

CLOSING ITEM NO.: A-4

CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

AND

BROADWAY ALBANY REALTY LLC

PROJECT BENEFITS AGREEMENT

DATED AS OF OCTOBER 1, 2015

RELATING TO FINANCIAL ASSISTANCE GRANTED BY THE
AGENCY WITH RESPECT TO A CERTAIN PROJECT LOCATED
AT 833 BROADWAY, 875 BROADWAY, 45 LEARNED STREET, 46
COLONIE STREET, 52 COLONIE STREET AND 54 COLONIE
STREET IN THE CITY OF ALBANY, ALBANY COUNTY, NEW
YORK.

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and is for convenience of reference only.)

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PROJECT BENEFITS AGREEMENT

THIS PROJECT BENEFITS AGREEMENT dated as of October 1, 2015 (the "Project Benefits 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 12207 (the "Agency") and BROADWAY ALBANY REALTY LLC, limited liability company duly organized and validly existing under the laws of the State of Delaware having an office for the transaction of business located at 1465 Monroe Avenue, Rochester, New York 14618 (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 industrial, manufacturing, warehousing, commercial, research, and recreation facilities, among others, 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 of New York, as amended, codified as Section 903-a of the General Municipal Law of the State of New York (said Chapter and the Enabling Act being hereinafter collectively referred to as 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 of New York and improve their standard of living; and

WHEREAS, Broadway Albany Realty LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of Delaware, 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 all or a portion of six (6) parcels of land containing in the aggregate approximately 10 acres located at 833 Broadway, 875 Broadway, 45 Learned Street, 46 Colonie Street, 52 Colonie Street and 54 Colonie Street (Tax Map #s 65.20-3-2, 65.20-1-19, 65.20-1-12.1, 65.20-3-21.2, 65.20-3-19 and 65.20-3-20, respectively) in the City of Albany, Albany County, New York (collectively, the "Land"), together with a building containing approximately 140,000 square feet of space located thereon (the "Facility"), (2) the renovation of the Facility, (3) the expansion of the parking area and the making of other improvements therein and thereon (collectively, the "Improvements") and (4) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the "Equipment") (the Land, the Facility, the Improvements and

the Equipment being collectively referred to as the "Project Facility"), all of the foregoing constituting a commercial office facility and other related uses, a portion of which to be leased by the Company to Maximus, Inc.; (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, mortgage recording taxes and real estate transfer taxes (collectively, the "Financial Assistance"); and (C) the sale of the Project Facility to the Company pursuant to the terms of an installment sale agreement dated as of October 1, 2015 (the "Installment Sale Agreement"); and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on April 23, 2015 (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 April 28, 2015 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 April 29, 2015 on (1) a public bulletin board located at the City Hall Rotunda located at 24 Eagle Street, in the City of Albany, Albany County, New York, and (2) the Agency's website, (C) caused notice of the Public Hearing to be published on April 30, 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 Public Hearing on May 12, 2015 at 12:00 o'clock p.m., local time at offices of the City of Albany Industrial Development 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 June 3, 2015 (the "SEQR Resolution"), the Agency (A) ratified the determination by the Planning Board of the City of Albany, New York (the "Planning Board") to act as "lead agency" with respect to the Project, (B) acknowledged receipt of a copy of a negative declaration issued by the Planning Board on May 21, 2015 (the "Negative Declaration"), and (C) indicated that the Agency had no information to suggest that the Planning Board was incorrect in authorizing the issuance of the Negative Declaration; and

WHEREAS, by further resolution adopted by the members of the Agency on June 3, 2015 (the "Approving Resolution"), the Agency determined to (A) grant the Financial Assistance and to acquire and install the Equipment, or cause the Equipment to be acquired and installed and (B) sell the Equipment to the Company pursuant to an installment sale agreement dated as of October 1, 2015 (the "Installment Sale Agreement") between the Agency and the Company pursuant to which, among other things, the Company shall be obligated (1) to pay all costs incurred by the Agency with respect to the Project and/or the Project Facility, including all costs of operation and maintenance, all taxes and other governmental charges, any required payments in lieu of taxes, and the reasonable fees and expenses incurred by the Agency with respect to or in connection with the Project and/or the Equipment and (2) to comply with the provisions of the Act applicable to beneficiaries of financial assistance from the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Installment Sale Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain license agreement dated as of October 1, 2015 (the "License Agreement") between the Company and the Agency, which grants to the Agency a license to enter upon the Land for the purpose of undertaking and completing the

