck Street in the City of Albany, Albany County, New York, said Leased Land being more particularly described below), together with any improvements now or hereafter located on the Leased Land (the Leased Land and all such improvements being sometimes collectively referred to as the “Leased Premises”):

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND situate, lying and being in the City of Albany, Albany County, New York, bounded and described as follows:

Schedule A

**CLINTON REVIVAL PARCELS:**

No. 64 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 380.57 feet easterly as measured along the south line of CLINTON AVENUE from its intersection with the east line on NORTH HAWK STREET; thence easterly and running along the south line of CLINTON AVENUE 25.0 feet ; thence southerly making an interior angle of 90 degrees 00 minutes with the last described course 86.0 feet; thence westerly making an interior angle of 90 degrees 00 minutes with the last described course 25.00 feet; thence northerly making an interior angle of 90 degrees 00 minutes with the last described course 86.0 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 00 minutes with the first course of the parcel herein described.

No. 68 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 330.57 feet easterly as measured along the south line of CLINTON AVENUE from its intersection with the east line on NORTH HAWK STREET; thence easterly and running along the south line of CLINTON AVENUE 25.0 feet ; thence southerly making an interior angle of 90 degrees 00 minutes with the last described course 86.0 feet; thence westerly making an interior angle of 90 degrees 00 minutes with the last described course 25.00 feet; thence northerly making an interior angle of 90 degrees 00 minutes with the last described course 86.0 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 00 minutes with the first course of the parcel herein described.

No. 70 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 305.57 feet easterly as measured along the south line of CLINTON AVENUE from its intersection with the east line on NORTH HAWK STREET; thence easterly and running along the south line of CLINTON AVENUE 25.0 feet ; thence southerly making an interior angle of 90 degrees 00 minutes with the last described course 86.0 feet; thence westerly making an interior angle of 90 degrees 00 minutes with the last described course 25.00 feet; thence northerly making an interior angle of 90 degrees 00 minutes with the last described course 86.0 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 00 minutes with the first course of the parcel herein described.

No. 97 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 44.51 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line on NORTH HAWK STREET; thence easterly and running along the north line of CLINTON AVENUE 22.00 feet; thence northerly making an

interior angle of 90 degrees 00 minutes with the last described course and running through the center line of a partywall which forms the east wall of the building occupying the premises herein described 44.00 feet; thence northerly making an interior angle of 183 degrees 23 minutes 00 seconds with the last described course 76.13 feet to a point in the south line of LUDLOW ALLEY; thence westerly making an interior angle of 86 degrees 37 minutes 00 seconds with the last described course and running along the south line of LUDLOW ALLEY 9.00 feet; thence southerly making an interior angle of 91 degrees 50 minutes 00 seconds with the last described course 57.03 feet; thence westerly making an interior angle of 267 degrees 54 minutes 00 seconds with the last described course 15.66 feet; thence southerly making an interior angle of 90 degrees 00 minutes 00 seconds with the last described course and running in part through the center line of a partywall which forms the west wall of the building occupying the premises herein described and the building adjoining the herein described premises on the west and the northerly extension thereof 63.00 to the point and place of beginning; the last described course making an interior angle of 90 degrees 00 minutes with the first course of the parcel herein described.

No. 99 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 22.40 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line on NORTH HAWK STREET; thence easterly and running along the north line of CLINTON AVENUE 22.11 feet; thence northerly making an interior angle of 90 degrees 00 minutes with the last described course and running through the center line of a partywall between the building occupying the premises herein described and the building adjoining the herein described premises on the east and the northerly extension thereof 62.72 feet; thence westerly making an interior angle of 90 degrees 00 minutes with the last described course 22.11 feet; thence southerly making an interior angle of 90 degrees 00 minutes with the last described course and running through the center line of a partywall between the building occupying the premises herein described and the building adjoining the herein described premises on the west and the northerly extension thereof 62.72 to the point and place of beginning; the last described course making an interior angle of 90 degrees 00 minutes with the first course of the parcel herein described.

No. 101 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE at its intersection with the east line on NORTH HAWK STREET; thence easterly and running along the north line of CLINTON AVENUE 22.40 feet; thence northerly making an interior angle of 90 degrees 00 minutes with the last described course and running through the center line of a partywall between the building occupying the premises herein described and the building adjoining the herein described premises on the east and the northerly extension thereof 62.72 feet; thence westerly making an interior angle of 90 degrees 00 minutes with the last described course 22.40 feet to a point in the east line of NORTH HAWK STREET; thence southerly making an interior angle of 90 degrees 00 minutes with the last described course and along the east line of NORTH HAWK STREET 62.72 to the point and place of beginning; the last described course making an interior angle of 90 degrees 00 minutes with the first course of the parcel herein described.

No. 115 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 155.22 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of NORTH HAWK STREET;



thence westerly and running along the north line of CLINTON AVENUE 17.43 feet; thence northerly making an interior angle of 89 degrees 50 minutes with the last described course and running in part along the west face the west wall of the building occupying the premises herein described and the northerly extension thereof 120.00 feet; thence easterly, making an interior angle of 90 degrees 10 minutes with the last described course 17.43 feet; thence southerly making an interior angle of 89 degrees 50 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 120.00 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 10 minutes with the first course of the parcel herein described.

No. 119 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 189.98 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of NORTH HAWK STREET; thence westerly and running along the north line of CLINTON AVENUE 17.83 feet; thence northerly making an interior angle of 89 degrees 50 minutes with the last described course and running in part along the west face the west wall of the building occupying the premises herein described and the northerly extension thereof 120.00 feet; thence easterly, making an interior angle of 90 degrees 10 minutes with the last described course 17.83 feet; thence southerly making an interior angle of 89 degrees 50 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 120.00 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 10 minutes with the first course of the parcel herein described.

No. 125 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 207.81 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of NORTH HAWK STREET; thence westerly and running along the north line of CLINTON AVENUE 22.11 feet; thence northerly making an interior angle of 89 degrees 50 minutes with the last described course and running in part along the west face the west wall of the building occupying the premises herein described and the northerly extension thereof 120.00 feet; thence easterly, making an interior angle of 90 degrees 10 minutes with the last described course 22.11 feet; thence southerly making an interior angle of 89 degrees 50 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 120.00 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 10 minutes with the first course of the parcel herein described.

No. 127 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 229.92 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of NORTH HAWK STREET; thence westerly and running along the north line of CLINTON AVENUE 22.21 feet; thence northerly making an interior angle of 89 degrees 32 minutes with the last described course and running in part along the west face the west wall of the building occupying the premises herein described and the northerly extension thereof 120.00 feet; thence easterly, making an interior angle of 90 degrees 28 minutes with the last described course 21.58 feet; thence southerly

making an interior angle of 89 degrees 50 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 120.00 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 10 minutes with the first course of the parcel herein described.

No. 132 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 330.41 feet easterly as measured along the south line of CLINTON AVENUE from its intersection with the east line of SOUTH SWAN STREET; thence easterly and running along the south line of CLINTON AVENUE 24.19 feet; thence southerly making an interior angle of 91 degrees 12 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the southerly extension thereof 91.53 feet; thence westerly making an interior angle of 88 degrees 48 minutes with the last described course 23.71 feet; thence northerly making an interior angle of 91 degrees 30 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the southerly extension thereof 91.53 feet to the point and place of beginning; the last described course making an interior angle of 88 degrees 30 minutes with the first course of the parcel herein described.

No. 135 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 201.40 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line on NORTH SWAN STREET; thence easterly and running along the north line of CLINTON AVENUE 20.78 feet; thence northerly making an interior angle of 89 degrees 16 minutes with the last described course 110.00 feet; thence westerly making an interior angle of 90 degrees 44 minutes with the last described course 20.78 feet; thence southerly making an interior angle of 89 degrees 16 minutes with the last described course 110.00 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 44 minutes with the first course of the parcel herein described.

No. 137 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 180.46 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line on NORTH SWAN STREET; thence easterly and running along the north line of CLINTON AVENUE 21.00 feet; thence northerly making an interior angle of 89 degrees 16 minutes with the last described course 99.98 feet; thence westerly making an interior angle of 90 degrees 44 minutes with the last described course 21.90 feet; thence southerly making an interior angle of 88 degrees 45 minutes with the last described course 100.00 feet to the point and place of beginning; the last described course making an interior angle of 91 degrees 15 minutes with the first course of the parcel herein described.

No. 139 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 159.40 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line on NORTH SWAN STREET; thence easterly and running along the north line of CLINTON AVENUE 21.00 feet; thence northerly making an interior angle of 88 degrees 45 minutes with the last described course 100.0 feet; thence westerly making an interior angle of 91 degrees 15 minutes with the last described course 21.00 feet; thence southerly making an interior angle of 88 degrees 45 minutes with the last described course 100.00 feet to the point and place of beginning; the last described course making an interior angle of 91 degrees 15 minutes with the first course of the parcel herein described.

No. 141 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 138.36 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line on NORTH SWAN STREET; thence easterly and running along the north line of CLINTON AVENUE 21.04 feet; thence northerly making an interior angle of 88 degrees 45 minutes with the last described course 110.0 feet; thence westerly making an interior angle of 90 degrees 15 minutes with the last described course 20.98 feet; thence southerly making an interior angle of 88 degrees 47 minutes with the last described course 110.00 feet to the point and place of beginning; the last described course making an interior angle of 91 degrees 13 minutes with the first course of the parcel herein described.

No. 144 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 161.83 feet easterly as measured along the south line of CLINTON AVENUE from its intersection with the east line of SOUTH SWAN STREET; thence easterly and running along the south line of CLINTON AVENUE 24.06 feet; thence southerly making an interior angle of 92 degrees 00 minutes with the last described course 91.56 feet; thence westerly making an interior angle of 88 degrees 00 minutes with the last described course 24.06 feet; thence northerly making an interior angle of 92 degrees 00 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the southerly extension thereof 91.56 feet to the point and place of beginning; the last described course making an interior angle of 88 degrees 00 minutes with the first course of the parcel herein described.

No. 149 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 42.65 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line on NORTH SWAN STREET; thence easterly and running along the north line of CLINTON AVENUE 25.00 feet; thence northerly making an interior angle of 90 degrees 00 minutes with the last described course 100.0 feet; thence westerly making an interior angle of 90 degrees 00 minutes with the last described course 23.96 feet; thence southerly making an interior angle of

90 degrees 35minutes 32 seconds with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 100.00 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 24 minutes 28 seconds with the first course of the parcel herein described.

No. 150 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 88.81 feet easterly as measured along the south line of CLINTON AVENUE from its intersection with the east line of SOUTH SWAN STREET; thence easterly and running along the south line of CLINTON AVENUE 25.00 feet; thence southerly making an interior angle of 91 degrees 38 minutes with the last described course 91.54 feet; thence westerly making an interior angle of 88 degrees 22 minutes with the last described course 25.00 feet; thence northerly making an interior angle of 91 degrees 38 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the southerly extension thereof 91.54 feet to the point and place of beginning; the last described course making an interior angle of 88 degrees 22 minutes with the first course of the parcel herein described.

No. 151 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 22.31 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line on NORTH SWAN STREET; thence easterly and running along the north line of CLINTON AVENUE 20.34 feet; thence northerly making an interior angle of 90 degrees 35 minutes 32 seconds with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 61.0 feet; thence westerly making an interior angle of 89 degrees 24 minutes 28 seconds with the last described course 20.34 feet; thence southerly making an interior angle of 90 degrees 35 minutes 32 seconds with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 61.00 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 24 minutes 28 seconds with the first course of the parcel herein described.

No. 157 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 25.74 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of NORTH SWAN STREET; thence westerly and running along the north line of CLINTON AVENUE 20.92 feet; thence northerly making an interior angle of 89 degrees 44 minutes 05 seconds with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 82.50 feet; thence easterly making an interior angle of 90 degrees 15 minutes 55 seconds with the last described course 20.30 feet; thence southerly making an interior angle of 90 degrees 10 minutes 06 seconds with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 82.50 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 49 minutes 54 seconds with the first course of the parcel herein described.

No. 160 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 21.10 feet westerly as measured along the south line of CLINTON AVENUE from its intersection with the west line of SOUTH SWAN STREET; thence westerly and running along the south line of CLINTON AVENUE 20.90 feet; thence southerly making an interior angle of 87 degrees 32 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the southerly extension thereof 75.00 feet; thence easterly making an interior angle of 92 degrees 28 minutes with the last described course 21.25 feet; thence northerly making an interior angle of 87 degrees 16 minutes with the last described course and running through the centerline of a partywall between the building occupying the premises herein described and the remains of building adjoining the herein described premises on the east and the southerly extension thereof 75.01 feet to the point and place of beginning; the last described course making an interior angle of 92 degrees 44 minutes with the first course of the parcel herein described.

