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### CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

### **AND**

760 BROADWAY LLC

# UNIFORM AGENCY PROJECT AGREEMENT

DATED AS OF APRIL 1, 2018

RELATING TO FINANCIAL ASSISTANCE GRANTED BY THE AGENCY WITH RESPECT TO A CERTAIN PROJECT 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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### UNIFORM AGENCY PROJECT AGREEMENT

THIS UNIFORM AGENCY PROJECT AGREEMENT dated as of April 1, 2018 (the "Uniform Agency Project 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 (the "State") having an office for the transaction of business located at 21 Lodge Street, Albany, New York 12207 (the "Agency") and 760 BROADWAY LLC, a limited liability company duly organized and validly 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 12207 (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, as amended; 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 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, as amended, codified as Section 903-a of the General Municipal Law of the State (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 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/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 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, (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 Uniform Agency Project 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 Uniform Agency Project Agreement in order to secure such Financial Assistance from the Agency: and

WHEREAS, all things necessary to constitute this Uniform Agency Project 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 Uniform Agency Project 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 capitalized terms used herein and not otherwise defined herein shall have the same meanings as set forth in the Lease Agreement. The following words and terms used in this Uniform Agency Project 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 May, 2015, as amended in December, 2017 with respect to the Project, a copy of which is attached as Schedule D, 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 Lease Agreement, and includes this Uniform Agency Project Agreement.

"Completion Date" means the earlier to occur of (A) May 31, 2020 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 Lease 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 Company's payroll but who has worked for the Company 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, or (B) 2 part-time, private-sector employees (or self-employed individuals) that are not on the Company's payroll but who have worked for the Company at the Project Facility for a combined 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.

"Conveyance Documents" shall have the meaning set forth in the Lease Agreement.

"Equipment" shall have the meaning set forth in the Lease Agreement.

"Facility" shall have the meaning set forth in the Lease Agreement.

"Financial Assistance" means exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes as more particularly described in the Basic Documents.

"Full Time Equivalent Employee" means (A) a full-time, permanent, private-sector employee on the Company's payroll, 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 to other employees with comparable rank and duties; or (B) two part-time, permanent, private-sector employees on Company's payroll, 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 to other employees with comparable rank and duties; or (C) a Contract Employee.

"Initial Employment Plan" means the initial plan, based on the employment projections contained in 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 G to the Lease Agreement.

"Land" means an approximately 1.40 acre parcel of land located at 776 (A/K/A 760) Broadway in the City of Albany, Albany County, New York (tax map no. 65.82-6-15).

"Lease Agreement" means the lease agreement dated as of April 1, 2018 by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

"Payment in Lieu of Tax Agreement" means the payment in lieu of tax agreement dated as of April 1, 2018 by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility, as such agreement may be amended or supplemented from time to time.

"Project" shall have the meaning set forth in the Lease Agreement.

"Project Facility" means, collectively, the Land, the Facility, and the Equipment.

"Recapture Events" shall mean the following:

- (1) failure to complete the acquisition, construction, and installation of the Project Facility;
- (2) failure by the Company to meet at least eighty percent (80%) of the Employment Level requirements contained in Section 3.02(E) hereof and in the Application or Initial Employment Plan;
- (3) liquidation of substantially all of the Company's operating assets and/or cessation of substantially all of the Company's operations;
- (4) relocation of all or substantially all of Company's operations 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 Company's 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 the Basic Documents;
- (8) a change in the use of the Project Facility, other than as a commercial/residential facility and other directly and indirectly related uses; or
- (9) failure by the Company to make an actual investment in the Project by the Completion Date equal to or exceeding 90% of the Total Project Costs as set forth in the Application.

"Recapture Period" means the approximate twenty (20) year period ending on December 31, 2040.

SECTION 1.02. INTERPRETATION. In this Uniform Agency Project Agreement, unless the context otherwise requires:

- (A) the terms "hereby", "hereof", "herein", "hereunder" and any similar terms as used in this Uniform Agency Project Agreement, refer to this Uniform Agency Project Agreement, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the date of this Uniform Agency Project 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 Uniform Agency Project 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 Uniform Agency Project Agreement nor affect its meaning, construction or effect; and
- (E) any certificates, letters or opinions required to be given pursuant to this Uniform Agency Project 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 Uniform Agency Project 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) <u>Power</u>. 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 to enter into this Uniform Agency Project 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 Uniform Agency Project Agreement.
- (B) <u>Authorization</u>. 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 Uniform Agency Project 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 Uniform Agency Project Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery, and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.
- (C) <u>Conflicts</u>. The Agency is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project 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) <u>Power</u>. 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 and has the power under the laws of the State of New York to enter into this Uniform Agency Project 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 Uniform Agency Project Agreement, and by proper action of its members has been duly authorized to execute, deliver and perform this Uniform Agency Project Agreement.
- (B) <u>Authorization</u>. 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 Uniform Agency Project 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 Uniform Agency Project Agreement. By proper action of its members, the Company has duly authorized the execution, delivery, and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.
- (C) <u>Conflicts</u>. The Company is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement by (and the execution, delivery and performance of this Uniform Agency Project Agreement, the consummation of the transactions

contemplated hereby and the fulfillment of and compliance with the provisions of this Uniform Agency Project 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, 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 Uniform Agency Project Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project 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 Uniform Agency Project 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) <u>Governmental Consent</u>. 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 Uniform Agency Project Agreement by the Company or as a condition to the validity of this Uniform Agency Project Agreement.

### ARTICLE III

### **COVENANTS AND AGREEMENTS**

SECTION 3.01. FINANCIAL ASSISTANCE. (A) <u>Financial Assistance</u>. In the Application or Initial Employment Plan, the Company certified to the Agency employment information with respect to the Project Facility, and the operations of the Company. In reliance on the certifications provided by the Company in the Application or Initial Employment Plan, the Agency agrees to provide the Company with the following Financial Assistance related to the Project:

(1) sales and use tax exemptions: \$385,000

(2) a mortgage recording tax exemption: \$150,000

(3) a real property tax exemption: \$6,003,665 (estimated)

- (B) <u>Description of Project and Public Purpose of Granting Financial Assistance to the Project</u>. 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 as follows:
  - (1) That the Project is described as follows: (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 88 residential apartments and approximately 95 indoor/outdoor/covered parking spaces to be leased by the Company to various commercial and residential tenants and other directly and indirectly related activities.
  - (2) That the Project will furnish the following benefits to the residents of the City of Albany, New York (the "Public Benefits"): as described in Exhibit A to the Approving Resolution.
- (C) <u>Payment in Lieu of Tax Agreement</u>. A copy of the Payment in Lieu of Tax Agreement is attached as Schedule C. The attached Payment in Lieu of Tax Agreement describes the dates the payments in lieu of taxes are to be made and includes a table describing the amount of payments in lieu of taxes to be made.
- (D) <u>Contingent Nature of the Financial Assistance</u>. Notwithstanding the provisions of Section 3.01(A) of this Uniform Agency Project 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) <u>Filing Closing Date</u>. To file with the Agency, prior to the Closing Date, the Initial Employment Plan.
- (B) Filing Annual. To file with the Agency, on an annual basis, within sixty (60) days after the end of each calendar year, a report regarding the number of people employed at the Project Facility and certain other matters as required under Applicable Law, an annual employment verification/compliance report (the "Annual Verification Report," in substantially the form attached hereto as Schedule E).
- (C) <u>Employment Listing</u>. 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)).
- (D) <u>Employment Consideration</u>. Except as otherwise provided by collective bargaining agreement, the Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.
- (E) <u>Employment Level</u>. (1) To maintain, as described in the Application or Initial Employment Plan, the following employment level (the "Employment Level") during the term of the Uniform Agency Project Agreement, beginning no later than three (3) years after the Completion Date:

Year	Total Employees
1-2	Not Applicable
3	2 -Full Time Equivalent Employees
4 and thereafter	2 -Full Time Equivalent Employees

- (2) (a) To verify that the Employment Level is being achieved at the Project Facility and the information contained in the Annual Verification 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 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 Verification Report described in Section 3.02(B) above, being collectively referred to as the "Employment Affidavits") or some other form that is explicitly approved by the Agency. Full Time Equivalent Employees for each calendar year during the term of this Uniform Agency Project 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)(2).
  - (b) In the event that some or all of the Full Time Equivalent Employees employed at the Project Facility constitute 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 such Contract Employees. The Company hereby agrees to provide such Quarterly Reports in accordance with the terms contained in Section 3.02(E)(2)(a) above.

- (F) Non-Discrimination. (1) At all times during the term of this Uniform Agency Project 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 subtenant of the Project Facility 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 during the term of this Uniform Agency Project 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. (A) The following shall be "Events of Default" under this Uniform Agency Project Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Uniform Agency Project Agreement, any one or more of the following events:

- (1) A default in the performance or observance of any of the covenants, conditions or agreements on the part of the Company in this Uniform Agency Project 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.
  - (2) The occurrence of an "Event of Default" under any other Basic Document.
- (3) Any material 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 Lease Agreement, and (b) all other payments due under this Uniform Agency Project Agreement or any of the other Basic Documents; or
- (2) terminate the Lease Agreement and the Payment in Lieu of Tax 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 Lease 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 Uniform Agency Project Agreement.
- (B) No action taken pursuant to this Section 4.02 (including repossession of the Project Facility) shall relieve the Company from its obligations to make any payments required by this Uniform Agency Project Agreement and the other Basic Documents.

SECTION 4.03. RECAPTURE OF FINANCIAL ASSISTANCE. (A) <u>General</u>. 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 provided as of the date of determination (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 within thirty (30) days to the Agency the recapture of the Project Financial Assistance, as provided in this Section 4.03.

- (B) <u>Project Financial Assistance to be Recaptured</u>. The Project Financial Assistance to be recaptured, as adjusted by the provisions of Section 4.03(C) below, by the Agency from the Company upon the occurrence of a Recapture Event during a Recapture Period shall be an amount equal to a percentage (as provided in subsection (C) below) multiplied by the sum of the following:
  - (1) the portion of the amount of New York State sales and use taxes allocable to Albany County that the Company would have paid as of the date of determination 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;
  - (2) the amount of any mortgage recording tax exemption provided by the Agency to the Company in connection with the undertaking of the Project; and
  - (3) the difference between the amount of the payment in lieu of tax payments paid by the Company under the Payment in Lieu of Tax Agreement and the amount of the general real property ad valorem taxes that would have been payable by the Company to the Taxing Entities if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency.
- (C) <u>Amount of Project Financial Assistance to be Recaptured</u>. Upon the occurrence of a Recapture Event, the Company shall pay to the Agency the following amounts as recapture:

Year <sup>1</sup>	Amount of Recapture
1	100% of the Project Financial Assistance
2	95% of the Project Financial Assistance
3	90% of the Project Financial Assistance
4	85% of the Project Financial Assistance
5	80% of the Project Financial Assistance
6	75% of the Project Financial Assistance
7	70% of the Project Financial Assistance
8	65% of the Project Financial Assistance
9	60% of the Project Financial Assistance
10	55% of the Project Financial Assistance
11	50% of the Project Financial Assistance
12	45% of the Project Financial Assistance
13	40% of the Project Financial Assistance
14	35% of the Project Financial Assistance
15	30% of the Project Financial Assistance
16	25% of the Project Financial Assistance
17	20% of the Project Financial Assistance
18	15% of the Project Financial Assistance
19	10% of the Project Financial Assistance
20	5% of the Project Financial Assistance

Start immediately following Closing Date, and have 100% numbers run during construction and include the first year following Completion Date, and then extend terms for the same term as the PILOT Agreement, with % numbers equally divided for the remaining term.

- (D) Redistribution of Project Financial Assistance to be Recaptured. Upon the receipt by the Agency of any amount of Project Financial Assistance pursuant to this Section 4.03, the Agency shall redistribute such amount within thirty (30) days of such receipt to the Taxing Entity that would have received such amount but for the granting by the Agency of the Project Financial Assistance.
- (E) <u>Survival of Obligations</u>. 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 Lease Agreement.
- (F) Agency Review of Recapture Determination. 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). If the Agency determines that a Recapture Event has occurred, it shall give notice of such determination to the Company. The Company shall have thirty (30) days from the date the notice is deemed given to submit a written response to the Agency's determination and to request a written and/or oral presentation to the Agency why the proposed recapture amount should not be paid to the Agency. The Company may make its presentation at a meeting of the Agency. The Agency shall then vote on a resolution recommending (i) a termination of Financial Assistance, (ii) a recapture of Financial Assistance, (iii) both a termination and a recapture of Finance Assistance, (iv) a modification of Financial Assistance or (iv) no action.
- SECTION 4.04. LATE PAYMENTS. (A) One Month. If the Company shall fail to make any payment required by this Uniform Agency Project 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 5.05 of this Uniform Agency Project 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 Uniform Agency Project 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 Uniform Agency Project 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 within thirty (30) days 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 Uniform Agency Project Agreement or now or hereafter existing at law or in equity or by statute.

- (B) <u>Delay</u>. No delay or omission in exercising any right or power accruing upon the occurrence of a 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) <u>Notice Not Required</u>. In order to entitle the Agency to exercise any remedy reserved to it in this Uniform Agency Project Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Uniform Agency Project Agreement.
- (D) <u>No Waiver</u>. In the event any provision contained in this Uniform Agency Project 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 Uniform Agency Project Agreement shall be established by conduct, custom, or course of dealing.

### ARTICLE V

### **MISCELLANEOUS**

SECTION 5.01. TERM. This Uniform Agency Project Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the execution and delivery of this Uniform Agency Project Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Uniform Agency Project Agreement shall continue to remain in effect until December 31, 2040.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Uniform Agency Project 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 Uniform Agency Project 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) <u>Addresses</u>. 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.

(C) <u>Change of Address</u>. 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 Uniform Agency Project 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 Uniform Agency Project 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 Uniform Agency Project 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 Uniform Agency Project 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 Uniform Agency Project 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 Uniform Agency Project Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 5.10. SURVIVAL OF OBLIGATIONS. The obligations of the Company to make the filings and listings required by Section 3.02 hereof shall survive the termination of this Uniform Agency Project Agreement, and all such filings and reports after such termination shall be made upon demand of the party to whom such filings and reports are due.