Project, (2) a bill of sale dated as of October 1, 2015 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, and (3) 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, (B) the Agency and the Company will execute and deliver the project benefits agreement dated as of October 1, 2015 (the "Project Benefits Agreement") relating to the granting of the Financial Assistance by the Agency to the Company, (C) 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 (D) 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, since no real property tax exemption is intended to be granted by the Agency with respect to the Project at this time, no New York State Board of Real Property Services Form RP-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 under Section 412-a of the Real Property Tax Law) (a "Real Property Tax Exemption Form") will be filed by the Agency with respect to the Project at this time; and

WHEREAS, (A) the Agency has established certain policies allowing denial of Financial Assistance to any project which does not deliver the public benefits promised at the time said project was approved by the Agency (the "Public Benefits"), (B) the Agency is unwilling to grant Financial Assistance to a project unless the beneficiary of such project agrees that the amount of Financial Assistance to be received by such beneficiary with respect to such project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of such project in delivering the promised Public Benefits, and (C) the Agency has created this Project Benefits Agreement in order to establish the conditions under which the Agency will be entitled to recapture some or all of the Financial Assistance that has been granted to the Company under the Basic Documents if the Project is unsuccessful in whole or in part in delivering the promised Public Benefits; and

WHEREAS, the Company desires to receive certain Financial Assistance from the Agency with respect to the Project, and accordingly is willing to enter into this Project Benefits Agreement in order to secure such Financial Assistance from the Agency; and

WHEREAS, all things necessary to constitute this Project Benefits 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 Project Benefits Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS TO WIT:

ARTICLE I

DEFINITIONS

SECTION 1.01. DEFINITIONS. All defined terms used herein and not otherwise defined herein shall have the same meanings as set forth in the Installment Sale Agreement. The following words and terms used in this Project Benefits Agreement shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent.

“Application” means the application submitted by the Company to the Agency in April, 2015 with respect to the Project, in which the Company (A) described the Project, (B) requested that the Agency grant certain Financial Assistance with respect to the Project, and (C) indicated the Public Benefits that would result from approval of the Project by the Agency.

“Basic Documents” shall have the meaning set forth in the Installment Sale Agreement, and includes this Project Benefits Agreement.

“Completion Date” means the earlier to occur of (A) August 31, 2016 or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Installment Sale Agreement, or (C) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

“Contract Employee” means (A) a full-time, private-sector employee (or self employed individual) that is not on the payroll of the Company or the Tenant but who has worked for the Company or the Tenant at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee (i.e., a job existing at the site of the Project Facility year-round), or (B) 2 part-time, private-sector employees (or self-employed individuals) that are not on the payroll of the Company or the Tenant but who have worked for the Company or the Tenant at the Project Facility for a combined minimum of 35 hours per week for not less than 32 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee.

“Equipment” shall have the meaning set forth in the Installment Sale Agreement.

“Facility” shall have the meaning set forth in the Installment Sale Agreement.

“Financial Assistance” means exemptions from certain sales and use taxes, as more particularly described in the Basic Documents.

“Full Time Equivalent Employee” means (A) a full-time, permanent, private-sector employee on the payroll of the Company or the Tenant, who has worked at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by the Company or the Tenant to other employees with comparable rank and duties; or (B) two part-time, permanent, private-sector employees on the payroll of the Company or the Tenant, who have worked at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by the Company or the Tenant to other employees with comparable rank and duties; or (C) a Contract Employee.

“Land” means an approximately 10 acre parcel of land located at 833 Broadway, 875 Broadway, 45 Learned Street, 46 Colonie Street, 52 Colonie Street and 54 Colonie Street in the City of Albany, Albany County, New York.

“Installment Sale Agreement” means the installment sale agreement dated as of October 1, 2015 by and between the Agency and the Company, pursuant to which, among other things, the Agency has sold the Project Facility to the Company, as said installment sale agreement may be amended or supplemented from time to time.

“Project” shall have the meaning set forth in the Installment Sale Agreement.

“Project Facility” means, collectively, the Land, the Facility and the Equipment.