No. 161 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 68.21 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of NORTH SWAN STREET; thence westerly and running along the north line of CLINTON AVENUE 22.71 feet; thence northerly making an interior angle of 89 degrees 58 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 82.50 feet; thence easterly making an interior angle of 90 degrees 02 minutes with the last described course 22.71 feet; thence southerly making an interior angle of 89 degrees 58 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 82.50 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 02 minutes with the first course of the parcel herein described.

No. 175 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 223.17 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of NORTH SWAN STREET; thence westerly and running along the north line of CLINTON AVENUE 22.42 feet; thence northerly making an interior angle of 89 degrees 46 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 126.0 feet; thence easterly making an interior angle of 90 degrees 14 minutes with the last described course 22.31 feet; thence southerly making an interior angle of 89 degrees 49 minutes with the last described course and running in part through the centerline of a partywall between the building occupying the premises herein described and the building occupying the premises adjoining the herein described premises on the east and the northerly extension thereof 126.0 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 11 minutes with the first course of the parcel herein described.

No. 179 CLINTON AVENUE

ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 266.74 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of NORTH SWAN STREET; thence westerly and running along the north line of CLINTON AVENUE 25.05 feet; thence northerly making an interior angle of 89 degrees 37 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 136.0 feet; thence easterly making an interior angle of 90 degrees 23 minutes with the last described course 18.96 feet; thence southerly making an interior angle of 90 degrees 00 minutes with the last described course 10.0 feet; thence easterly making an interior angle of 270 degrees 00 minutes with the last described course 5.0 feet; thence southerly making an interior angle of 90 degrees 05 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 126.0 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 55 minutes with the first course of the parcel herein described.

No. 189 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 364.68 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of NORTH SWAN STREET; thence westerly and running along the north line of CLINTON AVENUE 18.41 feet; thence northerly making an interior angle of 89 degrees 53 minutes with the last described 136.0 feet; thence easterly making an interior angle of 90 degrees 07 minutes with the last described course 18.41 feet; thence southerly making an interior angle of 89 degrees 53 minutes with the last described course and running in part through the centerline of a partywall between the building occupying the premises herein described and the building occupying the premises adjoining the herein described premises on the east and the northerly extension thereof 136.0 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 07 minutes with the first course of the parcel herein described.

No. 193 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 415.86 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of NORTH SWAN STREET; thence westerly and running along the north line of CLINTON AVENUE 16.52 feet; thence northerly making an interior angle of 89 degrees 34 minutes with the last described course and running in part through the center line of a partywall between the building occupying the premises herein described and the building occupying the premises adjoining the herein described premises on the west and the northerly extension thereof 136.0 feet; thence easterly making an interior angle of 90 degrees 26 minutes with the last described course 16.60 feet; thence southerly making an interior angle of 89 degrees 32 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the building occupying the premises adjoining the herein described premises and the northerly extension thereof 136.0 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 28 minutes with the first course of the parcel herein described.

No. 195 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 432.38 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of NORTH SWAN STREET; thence westerly and running along the north line of CLINTON AVENUE 16.45 feet; thence northerly making an interior angle of 90 degrees 00 minutes with the last described course and running in part through the center line of a partywall between the building occupying the premises herein described and the building occupying the premises adjoining the herein described premises on the west and the northerly extension thereof 136.0 feet; thence easterly making an interior angle of 90 degrees 00 minutes with the last described course 17.48 feet; thence southerly making an interior angle of 89 degrees 34 minutes with the last described course and running in part through the centerline of a partywall between the building occupying the premises herein described and the building occupying the premises adjoining the herein described premises on the east and the northerly extension thereof 136.0 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 26 minutes with the first course of the parcel herein described.

No. 197 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 448.83 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of NORTH SWAN STREET; thence westerly and running along the north line of CLINTON AVENUE 22.04 feet; thence northerly making an interior angle of 90 degrees 00 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 136.0 feet; thence easterly making an interior angle of 90 degrees 00 minutes with the last described course 22.04 feet; thence southerly making an interior angle of 90 degrees 00 minutes with the last described course and running in part through the centerline of a partywall between the building occupying the premises herein described and the building occupying the premises adjoining the herein described premises on the east and the northerly extension thereof 136.0 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 00 minutes with the first course of the parcel herein described.

No. 203 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 514.88 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of NORTH SWAN STREET; thence westerly and running along the north line of CLINTON AVENUE 22.13 feet; thence northerly making an interior angle of 90 degrees 44 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 136.0 feet; thence easterly making an interior angle of 89 degrees 16 minutes with the last described course 23.59 feet; thence southerly making an interior angle of 90 degrees 07 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 136.0 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 53 minutes with the first course of the parcel herein described.

No. 208 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 88.48 feet easterly as measured along the south line of CLINTON AVENUE from its intersection with the east line of DOVE STREET; thence easterly and running along the south line of CLINTON AVENUE 22.03 feet; thence southerly making an interior angle of 92 degrees 18 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the southerly extension thereof 86.02 feet; thence westerly making an interior angle of 87 degrees 42 minutes with the last described course 22.38 feet; thence northerly making an interior angle of 92 degrees 04 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the southerly extension thereof 86.00 feet to the point and place of beginning; the last described course making an interior angle of 87 degrees 56 minutes with the first course of the parcel herein described.

No. 209 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 587.89 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of NORTH SWAN STREET; thence westerly and running along the north line of CLINTON AVENUE 22.45 feet; thence northerly making an interior angle of 90 degrees 36 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 136.0 feet; thence easterly making an interior angle of 89 degrees 24 minutes with the last described course 22.50 feet; thence southerly making an interior angle of 90 degrees 08 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 136.0 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 52 minutes with the first course of the parcel herein described.

No. 212 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 45.14 feet easterly as measured along the south line of CLINTON AVENUE from its intersection with the east line of DOVE STREET; thence easterly and running along the south line of CLINTON AVENUE 21.32 feet; thence southerly making an interior angle of 92 degrees 20 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the southerly extension thereof 102.00 feet; thence westerly making an interior angle of 87 degrees 40 minutes with the last described course 20.14 feet; thence northerly making an interior angle of 93 degrees 00 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the southerly extension thereof 102.05 feet to the point and place of beginning; the last described course making an interior angle of 87 degrees 00 minutes with the first course of the parcel herein described.



No. 217 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 663.40 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 22.63 feet; thence northerly making an interior angle of 90 degrees 08 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 136.0 feet; thence westerly making an interior angle of 89 degrees 52 minutes with the last described course 23.07 feet; thence southerly making an interior angle of 89 degrees 57 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 136.0 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 03 minutes with the first course of the parcel herein described.

No. 219 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 640.81 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 22.59 feet; thence northerly making an interior angle of 89 degrees 57 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 136.0 feet; thence westerly making an interior angle of 90 degrees 03 minutes with the last described course 22.94 feet; thence southerly making an interior angle of 89 degrees 48 minutes with the last described course and running in part through the centerline of a partywall between the building occupying the premises herein described and the building occupying the premises adjoining the herein described premises on the west 136.0 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 12 minutes with the first course of the parcel herein described.

No. 221 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 617.10 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 23.71 feet; thence northerly making an interior angle of 89 degrees 48 minutes with the last described course and running in part through the centerline of a partywall between the building occupying the premises herein described and the building occupying the premises adjoining the herein described premises on the east 136.0 feet; thence westerly making an interior angle of 90 degrees 12 minutes with the last described course 23.08 feet; thence southerly making an interior angle of 90 degrees 04 minutes with the last described course 136.0 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 56 minutes with the first course of the parcel herein described.

No. 229 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 528.66 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 22.44 feet; thence northerly making an interior angle of 90 degrees 18 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 136.0 feet; thence westerly making an interior angle of 89 degrees 42 minutes with the last described course 22.80 feet; thence southerly making an interior angle of 90 degrees 09 minutes with the last described course and in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 136.0 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 51 minutes with the first course of the parcel herein described.

No. 231 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 506.03 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 22.63 feet; thence northerly making an interior angle of 90 degrees 09 minutes with the last described course 136.0 feet; thence westerly making an interior angle of 89 degrees 51 minutes with the last described course 23.07 feet; thence southerly making an interior angle of 89 degrees 58 minutes with the last described course and in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 136.0 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 02 minutes with the first course of the parcel herein described.

No. 235-237 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 438.81 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 42.50 feet; thence northerly making an interior angle of 89 degrees 53 minutes with the last described course 136.0 feet; thence westerly making an interior angle of 90 degrees 07 minutes with the last described course 45.40 feet; thence southerly making an interior angle of 89 degrees 53 minutes with the last described course 29.0 feet; thence easterly making an interior angle of 90 degrees 07 minutes with the last described course 2.90 feet; thence southerly making an interior angle of 269 degrees 53 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 107.0 to the point and place of beginning; the last described course making an interior angle of 90 degrees 07 minutes with the first course of the parcel herein described.

No. 256 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 220.25 feet easterly as measured along the south line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the south line of CLINTON AVENUE 22.02 feet; thence southerly making an interior angle of 90 degrees 00 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the southerly extension thereof 85.50 feet; thence westerly making an

interior angle of 90 degrees 00 minutes with the last described course 22.02 feet; thence northerly making an interior angle of 90 degrees 00 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the southerly extension thereof 85.50 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 00 minutes with the first course of the parcel herein described.

No. 257 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 216.07 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 24.06 feet; thence northerly making an interior angle of 90 degrees 23 minutes with the last described course 125.0 feet; thence westerly making an interior angle of 89 degrees 37 minutes with the last described course 23.41 feet; thence southerly making an interior angle of 90 degrees 41 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 125.0 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 19 minutes with the first course of the parcel herein described.

No. 258 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 198.17 feet easterly as measured along the south line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the south line of CLINTON AVENUE 22.08 feet; thence southerly making an interior angle of 90 degrees 00 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the southerly extension thereof 85.50 feet; thence westerly making an interior angle of 90 degrees 00 minutes with the last described course 22.28 feet; thence northerly making an interior angle of 89 degrees 52 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the southerly extension thereof 85.50 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 08 minutes with the first course of the parcel herein described.

No. 259 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 192.04 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 24.03 feet; thence northerly making an interior angle of 90 degrees 41 minutes with the last described course and in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 125.0 feet; thence westerly making an interior angle of 89 degrees 19 minutes with the last described course 24.10 feet; thence southerly making an interior angle of 90 degrees 39 minutes with the last described course 125.0 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 21 minutes with the first course of the parcel herein described.

No. 261 CLINTON AVENUE

ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 168.11 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 23.93 feet; thence northerly making an interior angle of 90 degrees 39 minutes with the last described course 125.0 feet; thence westerly making an interior angle of 89 degrees 21 minutes with the last described course 25.64 feet; thence southerly making an interior angle of 89 degrees 52 minutes with the last described course 125.00 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 08 minutes with the first course of the parcel herein described.

No. 263 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 144.05 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 24.06 feet; thence northerly making an interior angle of 89 degrees 52 minutes with the last described course 125.0 feet; thence westerly making an interior angle of 90 degrees 08 minutes with the last described course 24.17 feet; thence southerly making an interior angle of 89 degrees 49 minutes with the last described course and in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 125.00 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 11 minutes with the first course of the parcel herein described.

No. 265 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 119.99 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 24.06 feet; thence northerly making an interior angle of 89 degrees 49 minutes with the last described course 120.0 feet; thence westerly making an interior angle of 90 degrees 11 minutes with the last described course 23.78 feet; thence southerly making an interior angle of 89 degrees 57 minutes with the last described course and in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 120.0 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 03 minutes with the first course of the parcel herein described.

No. 266 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 110.03 feet easterly as measured along the south line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the south line of CLINTON AVENUE 22.11 feet; thence southerly making an interior angle of 90 degrees 03 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the southerly extension thereof 85.50 feet; thence westerly making an interior angle of 89 degrees 57 minutes with the last described course 22.11 feet; thence northerly making an interior

angle of 90 degrees 03 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the southerly extension thereof 85.50 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 57 minutes with the first course of the parcel herein described.