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

done as of the date first above written.	
	CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY
	BY: Rutser (Viee) Chair
	760 BROADWAY LLC
	BY:Authorized Officer
As required under Section 859-a(6) of	DJECT CERTIFICATION  the Act, the Company hereby certifies, under penalty of compliance with all local, state and federal tax, worker gulations.  760 BROADWAY LLC
	BY:Authorized Officer

IN WITNESS WHEREOF, the Agency and the Company have caused this Uniform Agency Project 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

### SPECIAL PROJECT CERTIFICATION

As required under Section 859-a(6) of the Act, the Company hereby certifies, under penalty of perjury, that the Company is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

760 BROADWAY LLC

Authorized Office

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

On the 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.

otary 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	)
1	) ss.
COUNTY OF Albany	)

On the 25th day of April, in the year 2018, before me, the undersigned, personally appeared Dowid Sarcet, 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, 20 19

### **SCHEDULE A**

### NYS-45 QUARTERLY REPORT

NYS-45 <sub>(2/13)</sub>		hholding, Wage Reportin	g, •	
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### 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.

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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. 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.

### SCHEDULE C

## COPY OF PAYMENT IN LIEU OF TAX AGREEMENT

- SEE ATTACHED -

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 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) <u>Power</u>. 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) <u>Authorization</u>. 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) <u>Conflicts</u>. 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) <u>Power</u>. 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) <u>Authorization</u>. 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) <u>Conflicts</u>. 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) <u>Governmental Consent</u>. 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) <u>Special Assessments</u>. 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) <u>Agreement to Make Payments</u>. 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) <u>Time of Payments</u>. 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) <u>Method of Payment</u>. 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 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.

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) <u>First Month</u>. 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) <u>Limited Obligation</u>. 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) <u>Further Limitation</u>. 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) <u>Cross-Default</u>. 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) <u>Separate Suits</u>. 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) <u>Venue</u>. 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) <u>Delay</u>. 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) <u>Notice Not Required</u>. 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) <u>Notices Given by Taxing Entities</u>. 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) <u>Addresses</u>. 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) <u>Copies</u>. 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) <u>Change of Address</u>. 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.

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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

Authorized Officer

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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

Authorized Officer

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

On the 26th 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.

otary Public

Nadane E. Zeigler
Notary Public, State of New York
No. 022E5050898
Qualified in Albany County
Commission Expires October 23, 20 21

STATE OF NEW YORK )

(COUNTY OF Albany )

On the 25th day of April, in the year 2018, before me, the undersigned, personally appeared <u>David Sarcel</u>, 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
Quelified in Alberry County
My Commission Expires Merch 24, 20

#### 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 -

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#### 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:

- Southerly, along the westerly bounds of Broadway a distance of 71.13 feet to a point;
- Southerly, making an interior angle of 185° 04' 12" with the last

feet to a point;

2. Southerly, making an interior angle of 185° 04' 12" with the last described course a distance of 47.03 feet to a point;

3. Southerly, making an interior angle of 180° 48' 51" with the last described course a distance of 103.07 feet to a point;

4. Southerly, making an interior angle of 181° 32' 00" with the last described course a distance of 136.43 feet to a point;

5. Southerly, making an interior angle of 184° 06' 18" with the last described course a distance of 59.49 feet to a point; thence westerly, making an interior angle of 89° 29' 42" with the last described course a distance of 102.44 feet to a point; thence southerly, making an interior angle of 269° 16' 25" with the last described course a distance of 4.50 feet to a point; thence westerly, making an interior angle of 90°43' 35" with the last described course a distance of 20.98 feet to a point; thence northerly, making an interior angle of 90°43' 35" with the last described course a distance of 12,18 feet to a point; thence northerly, making an interior angle of 89° 11' 00" with the last described course a distance of 12,18 feet to a point; thence northerly, making an interior angle of 89° 11' 00" with the last described course a distance of 15.80 feet to a point; thence northerly, making an interior angle of 265°57' 34" with the last described course a distance of 15.05 feet to a point; thence westerly, making an interior angle of 274°05' 00" with the last described course a distance of 15.05 feet to a point; thence westerly, making an interior angle of 274°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; thence northerly, along the easterly bounds of North Pearl Street; thence northerly, along the easterly bounds of North Pearl Street; thence northerly, along 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 the easterly bounds of North Pearl Street and making an interior angle of 9°11' 00" with the last described course a distance of 120.54 feet to a point; thence easterly, making an interior angle of 91° 03' 12" with the last described course a distance of 113.43 feet to a point; thence northerly, making an interior angle of 268° 36' 48" with the last described course a distance of 102.83 feet to a point; thence westerly, making an interior angle of 271°09' 00" with the last described course a distance of 14.82 feet to a point; thence northerly, making an interior angle of 91°06' 45" with the last described course a distance of 34.85 feet to a point; thence easterly, making an interior angle of 88° 53' 12" with the last described course a distance of 37.71 feet to a point; thence northerly, making an interior angle of 258° 59'

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#### 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° 01' with the last described course a distance of 59.50 feet to a point: thence northerly; making an interior angle of 244° 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° 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° 11' 00" with the first course of the parcel herein described.

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#### 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

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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) <u>Payments Project Improvements Assessed Value.</u> (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:

Tax Year	County/ City	School
Commencing in	Percentage of Normal Tax	Percentage of Normal Tax on
Calendar Year	on Assessed Value of	Assessed Value of
	the Improvements	the Improvements
[		
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	100%	100%
during the term of		
this Payment in Lieu		
of Tax Agreement		

(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:
<ol> <li>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</li> </ol>
<ol> <li>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.</li> </ol>
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.
<ol> <li>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.</li> </ol>
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
012001.00146 Business 15859140v7

# SCHEDULE A

# SUMMARY MEMORANDUM/REPORT DESCRIBING GROSS REVENUE

[To Be Completed By The Company]

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# SCHEDULE D

# COPY OF APPLICATION AND AMENDED APPLICATION - SEE ATTACHED -

# CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

# APPLICATION

IMPORTANT NOTICE: The answers to the questions contained in this application are necessary to determine your firm's eligibility for financing und other assistance from the City of Albany Industrial Development Agency. These answers will also be used in the preparation of papers in this transaction. Accordingly, all questions should be answered accurately and completely by an officer or other employee of your firm who is thoroughly familiar with the business and affairs of your firm and who is also thoroughly familiar with the proposed project. This application is subject to acceptance by the Agency.
TO: CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY c/o Department of Economic Development 21 Lodge Street Albany, New York 12207
This application by applicant respectfully states:
APPLICANT: 760 BROADWAY LLC
APPLICANT'S ADDRESS: PO BOX 6515
CITY: ALBANY STATE: NY ZIP CODE: 12206
PHONE NO.: (518) 512-3693 FAX NO.: (518) 472-1227 E-MAIL: DEARRAF@FAIRABNKPROPERT
NAME OF PERSON(S) AUTHORIZED TO SPEAK FOR APPLICANT WITH RESPECT TO THIS APPLICATION: David Sarraf
IF APPLICANT IS REPRESENTED BY AN ATTORNEY, COMPLETE THE FOLLOWING:
NAME OF ATTORNEY: MARC GOLDBERG, PHILLIPS LYTLE LLP
ATTORNEY'S ADDRESS: 30 SOUTH PEARL STREET
CITY: ALBANY STATE: NY ZIP CODE: 12207
PHONE NO.: (518) 472-1224 FAX NO.: (518) 472-1227 E-MAIL: MGOLDBERG@PHILLIPSLYTLE

#### INSTRUCTIONS

- The Agency will not approve any application unless, in the judgment of the Agency, said application and the summary contains sufficient information upon which to base a decision whether to approve or tentatively approve an action.
- Fill in all blanks, using "none" or "not applicable" or "N/A" where the question is not appropriate to the project which is the subject of this application (the "Project").
- If an estimate is given as the answer to a question, put "(est)" after the figure or answer which is estimated.
- 4. If more space is needed to answer any specific question, attach a separate sheet.
- When completed, return one (1) copy of this application to the Agency at the address indicated on the first page of this application.
- The Agency will not give final approval to this application until the Agency receives a completed environmental assessment form concerning the Project which is the subject of this application.
- 7. Please note that Article 6 of the Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the applicant feels that there are elements of the Project which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the applicant's competitive position, the applicant may identify such elements in writing and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law.
- 8. The applicant will be required to pay to the Agency all actual costs incurred in connection with this application and the Project contemplated herein (to the extent such expenses are not paid out of the proceeds of the Agency's bonds issued to finance the Project). The applicant will also be expected to pay all costs incurred by general counsel and bond counsel/special counsel to the Agency. The costs incurred by the Agency, including the Agency's general counsel and bond counsel, may be considered as a part of the Project and included as a part of the resultant bond issue.
- 9. The Agency has established an application fee of One Thousand Five Hundred Dollars (\$1,500) to cover the anticipated costs of the Agency in processing this application. A check or money order made payable to the Agency must accompany each application. THIS APPLICATION WILL NOT BE ACCEPTED BY THE AGENCY UNLESS ACCOMPANIED BY THE APPLICATION FEE.
- 10. The Agency has also established an administrative fee equal to (A) one percent (1%) of the cost of the Project in the case of an Agency Straight Lease Transaction, and (B) one percent (1%) of the aggregate principal amount of the

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bonds to be issued by the Agency in the case of an Agency Bond Transaction. The Agency has also established an administrative fee for the issuance of refunding bonds for Agency Bond Transactions. The formula for the calculation of the administrative fee for the issuance of refunding bonds is outlined in the Agency's Policy Manual. THESE FEES ARE PAYABLE ON THE CLOSING DATE.

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1.	Project Number	
2.	Date application Received by Agency	. 20
3.	Date application referred to attorney for review	. 20
4.	Date copy of application mailed to members	20
5.	Date notice of Agency meeting on application posted	, 20
6.	Date notice of Agency meeting on application mailed	. 20
7.	Date of Agency meeting on application	, 20
8,	Date Agency conditionally approved application	, 20
9.	Date scheduled for public hearing	, 20
10.	Date Environmental Assessment Form ("EAF") recoived	. 20
11.	Date Agency completed environmental review	, 20
12.	Date of final approval of application	, 20

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## SUMMARY OF PROJECT

Applicant: 760 BI	ROADWAY LLC			
Contact Person: D	AVID SARRAF			
Phone Number: (	518) 512-3693			
Occupant: 760 BR	OADWAY LLC			
Project Location: 7	76 (AKA 760) BROADW	VAY, NEW YORK	<b>.</b>	
Approximate Size o	of Project Site: 130,000 S	F		
	ect: 100 NEW CONSTRU	JCTION APARTM	MENTS CONSISTING OF STUDI HERE MAY BE 1 RETAIL SPACI	OS, I E ON
Type of Project:	☐ Manufacturing		☐ Warehouse/Distribution	
	☐ Commercial		☐ Not-For-Profit	
	X Other-Specify MUL	TI FAMILY RESI	IDENTIAL	
Employment Impact:	Existing Jobs			
	New Jobs 2			
Project Cost: \$ 16,5	00.000,00			
Type of Financing:	☐ Tax-Exempt	☐ Taxable	☐ Straight Lease	
Amount of Bonds Re	quested: \$			
Estimated Value of Ta	ex-Exemptions:			
Morty Real	6. Sales and Compensating I gage Recording Taxes: Property Tax Exemptions: (please specify):	S	385.000.00 (EST) 150.000.00 (EST) 220.484.62 (EST)*	
Provide estimates for	the following:			
Estimate of Jo Estimate of Jo	oll Time Employees at the Probs to be Created: who to be Retained: mated Annual Salary of Jobs	•	A Status: 0 2 N/A \$35,000,00	
012001-00025 Business 13638594	ศ	- 5 - *This no	umber is based on the *greater cenario	

Annualized Salary Range of Jobs to be Created: Estimated Average Annual Salary of Jobs to be Retained: \$25,<u>000.00 - \$45,</u>000.00

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1.			ON CONCERNING THE PROPOSED OCCUPANT OF THE PROJECT ER. THE "COMPANY").
	A.	<u>Identit</u> 1.	ty of Company: Company Name: 760 BROADWAY LLC
			Present Address: PO BOX 6515
	•		Zip Code: 12206
			Employer's ID No.: 47-4027113
		2.	If the Company differs from the Applicant, give details of relationship:
		3.	Indicate type of business organization of Company:
			a Corporation (If so, incorporated in what country?  What State? Date Incorporated? Type of Corporation? Authorized to do business in New York?  Yes; No).
			b. Partnership (if so, indicate type of partnership
			c. X Limited liability company, Date created? MAY 2015 (in New York State)
			dSole proprietorship
		4. organiza	Is the Company a subsidiary or direct or indirect affiliate of any other atlon(s)? If so, indicate name of related organization(s) and relationship:  No
	B.	Manage	ment of Company:
		l. for each	List all owners, officers, members, directors and partners (complete all columns person):

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NAME (First, Middle, Last) HOME ADDRESS	OFFICE HELD	OTHER PRINCIPAL BUSINESS
DAVID SARRAF	MEMBER	FAIRBANK PROPERTIES LLC
HARRIS SARRAF	MEMBER	FAIRBANK PROPERTIES LL

- 2. Is the Company or management of the Company now a plaintiff or a defendant in any civil or criminal litigation? Yes  $\underline{\hspace{1cm}}$ ; No  $\underline{\hspace{1cm}} X$ .
- 3. Has any person listed above ever been convicted of a criminal offense (other than a minor truffic violation)? Yes  $\underline{\hspace{1cm}}$ ; No  $\underline{\hspace{1cm}}$  No  $\underline{\hspace{1cm}}$ .
- 4. Has any person listed above or any concern with whom such person has been connected ever been in receivership or been adjudicated a bankrupt? Yes \_\_\_\_; No \_X\_\_. (If yes to any of the foregoing, furnish details in a separate attachment).
- If the answer to any of questions 2 through 4 is yes, please, furnish details in a separate attachment.

#### C. Principal Owners of Company:

- 1. Principal owners of Company: Is Company publicly held? Yes  $\underline{\hspace{1cm}}$ ; No  $\underline{\hspace{1cm}}$ . If yes, list exchanges where stock traded:
- 2. If no, list all stockholders having a 5% or more interest in the Company:

NAME	ADDRESS	PERCENTAGE OF HOLDING
DAVID SARRAF	PO BOX 6515 ALBANY, NY 12206	50%
HARRIS SARRAF	PO BOX 6515 ALBANY, NY 12206	50%

D. Company's Principal Bunk(s) of account: KEYBANK

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#### DATA REGARDING PROPOSED PROJECT II.