“Recapture Events” shall mean the following:

(1) failure to complete the acquisition, reconstruction, renovation and installation of the Project Facility;

(2) failure to meet at least eighty percent (80%) of the Employment Level requirement contained in Section 3.02(E) hereof;

(3) liquidation of substantially all of the operating assets of the Company or the Tenant and/or cessation of substantially all of the operations of the Company or the Tenant;

(4) relocation of all or substantially all of operations of the Company or the Tenant at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility;

(5) transfer of jobs equal to at least fifteen percent (15%) of the Employment Level out of the City of Albany, New York;

(6) failure by the Company to comply with the annual reporting requirements or to provide the Agency with requested information;

(7) sublease of all or part of the Project Facility in violation of Basic Documents; or

(8) a change in the use of the Project Facility, other than as a commercial office facility.

“Recapture Period” means an approximately fifty-six (56) month, beginning on the date hereof and ending on June 30, 2020.

“Tenant” means Maximus, Inc., and, subsequently, any Person or Persons that the Company has leased all or a portion of the Facility; provided however, the term Tenant does not include Citizens Bank, N.A. and any successor or assignee occupying that portion of the Facility. If there is more than one (1) Tenant, then “Tenant” shall refer, collectively, to all the Tenants.

SECTION 1.2. INTERPRETATION. In this Project Benefit Agreement, unless the context otherwise requires:

(A) the terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms as used in this Project Benefit Agreement, refer to this Project Benefit Agreement, and the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of this Project Benefit Agreement;

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) words importing the singular number shall mean and include the plural number, and vice versa;

(D) any headings preceding the texts of the several Articles and Sections of this Project Benefit Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Project Benefit Agreement nor affect its meaning, construction or effect; and

(E) any certificates, letters or opinions required to be given pursuant to this Project Benefit Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Project Benefit Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.01. 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 this Project Benefits 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 Project Benefits Agreement.

(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 Project Benefits 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 Project Benefits Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Project Benefits Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Project Benefits Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Project Benefits 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 2.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is limited liability company duly organized and validly existing under the laws of the State of Delaware, is duly authorized to do business in the State of New York and has the power under the laws of the State of New York to enter into this Project Benefits Agreement and to perform and 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 Project Benefits Agreement, and by proper action of its board of directors has been duly authorized to execute, deliver and perform this Project Benefits Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of organization, operating agreement and the laws of the State of New York to enter into this Project Benefits 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 Project Benefits Agreement. By proper action of its members, the Company has duly authorized the execution, delivery and performance of this Project Benefits Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Project Benefits Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement by (and the execution, delivery and performance of this Project Benefits Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Project Benefits Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its

certificate of formation 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 Project Benefits Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Project Benefits 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 Project Benefits 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 Project Benefits Agreement by the Company or as a condition to the validity of this Project Benefits Agreement.

ARTICLE III

COVENANTS AND AGREEMENTS

SECTION 3.01. FINANCIAL ASSISTANCE. (A) Financial Assistance. In connection with the Project, and in reliance on the certifications provided by the Company in the Application, the Agency agrees to provide the Company with the following Financial Assistance related to the Project: possible sales and use tax exemptions.

(B) Public Purpose of Granting Financial Assistance to the Project. In the Application and in the discussions had between the Company and the Agency with respect to the Company's request for Financial Assistance from the Agency with respect to the Project, the Company has represented to the Agency that the Project will furnish the following benefits to the residents of City of Albany, New York (the "Public Benefits"):

(1) The reconstruction of the Facility.

(2) The employment of 430 Full Time Equivalent Employees by the Company and the Tenant at the Project Facility.

(C) Contingent Nature of the Financial Assistance. Notwithstanding the provisions of Section 3.01(A) of this Project Benefits Agreement, the Agency and the Company agree that the amount of Financial Assistance to be received by the Company with respect to the Project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of the Project in delivering the promised Public Benefits.

SECTION 3.02. COMPANY AGREEMENTS. The Company hereby agrees as follows:

(A) Filing – Initial. To file with the Agency, prior to the Closing Date, an initial plan, based on the employment projections contained I the Application, regarding the number of people expected to be employed at the Project Facility and certain other matters, in substantially the form attached as Exhibit D to the Installment Sale Agreement.

(B) Filing – Annual. To file with the Agency, on an annual basis, within sixty (60) days after the end of each calendar year, reports regarding the number of people employed at the Project Facility and certain other matters, the annual employment report to be in substantially the form annexed as Exhibit E to the Installment Sale Agreement (the "Annual Report").

(C) Employment Listing. To list, and to cause the Tenant to list, new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)). The obligations of the Company under this Section 3.02(C) apply regardless of whether the Full Time Equivalent Employees are direct employees of the Company or the Tenant, or are Contract Employees.