No. 267 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 96.08 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 23.91 feet; thence northerly making an interior angle of 89 degrees 57 minutes with the last described course 130.0 feet; thence westerly making an interior angle of 90 degrees 03 minutes with the last described course 25.20 feet; thence southerly making an interior angle of 89 degrees 23 minutes with the last described course and in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 130.00 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 37 minutes with the first course of the parcel herein described.

No. 268 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 88.03 feet easterly as measured along the south line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the south line of CLINTON AVENUE 22.00 feet; thence southerly making an interior angle of 90 degrees 03 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the southerly extension thereof 85.50 feet; thence westerly making an interior angle of 89 degrees 57 minutes with the last described course 22.60 feet; thence northerly making an interior angle of 89 degrees 39 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the southerly extension thereof 85.50 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 21 minutes with the first course of the parcel herein described.

No. 269 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 71.21 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 24.87 feet; thence northerly making an interior angle of 89 degrees 23 minutes with the last described course 125.0 feet; thence westerly making an interior angle of 90 degrees 37 minutes with the last described course 22.90 feet; thence southerly making an interior angle of 90 degrees 17 minutes with the last described course and in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 125.00 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 43 minutes with the first course of the parcel herein described.

No. 270 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 66.20 feet easterly as measured along the south line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the south line of CLINTON AVENUE 21.83 feet; thence southerly making an interior angle of 89 degrees 39 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the southerly extension thereof 85.50 feet; thence westerly making an interior angle of 90 degrees 21 minutes with the last described course 21.83 feet; thence northerly making an interior angle of 89 degrees 39 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the southerly extension thereof 85.50 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 21 minutes with the first course of the parcel herein described.

No. 271 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 48.24 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 22.97 feet; thence northerly making an interior angle of 90 degrees 17 minutes with the last described course and in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 90.00 feet; thence westerly making an interior angle of 89 degrees 43 minutes with the last described course 23.81 feet; thence southerly making an interior angle of 89 degrees 45 minutes with the last described course and in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 90.00 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 15 minutes with the first course of the parcel herein described.

No. 272 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 44.20 feet easterly as measured along the south line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the south line of CLINTON AVENUE 22.00 feet; thence southerly making an interior angle of 89 degrees 39 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the southerly extension thereof 85.50 feet; thence westerly making an interior angle of 90 degrees 21 minutes with the last described course 21.08 feet; thence northerly making an interior angle of 90 degrees 16 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the southerly extension thereof 85.50 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 44 minutes with the first course of the parcel herein described.

No. 279 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 20.34 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of LARK STREET; thence westerly and running along the north line of CLINTON AVENUE 18.02 feet; thence northerly making an interior angle of 90 degrees 05 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 73.58 feet; thence easterly making an interior angle of 90 degrees 28 minutes with the last described course 18.06 feet; thence southerly making an interior angle of 89 degrees 30 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 73.75 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 57 minutes with the first course of the parcel herein described.

No. 281 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 38.35 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of LARK STREET; thence westerly and running along the north line of CLINTON AVENUE 18.10 feet; thence northerly making an interior angle of 89 degrees 58 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 73.41 feet; thence easterly making an interior angle of 90 degrees 35 minutes with the last described course 17.95 feet; thence southerly making an interior angle of 89 degrees 32 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 73.58 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 55 minutes with the first course of the parcel herein described.

No. 283 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 56.45 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of LARK STREET; thence westerly and running along the north line of CLINTON AVENUE 18.03 feet; thence northerly making an interior angle of 89 degrees 57 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 73.24 feet; thence easterly making an interior angle of 90 degrees 36 minutes with the last described course 18.01 feet; thence southerly making an interior angle of 89 degrees 25 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 73.41 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 02 minutes with the first course of the parcel herein described.

No. 287 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 98.10 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of LARK STREET; thence westerly and running along the north line of CLINTON AVENUE 20.05 feet; thence northerly making an interior angle of 90 degrees 05 minutes with the last described course and running in part along the west face of the west wall

of the building occupying the premises herein described and the northerly extension thereof 140.0 feet; thence easterly making an interior angle of 89 degrees 55 minutes with the last described course 20.38 feet; thence southerly making an interior angle of 89 degrees 57 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 140.0 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 03 minutes with the first course of the parcel herein described.

No. 288 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 109.88 feet westerly as measured along the south line of CLINTON AVENUE from its intersection with the west line of LARK STREET; thence westerly and running along the south line of CLINTON AVENUE 21.99 feet; thence southerly making an interior angle of 90 degrees 28 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the southerly extension thereof 90.00 feet; thence easterly making an interior angle of 89 degrees 32 minutes with the last described course 21.65 feet; thence northerly making an interior angle of 90 degrees 41 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the southerly extension thereof 90.00 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 19 minutes with the first course of the parcel herein described.

No. 289 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 118.15 feet westerly as measured along the north line of CLINTON AVENUE from its intersection with the west line of LARK STREET; thence westerly and running along the north line of CLINTON AVENUE 22.06 feet; thence northerly making an interior angle of 89 degrees 49 minutes with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the northerly extension thereof 140.0 feet; thence easterly making an interior angle of 90 degrees 11 minutes with the last described course 21.41 feet; thence southerly making an interior angle of 90 degrees 05 minutes with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 140.0 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 55 minutes with the first course of the parcel herein described.

No. 294 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 176.02 feet westerly as measured along the south line of CLINTON AVENUE from its intersection with the west line of LARK STREET; thence westerly and running along the south line of CLINTON AVENUE 22.05 feet; thence southerly making an interior angle of 89 degrees 55 minutes 13 seconds with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the southerly extension thereof 86.00 feet; thence easterly making an interior angle of 90 degrees 04 minutes 47 seconds with the last described course 22.00 feet; thence northerly making an interior angle of 89 degrees 57 minutes 13 seconds with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the



southerly extension thereof 86.00 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 02 minutes 47 seconds with the first course of the parcel herein described.

No. 298 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the south line of CLINTON AVENUE said point being 285.45 feet easterly as measured along the south line of CLINTON AVENUE from its intersection with the east line of NORTHERN BOULEVARD; thence easterly and running along the south line of CLINTON AVENUE 22.96 feet; thence southerly making an interior angle of 90 degrees 12 minutes with the last described course 86.00 feet; thence westerly making an interior angle of 89 degrees 48 minutes with the last described course 22.88 feet; thence northerly making an interior angle of 90 degrees 15 minutes 13 seconds with the last described course and running in part along the west face of the west wall of the building occupying the premises herein described and the southerly extension thereof 86.00 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 44 minutes 47 seconds with the first course of the parcel herein described.

No. 305 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 390.51 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of NORTHERN BOULEVARD; thence easterly and running along the north line of CLINTON AVENUE 19.00 feet; thence northerly making an interior angle of 89 degrees 44 minutes 35 seconds with the last described course and running in part along the east face of the east wall of the building occupying the premises herein described and the northerly extension thereof 146.0 feet; thence westerly making an interior angle of 90 degrees 15 minutes 25 seconds with the last described course 19.00 feet; thence southerly making an interior angle of 89 degrees 44 minutes 35 seconds with the last described course and running in part through the centerline of a partywall between the building occupying the premises herein described and the building occupying the premises adjoining the herein described premises on the west 146.0 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 15 minutes 25 seconds with the first course of the parcel herein described.

No. 317 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 272.93 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of NORTHERN BOULEVARD; thence easterly and running along the north line of CLINTON AVENUE 22.47 feet; thence northerly making an interior angle of 89 degrees 39 minutes 11 seconds with the last described course 150.00 feet; thence westerly making an interior angle of 90 degrees 20 minutes 49 seconds with the last described course 22.38 feet; thence southerly making an interior angle of 89 degrees 39 minutes 42 seconds with the last described course 150.00 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 20 minutes 18 seconds with the first course of the parcel herein described.

No. 321 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 225.22 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of NORTHERN BOULEVARD; thence easterly and running along the north line of CLINTON AVENUE 25.00 feet; thence northerly making an interior angle of 90 degrees 00 minutes with the last described course 125.00 feet; thence westerly making an interior angle of 90 degrees 00 minutes with the last described course 25.00 feet; thence southerly making an interior angle of 90 degrees 00 minutes with the last described course 125.00 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 00 minutes with the first course of the parcel herein described.

No. 20 TEN BROECK STREET  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the west line of TEN BROECK STREET said point being 21.67 feet southerly as measured along the west line of FIRST STREET from its intersection with the south line on FIRST STREET; thence southerly and running along the west line of TEN BROECK STREET 21.77 feet; thence westerly making an interior angle of 89 degrees 54 minutes with the last described course 45.00 feet; thence continuing northwesterly and making an interior angle of 163 degrees 33 minutes with the last described course 56.42 feet; thence northeasterly making an interior angle of 79 degrees 05 minutes with the last described course 21.66 feet to a point; thence southeasterly making an interior angle of 101 degrees 01 minutes with the last described course 46.33 feet to a point; thence easterly making an interior angle of 195 degrees 50 minutes with the last described course 44.66 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 37 minutes with the first course of the parcel herein described.

No. 59 TEN BROECK STREET  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the east line of TEN BROECK STREET said point being 302.50 feet easterly as measured along the east line of TEN BROECK STREET from its intersection with the north line on WILSON STREET; thence northerly and running along the north line of TEN BROECK STREET 16.69 feet; thence easterly making an interior angle of 93 degrees 13 minutes with the last described course 125.00 feet; thence southerly making an interior angle of 86 degrees 47 minutes with the last described course 16.69 feet; thence westerly making an interior angle of 93 degrees 13 minutes with the last described course 125.00 feet to the point and place of beginning; the last described course making an interior angle of 86 degrees 47 minutes with the first course of the parcel herein described.

No. 75 TEN BROECK STREET  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the east line of TEN BROECK STREET said point being 492.41 feet easterly as measured along the east line of TEN BROECK STREET from its intersection with the north line on WILSON STREET; thence northerly and running along the north line of TEN BROECK STREET 22.32 feet; thence easterly making an interior angle of 92 degrees 11 minutes 01 seconds with the last described course 130.83 feet; thence southerly making an

interior angle of 87 degrees 48 minutes 59 seconds with the last described course 22.32 feet; thence westerly making an interior angle of 92 degrees 11 minutes 01 seconds with the last described course 130.83 feet to the point and place of beginning; the last described course making an interior angle of 87 degrees 48 minutes 59 seconds with the first course of the parcel herein described.

No. 83 TEN BROECK STREET  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the east line of TEN BROECK STREET said point being 587.80 feet easterly as measured along the east line of TEN BROECK STREET from its intersection with the north line on WILSON STREET; thence northerly and running along the north line of TEN BROECK STREET 25.00 feet; thence easterly making an interior angle of 91 degrees 42 minutes with the last described course 130.00 feet; thence southerly making an interior angle of 88 degrees 15 minutes with the last described course 24.40 feet; thence westerly making an interior angle of 92 degrees 10 minutes with the last described course 130.00 feet to the point and place of beginning; the last described course making an interior angle of 88 degrees 20 minutes with the first course of the parcel herein described.

No. 85 TEN BROECK STREET  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the east line of TEN BROECK STREET said point being 612.81 feet easterly as measured along the east line of TEN BROECK STREET from its intersection with the north line on WILSON STREET; thence northerly and running along the north line of TEN BROECK STREET 25.10 feet; thence easterly making an interior angle of 92 degrees 02 minutes 26 seconds with the last described course 130.05 feet; thence southerly making an interior angle of 87 degrees 54 minutes 34 seconds with the last described course 25.87 feet; thence westerly making an interior angle of 91 degrees 45 minutes with the last described course 130.00 feet to the point and place of beginning; the last described course making an interior angle of 88 degrees 18 minutes with the first course of the parcel herein described.

**ALBANY LAND BANK PARCELS:**

No. 79 NORTH HAWK STREET  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the east line of NORTH HAWK STREET, said point being 62.72 feet northerly as measured along the east line of NORTH HAWK STREET from its intersection with the north line on CLINTON AVENUE; thence northerly and running along the east line of NORTH HAWK STREET 19.09 feet; thence easterly making an interior angle of 90 degrees 00 minutes with the last described course and running parallel with the northerly bounds of CLINTON AVENUE 60.78 feet; thence southerly making an interior angle of 87 degrees 54 minutes with the last described course 18.81 feet; thence easterly making an interior angle of 92 degrees 06 minutes and running parallel with the northerly bounds of CLINTON AVENUE 15.66 feet; thence southerly making an interior angle of 270 degrees 00 minutes with the last described course and running parallel with the easterly bounds of NORTH HAWK STREET 0.28 feet; thence easterly making an interior angle of 90 degrees 00 minutes and running parallel with the northerly bounds of CLINTON AVENUE 44.51 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 00 minutes with the first course of the parcel herein described.