- Summary: (Please provide a brief narrative description of the Project.) CONSTRUCT A 5 STORY, APPROXIMATELY 130,000 SF APARTMENT BUILDING WITH PARKING AND POSSIBLY A RETAIL SPACE ON FLOOR 1 AND 100 RESIDENTIAL APARTMENTS ON THE UPPER FLOORS. THE GROUND FLOOR WILL BE A PARKING GARAGE CONSTRUCTED OF STEEL AND CONCRETE
- B. Location of Proposed Project:
  - Street Address 776 (AKA 760) BROADWAY 1.
  - City of ALBANY
    Town of 2.
  - 3
  - 4. Village of
  - 5. County of ALBANY
- C. Project Site:
  - Approximate size (in acres or square feet) of Project site:

    Is a map, survey, or sketch of the project site attached? Yes \_\_\_\_; No \_X\_.

    Are there existing buildings on project site? Yes \_\_\_\_; No \_X\_. a. If yes, indicate number and approximate size (in square feet) of each existing building:
    - Are existing buildings in operation? Yes  $\underline{\hspace{1cm}}$ : No  $\underline{\hspace{1cm}}$ X. If yes, describe present use of present buildings:
    - Are existing buildings abandoned? Yes \_\_\_\_; No \_X\_. About to be abandoned? Yes \_\_\_\_; No \_\_\_\_. If yes, describe:
    - Attach photograph of present buildings.

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3.	Utilities serving project site: Water-Municipal: ALBANY WATER BOARD
	Other (describe)
	Sewer-Municipal: ALBANY WATER BOARD
	Other (describe) Electric-Utility: NATIONAL GRID
	Other (describe)
	Heat-Utility: NATIONAL GRID Other (describe)
4.	Present legal owner of project site:
	a. If the Company owns project site, indicate date of purchase JANUARY, 20 16; Purchase price: \$ 750,000,000  b. If Company does not own the Project site, does Company have option signed with owner to purchase the Project site? Yes; No If yes
	indicate date option signed with owner:, 20; and the date the option
	cxpires:, 20  c. If the Company does not own the project site, is there a relationship legally or by common control between the Company and the present owners of the project site? Yes; No If yes, describe:
5.	a. Zoning District in which the project site is located: C-3 and R-3B
	b. Are there any variances or special permits affecting the site? Yes $\underline{X}$ . If yes, list below and attach copies of all such variances or special permits:
Buildi 1.	ngs;  Does part of the Project consist of a new building or buildings? Yes X; No If yes, indicate number and size of new buildings:
	1 Building +/- 125,000 sf
	Does part of the Project consist of additions und/or renovations to the existing test of the existing test of the expanded or renovated to any expansions and the nature of expansion and/or renovation:
3. buildir	Describe the principal uses to be made by the Company of the building or

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100 RESIDENTIAL APARTMENTS AND POSSIBLY I RETAIL SPACE

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D.

#### E. Description of the Equipment:

- Does a part of the Project consist of the acquisition or installation of machinery, equipment or other personal property (the "Equipment")? Yes X; No\_\_\_\_. If yes, describe the Equipment:
   HEATING SYSTEMS, ELECTRICAL SYSTEMS, SPRINKLER SYSTEMS, ELEVATOR SYSTEMS AND FURNISHINGS CONSISTENT WITH ANS APARTMENT BUILDING
- With respect to the Equipment to be acquired, will any of the Equipment be Equipment which has previously been used? Yes\_\_\_\_; No\_X\_. If yes, please provide detail:
- Describe the principal uses to be made by the Company of the Equipment to be acquired or installed:

## SUPPORT MULTI FAMILY OCCUPANCY

#### F. Project Use:

1. What are the principal products to be produced at the Project?

#### **Apartments**

2. What are the principal activities to be conducted at the Project?

#### **MULTI FAMILY ACTIVIES**

- Does the Project include facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities? Yes X; No \_\_\_\_\_\_. If yes, please provide detail: Apartments & possibly Retail
- 4. If the answer to question 3 is yes, what percentage of the cost of the Project will be expended on such facilities or property primarily used in making retail sales of goods or services to customers who personally visit the Project?  $\underline{-100}$ %
- 5. If the answer to question 3 is yes, and the answer to question 4 is more than 33.33%, indicate whether any of the following apply to the Project:
  - Will the Project be operated by a not-for-profit corporation? Yes\_\_\_\_;
     No\_X\_. If yes, please explain:

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- b. Is the Project likely to attract a significant number of visitors from outside the economic development region in which the Project will be located? Yes.....; No.X... If yes, please explain:
  c. Would the Project occupant, but for the contemplated financial assistance from the Agency, locate the related jobs outside the State of New York? Yes....; No.X... If yes, please explain:
  d. Is the predominant purpose of the Project to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the city, town or village within which the Project will be located, because of a lack of reasonably accessible retail trade facilities offering such goods or services? Yes......; No.X... If yes, please
- 6. If the answers to any of subdivisions c, through e, of question 5 is yes, will the Project preserve permanent, private sector jobs or increase the overall number of permanent, private sector jobs in the State of New York? Yes. X; No.................. If yes, please explain:

  THE DEVELOPMENT OF THIS PROJECT WILL LEAD TO THE CREATION OF PRIVATE SECTOR JOBS WITH THE ADDITION OF 100 NEW APARTMENTS AND POSSIBLY ONE RETAIL SPACE THAT WILL NEED TO BE MANAGED AND MAINTAINED
- 7. Will the completion of the Project result in the removal of a plant or facility of the Company or another proposed occupant of the Project (a "Project Occupant") from one area of the State of New York to another area of the State of New York? Yes\_\_\_; No\_X\_ If yes, please explain:
- Will the completion of the Project result in the abandonment of one or more plants or facilities of the Company located in the State of New York? Yes\_\_\_\_; No\_X\_.
   If yes, please provide detail:

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provide detail:

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- 9. If the answer to either question 7 or question 8 is yes, indicate whether any of the following apply to the Project:
  - a. Is the Project reasonably necessary to preserve the competitive position
    of the Company or such Project Occupant in its industry? Yes\_\_\_\_;
    No\_\_\_\_. If yes, please provide detail:

N/A

Is the Project reasonably necessary to discourage the Company or such
Project Occupant from removing such other plant or facility to a location
outside the State of New York? Yes\_\_\_\_; No\_\_\_\_. If yes, please provide
detail: N/A

#### G. Other Involved Agencies:

1. Please indicate all other local agencies, boards, authorities, districts, commissions or governing bodies (including any city, county and other political subdivision of the State of New York and all state departments, agencies, boards, public benefit corporations, public authorities or commissions) involved in approving or funding or directly undertaking action with respect to the Project. For example, do you need a municipal building permit to undertake the Project? Do you need a zoning approval to undertake the Project? If so, you would list the appropriate municipal building department or planning or zoning commission which would give said approvals.

CITY OF ALBANY PLANING BOARD CITY OF ALBANY DEPARTMENT OF REGULATORY COMPLIANCE

2. Describe the nature of the involvement of the federal, state, or local agencies described above:

SITE PLAN APPROVAL (EXPECTED 9.15.16) - ALBANY DEPARTMENT OF DEVELOPMENT & PLANNING BUILDING PERMIT APPROVAL - ALBANY DEPARTMENT OF BUILDINGS & REGULATORY COMPLIANCE

#### H. Construction Status:

1. Has construction work on this Project begun? Yes \_\_\_\_\_; No \_X\_. If yes, please discuss in detail the approximate extent of construction and the extent of completion. Indicate in your answer whether such specific steps have been completed as site clearance and preparation; completion of foundations; installation of footings; etc.:

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- 2. Please indicate amount of funds expended on this Project by the Company in the past three (3) years and the purposes of such expenditures:
  \$840,000.00
- Please indicate the date the applicant estimates the Project will be completed: SUMMER 2018
- I. Method of Construction After Agency Approval:
  - 1. If the Agency approves the Project which is the subject of this application, there are two methods that may be used to construct the Project. The applicant can construct the Project privately and sell the Project to the Agency upon completion. Alternatively, the applicant can request to be appointed as "agent" of the Agency, in which case certain laws applicable to public construction may apply to the Project. Does the applicant wish to be designated as "agent" of the Agency for purposes of constructing the Project? Yes X.; No \_\_\_\_.
  - If the answer to question 1 is yes, does the applicant desire such "agent" status prior to the closing date of the financing? Yes\_\_\_\_; No\_X\_.
- III. INFORMATION CONCERNING LEASES OR SUBLEASES OF THE PROJECT. (PLEASE COMPLETE THE FOLLOWING SECTION IF THE COMPANY INTENDS TO LEASE OR SUBLEASE ANY PORTION OF THE PROJECT).
  - A. Does the Company intend to lease or sublease more than 10% (by area or fair market value) of the Project? Yes X; No\_\_\_\_\_. If yes, please complete the following for each existing or proposed tenant or subtenunt:
    - 1. Sublessee name: RESIDENTIAL TENANTS

Present Address: N/A

City: N/A State: N/A Zip: N/A

Employer's ID No.: N/A

Sublessee is: \_\_\_\_ Corporation: \_\_\_\_ Partnership: \_\_\_\_ Sole Proprietorship

Relationship to Company: N/A

Percentage of Project to be leased or subleased: 100% Use of Project intended by Sublessee: RESIDENTIAL.

Date of lease or sublease to Sublessee: TBD

Term of lease or sublease to Sublessee: 1 YEAR LEASES

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Will any portion of the space leased by this sublessee be primarily used in making retail sales of goods or services to customers who personally visit the Project? Yes\_\_\_;  $No_X$ . If yes, please provide on a separate attachment (a) details and (b) the answers to questions II(F)(4) through (6) with respect to such sublessee.

2. Sublessee name: TBD

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	Down A 4.1 - N/A
	Present Address: N/A
,	City: N/A State: N/A Zip: N/A Employer's ID No.: N/A
	4 ***
•	Sublessee is:
;	Corporation:Partnership: Sole Proprietorship
	Relationship to Company: N/A
	Percentage of Project to be leased or subleased: 100%
	Use of Project Intended by Sublessee: TBD
	Date of lease or sublease to Sublessee: TBD
	Term of lease or sublease to Sublessee: TED
	Will any portion of the space leased by this sublessee be primarily used in
	making retail sales of goods or services to customers who personally visit the
	Project? Yes X; No If yes, please provide on a separate attachment (a)
	details and (b) the answers to questions II(F)(4) through (6) with respect to such
8	sublessee. TBD
3. 8	Sublessec name:
I	Present Address:
(	City: Zip:
	Employer's ID No.:
	Sublessee is: Corporation: Partnership: Sole Proprietorship
	Relationship to Company:
	Percentage of Project to be leased or subleused:
į	Use of Project intended by Sublessee:
	Dute of lease or sublease to Sublessee:
7	Term of lease or sublease to Sublessee:
	Will any portion of the space leased by this sublessee be primarily used in
	making retail sales of goods or services to customers who personally visit the
	Project? Yes; No If yes, please provide on a separate attachment (a)
	details and (b) the answers to questions II(F)(4) through (6) with respect to such
	sublessee.
	reentage of the space intended to be leased or subleased is now subject to a
binding written le	
	NONE

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## IV. <u>Employment Impact</u>

A. Indicate the number of people presently employed at the Project site and the <u>additional</u> number that will be employed at the Project site at the end of the first and second years after the Project has been completed, using the tables below for (1) employees of the Applicant, (2) independent contractors, and (3) employees of independent contractors. (Do not include construction workers). Also indicate below the number of workers employed at the Project site representing newly created positions as opposed to positions relocated from other project sites of the applicant. Such information regarding relocated positions should also indicate whether such positions are relocated from other project sites financed by obligations previously issued by the Agency.

TYPE OF EMPLOYMENT Employees of Applicant							
Professional or Skilled Scmi-Skilled Un-Skilled Total							
Present Full Time							
Present Part Time							
Present Seasonal	·						
First Year Full Time	ı		1		2		
First Year Part Time							
First Year Seasonal							
Second Year Full Time 1				2			
Second Year Part Time							
Second Year Seasonal							

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TYPE OF EMPLOYMENT N/A Independent Contractors							
Professional or Skilled Semi-Skilled Un-Skilled Totals							
Present Full Time							
Present Part Time							
Present Sensonal							
First Year Full Time							
First Year Part Time							
First Year Seasonal							
Second Year Full Time	Second Year Full Time						
Second Year Part Time							
Second Year Seasonal							

TYPE OF EMPLOYMENT N/A Employees of Independent Contractors							
Professional or Skilled Semi-Skilled Un-Skilled Totals Managerial							
Present Full Time	Present Full Time						
Present Part Time	Present Part Time						
Present Scasonal							

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First Year Full Time			
First Year Part Time			
First Year Seasonal			
Second Year Full Time			
Second Year Part Time			
Second Year Sensonal			

B. Indicate below (1) the estimated salary and fringe benefit averages or ranges and (2) the estimated number of employees residing in the Capital Region Economic Development Region for all the jobs at the Project site, both retained and created, listed in the tables described in subsection A above for each of the categories of positions listed in the chart below.

RELATED EMPLOYMENT INFORMATION							
	Professional or Managerial	Skilled Semi-Ski		Un-Skilled			
Estimated Salary and Fringe Benefit Averages or Ranges	\$45,000		\$25,000.00				
Estimated Number of Employees Residing in the Capital Region Economic Development Region <sup>1</sup>	1		į				

C. Please describe the projected timeframe for the creation of any new jobs with respect to the undertaking of the Project:

THE COMPLETION OF THIS PROJECT. WILL RESULT IN THE EMPLOYMENT OF A PROPERTY MANAGER AND MAINTANANCE PERSON WHO WHILL OVERSEE THE DAILY OPERATION OF THE BUILDING,

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<sup>&</sup>lt;sup>1</sup> The Capital Region Economic Development Region consists of the following counties: Albany, Schenectudy, Rensselaer, Greene, Columbia, Saratoga, Warren und Washington.

D. Please prepare a separate attachment describing in detail the types of employment at the Project site. Such attachment should describe the activities or work performed for each type of employment.