(D) Employment Consideration. Except as otherwise provided by collective bargaining agreement, to first consider, and to cause the Tenant to first consider, where practicable, for such new

employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities. The obligations of the Company under this Section 3.02(D) apply regardless of whether the Full Time Equivalent Employees are direct employees of the Company or the Tenant, or are Contract Employees.

(E) Employment Level. (1) In the Application, the Company certified to the Agency employment information with respect to the Project Facility and the operations conducted at the Project Facility.

(2) To maintain, or cause to be maintained, the following employment level (the "Employment Level") during the term of the Project Benefits Agreement, beginning on December 31, 2016:

Year	Total Employees:
2015	Not Applicable
2016	230 Full Time Equivalent Employees
2017	430 Full Time Equivalent Employees
2018	430 Full Time Equivalent Employees
2019	430 Full Time Equivalent Employees
2020	430 Full Time Equivalent Employees

(3) (a) To verify that the Employment Level is being achieved at the Project Facility and the information contained in the Annual Report, the Company is required to submit, or cause to be submitted, within sixty (60) days after the end of each calendar year, a form NYS-45 as of the Company's last payroll date in the month of December (the "Quarterly Report," a copy of which is attached hereto as Schedule A and, together with the Annual Report described in Section 3.02(B) above, being collectively referred to as the "Employment Affidavits") or some other form of reporting that is explicitly approved by the Agency. Full Time Equivalent Employees for each calendar year during the term of this Project Benefits Agreement shall be the number reported in the Employment Affidavits delivered by the Company pursuant to Section 3.02(B) and this Section 3.02(E)(3).

(b) In the event that some or all of the Full Time Equivalent Employees employed at the Project Facility constitute employees of the Tenant or Contract Employees, it shall be the responsibility of the Company to deliver, or cause to be delivered, the Quarterly Reports of the employers relating to the Tenant and/or such Contract Employees. The Company hereby agrees to provide such Quarterly Reports in accordance with the terms contained in Section 3.02(E)(3)(a) above.

(F) Non-Discrimination. (1) At all times during the term of this Project Benefit Agreement, the Company shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Company shall use its best efforts to ensure that employees and applicants for employment with the Company or any Tenant of the Project Facility (including the Tenant) are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(2) The Company agrees that, in all solicitations or advertisements for employees placed by or on behalf of the Company or the Tenant during the term of this Project Benefit Agreement, the Company will state in substance that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

SECTION 4.01. EVENTS OF DEFAULT DEFINED. The following shall be "Events of Default" under this Project Benefits Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Project Benefits Agreement, any one or more of the following events:

(A) A default in the performance or observance of any of the covenants, conditions or agreements on the part of the Company in this Project Benefits Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.

(B) The occurrence of an "Event of Default" under any other Basic Document.

(C) Any representation or warranty made by the Company herein or in any other Basic Document proves to have been false at the time it was made.

SECTION 4.02. REMEDIES ON DEFAULT. (A) Whenever any Event of Default hereunder shall have occurred, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 of the Installment Sale Agreement, and (b) all other payments due under this Project Benefits Agreement or any of the other Basic Documents; or

(2) terminate the Installment Sale Agreement and convey to the Company all the Agency's right, title and interest in and to the Project Facility (The conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the delivery by the Agency of the Termination of License to Agency and the Bill of Sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title); or

(3) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Company under this Project Benefits Agreement.

(B) No action taken pursuant to this Section 4.01 (including repossession of the Project Facility) shall relieve the Company from its obligations to make any payments required by this Project Benefits Agreement and the other Basic Documents.

SECTION 4.03. RECAPTURE OF FINANCIAL ASSISTANCE. (A) General. (1) Upon the occurrence of a Recapture Event that occurs during the Recapture Period, the Agency may require the Company to provide for the recapture of the project financial assistance (the "Project Financial Assistance"), all in accordance with the terms of this Section 4.03. The Company hereby agrees, if requested by the Agency, to pay to the Agency the recapture of the Project Financial Assistance, as provided in this Section 4.03.

(2) The Agency's determination to recapture all or a portion of the Project Financial Assistance shall be made by the Agency after an evaluation of the criteria for recapture set forth in the Agency's "Recapture Benefits Policy" as in effect as of the Closing Date (a copy of which policy is attached hereto as Schedule B). The Company shall be provided a reasonable opportunity to appear before the Agency prior to the Agency's making such determination to provide reasons why such a determination would not be consistent with the Recapture Benefits Policy.