No. 233 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 481.31 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 24.72 feet; thence northerly making an interior angle of 89 degrees 58 minutes with the last described course and in part along the west face of the west wall of the building occupying the premises to the east and the northerly extension thereof 136.0 feet; thence westerly making an interior angle of 90 degrees 02 minutes with the last described course 24.91 feet; thence southerly making an interior angle of 89 degrees 53 minutes with the last described course 136.0 feet to the point and place of beginning; the last described course making an interior angle of 90 degrees 07 minutes with the first course of the parcel herein described.

**VICTORY CHRISTIAN CHURCH PARCELS**

No. 243 & 245 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 336.87 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 48.96 feet; thence northerly making an interior angle of 90 degrees 23 minutes with the last described course 125.00 feet; thence easterly making an interior angle of 270 degrees with the last described course 24.06 feet; thence northerly making an interior angle of 90 degrees with the last described course 11.92 feet; thence westerly making an interior angle of 90 degrees with the last described course 72.10 feet; thence southerly making an interior angle of 90 degrees 23 minutes with the last described course 136.92 feet to the point and place of beginning; the last described course making an interior angle of 87 degrees 37 minutes with the first course of the parcel herein described.

No. 255 CLINTON AVENUE  
ALBANY, NY

All that parcel of land situate in the City of Albany, County of Albany, State of New York, bounded and described as follows:

BEGINNING at a point in the north line of CLINTON AVENUE said point being 240.13 feet easterly as measured along the north line of CLINTON AVENUE from its intersection with the east line of LARK STREET; thence easterly and running along the north line of CLINTON AVENUE 96.12 feet; thence northerly making an interior angle of 90 degrees 23 minutes with the last described course 125.00 feet; thence westerly making an interior angle of 89 degrees 37 minutes with the last described course 96.12 feet; thence southerly making an interior angle of 90 degrees 23 minutes with the last described course 125.00 feet to the point and place of beginning; the last described course making an interior angle of 89 degrees 37 minutes with the first course of the parcel herein described.

CLOSING ITEM NO.: A-9

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CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

AND

RECKDE LLC

---

PAYMENT IN LIEU OF TAX AGREEMENT

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DATED AS OF JANUARY 1, 2018

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RELATING TO THE PREMISES LOCATED AT 79-91 DANA AVENUE  
IN THE CITY OF ALBANY, ALBANY COUNTY, NEW YORK.

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## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of January 1, 2018 (the "Payment in Lieu of Tax Agreement") by and between CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 21 Lodge Street, Albany, New York (the "Agency"), and RECKDE LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 204 Winding Brook Road, New Rochelle, New York (the "Company");

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 325 of the Laws of 1974 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in July, 2017, RECKDE LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of New York, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in an approximately 11,250 square feet parcel of land (tax map number 76.23-1-45) currently with an address of 79-91 Dana Avenue in the City of Albany, Albany County, New York (the "Land"), together with improvements containing in the aggregate approximately 4,800 square feet of space located thereon (collectively, the "Existing Facility"), (2) the demolition of the Existing Facility, (3) the construction on the Land of a building to contain approximately 40,000 square feet of space (the "Facility") and (4) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the "Equipment") (the Land, the Existing Facility, the Facility, and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to constitute an approximately thirty (30) unit residential apartment building with a ground level parking garage to be owned by the Company and leased to various residential tenants, and any other directly and



indirectly related activities; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on August 17, 2017 (the “Public Hearing Resolution”), the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on September 7, 2017 to the chief executive officers of the county and of each city and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be posted on September 7, 2017 on a public bulletin board located at Albany City Hall located at 24 Eagle Street in the City of Albany, Albany County, New York, (C) caused notice of the Public Hearing to be published on September 11, 2017 in Albany Times Union, a newspaper of general circulation available to the residents of the City of Albany, New York, (D) conducted the Public Hearing on September 21, 2017 at 12:15 o’clock p.m., local time at offices of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York, and (E) prepared a report of the Public Hearing (the “Public Hearing Report”) which fairly summarized the views presented at said Public Hearing and distributed to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on September 21, 2017 (the “Resolution Confirming SEQR Determination”), the Agency (A) concurred in the determination that the City of Albany Planning Board (the “Planning Board”) is the “lead agency” with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Planning Board issued on November 17, 2016 (the “Negative Declaration”), in which the Planning Board determined that the Project would not have a significant adverse environmental impact on the environment, and therefore, that an environmental impact statement need not be prepared with respect to the Project; and

WHEREAS, by resolution adopted by the members of the Agency on September 21, 2017 (the “Pilot Deviation Approval Resolution”), the members of the Agency determined to deviate from the Agency’s uniform tax exemption policy with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on September 21, 2017 (the “Commercial/Retail Finding Resolution”), the Agency (A) determined that the Project constituted a “commercial project” within the meaning of the Act, (B) found that although the Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act because the Project Facility is located in a highly distressed area, (C) determined, following a review of the Hearing Report, that the Project would serve the public purposes of the Act by preserving permanent private sector jobs in the State of New York, and (D) determined that the Agency would proceed with the Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Project by the Agency unless and until the Mayor of City of Albany, as chief executive officer of City of Albany, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Project; and

WHEREAS, pursuant to Section 862(2) of the Act, the Mayor, as chief executive officer of the City of Albany, New York, has confirmed the proposed action of the Agency by certificate dated January 16, 2018; and

WHEREAS, by further resolution adopted by the members of the Agency on September 21, 2017 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of January 1, 2018 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company for a lease term ending on the earlier to occur of (1) December 31, 2039 or (2) the date on which the Lease Agreement is terminated pursuant to the optional termination provisions thereof. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of January 1, 2018 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises") for a lease term ending on December 31, 2039; (2) a certain license agreement dated as of January 1, 2018 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project; and (3) a certain bill of sale dated as of January 1, 2018 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver (1) a certain payment in lieu of tax agreement dated as of January 1, 2018 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (C) the Agency and the Company will execute and deliver the uniform agency project agreement dated as of January 1, 2018 (the "Uniform Agency Project Agreement") by and between the Agency and the Company relating to the terms of the granting by the Agency of the Financial Assistance to the Company; (D) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (E) the Agency will execute and deliver to the Company a sales tax exemption letter for the Project Facility (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (F) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "Real Property Tax Law"), the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to normal taxes, provided that, so long as this Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to that portion of the Project Facility which is covered by this Payment in Lieu of Tax Agreement; and

WHEREAS, all things necessary to constitute this Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

ARTICLE I  
REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement hereunder.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement, and by proper action of its Members has been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.

(B) Authorization. The Company is authorized and has the power under its Articles of Organization, Operating Agreement and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper action of its Members, the Company has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and

performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its Articles of Organization or Operating Agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.

## ARTICLE II

### COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF THE PROJECT FACILITY. (A) Assessment of the Project Facility. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of the Project Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility, and for so long thereafter as the Agency shall own the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared for the first taxable status date subsequent to the acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease and the filing of the Real Property Tax Exemption Forms. The Company shall, promptly following acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease, take such action as may be necessary to ensure that the Project Facility shall be assessed on the exempt portion of the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall own such leasehold interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency becomes the owner of record of such leasehold interest in the Project Facility and the Real Property Tax Exemption Forms are filed with the Assessors. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Project Facility.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the "Receivers of Taxes") for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof.

(B) Valuation of the Project Facility. (1) The value of the Project Facility for purposes of determining payments in lieu of taxes due hereunder (hereinafter referred to as the "Assessed Value") shall be determined in accordance with the terms of Exhibit B attached hereto and this Section 2.02(B). The Company agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The parties hereto agree that the Assessors shall (a) appraise the Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law (collectively with the Facility, the "Improvements") in the same manner as other similar properties in the general area of the Improvements, and (b) place an Assessed Value upon the Improvements, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial determination of the Assessed Value of the Improvements and of any change in the Assessed Value of the Improvements.

(2) If the Company is dissatisfied with the amount of the Assessed Value of the Project Facility as initially established or as changed, the Company shall be entitled to challenge the Assessed Value in accordance with the terms and conditions contained in Article 7 of the Real Property Tax Law. The Company shall be entitled to take any actions under Article 7 of the Real Property Tax Law notwithstanding the fact that the Agency has an interest in the Land pursuant to the Lease to Agency.

(3) Any payments in lieu of taxes due upon such Project Facility pursuant to Section 2.02(C) hereof may not be withheld by the Company pending determination of the Assessed Value.

(C) Amount of Payments in Lieu of Taxes. The payments in lieu of taxes to be paid by the Company to the Receivers of Taxes annually on behalf of each Taxing Entity pursuant to the terms of this Payment in Lieu of Tax Agreement shall be the amount computed separately for each Taxing Entity as set forth in Exhibit B attached.

(D) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities") the Company agrees to make additional annual payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as "Additional Payments") to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Additional Normal Tax") which would be payable to each Taxing Entity with respect to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (E) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency.

(2) In each fiscal tax year during the term of this Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity) if such Additional Facilities were owned by the Company

and not the Agency, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

(E) Valuation of Additional Facilities. (1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due under Section 2.02(D) hereof shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the "Additional Assessed Value") upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company is dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, the Company shall be entitled to challenge the Additional Assessed Value in accordance with the terms and conditions contained in Article 7 of the Real Property Tax Law. The Company shall be entitled to take any actions under Article 7 of the Real Property Tax Law notwithstanding the fact that the Agency has an interest in the Land pursuant to the Lease to Agency.

(F) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(G) Time of Payments. The Company agrees to pay the amounts due hereunder to the Receivers of Taxes for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments.

(H) Method of Payment. All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example,



(1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall meet the qualifications set forth in Section 2.02(B) hereof, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.04. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

## ARTICLE III

### LIMITED OBLIGATION

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. (A) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants, and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Agency.

(B) Limited Obligation. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the City of Albany, New York, and neither the State of New York nor the City of Albany, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation. Notwithstanding any provision of this Payment in Lieu of Tax Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

## ARTICLE IV

### EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms “Event of Default” or “default” shall mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

(A) Failure of the Company to pay when due any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(C) Any warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

SECTION 4.02. REMEDIES ON DEFAULT. (A) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Payment in Lieu of Tax Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Payment in Lieu of Tax Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Payment in Lieu of Tax Agreement.

(D) No Waiver. In the event any provision contained in this Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) December 31, 2039 or (2) the date on which the Project Facility is reconveyed by the Agency to the Company pursuant to Article X or Article XI of the Lease Agreement.

(B) Extended Term. In the event that (1) the Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining title to the Agency's interest in the Project Facility shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Payment in Lieu of Tax Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company to the respective Taxing Entities if the Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, properly addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by a Taxing Entity under Article II hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

(C) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

RECKDE LLC  
204 Winding Brook Road  
New Rochelle, New York 10804  
Attention: Ronald Stein, Member

WITH A COPY TO:

Goldman Attorneys, PLLC  
255 Washington Avenue Extension  
Albany, New York 12205  
Attention: Paul J. Goldman, Esq.

IF TO THE AGENCY:

City of Albany Industrial Development Agency  
21 Lodge Street  
Albany, New York 12207  
Attention: Chair

WITH A COPY TO:

William G. Kelly, Jr., Esq.  
City Hall, Eagle Street - Room 106  
Albany, New York 12207

and

Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207  
Attention: A. Joseph Scott, III, Esq.