## V. Project Cost and Financing Sources

A. <u>Anticipated Project Costs.</u> State the costs reasonably necessary for the acquisition of the Project site, the construction of the proposed buildings and the acquisition and installation of any machinery and equipment necessary or convenient in connection therewith, and including any utilities, access roads or appurtenant facilities, using the following categories:

Description of Cost	Amount
Land	\$ 750,000.00
Buildings	\$ 13,550,000.00 (EST)
Machinery and equipment costs	\$
Utilities, roads and appurtenant costs	\$
Architects and engineering fees	\$ 325,000.00 (EST)
Costs of Bond Issue (legal, financial and printing)	\$
Construction loan fees and interest (if applicable)	\$ 400,000.00 EST
Other (specify)	
OTHER SOFT COSTS	\$ <u>1.475,000,00 (EST)</u>
	\$
	\$
TOTAL PROJECT COSTS	s <u>16.500.000.00</u>

B. Anticipated Project Financing Sources. State the sources reasonably necessary for the financing of the Project site, the construction of the proposed buildings and the acquisition and installation of any machinery and equipment necessary or convenient in connection therewith, and including any utilities, access roads or appurtenant facilities, using the following categories:

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## IV. EMPLOYMENT IMPACT

D. Description of types of employment upon completion of the project:

Property Manager - Responsibilities include leasing and tenant services

Maintenance Person – Responsibilities include daily monitoring of property, cleaning, minor repairs where necessary

Description of Sources	Amount
Private Sector Financing	\$
Public Sector	
Federal Programs	\$
State Programs	\$
Local Programs	\$
Applicant Equity	\$ 4.500,000,00 (EST)
Other (specify, e.g., tax credits)	
COMMUNITY PRESERVATION CORPORATION	\$ 12,000,000.00 (EST)
	\$
The state of the s	\$
TOTAL AMOUNT OF PROJECT FINANCING SOURCES	s <u>16,500,000.00</u>
Have any of the above expenditures already been Yes X; No If yes, indicate particulars.  \$750,000.00 - ACQUISITION  \$ 90,000.00 - ARCHITECTURAL & ENGINEERING	
Amount of loan requested: \$_12,000,000,000;	
Maturity requested:2years.	
las a commitment for financing been received as of this ap	plication date, and if so, from
es; No_X Institution Name: COMMUNITY	PRESERATION CORPO
rovide name and telephone number of the person we may o	contact.
Name: MICHAEL SKREBUTENAS Phone: (5	18) 859-2468
The percentage of Project costs to be financed from public qual the following:	sector sources is estimated to

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C.

D.

E.

F.

G. The total amount estimated to be borrowed to finance the Project is equal to the following: \$ 12,000,000,000

BENEFITS EXPECTED FROM THE AGENCY

## Financing Is the applicant requesting that the Agency issue bonds to assist in financing the Project? Yes \_\_\_\_\_; No \_X\_\_. If yes, indicate: ١. Amount of loan requested: \_\_\_ \_Dollars; a. b. Maturity requested: \_\_\_\_Years. Is the interest on such bonds intended to be exempt from federal income taxation? N/A Yes \_\_\_\_; No \_\_\_ If the answer to question 2 is yes, will any portion of the Project be used for any of the following purposes: N/A3. retail food and beverage services: Yes\_\_\_; No\_ automobile sales or service: Yes\_\_; No\_\_\_\_\_; No\_\_\_\_\_; No\_\_\_\_\_; No\_\_\_\_\_; Ь. c. d. golf course: Yes\_\_; No\_ country club: Yes\_\_; No\_ massage purlor: Yes\_\_; No\_ tennis club: Yes\_\_; No\_ c. ſ. g. fi. skating facility (including roller skating, skateboard and ice skating): Yes\_\_\_; No\_\_\_\_ i. racquet sports facility (including handball and racquetball court): Yes\_\_\_; No\_\_\_ hot tub facility: Yes\_\_\_; No\_\_\_ suntan facility: Yes\_\_\_; No\_\_\_ racetrack: Yes\_\_\_; No\_\_\_ If the answer to any of the above questions contained in question 3 is yes, please furnish details on a separate attachment. Is the Project located in the City's federally designated Enterprise Zone? Yes\_\_\_; No\_\_\_. N/A б. Is the applicant requesting the Agency to issue federally tax-exempt Enterprise Zone bonds? Yes\_\_\_; No\_X\_. Tax Benefits Is the applicant requesting any real property tax exemption that would not be

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2. Is the applicant expecting that the financing of the Project will be secured by one or more mortgages? Yes X; No \_\_\_\_. If yes, what is the approximate amount of financing to be secured by mortgages?  $\frac{12.000.0001.00}{1.000}$ .

available to a project that did not involve the Agency? Yes X; No

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B.

VI.

A.

- 3. Is the applicant expecting to be appointed agent of the Agency for purposes of avoiding payment of N.Y.S. Sales Tax or Compensating Use Tax? Yes \_X; No \_\_\_\_. If yes, what is the approximate amount of purchases which the applicant expects to be exempt from the N.Y.S. Sales and Compensating Use Taxes? \$\_\$4,812,500.00\_\_.
- 4. What is the estimated value of each type of tax-exemption being sought in connection with the Project? Please detail the type of tax-exemption and value of the exemption.

a.	N.Y.S. Sales and Compensating Use Taxes:	\$ 385,000.00
b.	Mortgage Recording Taxes:	\$_150,000.00_
c.	Real Property Tax Exemptions:	\$ 5,220,484.62
d.	Other (please specify):	\$

5. Are any of the tax-exemptions being sought in connection with the Project inconsistent with the Agency's Uniform Tax Exemption Policy? Yes X; No \_\_\_. If yes, please explain.

THE TAX EXEMPTIONS BEING SOUGHT ARE A DEVIATION FROM THE AGENCY'S UNIFORM EXEMPTION POLICY

- Is the Project located in the City's state designated Empire Zone? Yes X;
   No\_\_\_\_.
- C. <u>Project Cost/Benefit Information</u>. Complete the attached Cost/Benefit Analysis so that the Agency can perform a cost/benefit analysis of undertaking the Project. Such information should consist of a list and detailed description of the benefits of the Agency undertaking the Project (e.g., number of jobs created, types of jobs created, economic development in the area, etc.). Such information should also consist of a list and detailed description of the costs of the Agency undertaking the Project (e.g., tax revenues lost, buildings abandoned, etc.).
- VII. REPRESENTATIONS BY THE APPLICANT. The applicant understands and agrees with the Agency as follows:
  - A. <u>Job Listings</u>. 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.
  - B. <u>First Consideration for Employment</u>. In accordance with Section 858-b(2) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, 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 the JTPA Entities for new employment opportunities created as a result of the Project.

- C. <u>City Human Rights Law</u>. The applicant has reviewed the provisions of Chapter 48, Article III of the City Code, entitled "The Omnibus Human Rights Law" and agrees to comply with such provisions to the extent that such provisions are applicable to the applicant and the Project.
- D. Annual Sales Tax Filinus. In accordance with Section 874(8) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the applicant and all consultants or subcontractors retained by the applicant.
- E. <u>Annual Employment Reports.</u> The applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the applicant agrees to file, or cause to be filed, with the Agency, on an annual basis, reports regarding the number of people employed at the Project site, including (1) the NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return for the quarter ending December 31 (the "NYS-45"), and (2) the US Dept, of Labor BLS 3020 Multiple Worksite report if applicable. The applicant also agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the participation of individuals from minority groups as employees or applicants for employment with regard to the project.
- F. <a href="Lubor Information"><u>Local Lubor Information</u></a>. The applicant is aware of and understands the provisions of Part 24 of the Policy Manual of the Agency, Pursuant to Part 24 of the Policy Manual of the Agency, the applicant agrees to provide information, in form and substance satisfactory to the Agency, relating to construction activities for projects; specifically: (i) the Company's contact person responsible and accountable for providing information about the bidding for and awarding of construction contracts relative to this Application and the Project, (ii) the nature of construction jobs created by the Project, including the number, type, and duration of construction positions; and (iii) submit to the Agency a "Construction Completion Report" listing the names and business locations of prime contractors, subcontractors, and vendors who were engaged in the construction phase of the Project.
- G. <u>Additional Fee for Law Income Housing/Tax Credit (9% only) Projects.</u> An annual administrative fee equal to \$10,000 shall be payable annually by the applicant on each January I for a term equal to ten (10) years. This annual administrative fee is in addition to the standard administrative fee for Agency Straight Lease Transactions and Agency Bond Transactions and is applicable to Projects which provide for low income housing/tax credit (9% only) projects.
- H. <u>Project Benefits Agreement.</u> The applicant agrees to enter into a project benefits agreement with the Agency where the applicant agrees that (1) the amount of Financial Assistance to be received shall be contingent upon, and shall bear a direct relationship to the success or lack of success of such project in delivering certain described public benefits (the "Public Benefits") and (2) the Agency will be entitled to recapture some or all of the Financial Assistance granted to the applicant if the project is unsuccessful in whole or in part in delivering the promised Public Benefits.
- Assignment of Agency Abatements. In connection with any Agency Straight Lease Transaction or Agency Bond Transaction, the Agency may grant to the applicant certain exemptions from mortgage recording taxes, sales and use taxes and real property taxes. The

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applicant understands that the grant of such exemptions by the Agency is intended to benefit the applicant. Subsequently, if the applicant determines to convey the Project and, in connection with such conveyance to assign such exemptions to the purchaser, the applicant understand that any such assignment is subject to review and consent by the Agency, together with the satisfaction of any conditions that may be imposed by the Agency.

- J. Post Closing Cost Verification. The applicant agrees (1) the scope of the Project will not vary significantly from the description in the public hearing resolution for the project and (2) to deliver to the Agency within sixty (60) days following the completion date of a project an affidavit providing the total costs of the project. In the event that the amount of the total project costs described in the affidavit at the completion date exceeds the amount described in an affidavit provided by the applicant on the closing date of the project, the applicant agrees to adjust the amounts payable by the applicant to the Agency by such larger amount and to pay to the Agency such additional amounts. In the event that the amount described is less, there shall not be any adjustment to the Agency fees.
- K. Representation of Financial Information. Neither this Application nor any other agreement, document, certificate, project financials, or written statement furnished to the Agency or by or on behalf of the applicant in connection with the project contemplated by this Application contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading. There is no fact within the special knowledge of any of the officers of the applicant which has not been disclosed herein or in writing by them to the Agency and which materially adversely affects or in the future in their opinion may, insofar as they can now reasonably foresee, materially adversely affect the business, properties, assets or condition, financial or otherwise, of the applicant.
- L. <u>Agency Financial Assistance Required for Project.</u> The Project would not be undertaken but for the Financial Assistance provided by the Agency or, if the Project could be undertaken without the Financial Assistance provided by the Agency, then the Project should be undertaken by the Agency for the following reasons: NIA

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- M. Compliance with Article 18-A of the General Municipal Law: The Project, as of the date of this Application, is in substantial compliance with all provisions of article 18-A of the General Municipal including, but not limited to, the provisions of Section 859-a and subdivision one of Section 862; and the provisions of subdivision one of Section 862 of the General Municipal Law will not be violated if Financial Assistance is provided for the Project.
- N. <u>Compliance with Federal, State, and Local Laws</u>. The applicant is in substantial compliance with applicable local, state, and federal tax, worker protection, and environmental laws, rules, and regulations.
- O. <u>False or Misleading Information</u>. The applicant understands that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any Financial Assistance and the reimbursement of an amount equal to all or part of any tax exemptions claimed by reason of Agency involvement in the Project.
- P. <u>Absence of Conflicts of Interest</u>. The applicant acknowledges that the members, officers and employees of the Agency are listed on the Agency's website. No member, officer or employee of the Agency has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as hereinafter described: NONE

0.

Additional Information. Additional information regarding the requirements noted in this Application and other requirements of the Agency is included the Agency's Policy Manual which can be accessed at <a href="https://www.alhanyida.com">www.alhanyida.com</a>.

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I affirm under penalty of perjury that all statements made on this application are true, accurate and complete to the best of my knowledge.

By:

Applicant David Sarraf

Title:

Managing Member - 760 Broadway LLC

NOTE: APPLICANT MUST ALSO COMPLETE THE APPROPRIATE VERIFICATION APPEARING ON PAGES 26 THROUGH 29 HEREOF BEFORE A NOTARY PUBLIC <u>AND</u> MUST SIGN AND ACKNOWLEDGE THE HOLD HARMLESS AGREEMENT APPEARING ON PAGE 30

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(If Applicant is a Corporation)

(Name of chief executive of appl	and says that he is the
of	
(Title) (Compa	my Name)
	ched application; that he has read the foregoing application and
	same is true and complete and accurate to the best of his know
reponent muruer, says mar me ter	son this verification is made by the deponent and not by said co
is because the said company is a	compension. The amounds of denominate hollof relative to all ma
the said application which are n	ot stated upon his own personal knowledge are investigations
the said application which are n deponent has caused to be made acquired by deponent in the cour	ot stated upon his own personal knowledge are investigations concerning the subject matter of this application as well as info
the said application which are n deponent has caused to be made acquired by deponent in the cour	ot stated upon his own personal knowledge are investigations concerning the subject matter of this application as well as info
the said application which are n deponent has caused to be made	corporation. The grounds of deponent's belief relative to all ma of stated upon his own personal knowledge are investigations concerning the subject matter of this application as well as infor se of his duties as an officer of and from the books and papers
the said application which are n deponent has caused to be made a acquired by deponent in the cour	ot stated upon his own personal knowledge are investigations concerning the subject matter of this application as well as infor
the said application which are n deponent has caused to be made acquired by deponent in the cour corporation.	ot stated upon his own personal knowledge are investigations concerning the subject matter of this application as well as infor see of his duties as an officer of and from the books and papers
the said application which are n deponent has caused to be made acquired by deponent in the cour	ot stated upon his own personal knowledge are investigations concerning the subject matter of this application as well as infor see of his duties as an officer of and from the books and papers

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(If applicant is sole proprietor)

	, deposes and says
(Name of Indivi	idual)
	oregoing application and knows the contents thereof; and that the same is to the best of his knowledge. The grounds of deponent's belief relative
matters in the said ap	plication which are not stated upon his own personal knowledge are invest
which deponent has cr	aused to be made concerning the subject matter of this application.
•	• •
•	
•	
·	
Sworn to before me th	
·	

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(If applicant is limited liability company)

STATE OF Now King SS.:

David Sarruf

\_, deposes and says

(Name of Individual)

that he is one of the members of the firm of \_

(Limited Liability Company)

760 Broadway LLC

the limited liability company named in the attached application; that he has read the foregoing application and knows the contents thereof; and that the same is true and complete and accurate to the best of his knowledge. The grounds of deponent's belief relative to all matters in the said application which are not stated upon his own personal knowledge are investigations which deponent has caused to be made concerning the subject matter of this application as well as information acquired by deponent in the course of his duties as a member of and from the books and papers of said invited liability company.