(B) Project Financial Assistance to be Recaptured. The Project Financial Assistance to be recaptured, as adjusted by the provisions of Section 4.03(C) below, by the Agency upon the occurrence of a Recapture Event during a Recapture Period shall be an amount equal to the following: the portion of the amount of New York State sales and use taxes allocable to Albany County that the Company would have paid in connection with the undertaking of the Project if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency.

(C) Amount of Project Financial Assistance to be Recaptured. Upon the occurrence of a Recapture Event, the Company shall pay the following amounts as recapture:

Year	Amount of Recapture
2015	100% of the Project Financial Assistance
2016	100% of the Project Financial Assistance
2017	80% of the Project Financial Assistance
2018	60% of the Project Financial Assistance
2019	40% of the Project Financial Assistance
2020	20% of the Project Financial Assistance

(D) Survival of Obligations. The Company acknowledges that the obligations of the Company in this Section 4.03 shall survive the conveyance of the Project Facility to the Company and the termination of the Installment Sale Agreement.

SECTION 4.04. LATE PAYMENTS. (A) One Month. If the Company shall fail to make any payment required by this Project Benefits Agreement within thirty days of the date that written notice of such payment is sent from the Agency to the Company at the address provided in Section 4.05 of this Project Benefits Agreement, the Company shall pay the amount specified in such notice 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 Project Benefits Agreement when due and such delinquency shall continue beyond the thirty days after such notice, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the Agency until such payment in default shall have been made in full, and the Company shall pay the same to the Agency 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.

SECTION 4.05. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. If the Company should default in performing any of its obligations, covenants or agreements under this Project Benefits Agreement and the Agency 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 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 4.06. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency 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 Project Benefits 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 Recapture Event or an 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 to exercise any remedy reserved to it in this Project Benefits Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Project Benefits Agreement.

(D) No Waiver. In the event any provision contained in this Project Benefits 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 Project Benefits Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V
MISCELLANEOUS

SECTION 5.01. TERM. This Project Benefits Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the execution and delivery of this Project Benefits Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Project Benefits Agreement shall continue to remain in effect until June 30, 2020.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Project Benefits 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 Project Benefits 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, property 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) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Broadway Albany Realty LLC
1465 Monroe Avenue
Rochester, New York 14618
Attention: Lewis Norry, Managing Member

WITH A COPY TO:

Woods Oviatt Gilman LLP
2 State Street
Rochester, New York 14618 14618
Attention: Mitchell Nusbaum, Esq.

IF TO THE AGENCY:

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

WITH COPIES TO:

Office of Corporation Counsel
City Hall, Eagle Street - Room 106
Albany, New York 12207
Attention: John J. Reilly, Esq.

and

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

(C) 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 Project Benefits 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 Project Benefits Agreement are intended to be for the benefit of the Agency.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Project Benefits 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 Project Benefits 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 Project Benefits 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 Project Benefits 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 Project Benefits 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: Tracy Metzger
Authorized Officer

BROADWAY ALBANY REALTY LLC

BY: [Signature]
Authorized Officer

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

On the 27th day of October, in the year 2015, before me, the undersigned, a notary public in and for said state, personally appeared TRACY L. METZGER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

Allison J. Squires
Notary Public, State of New York
Qualified in Rensselaer County
No. 01SQ6208657
Commission Expires July 6, 2017

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

On the 2nd day of October, in the year 2015, before me, the undersigned, a notary public in and for said state, personally appeared Lewis Norry, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Deborah L. Cervini
Notary Public

DEBORAH L. CERVINI
Notary Public, State of New York
Qualified in Monroe County
No. 01CE6023322
My Commission Expires 4/19/19

SCHEDULE A

QUARTERLY REPORT

- SEE ATTACHED -

41329412

For office use only
Postmark

For office use only
Postmark

If seasonal employer, mark an X in the box

c. Third month

UI	AI	SI	WT
SK			SK

Part B - Withholding tax (WT) information

24. New York State
tax withheld
25. New York City
tax withheld
26. Yonkers tax
withheld
27. Total tax withheld
(add lines 22, 23, and 24)
28. WT credit from previous
quarter's return (see instr.)
29. Form NYS-1 payments made
for quarter
30. Total payments
(add lines 26 and 27)
31. Total WT amount due (if line 31
is greater than line 28, enter difference)
32. Total WT overpaid (if line 31
is greater than line 28, enter difference
here and mark an X in 20a or 20b)*
- 20a. Apply to outstanding
liabilities and/or refund
- OR
- 20b. Credit to next quarter
withholding tax

21. Total payment due (add lines 9 and 19; make one remittance payable to NYS Employment Contributions and Taxes)

Complete Parts D and E on back of form, if required.