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

(E) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

**SECTION 5.06. BINDING EFFECT.** This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in Lieu of Tax Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: T. Metzger  
Chair

RECKDE LLC

BY: \_\_\_\_\_  
Authorized Officer



IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

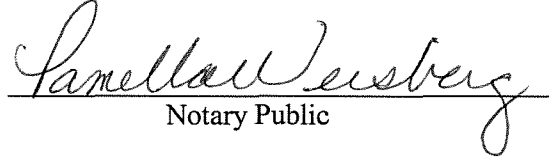
BY: \_\_\_\_\_  
Chair

RECKDE LLC

By:  \_\_\_\_\_  
Ronald Stein, Managing Member

STATE OF NEW YORK       )  
                                      )ss:  
COUNTY OF ALBANY       )

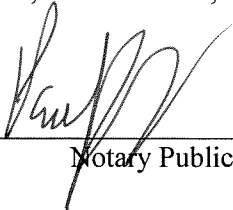
On the 16<sup>th</sup> day of January, in the year 2018, before me, the undersigned, personally appeared TRACY L. METZGER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he 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

Pamella Weisberg  
Notary Public, State of New York  
Qualified in Rensselaer County  
No. 01WE4943734  
Commission Expires October 31, 2018

STATE OF NEW YORK       )  
  )ss:  
COUNTY OF ALBANY       )

On the 15<sup>th</sup> day of January, in the year 2018, before me, the undersigned, personally appeared RONALD STEIN, 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

PAUL J. GOLDMAN  
Notary Public, State of New York  
Qualified in Albany County  
ID No. 02GO4864023  
Commission Expires: June 9, 2018

## EXHIBIT A

### DESCRIPTION OF THE LEASED LAND

ALL THAT CERTAIN PROPERTY reflected on that certain Map of the Subdivision of Property at Street Numbers 79, 81, 83, 85, 87, 89 & 91 Dana Avenue in the City of Albany, New York prepared by Raymond A. Koch PLS which was recorded in the Office of the Albany County Clerk on August 17, 2017 as Map No.: 13452 and more modernly known as 85 Dana Avenue.

## EXHIBIT B

### PILOT PAYMENT TERMS

#### I. Defined Terms:

“Applicable Fiscal Year” means the fiscal year of the Company ending no later than one hundred and twenty (120) days prior to the January 1 payment date in question. For example, assuming that the Company uses the calendar year for its fiscal year, and the payment date in question is January 1, 2030, the Applicable Fiscal Year for the Company for the January 1, 2030 payment date is the fiscal year of the Company ending December 31, 2028.

“Gross Revenue” means the total amount of income generated at the Project Facility, including tenant rent, unreturned security deposits (to the extent applied to rental payments due and owing and not to damages to a rental unit), lease cancellation/termination payments (net of damage), parking fees, any payments in kind, and other miscellaneous revenue generated at the site (e.g., vending machines, washing machines and other landlord services paid by the tenant); provided, however, that Gross Revenue shall not include any Pass Through Revenue.

“Person” means an individual, partnership, corporation, trust, or unincorporated organization.

“Pass Through Revenue” means revenue generated at the Project Facility relating to parking fees for tenant parking at a parking facility or parking lot not included in or on the Land. Revenue for such activities shall be considered Pass Through Revenue only if (1) the Company serves as a pass-through for such revenues between the tenant and the actual vendor, (2) the payee or recipient of the fees is not a Related Person to the Company, and (3) there is no “mark-up” or “profit” accruing to the Company relating to such fees (except as hereinafter provided). In connection with the determination of Pass Through Revenue, Gross Revenue will be subject to further adjustment as described as follows: if there is any “mark-up” or “profit” accruing to the Company, the amount of such “mark-up” or “profit” shall be included in the determination of Gross Revenue.

“Related Person” means, with respect to the Company, (1) a group of entities subject to “direct control” or “indirect control” by the same entity or group of entities, determined on the basis of all relevant facts and circumstances, (2) any organization under common management or control with the Company, (3) a Person which is a related person as defined in Section 144(a)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), by reference to Sections 267, 707(b) and 1563(a) of the Code, except that (a) one percent (1%) is substituted for fifty percent (50%) for purposes of applying Sections 267 and 707(b), and (b) one percent (1%) is substituted for eighty percent (80%) for purposes of applying Section 1563(a).

#### II. Assessed Value:

(A) The Assessed Value of the Project Facility shall consist of two components, the base Assessed Value (the “Project Base Assessed Value”) and the additional Assessed Value (the “Project Improvements Assessed Value”).

(B) The Project Base Assessed Value shall equal the value of the Land and Existing Facility prior to the undertaking of the Project. The Project Base Assessed Value shall be established pursuant to the terms of Section 2.02(B) of this Payment in Lieu of Tax Agreement.

(C) The Project Improvements Assessed Value shall equal the value of the Facility improved pursuant to the undertaking and completion of the Project (the "Improvements"). The Project Improvements Assessed Value shall be established pursuant to the terms of Section 2.02(B) of this Payment in Lieu of Tax Agreement.

(D) The parties hereto understand and agree that the Project Based Assessed Value and the Project Improvements Assessed Value shall change during the term of this Payment in Lieu of Tax Agreement as the Assessors appraise and re-appraise, as the case may be, the Project Facility during the term of this Payment in Lieu of Tax Agreement, as provided in Section 2.02(B) of this Payment in Lieu of Tax Agreement.

### III. Amount of Payments in Lieu of Taxes:

(A) The amount of payments in lieu of taxes shall be the sum of the following: (1) the amount of payments in lieu of taxes payable with respect to the Land and Existing Facility based on the Project Base Assessed Value, and (2) the amount of payments in lieu of taxes payable with respect to the Improvements based on the Project Improvements Assessed Value.

(1) Payments - Project Base Assessed Value. (a) First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if the Land and the Existing Facility were owned by the Company and not the Agency by multiplying (i) the Project Base Assessed Value (as set forth in II(B) above) by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Land and the Existing Facility if the Land and the Existing Facility were owned by the Company and not the Agency.

(b) Then, in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Land and the Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Land and the Existing Facility shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to the Land and the Existing Facility for such tax year.

(2) Payments - Project Improvements Assessed Value. (a) First, determine the Normal Tax which would be payable to each Taxing Entity if the Improvements were owned by the Company and not the Agency by multiplying (i) the Project Improvements Assessed Value determined pursuant to Section 2.02(B) of this Payment in Lieu of Tax Agreement, by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Improvements if the Improvements were owned by the Company and not the Agency.

(b) Then, in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Improvements shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Improvements shall be the product of: (i) the amount set forth in Section III(A)(2)(a) above and (ii) the applicable percentage of the Normal Tax

due each Taxing Entity with respect to the Improvements for such tax year, as shown in the following table:

<u>Tax Year Commencing in Calendar Year</u>	<u>County/ City Percentage of Normal Tax on Assessed Value of the Improvements</u>	<u>School Percentage of Normal Tax on Assessed Value of the Improvements</u>
2017	100%	100%
2018	100%	100%
2019	100%	10%
2020	10%	10%
2021	10%	10%
2022	10%	10%
2023	10%	10%
2024	10%	10%
2025	10%	10%
2026	10%	10%
2027	10%	10%
2028	10%	10%
2029	10%	15%
2030	15%	25%
2031	25%	35%
2032	35%	40%
2033	40%	50%
2034	50%	60%
2035	60%	70%
2036	70%	80%
2037	80%	80%
2038	80%	80%
2039	80%	100%
2040 and thereafter during the term of this Payment in Lieu of Tax Agreement	100%	100%

(c) The parties acknowledge that the tax years shown in the table above do not reflect assessment roll years. For example, the 2016 assessment roll will be used to generate the 2016-17 School payment in lieu of tax bill and the 2017 City/County payment in lieu of tax bill.

(B) Except as otherwise provided in Section IV below, in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which any portion of the Project Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Project Facility shall be the sum of (1) the amount due each Taxing Entity with respect to the Land and the Existing Facility for such tax year, as determined pursuant to subsection (A)(1) hereof, **plus** (2) the amount due each Taxing Entity with respect to the Improvements for such tax year, as determined pursuant to subsection (A)(2) hereof.

#### IV. Alternative Determination of Amount of Payments in Lieu of Taxes:

(A) Beginning on January 1, 2032, the Company will pay payments in lieu of taxes in an amount equal to the greater of (1) the amount determined pursuant to Section III above, or (2) 11.5% of the Gross Revenue for the Applicable Fiscal Year of the Project Facility.

(B) On each September 1, beginning on September 1, 2031, the Company will provide the Treasurer of the City of Albany with a complete and executed copy of the Company Affidavit, a form of which is attached as Exhibit C.

(C) The Company agrees to provide to the Treasurer of the City of Albany and the CEO of the Agency, within thirty (30) days of their written request, with a copy of the Company's unaudited financial statement verified by the Company or such other person as may be authorized by the Company to verify said statement supporting the Company's calculation of the Gross Revenue. In the event that the Company's unaudited financial statement is not prepared in accordance with GAAP, the Company agrees to provide such additional information regarding the Company's calculation of Gross Revenue as reasonably requested by the Agency.

(D) Notwithstanding the foregoing, the Company agrees to provide financial statements audited in accordance with GAAP if the Company prepares audited statements for delivery to its lender.



EXHIBIT C

COMPANY AFFIDAVIT REGARDING  
GROSS REVENUE

STATE OF NEW YORK                    )  
  )Ss:  
COUNTY OF ALBANY                 )

I, the undersigned, an Authorized Officer of RECKDE LLC (the "Company"), do hereby depose and state as follows:

1. The City of Albany Industrial Development Agency (the "Agency") and the City of Albany may rely on the contents of this Affidavit in determining the amount of payments in lieu of taxes payable by the Company for the year commencing January 1, 20\_\_.

2. Initial capitalized words used in this Affidavit shall have the meanings ascribed to such terms in the payment in lieu of tax agreement dated as of January 1, 2018 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company.

3. The Applicable Fiscal Year of the Company is the fiscal year of the Company ending on \_\_\_\_\_.

4. Attached hereto as Schedule A is a summary memorandum/report describing the Gross Revenue of the Company for the Applicable Fiscal Year.

5. The Gross Revenue of the Company for the Applicable Year has been determined in accordance with the terms of the Payment in Lieu of Tax Agreement.

6. 11.5% of the Gross Revenue equals \$\_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned has set forth their hand as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

RECKDE LLC

BY: \_\_\_\_\_  
Authorized Representative

Sworn to before me this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

SCHEDULE A  
SUMMARY MEMORANDUM/REPORT  
DESCRIBING GROSS REVENUE

[To Be Completed By The Company]

**COMMERCIAL PROJECT**

CLOSING ITEM NO.: A-7

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CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

AND

SWINBURNE COMMERCE LLC

---

PAYMENT IN LIEU OF TAX AGREEMENT

---

DATED AS OF DECEMBER 1, 2018

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RELATING TO THE PREMISES LOCATED AT 526 CENTRAL AVENUE  
(TAX MAP NO. 65.37-3-53-1) IN THE CITY OF ALBANY, ALBANY  
COUNTY, NEW YORK.

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## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of December 1, 2018 (the "Payment in Lieu of Tax Agreement") by and between CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 21 Lodge Street, Albany, New York (the "Agency"), and SWINBURNE COMMERCE LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 1055 Saw Mill River Road, Suite 204, Ardsley, New York (the "Company");

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 325 of the Laws of 1974 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in June, 2018, Swinburne Commerce LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of New York, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in a portion of a parcel of land with an address of 526 Central Avenue (tax map number 65.37-3-53-1) in the City of Albany, Albany County, New York (the "Land"), (2) the construction on the Land of an approximately 21,358 square foot condominium unit (the "Facility"), and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the "Equipment") (the Land, the Facility, and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to constitute a leasable commercial space facility and any other directly and indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase)

or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on September 20, 2018 (the “Public Hearing Resolution”), the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on September 26, 2018 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted on September 27, 2018 at the Albany City Hall located at 24 Eagle Street in the City of Albany, Albany County, New York, (C) caused notice of the Public Hearing to be published on September 28, 2018 in the Times Union, a newspaper of general circulation available to the residents of the City of Albany, New York, (D) conducted the Public Hearing on October 10, 2018 at 12:00 o’clock p.m., local time at the office of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York, and (E) prepared a report of the Public Hearing (the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on October 18, 2018 (the “SEQR Resolution”), the Agency (A) concurred in the determination that the City of Albany Planning Board (the “Planning Board”) is the “lead agency” with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Planning Board issued on May 17, 2018 (the “Negative Declaration”), in which the Planning Board determined that the Project would not have a significant adverse environmental impact on the environment, and therefore, that an environmental statement need not be prepared with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on October 18, 2018 (the “Commercial/Retail Finding Resolution”), the Agency (A) determined that the Project constituted a “commercial project” within the meaning of the Act, (B) found that although the Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act because the Project Facility is located in a highly distressed area, (C) determined, following a review of the Report, that the Project would serve the public purposes of the Act by preserving permanent private sector jobs in the State of New York, and (D) determined that the Agency would proceed with the Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Project by the Agency unless and until the Mayor of the City of Albany, as chief executive officer of the City of Albany, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Project; and