Sworn to before me this

(Notary Public)

MARC H. GOLDBERG
NOTARY PUBLIC-STATE OF NEW YORK
NO. 02GO4939602
Qualified in Sarataga County
Commission Expires July 05, 20/6

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(If applicant is partnership)

(Name of Individual)	deposes and says
that he is one of the member	rs of the firm of
the contents thereof; and that grounds of deponent's belief own personal knowledge are matter of this application as	(Partnership Name) the attached application; that he has read the foregoing application the same is true and complete and accurate to the best of his known relative to all matters in the said application which are not state investigations which deponent has caused to be made concerning well as information acquired by deponent in the course of his oks and papers of said pattnership.
Sworn to before me this, 20	
(Notary Public)	
•	

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#### HOLD HARMLESS AGREEMENT

Applicant hereby releases City of Albany Industrial Development Agency and the members, officers, servants, agents and employees thereof (hereinafter collectively referred to as the "Agency") from, agrees that the Agency shall not be liable for and agrees to indemnify, defend and hold the Agency harmless from and against any and all liability arising from or expense incurred by (i) the Agency's examination and processing of, and action pursuant to or upon, the attached Application, regardless of whether or not the application or the project described therein or the issue of bonds requested therein are favorably acted upon by the Agency, and (ii) the Agency's financing of the Project described therein; including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. If, for any reason, the Applicant fails to conclude or consummate necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable, proper or requested action, or withdraws, abandons, cancels or neglects the Application, or if the Agency or the Applicant are unable to find buyers willing to purchase the total bond issue requested, then, and in that event, upon presentation of an invoice fremizing the same, the Applicant shall pay to the Agency, its agents or assigns, all actual costs incurred by the Agency in the processing of the Application, including attorneys' fees, if any.

worn to before me this 2016

(Notary Public) MARC H. GOLDBERG NOTARY PUBLIC-STATE OF NEW YORK No. 02GO4939602 Qualified in Saratoga County /

- 31 -

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TO:

FROM:

Project Applicants City of Albany Industrial Development Agency

RE: Cost/Benefit Analysis

In order for the City of Albany Industrial Development Agency (the "Agency") to prepare a Cost/Benefit Analysis for a proposed project (the "Project"), the Applicant must answer the questions contained in this Project Questionnaire (the "Questionnaire") and complete the attached Schedules. This Questionnaire and the attached Schedule will provide information regarding various aspects of the Project, and the costs and benefits associated therewith.

This Questionnaire must be completed before we can finalize the Cost/Benefit Analysis, please complete this Questionnaire and forward it to us at your earliest convenience.

#### **PROJECT OUESTIONNAIRE**

1.	Name of Project Beneficiary ("Company"):	760 BROADWAY LLC
2.	Brief Identification of the Project:	The state of the s
3.	Estimated Amount of Project Benefits Sought:	
	A. Amount of Bonds Sought:	\$_N/A
	B. Value of Sales Tax Exemption Sought	\$_385,000.00 (EST)
	C. Value of Real Property Tax Exemption Sough	s 5.220,484.62 (EST)
- 30.40	D. Value of Mortgage Recording Tax Exemption Sought	
4.	Likelihood of accomplishing the Project in a time	ly Yes X No
	fashion (please explain):	Applicant has ownership of property;  Applicant will be receiving planning approval on 9.15.16  Applicant will have a financing commitment upon approval of PILOT Programments.
		Applicant is in the process of drawing construction documents

#### PROJECTED PROJECT INVESTMENT

A.	Land-Related Costs	
i 1.	Land acquisition	\$ 750,000.00
2.	Site preparation	\$
3.	Landscaping	\$
4.	Utilities and infrastructure development	\$
5.	Access roads and parking development	5
6.	Other land-related costs (describe)	\$
В.	Building-Related Costs	! Dagging of and thinkforther from the commission of a second of the commission of t
, I.	Acquisition of existing structures	\$
2.	Renovation of existing structures	S
3.	New construction costs	\$_10,700,000,00 (EST)
4.	Electrical systems	\$ 1,350,000.00 (EST)
5.	Heating, ventilation and air conditioning	\$ 800,000.00 (EST)
6.	Plumbing	\$ 700,000.00 (EST)
7.	Other building-related costs (describe)	\$

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C. 1. 2. 3. 4. 5.	Packuging equipment Warehousing equipment Installation costs for various equipment	\$ 5 5 \$
D.	Furniture and Fixture Costs	
١.		\$
2.	Office equipment	\$
	Computers	\$
	Other furniture-related costs (describe)	5
E.	Working Capital Costs	
١,	<u> </u>	\$
2.	Production costs	\$ <u></u>
3.	Raw nuterials	\$
4.	Debt service	\$
5.	Relocation costs	\$
6.	Skills training	\$
7.	•	\$
F.	Professional Service Costs	
١.	Architecture and engineering	\$_325,000,00 (EST)
2.	Accounting/legal	\$ 50,000.00 (EST)
3.	Other service-related costs (describe)	\$ 1.575,000,00 (EST)
G.	Other Costs	
1.	PILOT COSTS	\$ 170,000.00 (EST)
2.	RE TAXES	\$ <u>80,000.00 (EST)</u>
H.	Summary of Expenditures	
1.	Total Land-Related Costs	\$ 750,000,00
2.		\$13,550,000,00 (EST)
3,	Total Machinery and Equipment Costs	\$
4.	Total Furniture and Fixture Costs	\$
5.	Total Working Cupital Costs	\$
G.	Total Professional Service Costs	\$1,950,000,00 (EST)
7.	Total Other Costs	s 250,000.00 (EST)

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#### PROJECTED PROFIT

1. Please provide projected profit as defined by earnings after income tax but hefore depreciation and amortization:

YEAR		Without IDA benefits		With IDA benefits
ı	\$_	-65,000,00 (EST)	. \$	210,000,00 (EST)
2	S	-46,000.00 (EST)	S	234,000.00 (EST)
3	\$	-27.000.00 (EST)	s	259,000,00 (EST)
4	\$	- 7.000,00 (EST)	\$	285,000.00 (EST)
5	\$	12.000.00 (EST)	Š	311.000.00 (EST)

#### PROJECTED CONSTRUCTION EMPLOYMENT IMPACT

 Please provide estimates of total construction jobs and the total annual wages and benefits of construction jobs at the Project;

Year	Number of Construction Jobs	Total Annual Wages and Benefits	Estimated Additional NYS Income Tax
Current Year	30 (EST)	\$ 1.500,000.00 INCLUDING BENEFITS (EST\$ ]	
Year I	70 (EST)	\$ 3,500,000,000 INCLUIDING BENEFITS (EST\$ 2	30.000.00 (EST)
Year 2		\$ \$	
Year 3		\$ S	
Year 4		\$ \$_	
Year 5		\$ <b>S</b>	

#### PROJECTED PERMANENT EMPLOYMENT IMPACT

- Estimates of the total number of existing permanent jobs to be preserved or retained as a result of the Project are described in the tables in Section IV of the Application. N/A
- II. Estimates of the total new permanent jobs to be created at the Project are described in the tables in Section IV of the Application.
- III. Please provide estimates for the following:
  - A. Creation of New Job Skills relating to permanent jobs. Please complete Schedule A.
- IV. Provide the projected percentage of employment that would be filled by City of Albany residents:
  - A. Provide a brief description of how the project expects to nicet this percentage:

Local contractors who will be used during the construction of this project will be asked about their employment of City of Albany Residents

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#### PROJECTED OPERATING IMPACT

I. Please provide estimates for the impact of Project operating purchases and sales:

Additional Purchases (1st year following project completion)	\$ 10,000.00 (EST)
Additional Sales Tax Paid on Additional Purchases	\$800.00 (EST)
Estimated Additional Sales (In full year following project completion)	sN/A
Estimated Additional Sales Tax to be collected on additional sales (1 full year following project completion)	\$N/A

II. Please provide estimates for the impact of Project on existing real property taxes and new payments in lieu of taxes ("Pilot Payments"):

D	 DE O	T Payments

Year	Existing Real	New Pilot *	Total
	Property Taxes	Payments	(Difference)
	(Without IDA involvement)	(With IDA)	
Current Year	38,000.00 (EST)	38,000.00 (EST)	0.00 (EST)
Year 1	38,500.00 (EST)	38,500,00 (EST)	0.00 (EST)
Year 2	325,000.00 (EST)	39,000.00 (EST)	286,000.00 (EST)
Year 3	330,000.00 (EST)	40,000.00 (EST)	290,000.00 (EST)
Year 4	335,000,00 (EST)	40,500.00 (EST)	294,500,00 (EST)
Year 5	340,000.00 (EST)	41,500.00 (EST)	298,500.00 (EST)
Year 6 Year 7	350,000,00 (EST)	42,500.00 (EST)	307,000,00 (EST)
Year 8	355,000.00 (EST)	43,500.00 (EST)	311,500,00 (EST)
Year 9	360,000,00 (EST)	44,000.00(EST)	316,000,00 (EST)
Year 10	370,000.00 (EST)	60,000.00 (EST)	310,000.00 (EST)

III. Please provide a detailed description for the impact of other economic benefits and all anticipated community benefits expected to be produced as a result of the Project (attach additional pages as needed for a complete and detailed response):

See attached.

The property tax exemption that was used on the initial project application submitted May 2015 was based on the "greater than" scenario.

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<sup>\*</sup> The total real property tax exemption based on the "greater than" scenario is \$5,220,484.62 and the respective PILOT payments total \$2,408,011.64. The total real property tax exemption based on the "percentage" scenario is \$5,474,885.63 and the respective PILOT payments total \$2,153,610.63.

# PROJECTED OPERATING IMPACT

776 (aka 760) Broadway is currently a vacant lot in Albany, NY. The construction of 100 apartments on this property will have a significant economic impact on the downtown area.

Over the next 2 years, there will be approximately 50-75 short-term jobs directly created by the construction of this building. Once completed, this project will make a significant contribution to the economic revitalization of Downtown Albany by increasing the number of permanent jobs as it will expedite the progress of commercial and retail markets trying to gain momentum. Additionally, while the residential market in Downtown Albany has progressed positively in recent years, the lack of comparable projects have made new construction too risky for Developers and Financiers. The challenge has been finding those willing to invest in something that hasn't been done. Its completion will hopefully lead others to follow suit., which in turn would lead to more economic activity.

Another impact that these 100 new residential units and an indoor parking garage will have is the connection of 3 neighborhoods of downtown Albany that have struggled to gain momentum in their efforts to create thriving commercial and retail markets.

760 Broadway is located right in the middle of three Downtown neighborhoods:

To the North, the Warehouse District – an area that has long been industrial,
but recently shown signs of residential life with the opening of
restaurants and bars and apartment proposals in the pipeline.

To the south, Downtown Proper – once a thriving business district, over the last two decades it has experienced a significant economic slowdown with an increase in commercial and retail vacancy rates. It has now gained considerable momentum with offices beginning to return, and a residential market that is showing signs of strength which will hopefully provide a foundation for a thriving retail market.

To the West, the North Pearl Street Historic District – a residential neighborhood with a very limited inventory of quality apartments and a lack in foot traffic that suggests undesirable pedestrian conditions.

The significant addition of residences to this site will add immediate population and foot traffic to the economic landscape of 3 downtown neighborhoods simultaneously. The development of this lot will act as a tremendous catalyst to the future economic development of Downtown Albany.

#### CERTIFICATION

I certify that I have prepared the responses provided in this Questionnaire and that, to the best of my knowledge; such responses are true, correct, and complete.

I understand that the foregoing information and attached documentation will be relied upon, and constitute inducement for, the Agency in providing financial assistance to the Project. I certify that I nm familiar with the Project and am authorized by the Company to provide the foregoing information, and such information is true and complete to the best of my knowledge. I further agree that I will advise the Agency of any changes in such information, and will answer any further questions regarding the Project prior to the closing.

I affirm under penalty of perjury that all statements made on this application are true, accurate and complete to the best of my knowledge.

Date Signed: August 24 , 2016.

. Name of Person Completing Project Questionnaire on  $\dot{\ \ }$  hehalf of the Company.

Name: David Sarraf

Title: Member

Phone Number: (518) 512-3693 Address: PO Box 6515, Albuny NY 12206

Signature:

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## SCHEDULE A

#### CREATION OF NEW JOB SKILLS

Please list the projected new job skills for the new permanent jobs to be created at the Project as a result of the undertaking of the Project by the Company.

New Job Skills	Number of Positions Created	Runge of Salury and Benefits
Property Manager	1	\$25/ hr with benefits (est)
Maintenance Person	ŀ	\$20/ hr with benefits (est)

Should you need additional space, please attach a separate sheet.

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	776 (aka 760) Bro	adway
}	Proposed PIL	OT
YEAR	ABATEMEI	u <b>T</b>
TLAN.	1	100%
	•	
ł	2	100%
	3	100%
	4	100%
	5	100%
	6	100%
	7	100%
	8	100%
ł	9	100%
	10	95%
	11	95%
	12	90%
	13	65%
	14	64%
	15	63%
_	16	62%
_	17	61%
	18	60%
	19	59%
	20	58%
21 and	thereafter	0%

Beginning in Year 13, the Proposed PILOT Agreement will also provide that the amount of payments in lieu of taxes payable by the Company will be the greater of (a) the amount determined in accordance with the above paragraph, OR (b) an amount equal to 11.5% of the gross rental revenue generated at the Project Facility.