<p>Quarterly employee/payee wage reporting information (If more than five employees or if reporting other wages, do not make entries in this section; complete Form NYS-45-ATT. Do not use negative numbers: see instructions.)</p>	<p>Annual wage and withholding totals</p> <p>If this return is for the 4th quarter or the last return you will be filing for the calendar year, complete columns 4 and 5.</p>
---	--

[illegible]**Totals** (column c must equal remuneration on line 1; see instructions for exceptions)

Sign your return: I certify that the information on this return and any attachments is to the best of my knowledge and belief true, correct, and complete.

Title

Telephone number

Withholding
identification number



41329429

Part D - Form NYS-1 corrections/additions

Use Part D only for corrections/additions for the quarter being reported in Part B of this return. To correct original withholding information reported on Form(s) NYS-1, complete columns a, b, c, and d. To report additional withholding information not previously submitted on Form(s) NYS-1, complete only columns c and d. Lines 12 through 15 on the front of this return must reflect these corrections/additions.

a Original last payroll date reported on Form NYS-1, line A (mmdd)	b Original total withheld reported on Form NYS-1, line 4	c Correct last payroll date (mmdd)	d Correct total withheld
▶			
▶			
▶			
▶			
▶			
▶			

Part E - Change of business information

22. This line is not in use for this quarter.

23. If you permanently ceased paying wages, enter the date (mmddyy) of the final payroll (see Note below)

24. If you sold or transferred all or part of your business:

- Mark an X to indicate whether in whole ☐ or in part ☐
- Enter the date of transfer (mmddyy)
- Complete the information below about the acquiring entity

Legal name	EIN
Address	

Note: For questions about other changes to your withholding tax account, call the Tax Department at (518) 485-6654; for your unemployment insurance account, call the Department of Labor at (518) 485-8589 or 1 888 899-8810. If you are using a paid preparer or a payroll service, the section below must be completed.

Paid preparer's use	Preparer's signature	Date	Preparer's NYTPRIN	Preparer's SSN or PTIN	Mark an X if self-employed <input type="checkbox"/>
	Preparer's firm name (or yours, if self-employed)	Address	Firm's EIN	Telephone number ()	
Payroll service's name			Payroll service's EIN		

Checklist for mailing:

- File original return and keep a copy for your records.
- Complete lines 9 and 19 to ensure proper credit of payment.
- Enter your withholding ID number on your remittance.
- Make remittance payable to NYS Employment Contributions and Taxes.
- Enter your telephone number in boxes below your signature.
- See *Need help?* on Form NYS-45-I if you need forms or assistance.

Mail to:

NYS EMPLOYMENT
CONTRIBUTIONS AND TAXES
PO BOX 4119
BINGHAMTON NY 13902-4119

NYS-45 (2/13) (back)

SCHEDULE B

RECAPTURE BENEFITS POLICY

PART 25

POLICY RESPECTING RECAPTURE OF PROJECT BENEFITS

SECTION 2501. PURPOSE AND JUSTIFICATION. (A) The purpose of this Policy is to outline the procedures utilized by City of Albany Industrial Development Agency (the “Agency”) to review compliance with (1) the requirements of the Agency relating to job creation and/or retention, other expected public benefits and reporting and (2) the requirements of the State of New York (the “State”) relating to sales tax exemptions and reporting.

(B) The Agency was created pursuant to Section 903-a of Title 2 of Article 18-A of the General Municipal Law and Title 1 of Article 18-A the General Municipal Law (collectively, the “Act”) for the purpose of promoting employment opportunities for, and the general prosperity and economic welfare of, residents of the City of Albany and the State of New York (the “State”). Under the Act, the Agency was created in order to advance the job opportunities, health, general prosperity, and economic welfare of the residents of the City of Albany, New York (the “City”) and of the State.

(C) The Agency has been advised that a number of other industrial development agencies have adopted policies that (1) contain provisions allowing the industrial development agency to recapture certain financial benefits provided by said agency to a project applicant if said project applicant does not fulfill certain job creation promises contained in its application or fails to fulfill certain other promises made to said agency and (2) allow said agency to take into account exigent circumstances in deciding whether to exercise these provisions respecting the recapture of said financial benefits.