WHEREAS, by resolution adopted by the members of the Agency on October 18, 2018 (the “Pilot Deviation Approval Resolution”), the members of the Agency determined to deviate from the Agency’s uniform tax exemption policy with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on October 18, 2018 (the “Approving Resolution”), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of December 1, 2018 (the “Lease Agreement”) between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the

“Basic Documents”), pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company for a lease term ending on the earlier to occur of (1) December 31, 2029, or (2) the date on which the Lease Agreement is terminated pursuant to the optional termination provisions thereof, the Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, by certificate dated November 15, 2018 (the “Public Approval”), the Mayor, as chief executive officer of the City of Albany, New York, confirmed the proposed action to be taken by the Agency with respect to the Project for purposes of Section 862(2)(c) of the Act; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the “Closing”), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of December 1, 2018 (the “Lease to Agency”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”) for a lease term ending on December 31, 2029; (2) a certain license agreement dated as of December 1, 2018 (the “License to Agency”) by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (a) a license to enter upon the balance of the Land (the “Licensed Premises”) for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a certain bill of sale dated as of December 1, 2018 (the “Bill of Sale to Agency”), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver (1) a certain payment in lieu of tax agreement dated as of December 1, 2018 (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement (the “Section 875 GML Recapture Agreement”) by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (C) the Agency and the Company will execute and deliver the uniform agency project agreement dated as of December 1, 2018 (the “Uniform Agency Project Agreement”) by and between the Agency and the Company relating to the terms of the granting by the Agency of the Financial Assistance to the Company; (D) the Agency will file with the assessor and mail to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement, (E) the Agency will execute and deliver to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (F) the Agency will file with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”); and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the “Real Property Tax Law”), upon the filing by the Agency of the Real Property Tax Exemption Form, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to



normal taxes, provided that, so long as this Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to that portion of the Project Facility which is covered by this Payment in Lieu of Tax Agreement; and

WHEREAS, all things necessary to constitute this Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement hereunder.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement, and by proper action of its Members has been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of organization, operating agreement and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper action of its Members, the Company has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not

conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization or operating agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.

## ARTICLE II

### COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF THE PROJECT FACILITY. (A) Assessment of the Project Facility. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of a leasehold interest in the Project Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility, and for so long thereafter as the Agency shall own a leasehold interest in the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease and the filing of the Real Property Tax Exemption Forms. The Company shall, promptly following acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall own such leasehold interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency becomes the owner of record of such leasehold interest in the Project Facility and the Real Property Tax Exemption Forms are filed with the Assessors. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Project Facility.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the "Receivers of Taxes") for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof.

(B) Valuation of the Project Facility. (1) The value of the Project Facility for purposes of determining payments in lieu of taxes due hereunder (hereinafter referred to as the “Assessed Value”) shall be determined by the appropriate Assessors. The Company agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The parties hereto agree that the Assessors shall (a) appraise the Land in the same manner as other similar properties in the general area of the Land, (b) place an Assessed Value upon the Land, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes, (c) appraise the Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law (collectively with the Facility, the “Improvements”) in the same manner as other similar properties in the general area of the Improvements, and (d) place an Assessed Value upon the Improvements, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial determination of the Assessed Value of the Improvements and of any change in the Assessed Value of the Land or the Improvements.

(2) If the Company is dissatisfied with the amount of the Assessed Value of the Project Facility as initially established or as changed, the Company shall be entitled to challenge the Assessed Value in accordance with the terms and conditions contained in Article 7 of the Real Property Tax Law. The Company shall be entitled to take any actions under Article 7 of the Real Property Tax Law notwithstanding the fact that the Agency has an interest in the Land pursuant to the Lease to Agency.

(C) Amount of Payments in Lieu of Taxes. The payments in lieu of taxes to be paid by the Company to the Receivers of Taxes annually on behalf of each Taxing Entity pursuant to the terms of this Payment in Lieu of Tax Agreement shall be the amount computed separately for each Taxing Entity as set forth in Exhibit B attached.

(D) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land (such structural additions and additional buildings and other structures being hereinafter referred to as “Additional Facilities”) the Company agrees to make additional annual payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as “Additional Payments”) to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the “Additional Normal Tax”) which would be payable to each Taxing Entity with respect to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (E) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency.

(2) In each fiscal tax year during the term of this Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity) if such Additional Facilities were owned by the Company and not the Agency, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent

(100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

(E) Valuation of Additional Facilities. (1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due under Section 2.02(D) hereof shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the "Additional Assessed Value") upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company is dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, the Company shall be entitled to challenge the Additional Assessed Value in accordance with the terms and conditions contained in Article 7 of the Real Property Tax Law. The Company shall be entitled to take any actions under Article 7 of the Real Property Tax Law notwithstanding the fact that the Agency has an interest in the Land pursuant to the Lease to Agency.

(F) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(G) Time of Payments. The Company agrees to pay the amounts due hereunder to the Receivers of Taxes for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments.

(H) Method of Payment. All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes

attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall meet the qualifications set forth in Section 2.02(B) hereof, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.04. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

### ARTICLE III

#### LIMITED OBLIGATION

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. (A) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants, and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Agency.

(B) Limited Obligation. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the City of Albany, New York, and neither the State of New York nor the City of Albany, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation. Notwithstanding any provision of this Payment in Lieu of Tax Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.



## ARTICLE IV

### EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms “Event of Default” or “default” shall mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

(A) Failure of the Company to pay when due any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(C) Any warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

SECTION 4.02. REMEDIES ON DEFAULT. (A) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Payment in Lieu of Tax Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Payment in Lieu of Tax Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Payment in Lieu of Tax Agreement.

(D) No Waiver. In the event any provision contained in this Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) December 31, 2029, or (2) the date on which the Project Facility is reconveyed by the Agency to the Company pursuant to Article X or Article XI of the Lease Agreement.

(B) Extended Term. In the event that (1) the Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining title to the Agency's interest in the Project Facility shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Payment in Lieu of Tax Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company to the respective Taxing Entities if the Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, properly addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by a Taxing Entity under Article II hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

(C) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Swinburne Commerce LLC  
1055 Saw Mill River Road, Suite 204  
Ardsley, New York 10502  
Attention: Kenneth Regan, Member

WITH A COPY TO:

Cannon Heyman & Weiss, LLP  
54 State Street, 5th Floor  
Albany, New York 12207  
Attention: Geoffrey Cannon, Esq.

IF TO THE AGENCY:

City of Albany Industrial Development Agency  
21 Lodge Street  
Albany, New York 12207  
Attention: Chair

WITH A COPY TO:

William G. Kelly, Jr., Esq.  
City Hall, Eagle Street - Room 106  
Albany, New York 12207  
Attention: William G. Kelly, Jr., Esq.

and

Hodgson Russ LLP  
677 Broadway  
Albany, New York 12207  
Attention: A. Joseph Scott, III, Esq.

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

(E) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in Lieu of Tax Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: TR Metzger  
Chair

SWINBURNE COMMERCE LLC

By: Swinburne Commerce Manager LLC, its  
manager

BY: \_\_\_\_\_  
Name: Lawrence Regan  
Title: Authorized Signatory

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
Chair

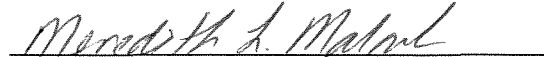
SWINBURNE COMMERCE LLC

By: Swinburne Commerce Manager LLC, its  
manager

BY: \_\_\_\_\_  
Name: Lawrence Regan  
Title: Authorized Signatory

STATE OF NEW YORK       )  
  )ss:  
COUNTY OF ALBANY       )

On the 3rd day of December, in the year 2018, before me, the undersigned, personally appeared TRACY L. METZGER, 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

Meredith L. Malark  
Notary Public, State of New York  
Qualified in Albany County  
No. 01MA6212870  
Commission Expires October 26, 2021



STATE OF NEW YORK     )  
                                  )  
COUNTY OF ALBANY     )

On the 30 day of November, in the year 2018, before me, the undersigned, personally appeared LAWRENCE REGAN, 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

JEAN SONAZZI  
Notary Public, State of New York  
No. 404913  
Qualified in Westchester County  
Comm. Exp. January 15, 2028

## EXHIBIT A

### DESCRIPTION OF THE LEASED LAND

A leasehold interest created by a certain lease to agency dated as of December 1, 2018 (the “Lease to Agency”) between Swinburne Commerce LLC (the “Company”), as landlord, and City of Albany Industrial Development Agency (the “Agency”), as tenant, in a portion of a parcel of land with an address of 526 Central Avenue (tax map number 65.37-3-53-1) in the City of Albany, Albany County, New York, said Leased Land being more particularly described below), together with any improvements now or hereafter located on the Leased Land (the Leased Land and all such improvements being sometimes collectively referred to as the “Leased Premises”):

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND situate, lying and being in the City of Albany, Albany, New York, bounded and described as follows:

**- SEE ATTACHED -**

# *Old Republic National Title Insurance Company*

ALL NEW YORK TITLE AGENCY, INC.

## SCHEDULE A

Title No.: ANY2017-2951C

All that tract, piece or parcel of land, situated in the City of Albany, Albany County, New York, bounded and described as follows:

BEGINNING at point at the southwesterly bounds of Central Avenue at its intersection with the division line between the lands now or formerly of the City of Albany (65.37-3-55.1) to the northwest and the lands now or formerly of City School District of The City of Albany (65.37-3-48 and 65.37-3-55.21);

THENCE along said division line the following seven (7) courses and distances:

1. South  $49^{\circ} 23' 37''$  West for a distance of 183.84 feet to a point;
2. North  $40^{\circ} 36' 23''$  West for a distance of 60.00 feet to a point;
3. South  $49^{\circ} 23' 37''$  West for a distance of 101.67 feet to a point;
4. North  $40^{\circ} 36' 23''$  West for a distance of 36.78 feet to a point;
5. South  $49^{\circ} 23' 37''$  West for a distance of 199.67 feet to a point;
6. North  $40^{\circ} 36' 23''$  West for a distance of 29.00 feet to a point;
7. South  $49^{\circ} 23' 37''$  West for a distance of 95.49 feet to a point;

THENCE North  $52^{\circ} 24' 44''$  West along the division line of the lands now or formerly of the City of Albany (65.37-3-55.1) to the northeast and the lands now or formerly of Griffith (65.45-1-50), Potka (65.45-1-51), Turner (65.37-3-57), Ipek (65.37-3-58), Shea (65.37-3-59), Duval and Robertson (65.37-3-60), Curran (65.37-3-61) and Curran (65.37-3-62) to the southwest for a distance of 311.10 feet to a point;

THENCE North  $68^{\circ} 06' 37''$  East along the division line of the lands now or formerly of the City of Albany (65.37-3-55.1) and also the lands now or formerly of the City of Albany (65.37-3-47) to the south and the lands now or formerly of Lasch (65.37-3-35), Tarwerdi (65.37-3-36), McHugh (65.37-3-37), Cusick (65.37-3-38), Greene, AKA Greene-Millwood (65.37-3-39), Tupurtitas (65.37-3-40), Swann (65.37-3-41), Stavroula (65.37-3-42), Boakye and Moore-Boakye (65.37-3-43), Di Natale (65.37-3-44), Bright and Nagle (65.37-3-45), Hofler (65.37-3-46) and Sabeskis (65.37-3-48) to the north for a distance of 456.04 feet to a point;

THENCE North  $21^{\circ} 53' 23''$  West along the division line of the lands now or formerly of the City of Albany (65.37-3-47) to the east and the lands now or formerly of Sabeskis (65.37-3-48) to the west a distance of 120.00 feet to a point on the southerly bounds of Manning Boulevard;

THENCE North  $68^{\circ} 06' 37''$  East along the southerly bounds of Manning Boulevard 50.00 feet to a point;

THENCE South  $28^{\circ} 04' 23''$  East along the division line of the lands now or formerly of the City of Albany (65.37-3-47) to the west and the lands now or formerly of the Stewarts Shops Corp. (65.37-3-49) to the east a distance of 154.25 feet to a point;

# *Old Republic National Title Insurance Company*

ALL NEW YORK TITLE AGENCY, INC.