ALMEST	to the active		7 T. C.		777. HE	Bill Street Street	COLAmetrola)	CALL AND ASSESSMENT	HACK SHAP	V.Section 1		
	Print Company of the			Proposed Project (Marky Assessment Astrophysics)								
la i			Current Stat. 4"		Harrist Léa		Represent PAUT					
1	CRY& County Sta Year	School Tex Yes	Yez Flaken	Const A	Carrees Name	Bate Assessments	Total traproved Appeterrence	Tipe who Pti,OTera	PILOT Fayrage	Alexander a	Trans Sistem Own on	S of Abstracted on Improved Assessments
teriron.	2017	2010/2017	48.65	\$300,000.00	214 ME1.00						1	
Ton	2017	2017/2018		130000		1750.001.00	M.175 204	20000	1446	CONTRACT.	E22 844.74	180,000
"3	2019	2018/2019	81.86	\$200,000,00	818.585.43	\$758,000 mb	64,173,109.00	\$313,903.01	\$38,740 \$38,867,60	\$201.336.28	873.342.44	100.001
3	2020	2019/2020	62.82	S300 008 B0	\$16.E74.73	\$750,000 ec	\$4,172,108.00	\$334.44B.01	538,000,00	\$206.958.01	\$23,013.77	180,000
- 1	2921	2020(702)	53.86	\$300,000,00		\$750,800.80	HL173,100.00	5333.183.47	\$46,495,00	\$292,005,07	\$24,290.73	100 001
Ė	2022	2021/2022	55.0s	S300,000,00	\$16,516,15	\$750,000.60	\$8,172,100.00	\$336,144,69	\$41,284,79	\$250.540.80	\$M.778.55	100.00
ė	2023	2022/2023	56.16	\$300,000.00	616.046.62	\$799,000.90	\$4,773,108,00	1341.611.49	\$42,120,00	\$364,520,66	326.272.00	180.00
7	3624	3023/2024	57.39			6768,000.80	26,173,100.00	8363,574.31	\$42,963.04	\$310,011.21	125,777.92	180.00
8	2025		58.43		\$17,574.20	\$760,000,00	94.173,10E.00	\$360,645.00	\$43,872,27	\$314,623.53	120,293,67	180.00
	2428		59.50			\$754,000.00		9397,059,71	\$44, <b>862.5</b> 0	\$323,168.21	826,812.72	100.00
18	2427	2029/1927	80.75			\$750,000.00		3376,315.00	362,076.01	\$313,139.86	\$43,838L03	94.00
11	2020	2027/2026	62.00		\$18,902.12	\$7\$41,000.90	\$4,173,100.00	\$382,728.21	\$43,311.30	\$319,406.01	\$44,708.16	85.00
12	2429		63.24		\$14,974,17	\$794,809.60		\$300,374.81	681,725.00	\$306,848.83	\$47,781.81	***
1254	2004	2625/2630 2809/2831	64.51 65.88	1300,000,000	110,363.86	\$750,800.00 \$750,800.00	\$4,173,100,00	\$364,182,16	\$213,076.A2	\$180,111.66	\$192,746.67	44
14 <sup>1</sup> 15	3631					\$756,000.00 \$756,000.00		\$401,145.74 \$414.746.66	\$217,331.83 \$291.678.64		\$107,991.21 \$201.543.64	NAME OF THE PARTY.
13	300					\$750,000,00 \$750,000,00		5427.864.63	\$29L112.14	\$165,441,66	5205,513.60	62,80
17	3634					\$758,600.08		\$431,00K.11	\$236.RS4.38	\$200,370,73		41.80
ii	7014				ELLER M	\$799,000,00		\$439.625.21	\$235,347.01		\$212,628.00	60.00
19	2036		72.4			\$734,000,00	\$4,173,100.00	\$449,417,77	5239,042.01	\$200,00A.71	\$218,154,80	200
200	2637		74.9			\$750,000.00		\$457,366,07	\$244,781.05	\$212,633,92	\$222.510.79	
	2034		76.54	- 76 3340,000,00	chiter a	\$790,009.00						
			Totales		\$386,744.21			17.834.44C24	12444.0144	13 23 44 45	1747 224	119
The Property Institute of the State of the S												
(i) The season of processing of \$2.500, this Cold is justed as the "process made "process made" in magazine #0, UT processes and EL, CR, SEI LA, CR, S												

# CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

# APPLICATION

IMPORTANT NOTICE: The answers to the questions contained in this application are necessary to determine your firm's eligibility for financing and other assistance from the City of Albany Industrial Development Agency. These answers will also be used in the preparation of papers in this transaction. Accordingly, all questions should be answered accurately and completely by an officer or other employed of your firm who is thoroughly familiar with the business and affairs of your firm and who is also thoroughly familiar with the proposed project. This application is subject to acceptance by the Agency.
TO: CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY c/o Department of Economic Development 21 Lodge Street Albany, New York 12207
This application by applicant respectfully states:
APPLICANT: 760 Broadway LLC
APPLICANT'S ADDRESS: PO Box 6515
CITY: Albany STATE: New York ZIP CODE: 12206
PHONE NO.: (518) 512-3693 FAX NO.: (518) 512-3694 E-MAIL: dsarraf@fairbankproperties.com
NAME OF PERSON(S) AUTHORIZED TO SPEAK FOR APPLICANT WITH RESPECT TO THIS APPLICATION: David Sarraf
IF APPLICANT IS REPRESENTED BY AN ATTORNEY, COMPLETE THE FOLLOWING:
NAME OF ATTORNEY: Marc Goldberg, Phillips Lytle LLP
ATTORNEY'S ADDRESS: 30 South Pearl Street
CITY: Albany STATE: New York ZIP CODE: 12207
PHONE NO.: (518) 472-1224 FAX NO.: (518) 472-1227 E-MAIL: mgoldberg@phillipslytle.com
NOTE: PLEASE READ THE INSTRUCTIONS ON PAGE 2 HEREOF BEFORE FILLING OUT THIS FORM.

#### INSTRUCTIONS

- 1. The Agency will not approve any application unless, in the judgment of the Agency, said application and the summary contains sufficient information upon which to base a decision whether to approve or tentatively approve an action.
- Fill in all blanks, using "none" or "not applicable" or "N/A" where the question is not appropriate to the project which is the subject of this application (the "Project").
- If an estimate is given as the answer to a question, put "(est)" after the figure or answer which is estimated.
- 4. If more space is needed to answer any specific question, attach a separate sheet.
- 5. When completed, return eight (8) copies of this application to the Agency at the address indicated on the first page of this application.
- 6. The Agency will not give final approval to this application until the Agency receives a completed environmental assessment form concerning the Project which is the subject of this application.
- 7. Please note that Article 6 of the Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the applicant feels that there are elements of the Project which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the applicant's competitive position, the applicant may identify such elements in writing and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law.
- 8. The applicant will be required to pay to the Agency all actual costs incurred in connection with this application and the Project contemplated herein (to the extent such expenses are not paid out of the proceeds of the Agency's bonds issued to finance the Project). The applicant will also be expected to pay all costs incurred by general counsel and bond counsel/special counsel to the Agency. The costs incurred by the Agency, including the Agency's general counsel and bond counsel, may be considered as a part of the Project and included as a part of the resultant bond issue.
- 9. The Agency has established an application fee of One Thousand Five Hundred Dollars (\$1,500) to cover the anticipated costs of the Agency in processing this application. A check or money order made payable to the Agency must accompany each application. THIS APPLICATION WILL NOT BE ACCEPTED BY THE AGENCY UNLESS ACCOMPANIED BY THE APPLICATION FEE.
- 10. The Agency has also established an administrative fee equal to (A) one percent (1%) of the cost of the Project in the case of an Agency Straight Lease

Transaction, and (B) one percent (1%) of the aggregate principal amount of the bonds to be issued by the Agency in the case of an Agency Bond Transaction. The Agency has also established an administrative fee for the issuance of refunding bonds for Agency Bond Transactions. The formula for the calculation of the administrative fee for the issuance of refunding bonds is outlined in the Agency's Policy Manual. THESE FEES ARE PAYABLE ON THE CLOSING DATE.

3

# FOR AGENCY USE ONLY

1.	Project Number	
2.	Date application Received by Agency	, 20
3.	Date application referred to attorney for review	, 20
4.	Date copy of application mailed to members	, 20
5.	Date notice of Agency meeting on application posted	, 20
6.	Date notice of Agency meeting on application mailed	<sub>r</sub> 20
. 7.	Date of Agency meeting on application	, 20
8.	Date Agency conditionally approved application	; 20
9.	Date scheduled for public hearing	, 20
10.	Date Environmental Assessment Form ("EAF") received	,20
11.	Date Agency completed environmental review	,20
12.	Date of final approval of application	, 20

4

# SUMMARY OF PROJECT

Applicant: 760 Broadway LLC				
Contact Person: Da	vid Sarraf			
Phone Number: (51	8) 512 - 3693			
Occupant: 760 Bro	adway LLC			
Project Location:	776 (aka 760) Broadway, Alb	any, NY		
Approximate Size o	f Project Site: 100,000 sf			
Description of Project: 100 new construction apartments consisting of studios, one bedrooms, and two bedrooms. There will be a parking garage on the ground floor for approximately 120 cars. There will also be 1 retail space on Broadway				
Type of Project:	☐ Manufacturing	☐ Warehouse/Distribution		
	☐ Commercial	☐ Not-For-Profit		
	Other-Specify Multi Fa	mily		
Employment Impact:	Existing Jobs N/A			
	New Jobs 3			
Project Cost: \$_15,00	0,000.00			
Type of Financing:	☐ Tax-Exempt	☐ Taxable ☐ Straight Lease		
Amount of Bonds Rec	uested: \$			
Estimated Value of Ta	x-Exemptions:			
Mortg Real I	Sales and Compensating Use age Recording Taxes: Property Tax Exemptions: (please specify):	Tax: \$_355,000.00 (est) \$_150,000.00 (est) \$_5,239,030.64 (est) \$_		

5

(HE	REINAFTER, THE "COMPANY").
A.	Identity of Company: 1. Company Name: 760 Broadway LLC
	Present Address: PO Box 6515 Albany, New York
	Zip Code: 12206
	Employer's ID No.:
	2. If the Company differs from the Applicant, give details of relationship:
	3. Indicate type of business organization of Company:
	a Corporation (If so, incorporated in what country?
	What State? Date Incorporated? Type of Corporation? Authorized to do business in New York?
	Yes; No).
	b. Partnership (if so, indicate type of partnership, Number of general partners, Number of limited partners).
	C. X Limited liability company,  Date created? 2015 - May
	d Sole proprietorship
	4. Is the Company a subsidiary or direct or indirect affiliate of any other organization(s)? If so, indicate name of related organization(s) and relationship:
В.	N/A Management of Company:
υ,	List all owners, officers, members, directors and partners (complete all columns for each person):
	to cook possony.
	6
	U

OFFICE HELD	OTHER PRINCIPAL BUSINESS
Member	Fairbank Properties LLC
Member	Fairbank Properties LLC
	Member

- 2. Is the Company or management of the Company now a plaintiff or a defendant in any civil or criminal litigation? Yes  $\_\_$ ; No  $\underline{X}$ .
- 3. Has any person listed above ever been convicted of a criminal offense (other than a minor traffic violation)? Yes \_\_\_\_; No  $\underline{X}$ \_.
- 4. Has any person listed above or any concern with whom such person has been connected ever been in receivership or been adjudicated a bankrupt? Yes \_\_\_\_; No  $\chi$ \_. (If yes to any of the foregoing, furnish details in a separate attachment).
- 5. If the answer to any of questions 2 through 4 is yes, please, furnish details in a separate attachment.

#### C. Principal Owners of Company:

- 1. Principal owners of Company: Is Company publicly held? Yes  $\_\_$ ; No  $\_X$ . If yes, list exchanges where stock traded:
- 2. If no, list all stockholders having a 5% or more interest in the Company:

NAME	ADDRESS	PERCENTAGE OF HOLDING
David Sarraf	PO Box 6515 Albany, NY 12206	50%
Harris Sarraf	PO Box 6515 Albany, NY 12206	50%

D. Company's Principal Bank(s) of account: Keybank DATA REGARDING PROPOSED PROJECT A. Summary: (Please provide a brief narrative description of the Project.) Construct 4.5 Story, approximately 100,000 square foot apartment building with parking and a retail space on floor 1 and 100 residential apartments on the upper floors. The ground floor will be a parking garage constructed of steel & concrete and will be able to accommodate approximately 120 cars B. Location of Proposed Project: Street Address 776 (aka 760) Broadway 2, City of Albany 3 Town of Village of 4.. County of Albany C. Project Site: Approximate size (in acres or square feet) of Project site: 1.4 Is a map, survey, or sketch of the project site attached? Yes \_\_\_\_; No X \_\_.

2. Are there existing buildings on project site? Yes \_\_\_\_; No X \_\_.

a. If yes, indicate number and approximate size (in square feet) of each existing building: b. Are existing buildings in operation? Yes  $\underline{\hspace{1cm}}$ ; No  $\underline{\hspace{1cm}}$ . If yes, describe present use of present buildings: Are existing buildings abandoned? Yes \_\_\_\_; No X \_. About to be abandoned? Yes \_\_\_\_; No \_\_\_\_. If yes, describe: d. Attach photograph of present buildings.

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II.

	3,	Utilities serving project site: Water-Municipal: Albany Water Board Other (describe) Scwer-Municipal: Albany Water Board Other (describe) Electric-Utility: National Grid Other (describe)
		Heat-Utility: National Grid Other (describe)
	4.	Present legal owner of project site: Security West Corp  a. If the Company owns project site, indicate date of purchase, 20; Purchase price: \$
	5.	<ul> <li>a. Zoning District in which the project site is located: C-3</li> <li>b. Are there any variances or special permits affecting the site? Yes</li> </ul>
		No X. If yes, list below and attach copies of all such variances or special permits:
D.	Buildir 1. I	ngs:  Does part of the Project consist of a new building or buildings? Yes X; No f yes, indicate number and size of new buildings:  1 New, approximately 100,000 square foot building
		Does part of the Project consist of additions and/or renovations to the existing gs? Yes; No _X If yes, indicate the buildings to be expanded or renovated c of any expansions and the nature of expansion and/or renovation:
	3. buildin	Describe the principal uses to be made by the Company of the building of gs to be acquired, constructed, or expanded:
		100 Residential Apartments and 1 Retail Space
		Q

E.		Equipment:

Does a part of the Project consist of the acquisition or installation of machinery, equipment or other personal property (the "Equipment")? Yes X; No\_\_\_\_. If yes, describe the Equipment:

Heating Systems, electrical systems, sprinkler systems, elevator systems and furnishings consistent with an apartment building.