(D) Chapter 59 of the Laws of 2013 (Part J), effective March 28, 2013 (the “2013 Budget Law”), enacted March 28, 2013, established new recordkeeping, reporting, and recapture requirements for industrial development agency projects that receive sales tax exemptions.

(E) The new sales tax recording and reporting requirements required by the 2013 Budget Law include the following: (1) a requirement to keep records of the amount of sales tax benefits provided to each project and make those records available to the State upon request; (2) a requirement to report to the State, within 30 days after providing financial assistance, the amount of sales tax benefits intended to be provided to a project; and (3) a requirement that the Agency post on the internet and make available without charge copies of its resolutions and agreements appointing an agent or project operator or otherwise related to any project it establishes. A project operator (“Project Operator”) is appointed by the Agency through the filing of form ST-60 with the New York State Department of Taxation and Finance.

(F) The 2013 Budget Law requires that the Agency recapture State sales tax benefits where: (1) the project is not entitled to receive those benefits; (2) the exemptions exceed the amount authorized or are claimed for unauthorized property or services; or (3) the Project Operator failed to use property or services in the manner required by its agreements with the Agency.

(G) For purposes of this Policy, with respect to a particular calendar year and a particular project, the term “financial assistance” shall include the following:

(1) Proceeds of debt obligations issued by the Agency with respect to said project have been disbursed during the calendar year in question.

(2) Any tax exemption or abatement (a) which may have directly or indirectly benefitted the project or Project Operator shall during such calendar year and (b) which resulted from (i) the Agency’s title to, possession of or, control of or other interest in said project, or (ii) the designation by the Agency of said project occupant (or any sublessee, contractor, supplier or other operator of the project) as an agent of the Agency.

(3) Any grant made by the Agency with respect to said project or Project Operator shall during such calendar year.

(4) Any loan made by the Agency with respect to said project or Project Operator shall during such calendar year.

(H) For purposes of this Policy, with respect to a particular project, the term “Project Agreements” shall mean the project documents between the Agency and an applicant with respect to the applicant’s project. In addition to a lease agreement or installment sale agreement between the Agency and the applicant, the Project Agreements may also include a payment in lieu of tax agreement, a project agreement, and one or more recapture agreements, as well as security agreements intended to ensure compliance by the applicant with the requirements of the Project Agreements.

SECTION 2502. REQUIREMENTS FOR APPLICANTS. (A) Under the Act, the Agency is required to submit certain annual reports relating to Agency projects to the New York State Office of the Comptroller. In order to satisfy its annual reporting requirements and other requirements under the Act and certain other requirements imposed by the Act, as well as the new requirements imposed upon the Agency by the 2013 Budget Law, the Agency will require each applicant for financial assistance from the Agency agree to satisfy the following requirements as a condition to the receipt of such financial assistance:

(1) Any applicant requesting a sales tax exemption from the Agency must include in the application a realistic estimate of the value of the savings anticipated to be received by the applicant. Each applicant is hereby warned to provide a realistic estimate in the application, as the 2013 Budget Law and the regulations expected to be enacted thereunder are expected to require that the Agency recapture any benefit that exceeds the

greater of (a) the amount listed in said application or (b) authorized by the Agency in a separate resolution.

(2) Any applicant requesting a sales tax exemption from the Agency must agree to annually file (and cause any sublessee, contractor, supplier or other operator of the project to file annually) with the State, on a form and in such manner as is prescribed by the State, a statement of the value of all sales and use tax exemptions claimed by the applicant and all contractors, subcontractors, consultants and other agents of the applicant under the authority granted to the applicant by the Agency.

(3) Any applicant requesting a sales tax exemption from the Agency must agree to furnish to the Agency a copy of each such annual report submitted to the State by the applicant or any sublessee, contractor, supplier or other operator of the project.

(4) As required by the 2013 Budget Law, the Project Agreements will provide that any sales tax benefits determined by the Agency to be subject to recapture pursuant to the 2013 Budget Law must be remitted by the applicant to the Agency within 20 days of a request therefor by the Agency.

(5) The applicant agrees that, as required by the 2013 Budget Law, the resolutions of the Agency with respect to the project and the Project Agreements will now be publicly available on the Agency's website. As provided in the New York Freedom of Information Law ("FOIL"), the applicant may request that certain information contained therein be redacted and, if the applicant can demonstrate to the satisfaction of the Agency that release of said information would result in substantial harm to the applicant's competitive position, the Agency may comply with such request.