## SCHEDULE A

Title No.: ANY2017-2951C

THENCE South  $40^{\circ} 36' 23''$  East along the division line of the lands now or formerly of the City of Albany (65.37-3-47) and the lands now or formerly of the City of Albany (65.37-3-53) to the west and the lands now or formerly of the Albany Firemen's Federal Credit Union (65.37-3-51) to the east a distance of 66.00 feet to a point;

THENCE North  $49^{\circ} 23' 37''$  East and continuing along the lands now or formerly of the City of Albany (65.37-3-53) to the southeast and the lands now or formerly of the Albany Firemen's Federal Credit Union (65.37-3-51) to the northwest a distance of 160.00 feet to a point on the first mentioned southwesterly bounds of Central Avenue;

THENCE South  $40^{\circ} 36' 23''$  East along the bounds of Central Avenue a distance of 164.98 feet to the point or place of BEGINNING.

FOR INFORMATION ONLY: Containing 146,840± square feet or 3.37± acres, more or less.

## EXHIBIT B

### PILOT PAYMENT TERMS

#### I. Reserved:

#### II. Assessed Value:

(A) The Assessed Value of the Project Facility shall consist of two components, the base Assessed Value (the "Project Base Assessed Value") and the additional Assessed Value (the "Project Improvements Assessed Value").

(B) The Project Base Assessed Value shall equal the value of the Land and Existing Facility prior to the undertaking of the Project. The Project Base Assessed Value shall be established pursuant to the terms of Section 2.02(B) of this Payment in Lieu of Tax Agreement.

(C) The Project Improvements Assessed Value shall equal the value of the Facility improved pursuant to the undertaking and completion of the Project (the "Improvements"). The Project Improvements Assessed Value shall be established pursuant to the terms of Section 2.02(B) of this Payment in Lieu of Tax Agreement.

(D) The parties hereto understand and agree that the Project Based Assessed Value and the Project Improvements Assessed Value shall change during the term of this Payment in Lieu of Tax Agreement as the Assessors appraise and re-appraise, as the case may be, the Project Facility during the term of this Payment in Lieu of Tax Agreement, as provided in Section 2.02(B) of this Payment in Lieu of Tax Agreement.

#### III. Amount of Payments in Lieu of Taxes:

(A) The amount of payments in lieu of taxes shall be the sum of the following: (1) the amount of payments in lieu of taxes payable with respect to the Land and Existing Facility based on the Project Base Assessed Value, and (2) the amount of payments in lieu of taxes payable with respect to the Improvements based on the Project Improvements Assessed Value.

(1) Payments - Project Base Assessed Value. (a) First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if the Land and the Existing Facility were owned by the Company and not the Agency by multiplying (i) the Project Base Assessed Value (as set forth in II(B) above) by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Land and the Existing Facility if the Land and the Existing Facility were owned by the Company and not the Agency.

(b) Then, in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Land and the Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Land and the Existing Facility shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to the Land and the Existing Facility for such tax year.

(2) Payments - Project Improvements Assessed Value. (a) First, determine the Normal Tax which would be payable to each Taxing Entity if the Improvements were owned by the Company and not the Agency by multiplying (i) the Project Improvements Assessed Value determined pursuant to Section 2.02(B) of this Payment in Lieu of Tax Agreement, by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Improvements if the Improvements were owned by the Company and not the Agency.

(b) Then, in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Improvements shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Improvements shall be the product of: (i) the amount set forth in Section III(A)(2)(a) above and (ii) the applicable percentage of the Normal Tax due each Taxing Entity with respect to the Improvements for such tax year, as shown in the following table:

<u>Tax Year Commencing in Calendar Year</u>	<u>County/ City Percentage of Normal Tax on Assessed Value of the Improvements</u>	<u>School Percentage of Normal Tax on Assessed Value of the Improvements</u>
2018	100%	100%
2019	100%	100%
2020	50%	50%
2021	55%	55%
2022	60%	60%
2023	65%	65%
2024	70%	70%
2025	75%	75%
2026	80%	80%
2027	85%	85%
2028	90%	90%
2029	95%	95%
2030 and thereafter during the term of this Payment in Lieu of Tax Agreement	100%	100%

(c) The parties acknowledge that the tax years shown in the table above do not reflect assessment roll years. For example, the 2018 assessment roll will be used to generate the 2018-19 School payment in lieu of tax bill and the 2018 City/County payment in lieu of tax bill.

(B) Except as otherwise provided in Section IV below, in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which any portion of the Project Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Project Facility shall be the sum of (1) the amount due each Taxing Entity with respect to the Land and the Existing Facility for such tax year, as determined pursuant to subsection (A)(1) hereof, **plus** (2) the amount due each Taxing Entity with respect to the Improvements for such tax year, as determined pursuant to subsection (A)(2) hereof.

CLOSING ITEM NO.: A-7

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CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

AND

THE SWINBURNE BUILDING LLC

---

PAYMENT IN LIEU OF TAX AGREEMENT

---

DATED AS OF DECEMBER 1, 2018

---

RELATING TO THE PREMISES LOCATED AT 526 CENTRAL AVENUE  
(TAX MAP NO. 65.37-3-53-2) IN THE CITY OF ALBANY, ALBANY  
COUNTY, NEW YORK.

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## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of December 1, 2018 (the “Payment in Lieu of Tax Agreement”) by and between CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 21 Lodge Street, Albany, New York (the “Agency”), and THE SWINBURNE BUILDING LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 1055 Saw Mill River Road, Suite 204, Ardsley, New York (the “Company”);

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the “Enabling Act”) was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the “State”) and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 325 of the Laws of 1974 of the State (collectively, with the Enabling Act, the “Act”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in June, 2018, The Swinburne Building LLC (the “Company”), a limited liability company duly organized and validly existing under the laws of the State of New York, presented an application (the “Application”) to the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in a portion of land with an address of 526 Central Avenue (tax map number 65.37-3-53-2) in the City of Albany, Albany County, New York (the “Land”), (2) the construction on the Land of one approximately 86,937 square foot building (the “Facility”), and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the “Equipment”) (the Land, the Facility, and the Equipment being collectively referred to as the “Project Facility”), all of the foregoing to constitute an approximately seventy-four (74) unit residential apartment facility and any other directly and indirectly related activities; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an

obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on September 20, 2018 (the "Public Hearing Resolution"), the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the "Public Hearing") pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on September 26, 2018 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted on September 27, 2018 at the Albany City Hall located at 24 Eagle Street in the City of Albany, Albany County, New York, (C) caused notice of the Public Hearing to be published on September 28, 2018 in the Times Union, a newspaper of general circulation available to the residents of the City of Albany, New York, (D) conducted the Public Hearing on October 10, 2018 at 12:00 o'clock p.m., local time at the office of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York, and (E) prepared a report of the Public Hearing (the "Public Hearing Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on October 18, 2018 (the "SEQR Resolution"), the Agency (A) concurred in the determination that the City of Albany Planning Board (the "Planning Board") is the "lead agency" with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Planning Board issued on May 17, 2018 (the "Negative Declaration"), in which the Planning Board determined that the Project would not have a significant adverse environmental impact on the environment, and therefore, that an environmental statement need not be prepared with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on October 18, 2018 (the "Commercial/Retail Finding Resolution"), the Agency (A) determined that the Project constituted a "commercial project" within the meaning of the Act, (B) found that although the Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act because the Project Facility is located in a highly distressed area, (C) determined, following a review of the Public Hearing Report, that the Project would serve the public purposes of the Act by preserving permanent private sector jobs in the State of New York, and (D) determined that the Agency would proceed with the Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Project by the Agency unless and until the Mayor of City of Albany, as chief executive officer of the City of Albany, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Project; and

WHEREAS, by resolution adopted by the members of the Agency on October 18, 2018 (the "Pilot Deviation Approval Resolution"), the members of the Agency determined to deviate from the Agency's uniform tax exemption policy with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on October 18, 2018 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of December 1, 2018 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the

“Basic Documents”), pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company for a lease term ending on the earlier to occur of (1) December 31, 2049, or (2) the date on which the Lease Agreement is terminated pursuant to the optional termination provisions thereof, the Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, by certificate dated November 15, 2018 (the “Public Approval”), the Mayor, as chief executive officer of the City of Albany, New York, confirmed the proposed action to be taken by the Agency with respect to the Project for purposes of Section 862(2)(c) of the Act; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the “Closing”), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of December 1, 2018 (the “Lease to Agency”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”) for a lease term ending on December 31, 2049; (2) a certain license agreement dated as of December 1, 2018 (the “License to Agency”) by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (a) a license to enter upon the balance of the Land (the “Licensed Premises”) for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a certain bill of sale dated as of December 1, 2018 (the “Bill of Sale to Agency”), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver (1) a certain payment in lieu of tax agreement dated as of December 1, 2018 (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement (the “Section 875 GML Recapture Agreement”) by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (C) the Agency and the Company will execute and deliver the uniform agency project agreement dated as of December 1, 2018 (the “Uniform Agency Project Agreement”) by and between the Agency and the Company relating to the terms of the granting by the Agency of the Financial Assistance to the Company; (D) the Agency will file with the assessor and mail to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement, (E) the Agency will execute and deliver to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (F) the Agency will file with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”); and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the “Real Property Tax Law”), upon the filing by the Agency of the Real Property Tax Exemption Form, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to

normal taxes, provided that, so long as this Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to that portion of the Project Facility which is covered by this Payment in Lieu of Tax Agreement; and

WHEREAS, all things necessary to constitute this Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement hereunder.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement, and by proper action of its Members has been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of organization, operating agreement and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper action of its Members, the Company has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not

conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization or operating agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.

## ARTICLE II

### COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF THE PROJECT FACILITY. (A) Assessment of the Project Facility. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of a leasehold interest in the Project Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility, and for so long thereafter as the Agency shall own a leasehold interest in the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease and the filing of the Real Property Tax Exemption Forms. The Company shall, promptly following acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall own such leasehold interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency becomes the owner of record of such leasehold interest in the Project Facility and the Real Property Tax Exemption Forms are filed with the Assessors. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Project Facility.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the "Receivers of Taxes") for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof.



(B) Valuation of the Project Facility. (1) The value of the Project Facility for purposes of determining payments in lieu of taxes due hereunder (hereinafter referred to as the "Assessed Value") shall be determined by the appropriate Assessors. The Company agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The parties hereto agree that the Assessors shall (a) appraise the Land in the same manner as other similar properties in the general area of the Land, (b) place an Assessed Value upon the Land, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes, (c) appraise the Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law (collectively with the Facility, the "Improvements") in the same manner as other similar properties in the general area of the Improvements, and (d) place an Assessed Value upon the Improvements, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial determination of the Assessed Value of the Improvements and of any change in the Assessed Value of the Land or the Improvements.

(2) If the Company is dissatisfied with the amount of the Assessed Value of the Project Facility as initially established or as changed, the Company shall be entitled to challenge the Assessed Value in accordance with the terms and conditions contained in Article 7 of the Real Property Tax Law. The Company shall be entitled to take any actions under Article 7 of the Real Property Tax Law notwithstanding the fact that the Agency has an interest in the Land pursuant to the Lease to Agency.

(C) Amount of Payments in Lieu of Taxes. (1) For a period ending on the earlier to occur of (a) December 31, 2049, or (b) the date on which the City of Albany (the "City") shall determine that the Project Facility no longer is being used as housing facilities for persons of low income, the Company will pay to the Treasurer of the City, for distribution among the Albany City School District (the "School District"), Albany County (the "County") and the City, annual payments in lieu of taxes in an amount equal to ten percent (10%) of the aggregate collected annual tenant paid rents generated by the Project Facility (the "Rent"). The Rent shall include tenant paid rent and rent supplements and subsidies received from the federal government, the State, or a municipality on behalf of such tenants, less the aggregate annual owner paid utilities. Such payments to be payable on April 15 of each year, in an amount calculated pursuant to the previous sentence for the prior calendar year, commencing on April 15, 2019. The Company shall provide to the Treasurer of the City, along with each payment, an annual statement of all rental income and Project expenses verified by the Company or such other person as may be authorized by the Company to verify said statement.

(2) Commencing on the earlier to occur of (a) January 1, 2050, or (b) the date on which the City shall determine that the Project Facility no longer is being used as housing facilities for persons of low income, the Company will pay to the Treasurer of the City, for distribution among the School District, the County and the City, annual payments in lieu of taxes in an amount equal to as follows:

(a) First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if the Project Facility was owned by the Company and not the Agency by multiplying (i) the Assessed Value of the Project Facility determined pursuant to Section 2.02(B) hereof, by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Project Facility if the Project Facility was owned by the Company and not the Agency.