- With respect to the Equipment to be acquired, will any of the Equipment be Equipment which has previously been used? Yes\_\_\_\_; No\_X\_. If yes, please provide detail:
- Describe the principal uses to be made by the Company of the Equipment to be acquired or installed:

Support multi-family occupancy

#### F. Project Use:

- What are the principal products to be produced at the Project?
   Multi Family Housing
- What are the principal activities to be conducted at the Project?
   Multi Family activities
- Does the Project include facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities? Yes X; No \_\_\_\_. If yes, please provide detail: Multi Family Apartments & Retail Space

There will be one retail space that will be used in making retail sales of goods or services. This includes, but is not limited to, Product Sales and Food Services

- 4. If the answer to question 3 is yes, what percentage of the cost of the Project will be expended on such facilities or property primarily used in making retail sales of goods or services to customers who personally visit the Project? 100 %
- 5. If the answer to question 3 is yes, and the answer to question 4 is more than 33.33%, indicate whether any of the following apply to the Project:

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Will the Project be operated by a not-for-profit corporation? Yes\_\_\_; No X . If yes, please explain: b. Is the Project likely to attract a significant number of visitors from outside the economic development region in which the Project will be located? Yes\_\_\_; No X . If yes, please explain: Would the Project occupant, but for the contemplated financial assistance Ċ. from the Agency, locate the related jobs outside the State of New York? Yes\_\_\_; No\_X . If yes, please explain: đ. Is the predominant purpose of the Project to make available goods or services which would not, but for the Project, be reasonable accessible to the residents of the city, town or village within which the Project will be located, because of a lack of reasonably accessible retail trade facilities offering such goods or services? Yes\_\_\_; No\_X\_. If yes, please provide detail: Will the Project be located in one of the following: (i) an area designed as an economic development zone pursuant to Article 18-B of the General Municipal Law; or (ii) a census tract or block numbering area (or census tract or block numbering area contiguous thereto) which, according to the most recent census data, has (x) a poverty rate of at least 20% for the year in which the data relates, or at least 20% of households receiving public assistance, and (y) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data tract according to the American Community Survey If the answers to any of subdivisions c. through e. of question 5 is yes, will the Project preserve permanent, private sector jobs or increase the overall number of permanent, private sector jobs in the State of New York? Yes X; No\_\_\_\_. If yes, please explain: The development of this project will lead to the creation of private sector jobs with the addition of one new retail business and 100 new apartments that will need to be managed and maintained Will the completion of the Project result in the removal of a plant or facility of the Company or another proposed occupant of the Project (a "Project Occupant") from

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one area of the State of New York to another area of the State of New York? Yes\_\_\_\_;

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No X . If yes, please explain:

Will the completion of the Project result in the abandonment of one or more plants or facilities of the Company located in the State of New York? Yes\_\_\_; No\_X\_. If yes, please provide detail: If the answer to either question 7 or question 8 is yes, indicate whether any of the following apply to the Project: Is the Project reasonably necessary to preserve the competitive position of the Company on such Project Occupant in its industry? Yes\_\_\_\_; No\_\_\_\_. If yes, please provide detail: N/A b. Is the Project reasonably necessary to discourage the Company or such Project Occupant from removing such other plant or facility to a location outside the State of New York? Yes\_\_\_\_; No\_\_\_\_. If yes, please provide detail: N/A G. Other Involved Agencies: Please indicate all other local agencies, boards, authorities, districts, commissions or governing bodies (including any city, county and other political subdivision of the State of New York and all state departments, agencies, boards, public benefit corporations, public authorities or commissions) involved in approving or funding or directly undertaking action with respect to the Project. For example, do you need a municipal building permit to undertake the Project? Do you need a zoning approval to undertake the Project? If so, you would list the appropriate municipal building department or planning or zoning commission which would give said approvals. City of Albany Planning Board City of Albany Department of Regulatory Compliance City of Albany Board of Zoning Describe the nature of the involvement of the federal, state, or local agencies Site Plan Approval - Albany Department of Development & Planning Building Permit Approval - Albany Department of Buildings & Regulatory Compliance Site Variance - City of Albany Board of Zoning H. Construction Status: Has construction work on this Project begun? Yes \_\_\_\_; No \_X \_. If yes, please

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discuss in detail the approximate extent of construction and the extent of completion. Indicate in your answer whether such specific steps have been completed as site clearance and preparation; completion of foundations; installation of footings; etc.:

2. past thr	ate amount o		 he Company in	the

- I. Method of Construction After Agency Approval:
  - 1. If the Agency approves the Project which is the subject of this application, there are two methods that may be used to construct the Project. The applicant can construct the Project privately and sell the Project to the Agency upon completion. Alternatively, the applicant can request to be appointed as "agent" of the Agency, in which case certain laws applicable to public construction may apply to the Project. Does the applicant wish to be designated as "agent" of the Agency for purposes of constructing the Project? Yes X; No...
  - 2. If the answer to question 1 is yes, does the applicant desire such "agent" status prior to the closing date of the financing? Yes\_\_\_\_\_; No\_X\_.
- III. INFORMATION CONCERNING LEASES OR SUBLEASES OF THE PROJECT. (PLEASE COMPLETE THE FOLLOWING SECTION IF THE COMPANY INTENDS TO LEASE OR SUBLEASE ANY PORTION OF THE PROJECT).
  - - Sublessee name: Residential Tenants (TBD) Present Address: N/A State: N/A City: N/A Zip: N/A Employer's ID No.: N/A Sublessee is: \_\_\_\_ Corporation: \_\_\_ \_ Partnership: \_\_\_\_ Sole Proprietorship Relationship to Company: N/A Percentage of Project to be leased or subleased: 100% Use of Project intended by Sublessee: Residential Date of lease or sublease to Sublessee: TBD Term of lease or sublease to Sublessee: 1 year leases Will any portion of the space leased by this sublessee be primarily used in making retail sales of goods or services to customers who personally visit the Project? Yes\_\_\_; No\_X . If yes, please provide on a separate attachment (a) details and (b) the answers to questions II(F)(4) through (6) with respect to such sublessee.

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2,	Sublessee name: Retail Tenant (TBD)					
	Present Address: N/A					
	City: N/A State: N/A Zip: N/A					
	Employer's ID No.: N/A					
	Sublessee is:					
	Corporation: Partnership: Sole Proprietorship					
•	Relationship to Company: N/A					
	Percentage of Project to be leased or subleased: 100%					
	Use of Project intended by Sublessee: TBD					
	Date of lease or sublease to Sublessee: TBD					
	Term of lease or sublease to Sublessee: TBD					
	Will any portion of the space leased by this sublessee be primarily used in					
	making retail sales of goods or services to customers who personally visit the					
	Project? Yes X; No					
	details and (b) the answers to questions II(F)(4) through (6) with respect to such					
	sublessee. TBD					
3.	Sublessee name:					
٥.	Present Address:					
	City: State: Zip:					
	Employer's ID No.:					
	Sublessee is: Corporation: Partnership: Sole Proprietorship					
	Relationship to Company:					
	Percentage of Project to be leased or subleased:					
	Use of Project intended by Sublessee:					
	Date of lease or sublease to Sublessee:					
	Term of lease or sublease to Sublessee:					
	Will any portion of the space leased by this sublessee be primarily used in					
	making retail sales of goods or services to customers who personally visit the					
	Project? Yes ; No If yes, please provide on a separate attachment (a)					
	details and (b) the answers to questions II(F)(4) through (6) with respect to such					
	sublessee.					
	percentage of the space intended to be leased or subleased is now subject to a					
binding writte	n lease or sublease? None					
Employment l	mpact					
A. Indica	te below the number of people presently employed at the project site and the					
	vill be employed at the project site at end of the first and second years after the					
	een completed (Do not include construction workers). Also indicate below the					
	rkers employed at the project site representing newly created positions as opposed					
	elocated from other project sites of the applicant. Such information regarding					
	tions should also indicate whether such positions are relocated from other projec					
	tions should also indicate whether such positions are relocated from other project by obligations previously issued by the Agency.					
anca mianecu	by congations previously issued by the Agency.					

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IV.

	***************************************	and the second of		A CONTRACTOR CONTRACTO	
TYPE OF EMPLOYMENT					
-	PROFESSIONAL MANAGERIAL	SKILLED	SEMI- SKILLED	UNSKILLED	TOTALS
Present Full Time					
Present Part Time					
Present Seasonal			Am Mariot to the		
First Year Full Time	1				3
First Year Part Time					
First Year Seasonal					
Second Year Full Time	2			1	3
Second Year Part Time					
Second Year Seasonal	Maria de Mar	; 			

B. Please prepare a separate attachment describing in detail the types of employment at the project site. Such attachment should describe the activities or work performed for each type of employment.

#### V. Project Cost

A. <u>Anticipated Project Costs.</u> State the costs reasonably necessary for the acquisition of the project site and the construction of the proposed project including the acquisition and installation of any machinery and equipment necessary or convenient in connection therewith, and including any utilities, access roads, or appurtenant facilities, using the following categories:

Description of Cost	Amount
Land	\$_750,000.00
Buildings	\$ 13,410,000.00 (est)
Machinery and equipment costs	\$
Utilities, roads and appurtenant costs	\$
Architects and engineering fees	\$_\$270,000.00 (est)
Costs of Bond issue (legal, financial	
and printing)	\$

Construct	ion loan fees and interest
(i Other (spe	f applicable) \$ 400,000.00 (est) cify) \$ IDA Costs \$ 170,000.00 (est) \$ \$ \$
T	OTAL PROJECT COST \$ 15,000,000.00 (est)
	ave any of the above expenditures already been made by applicant? No $\underline{X}$ . (If yes, indicate particular.)
BENEFIT	S EXPECTED FROM THE AGENCY
A. <u>Fi</u>	nancing
1.	Is the applicant requesting that the Agency issue bonds to assist in financing the Project? Yes $\underline{\hspace{1cm}}$ ; No $\underline{\hspace{1cm}} \underline{\hspace{1cm}} X$ . If yes, indicate:
	<ul> <li>a. Amount of loan requested:Dollars;</li> <li>b. Maturity requested:Years.</li> </ul>
2.	Is the interest on such bonds intended to be exempt from federal income taxation? Yes; No
3.,	If the answer to question 2 is yes, will any portion of the Project be used for any of the following purposes:
	a. retail food and beverage services: Yes; No; No; No; No; No
4.	If the answer to any of the above questions contained in question 3 is yes, please furnish details on a separate attachment. $N/A$
5.	Is the Project located in the City's federally designated Enterprise Zone? Yes; No_X

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V.

		applicant requesting the Agency to issue feder bonds? Yes; No_X	rally tax-exempt Enterprise			
В.	Tax Benefits					
	I. Is the applicant requesting any real property tax exemption that would not be available to a project that did not involve the Agency? Yes X; No					
2. Is the applicant expecting that the financing of the Project will be secure or more mortgages? Yes X; No If yes, what is the approximate a financing to be secured by mortgages? \$ 12,000,000.00						
	avoiding payn If yes, what is	applicant expecting to be appointed agent of the tof N.Y.S. Sales Tax or Compensating Use to the approximate amount of purchases which the N.Y.S. Sales and Compensating Use Taxes?	Tax? Yes X; No the applicant expects to be			
		is the estimated value of each type of tax-enth the Project? Please detail the type of tax-enths.				
	a. b. c. d.	N.Y.S. Sales and Compensating Use Taxes: Mortgage Recording Taxes: Real Property Tax Exemptions: Other (please specify):	\$ 355,000.00 (est) \$ 150,000.00 (est) \$5,239,030.64 (est)			
			\$			
	inconsistent v Regulations?	ny of the tax-exemptions being sought in covith the Agency's tax-exemption policy con Yes X; No If yes, please explain.	nnection with the Project ntained in its Rules and			
		Project located in the City's state designated Site is a former Empire Zone	Empire Zone? Yes X;			
consist of a li number of jobs should also co	n perform a co st and detailed s created, types on sist of a list an	enefit Information. Complete the attached Cost/benefit analysis of undertaking the Project. description of the benefits of the Agency und of jobs created, economic development in the ared detailed description of the costs of the Agency sabandoned, etc.).	Such information should tertaking the Project (e.g., ea, etc.). Such information			
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- VI. REPRESENTATIONS BY THE APPLICANT. The applicant understands and agrees with the Agency as follows:
  - A. <u>Job Listings</u>. 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.
  - B. <u>First Consideration for Employment</u>: In accordance with Section 858-b(2) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, 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 the JTPA Entities for new employment opportunities created as a result of the Project.
  - C. <u>City Human Rights Law.</u> The Applicant agrees to endeavor to comply with the provisions of Article XI, Division 2 of the City Code, entitled "The Omnibus Human Rights Law." The Applicant understands that it is not subject to the provisions of The Omnibus Human Rights Law.
  - D. Annual Sales Tax Filings. In accordance with Section 874(8) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the applicant and all consultants or subcontractors retained by the applicant.
  - E. <u>Annual Employment Reports</u>: The applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the applicant agrees to file, or cause to be filed, with the Agency, on an annual basis, reports regarding the number of people employed at the Project site.
  - F. <u>Absence of Conflicts of Interest</u>: The applicant has received from the Agency a list of the members, officers, and employees of the Agency. No member, officer, or employee of the Agency has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as hereinafter described:
  - G. Local Labor Information: The applicant is aware of and understands the provisions of Part 24 of the Policy Manual of the Agency. Pursuant to Part 24 of the Policy Manual of the Agency, the applicant agrees to provide information, in form and substance satisfactory to the Agency, relating to construction activities for projects; specifically: (i) the Company's contact person responsible and accountable for providing information about the bidding for and awarding of construction contracts relative to this Application and the Project, (ii) the nature of construction jobs created by the Project, including the number, type, and duration of construction positions; and (iii) submit to the Agency a "Construction Completion Report" listing the names and business locations of prime contractors, subcontractors, and vendors who were engaged in the construction phase of the Project.

- H. Additional Fee for Low Income Housing/Tax Credit (9% only) Projects: An annual administrative fee equal to \$10,000 shall be payable annually by the applicant on each Ianuary 1 for a term equal to ten (10) years. This annual administrative fee is in addition to the standard administrative fee for Agency Straight Lease Transactions and Agency Bond Transactions and is applicable to Projects which provide for low income housing/tax credit (9% only) projects.
- I. <u>Project Benefits Agreement</u>. The applicant agrees to enter into a project benefits agreement with the Agency where the applicant agrees (1) that the amount of Financial Assistance to be received shall be contingent upon, and shall bear a direct relationship to the success or lack of success of such project in delivering certain described public benefits (the "Public Benefits") and (2) the Agency will be entitled to recapture some or all of the Financial Assistance granted to the applicant if the project is unsuccessful in whole or in part in delivering the promised Public Benefits.
- J. Assignment of Agency Abatements: In connection with any Agency Straight Lease Transaction or Agency Bond Transaction, the Agency may grant to the applicant certain exemptions from mortgage recording taxes, sales and use taxes and real property taxes. The applicant understands that the grant of such exemptions by the Agency is intended to benefit the applicant. Subsequently, if the applicant determines to convey the Project and, in connection with such conveyance to assign such exemptions to the purchaser, the applicant understand that any such assignment is subject to review and consent by the Agency, together with the satisfaction of any conditions that may be imposed by the Agency.
- K. <u>Post Closing Cost Verification</u>. The applicant agrees (1) the scope of the Project will not vary significantly from the description in the public hearing resolution for the project and (2) to deliver to the Agency within sixty (60) days following the completion date of a project an affidavit providing the total costs of the project. In the event that the amount of the total project costs described in the affidavit at the completion date exceeds the amount described in an affidavit provided by the applicant on the closing date of the project, the applicant agrees to adjust the amounts payable by the applicant to the Agency by such larger amount and to pay to the Agency such additional amounts. In the event that the amount described is less, there shall not be any adjustment to the Agency fees.
- L. Representation of Financial Information. Neither this Application nor any other agreement, document, certificate, project financials, or written statement furnished to the Agency or by or on behalf of the applicant in connection with the project contemplated by this Application contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading. There is not act within the special knowledge of any of the officers of the applicant which has not been disclosed herein or in writing by them to the Agency and which materially adversely affects or in the future in their opinion may, insofar as they can now reasonably foresee, materially adversely affect the business, properties, assets or condition, financial or otherwise, of the applicant.