(6) Except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOC") and with the administrative entity (collectively with the DOC, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA"), as replaced by the Workforce Investment Act of 1998 (Public Law 105-220), in which the Project is located.

(7) Except as otherwise provided by collective bargaining agreements, where practicable, the applicant will first consider persons eligible to participate in JTPA programs who shall be referred by JTPA Entities for new employment opportunities created as a result of the Project.

(8) The applicant agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Applicant, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

(9) Within sixty (60) days after the end of each calendar year, the applicant shall furnish to the Agency a certificate of an Authorized Representative of the applicant stating that no event of default under the Project Agreements has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the applicant has taken or proposes to take with respect thereto, and setting forth the unpaid principal balance of the Bonds and accrued but unpaid interest thereon and that no defenses, offsets or counterclaims exist with respect to the indebtedness evidenced thereby.

(10) The applicant shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.

(11) The applicant agrees to file with the Agency, no later than sixty (60) days after the end of each calendar year, reports regarding the number of people employed at the project and certain other matters.

(B) In order to ensure that the project will create the public benefits anticipated by the Agency accruing to the residents and taxpayers of the City, the Project Agreements will require that each Agency Project Operator agree that, annually, within 60 days of the end of each calendar year during which a project has received any financial assistance from the Agency, such Agency Project Operator will complete and file with the Agency an annual report (the "Operator Annual Report") describing the status of the project during the calendar year just completed, including such information as: jobs projected to be created/retained; estimated salary of jobs to be created/retained; current number of jobs; construction jobs created through the year; exemptions from taxes and payments in lieu of tax made; status of local labor; and status of bond financing related to the project.

SECTION 2503. ENFORCEMENT.(A) The Agency will use the information contained in the Operator Annual Report, and may use site visits and follow-ups, to gauge the status of a project in relation to the original commitment of the applicant as stated in the project application.

(B) Should the staff or board members of the Agency find significant deficiencies in any area; the project will be further reviewed. Examples of situations that may trigger review and/or action by the Agency include:

(1) If the Project Operator shifts production activity to a facility outside of the City and, as a result, fails to achieve the economic benefits projected;

(2) If the Project Operator moves all operations outside the City, neglects to move operations to the City, or the project does not otherwise conform to the project described in the Project Agreements;

(3) If a significant shortfall in economic benefits is identified, as compared with the application, such as a significant shortfall in new job creation/retention and/or expected major investments in the business;

(4) Failure to comply with annual reporting requirements or provide the Agency with requested information; or

(5) Closure of a project within the time period the applicant receives Agency financial assistance.

(C) Should the staff or board members of the Agency find significant deficiencies in the achievement of the economic benefits promised as described in the application and the Project Agreements, the Project Operator will be asked to provide justification for said shortfalls. The board members of the Agency will compare these statements against industry standards, as well as the current market and economic conditions, to determine whether the Project Operator did all that it could to meet its obligations as outlined in the application and the Project Agreements.

(D) The board members of the Agency will determine on a case by case basis whether a hearing is appropriate to allow a Project Operator to be heard on the issue regarding said Project Operator's failure to achieve the projected economic benefits.

(E) Should the board members of the Agency find that (1) significant deficiencies in the achievement of the economic benefits promised as described in the application and the Project Agreements have occurred and (2) there appears to be no justification satisfactory to the Agency to explain these deficiencies, the Agency may determine to undertake any enforcement action available to the Agency under the Agency Agreements to seek redress for these deficiencies.

(F) Enforcement action taken by the Agency under the Agency Documents may include, but shall not be limited to, the following:

(1) Requesting cure of the deficiency by a final notice letter.

(2) Forwarding an event of default notice under the Project Agreements.

(3) Notifying appropriate New York State agencies of the Project Operator's failure to comply with such requirements.

(4) Terminating any or all of the Project Agreements early.

(5) Reducing the value of financial assistance moving forward.

(6) Terminating any future financial assistance.

(7) Requiring that the value of all the financial assistance utilized to date to be repaid in full or in part.

(G) In connection with the undertaking of a Project and/or the preparation of Project Agreements, the Agency also reserves the right to negotiate the terms and conditions of these recapture provisions.

SECTION 2504. EFFECTIVE DATE. This policy shall be effective with respect to any project undertaken by the Agency where receipt of the application for the project occurs after the date of approval of this Policy.