(b) On April 15 in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the earlier of (i) April 15, 2050 or (ii) the first April 15 following the date on which the City shall determine that the Project Facility no longer is

being used as housing facilities for persons of low income, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Project Facility shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to the Project Facility for such tax year.

(3) Upon the request of the City, the County and/or the School District, the Company shall provide the City, the County and/or the School District with copies of an audit of the Company's annual statement of income and expense and/or documents demonstrating the Company's compliance with the requirements under this Payment in Lieu of Tax Agreement.

(D) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities") the Company agrees to make additional annual payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as "Additional Payments") to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Additional Normal Tax") which would be payable to each Taxing Entity with respect to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (E) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency.

(2) In each fiscal tax year during the term of this Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity) if such Additional Facilities were owned by the Company and not the Agency, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

(E) Valuation of Additional Facilities. (1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due under Section 2.02(D) hereof shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the "Additional Assessed Value") upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company is dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, the Company shall be entitled to challenge the Additional Assessed Value in accordance with the terms and conditions contained in Article 7 of the Real Property Tax Law. The Company shall be entitled to take any actions under Article 7 of the Real Property Tax Law notwithstanding the fact that the Agency has an interest in the Land pursuant to the Lease to Agency.

(F) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(G) Time of Payments. The Company agrees to pay the amounts due pursuant to Section 2.02(C) hereof to the Treasurer of the City at the times set forth in said Section 2.02(C) hereof. The Company agrees to pay the amounts due pursuant to Section 2.02(D) hereof to the Receivers of Taxes for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments.

(H) Method of Payment. All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall meet the qualifications set forth

in Section 2.02(B) hereof, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.04. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

## ARTICLE III

### LIMITED OBLIGATION

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. (A) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants, and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Agency.

(B) Limited Obligation. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the City of Albany, New York, and neither the State of New York nor the City of Albany, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation. Notwithstanding any provision of this Payment in Lieu of Tax Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

## ARTICLE IV

### EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms “Event of Default” or “default” shall mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

(A) Failure of the Company to pay when due any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(C) Any warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

(D) Notwithstanding anything to the contrary contained herein, the New York State Housing Finance Agency, the State of New York Mortgage Agency and JPMorgan Chase Bank, N.A. shall have the right but not the obligation to cure an Event of Default hereunder and the Agency agrees to accept such cure as if provided by the Company itself.

(E) Any cure of any default tendered by the investor member of the Company shall be accepted or reject on the same basis as if tendered by the Company itself.

SECTION 4.02. REMEDIES ON DEFAULT. (A) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Payment in Lieu of Tax Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder

resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Payment in Lieu of Tax Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Payment in Lieu of Tax Agreement.

(D) No Waiver. In the event any provision contained in this Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) (a) December 31, 2049, or (b) the date on which the City shall determine that the Project Facility no longer is being used as housing facilities for persons of low income, or (2) the date on which the Project Facility is reconveyed by the Agency to the Company pursuant to Article X or Article XI of the Lease Agreement.

(B) Extended Term. In the event that (1) the Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining title to the Agency's interest in the Project Facility shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Payment in Lieu of Tax Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company to the respective Taxing Entities if the Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, properly addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by a Taxing Entity under Article II hereof



shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

(C) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

The Swinburne Building LLC  
1055 Saw Mill River Road, Suite 204  
Ardsley, New York 10502  
Attention: Kenneth Regan, Member

and

First Sterling Investor 173 LLC  
c/o Regions Affordable Housing LLC  
111 Great Neck Road, Suite 500  
Great Neck, NY 11021  
Attention: Victor Sostar

WITH A COPY TO:

Cannon Heyman & Weiss, LLP  
54 State Street, 5th Floor  
Albany, New York 12207  
Attention: Geoffrey Cannon, Esq.

and

Berman Indictor LLP  
30 North 41st Street, Suite 450  
Philadelphia, PA 19104  
Attention: Penny S. Indictor, Esq.

IF TO THE AGENCY:

City of Albany Industrial Development Agency  
21 Lodge Street  
Albany, New York 12207  
Attention: Chair

WITH A COPY TO:

William G. Kelly, Jr., Esq.  
City Hall, Eagle Street - Room 106  
Albany, New York 12207  
Attention: William G. Kelly, Jr., Esq.

and

Hodgson Russ LLP  
677 Broadway  
Albany, New York 12207  
Attention: A. Joseph Scott, III, Esq.

IF TO THE LENDER:

New York State Housing Finance Agency  
641 Lexington Avenue  
New York, New York 10022  
Attention: President, Finance and Development

WITH COPIES TO:

New York State Housing Finance Agency  
641 Lexington Avenue  
New York, New York 10022  
Attention: Senior Vice President and Counsel

JPMorgan Chase Bank, N.A.  
Community Development Banking  
Mailcode NY1-K875  
270 Park Avenue, 45th Floor  
New York, New York 10017  
Attention: Alisha B. Ozeri, Underwriter

JPMorgan Chase Bank, N.A.  
Legal Department  
4 New York Plaza, 21st Floor  
Mail Code NY1-E089  
New York, New York 10004-2413  
Attention: Michael R. Zients, Executive Director and Assistant General Counsel

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

(E) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in Lieu


of Tax Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY:   
Chair

THE SWINBURNE BUILDING LLC

By: The Swinburne Building Manager LLC,  
its managing member

By: The Swinburne Building Associates LLC,  
its manager

BY: \_\_\_\_\_  
Name: Lawrence Regan  
Title: Authorized Signatory

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
Chair

THE SWINBURNE BUILDING LLC


By: The Swinburne Building Manager LLC,  
its managing member

By: The Swinburne Building Associates LLC,  
its manager

BY: \_\_\_\_\_  
Name: Lawrence Regan  
Title: Authorized Signatory

STATE OF NEW YORK       )  
  )ss:  
COUNTY OF ALBANY       )

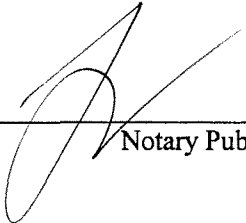
On the 3rd day of December, in the year 2018, before me, the undersigned, personally appeared TRACY L. METZGER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed 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

Meredith L. Malark  
Notary Public, State of New York  
Qualified in Albany County  
No. 01MA6212870  
Commission Expires October 26, 2021

STATE OF NEW YORK     )  
                                  *Regan*     )ss:  
COUNTY OF ~~ALBANY~~     )

On the 30 day of November, in the year 2018, before me, the undersigned, personally appeared LAWRENCE REGAN, 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

NOTARY PUBLIC  
STATE OF NEW YORK  
No. 1-44444  
Commission Expires 12/31/2021  
*28*

## EXHIBIT A

### DESCRIPTION OF THE LEASED LAND

A leasehold interest created by a certain lease to agency dated as of December 1, 2018 (the “Lease to Agency”) between The Swinburne Building LLC (the “Company”), as landlord, and City of Albany Industrial Development Agency (the “Agency”), as tenant, in a portion of land with an address of 526 Central Avenue (tax map number 65.37-3-53-2) (the “Leased Land”) in the City of Albany, Albany County, New York, said Leased Land being more particularly described below), together with any improvements now or hereafter located on the Leased Land (the Leased Land and all such improvements being sometimes collectively referred to as the “Leased Premises”):

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND situate, lying and being in the City of Albany, Albany, New York, bounded and described as follows:

- SEE ATTACHED -



# ***Old Republic National Title Insurance Company***

ALL NEW YORK TITLE AGENCY, INC.

## **SCHEDULE A**

**Title No.: ANY2017-2951C**

THE Condominium Unit known as the Residential Unit (hereinafter referred to as the "Unit") in the Building (hereinafter referred to as the "Building") known as The Swinburne Building Condominium (the "Condominium") located at 526 Central Avenue, City of Albany, County of Albany, State of New York, said Unit being designated and described as the Residential Unit in that certain Declaration dated December \_\_\_\_\_, 2018 made by The Swinburne Building LLC pursuant to Article 9-B of the Real Property Law of the State of New York establishing a plan for Condominium Ownership of the Building and the land upon which the Building is situated, which Declaration is recorded in the Office of the Albany County Clerk on December \_\_\_\_\_, 2018 in Book \_\_\_\_\_ at Page \_\_\_\_\_ (hereinafter referred to as the "Declaration").

THE Unit is also designated as Section 3, Block 65.37 and Lot 53-2 in the City of Albany and on the Tax Map of the City of Albany.

TOGETHER with undivided 80.26% (Residential Unit) interest in the Common Elements of the property described in said Declaration.

LOCATED wholly within the following described property:

All that tract, piece or parcel of land, situated in the City of Albany, Albany County, New York, bounded and described as follows:

BEGINNING at point at the southwesterly bounds of Central Avenue at its intersection with the division line between the lands now or formerly of the City of Albany (65.37-3-55.1) to the northwest and the lands now or formerly of City School District of The City of Albany (65.37-3-48 and 65.37-3-55.21);

THENCE along said division line the following seven (7) courses and distances:

1. South 49° 23' 37" West for a distance of 183.84 feet to a point;
2. North 40° 36' 23" West for a distance of 60.00 feet to a point;
3. South 49° 23' 37" West for a distance of 101.67 feet to a point;
4. North 40° 36' 23" West for a distance of 36.78 feet to a point;
5. South 49° 23' 37" West for a distance of 199.67 feet to a point;
6. North 40° 36' 23" West for a distance of 29.00 feet to a point;
7. South 49° 23' 37" West for a distance of 95.49 feet to a point;

THENCE North 52° 24' 44" West along the division line of the lands now or formerly of the City of Albany (65.37-3-55.1) to the northeast and the lands now or formerly of Griffith (65.45-1-50), Potka (65.45-1-51), Turner (65.37-3-57), Ipek (65.37-3-58), Shea (65.37-3-59), Duval and Robertson (65.37-3-60), Curran (65.37-3-61) and Curran (65.37-3-62) to the southwest for a distance of 311.10 feet to a point;

ALL NEW YORK TITLE AGENCY, INC.

# *Old Republic National Title Insurance Company*

## **SCHEDULE A**

**Title No.: ANY2017-2951C**

THENCE North 68° 06' 37" East along the division line of the lands now or formerly of the City of Albany (65.37-3-55.1) and also the lands now or formerly of the City of Albany (65.37-3-47) to the south and the lands now or formerly of Lasch (65.37-3-35), Tarwerdi (65.37-3-36), McHugh (65.37-3-37), Cusick (65.37-3-38), Greene, AKA Greene-Millwood (65.37-3-39), Tupurtitas (65.37-3-40), Swann (65.37-3-41), Stavroula (65.37-3-42), Boakye and Moore-Boakye (65.37-3-43), Di Natale (65.37-3-44), Bright and Nagle (65.37-3-45), Hofler (65.37-3-46) and Sabeskis (65.37-3-48) to the north for a distance of 456.04 feet to a point;

THENCE North 21° 53' 23" West along the division line of the lands now or formerly of the City of Albany (65.37-3-47) to the east and the lands now or formerly of Sabeskis (65.37-3-48) to the west a distance of 120.00 feet to a point on the southerly bounds of Manning Boulevard;

THENCE North 68° 06' 37" East along the southerly bounds of Manning Boulevard 50.00 feet to a point;

THENCE South 28° 04' 23" East along the division line of the lands now or formerly of the City of Albany (65.37-3-47) to the west and the lands now or formerly of the Stewarts Shops Corp. (65.37-3-49) to the east a distance of 154.25 feet to a point;

THENCE South 40° 36' 23" East along the division line of the lands now or formerly of the City of Albany (65.37-3-47) and the lands now or formerly of the City of Albany (65.37-3-53) to the west and the lands now or formerly of the Albany Firemen's Federal Credit Union (65.37-3-51) to the east a distance of 66.00 feet to a point;

THENCE North 49° 23' 37" East and continuing along the lands now or formerly of the City of Albany (65.37-3-53) to the southeast and the lands now or formerly of the Albany Firemen's Federal Credit Union (65.37-3-51) to the northwest a distance of 160.00 feet to a point on the first mentioned southwesterly bounds of Central Avenue;

THENCE South 40° 36' 23" East along the bounds of Central Avenue a distance of 164.98 feet to the point or place of BEGINNING.

FOR INFORMATION ONLY: Containing 146,840± square feet or 3.37± acres, more or less.