M. <u>Additional Information</u>. Additional information regarding the requirements noted in this Application and other requirements of the Agency is included the Agency's Policy Manual which can be accessed at <a href="https://www.albanyida.com">www.albanyida.com</a>.

(Applicant)

BY:

NOTE: APPLICANT MUST ALSO COMPLETE THE APPROPRIATE VERIFICATION APPEARING ON PAGES 18 THROUGH 21 HEREOF BEFORE A NOTARY PUBLIC AND MUST SIGN AND ACKNOWLEDGE THE HOLD HARMLESS AGREEMENT APPEARING ON PAGE 22

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(If Applicant is a Corporation)

STATE OF ) SS	ite.
deposes and	l cours short ha in the
(Name of chief executive of applicant	isays that he is the
of(Company ?	
the corporation named in the attached the contents thereof, and that the sam Deponent further says that the reason is because the said company is a corp	l application; that he has read the foregoing application and knows he is true and complete and accurate to the best of his knowledge. this verification is made by the deponent and not by said company formation. The grounds of deponent's belief relative to all matters in
deponent has caused to be made conc	tated upon his own personal knowledge are investigations which terming the subject matter of this application as well as information f his duties as an officer of and from the books and papers of said
deponent has caused to be made conc acquired by deponent in the course of	erning the subject matter of this application as well as information

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(Îf app	licant is sole proprietor)
STATE OF ) SS.:	
complete and accurate to the best of his k	nowledge. The grounds of deponent's belief relative to a tsteed upon his own personal knowledge are investigation
Sworn to before me this	
(Notary Public)	

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(If applicant is limited liability company)
STATE OF No Von)
STATE OF No Von)  SS.:  COUNTY OF Alberty)
David Sarraf deposes and says
(Name of Individual)
that he is one of the members of the firm of 760 Broadway LLC
(Partnership Name)
the partnership named in the attached application; that he has read the foregoing application and knows
the contents thereof; and that the same is true and complete and accurate to the best of his knowledge. The grounds of deponent's belief relative to all matters in the said application which are not stated upon his
own personal knowledge are investigations which deponent has caused to be made concerning the subject
matter of this application as well as information acquired by deponent in the course of his duties as a
member of and from the books and papers of said partnership.
Sworn to before me this
15 day of 14 a. 2019
(Notary Phone H. GOLDBERG
NOTARY PUBLIC-STATE OF ITEM
No. 02G04939602 Qualified in Saratoga County
Commission Expires July 05, 2013
NOTE: THIS APPLICATION WILL NOT BE ACCEPTED BY THE AGENCY UNLESS THE HOLD
HARMLESS AGREEMENT APPEARING ON PAGE 22 IS SIGNED BY THE APPLICANT.

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#### HOLD HARMLESS AGREEMENT

Applicant hereby releases City of Albany Industrial Development Agency and the members, officers, servants, agents and employees thereof (hereinafter collectively referred to as the "Agency") from, agrees that the Agency shall not be liable for and agrees to indemnify, defend and hold the Agency harmless from and against any and all liability arising from or expense incurred by (i) the Agency's examination and processing of, and action pursuant to or upon, the attached Application, regardless of whether or not the application or the project described therein or the issue of bonds requested therein are favorably acted upon by the Agency, and (ii) the Agency's financing of the Project described therein; including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. If, for any reason, the Applicant fails to conclude or consummate necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable, proper or requested action, or withdraws, abandons, cancels or neglects the Application, or if the Agency or the Applicant are unable to find buyers willing to purchase the total bond issue requested, then, and in that event, upon presentation of an invoice itemizing the same, the Applicant shall pay to the Agency, its agents or assigns, all actual costs incurred by the Agency in the processing of the Application, including attorneys' fees, if any.

(Applicant)

Swarn to before me this

day of Man 20 15

(Notary Public) MARC H. GOLDBERG NOTARY PUBLIC-STATE OF NEW YORK No. 02GO4939602 Qualified in Saratoga County

Commission Expires July 05, 2016

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TO:

**Project Applicants** 

FROM: RE: City of Albany Industrial Development Agency

Cost/Benefit Analysis

In order for the City of Albany Industrial Development Agency (the "Agency") to prepare a Cost/Benefit Analysis for a proposed project (the "Project"), the Applicant must answer the questions contained in this Project Questionnaire (the "Questionnaire") and complete the attached Schedules. This Questionnaire and the attached Schedule will provide information regarding various aspects of the Project, and the costs and benefits associated therewith.

Since we need this Questionnaire to be completed before we can finalize the Cost/Benefit Analysis, please complete this Questionnaire and forward it to us at your earliest convenience.

## **PROJECT QUESTIONNAIRE**

1. Name of Project Beneficiary ("Company"):			760 Broadway LLC
2.	Brief Identi	ication of the Project:	
3.	A. Amount B. Value o C. Value o	mount of Project Benefits Sought: of Bonds Sought: f Sales Tax Exemption Sought f Real Property Tax Exemption Sought f Mortgage Recording Tax Exemption	\$ N/A \$ 355,000.00 (est) \$ 5,239.030.64 (est) \$ 150,000.00 (est)
		PROJECTED PROJECT	INVESTMENT
	<ol> <li>Land ac</li> <li>Site prep</li> <li>Landsca</li> <li>Utilities</li> <li>Access a</li> </ol>	paration	\$_750,000.00 \$_ \$_ \$_ \$_ \$_ \$_
	<ol> <li>Acquisit</li> <li>Renovat</li> <li>New cor</li> <li>Electrication</li> <li>Heating</li> <li>Plumbin</li> </ol>	r-Related Costs ion of existing structures ion of existing structures istruction costs il systems ventilation and air conditioning g ilding-related costs (describe)	\$ 10,050,000,00 (est) \$ 1,350,000,00 (est) \$ 800,000,00 (est) \$ 700,000,00 (est) \$

C.	Machinery and Equipment Costs	te sugara se
1		\$
2		S
3		S
4		S
5		S
	professor Sales and support and the state of	
D.	Furniture and Fixture Costs	Company of the second of the s
! ~ ĭ	. Office furniture	
. 2	Office equipment	S
; <u>3</u>		\$
4	the control together a finite interestable to the control of the c	S
1	் பாளியிருந்த பண்ணைய் இணையில் வழி கிணையிரு இணையிருந்திரு இரு நிறையுள்ள கூறிய வரிய வரிய வரிய வரிய விணையின்.	
E.	Working Capital Costs	
i		` <b>.</b>
2	Production costs	Š
3		\$
4	Debt service	S
5	Relocation costs	S
6	Skills training	S
7		\$
;	S. W. C. C. COMPAND PROSESS OF COMPANY S. C.	
F.	Professional Service Costs	Manager # es
1.	Architecture and engineering	\$_300,000.00 (est)
2		\$ 50,000.00 (est)
3.	Other service-related costs (describe) Financing Costs/Interest	\$_ 750,000.00 (est)
٠. "	Percentification of the second	
G.	Other Costs	-4"
1.	PILOT Costs	\$_170,000,00 (est)
2.	RE Taxes	\$ 80,000.00 (est)
Н.	Summary of Expenditures	registed resources to an extension of the second
1.	Total Land-Related Costs	\$ 750,000.00
2.	Total Building-Related Costs	\$ 12.900.000.00 (est)
3.		\$
4.		S
5.		\$
6.		\$1,100,000.00 (est)
7.	Total Other Costs	\$ 250,000.00 (est)

## PROJECTED PROFIT

I. Please provide projected profit as defined by earnings after income tax but before depreciation and amortization:

YEAR	Without IDA benefits		With IDA benefits
1	\$ -80,000,00 (cst)	\$	190,000.00 (est)
2	\$ -60.000.00 (est)	\$_	215,000.00 (est)
3	\$ -50,000,00 (est)	\$_	235,000.00 (est)
4	\$ -25,000.00 (est)	\$_	265,000.00 (est)
5	\$ -5,000.00 (est)	\$_	290,000.00 (est)

# PROJECTED CONSTRUCTION EMPLOYMENT IMPACT

 Please provide estimates of total construction jobs and the total annual wages and benefits of construction jobs at the Project:

Year	Number of Construction Jobs	Total Annual Wages and Benefits	Estimated Additional NYS Income Tax
Current Year		<b>5</b>	
Year 1	30 (est)	\$ 1,500,000.00 including benefits (est) \$	100,000.00 (est)
Year 2	70 (est)	\$ 3,500,000.00 including benefits (est) \$	230,000.00 (est)
Year 3	100	\$ \$	
Year 4		\$ \$	
Year 5		\$ \$	

# PROJECTED PERMANENT EMPLOYMENT IMPACT

I. Please provide estimates of total number of existing permanent jobs to be preserved or retained as a result of the Project:

Year	Professional	Skilled	Semi-Skilled	Unskilled
Current Year		1	I have the second	
Year 1	* 1 00 00 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0			
Year 2				
Year 3		•		
Year 4	•	4		
Year 5	•	•		
				~

II.	Please provide	estimates of t	otal new per	manent jobs t	o be created	at the	Project:
-----	----------------	----------------	--------------	---------------	--------------	--------	----------

Year	Pro	ofessional	Skille	d	Semi-	Skilled	Unskilled	1
Current Year		•				\$	er armeten ay	
Year 1								
Year 2		1						
Year 3		2					1	
Year 4	ì				•			
Year 5		•						

- III. Please provide estimates for the following:
  - A. Creation of New Job Skills relating to permanent jobs. Please complete Schedule A.
- IV. Provide the projected percentage of employment that would be filled by City of Albany residents:

  30%-(est)
  - A. Provide a brief description of how the project expects to meet this percentage: Majority of contractors will be based in the Capital Region. The necessity of additional labor for this project will hopefully result in additional employment for City of Albany Residents

    PROJECTED OPERATING IMPACT
- I. Please provide estimates for the impact of Project operating purchases and sales:

Additional Purchases (1st year following project completion)	\$_10,000,00 (est)
Additional Sales Tax Paid on Additional Purchases	\$ 800.00 (est)
Estimated Additional Sales (1st full year following project completion)	\$ N/A
Estimated Additional Sales Tax to be collected on additional sales (1 <sup>st</sup> full year following project completion)	\$ N/A

II. Please provide estimates for the impact of Project on existing real property taxes and new payments in lieu of taxes ("Pilot Payments"):

SEE PILOT ANALYSIS

Year	Existing Real	New Pilot	Total
	Property Taxes	Payments	(Difference)
	(Without IDA involvement)	(With IDA)	
Current Year	•		
Year 1	310,000.00 (approx est)	38,000.00 (approx est)	272,000.00 (approx est)
Year 2	315,000.00 (approx est)	38,500.00 (approx est)	276,500.00 (approx est)
Year 3	325,000.00 (approx est)	39,000,00 (approx est)	286,000.00 (approx est)
Year 4	330,000.00 (approx est)	40,000.00 (approx est)	290,000.00 (approx est)
Year 5	335,000.00 (approx est)	40,500.00 (approx est)	294,500.00 (approx est)
Year 6	340,000.00 (approx est)	41,500.00 (approx est)	298,500.00 (approx est)
Year 7	350,000.00 (approx est)	42,500.00 (approx est)	307,500.00 (approx est)
Year 8	355,000.00 (approx est)	43,500.00 (approx est)	311,500.00 (approx est)
Year 9	360,000.00 (approx est)	44,000.00 (approx est)	316,000.00 (approx est)
Year 10	370,000.00 (approx est)	45,000.00 (approx cst)	325,000.00 (approx est)

III. Please provide a brief description for the impact of other economic benefits expected to be produced as a result of the Project:

The development of this property will result in a significant increase in foot traffic in an otherwise empty block in downtown Albany. The residents of the building will be additional consumers of the downtown economy and assist in stimulating the revitalization of Downtown Albany

#### CERTIFICATION

I certify that I have prepared the responses provided in this Questionnaire and that, to the best of my knowledge, such responses are true, correct, and complete.

I understand that the foregoing information and attached documentation will be relied upon, and constitute inducement for, the Agency in providing financial assistance to the Project. I certify that I am familiar with the Project and am authorized by the Company to provide the foregoing information, and such information is fine and complete to the best of my knowledge. I further agree that I will advise the Agency of any changes in such information, and will answer any further questions regarding the Project prior to the closing.

Date Signed: May 1	Name of Person Completing Project Questionnaire on behalf of the Company.
	Name: David Sarraf
	Title: Member
	Phone Number: (518) 817-1886
	Address: PO Box 6515, Albany, NY 12206
	Signature:

#### SCHEDULE A

# CREATION OF NEW JOB SKILLS

Please list the projected new job skills for the new permanent jobs to be created at the Project as a result of the undertaking of the Project by the Company.

New Job Skills Retail Services	Number of Positions Created 2	Wage Rate 20.00/hr - (est.)
Property Management Services	1	22.50/hr (cst.)
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Should you need additional space, please attach a separate sheet.

# 776 Broadway LLC PO Box 6515

Albany, NY 12206 Ph: (518) 512-3693 Fax: (518) 512-3694

## 776 (aka 760) Broadway Projected Employment Impact

## **Construction Employment**

Year 1 of Construction: 30 Jobs (estimate) Excavating Foundation Concrete/Steel Work Superstructure Project Manager Superintendent Laborers Year 2 of Construction: 70 Jobs (estimate)
Carpentry (rough)
Carpentry (finish)
Electric Plumbing HVAC Sprinkler Insulation Flooring Windows Masonry Roofing Sheetrock Painting Elevator Landscaping Asphalt Project Manager

#### **Permanent Employment**

Year 1 after completion

Superintendent Laborers

1 Job

**Building Superintendent** 

Year 2 after Completion 2 Jobs (estimate) Retail Space

Printers	1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	* -5/1 -1	
	776 (aka 760 Proposed	•	
YEAR	ABAT	EMENT	
	1	1	00%
	2	1	00%
	3	1	00%
ĺ	4	1	00%
l	5	1	00%
ì	6	1	00%
	7	1	00%
	8	11	00%
	9	1	00%
	10	1	00%
	11	1	00%
	12	1	00%
	13	!	95%
	14	9	90%
	15		85%
	16		80%
	17	{	80%
	18	•	75%
	19	•	75%
	20		75%
21 and	thereafter		0%
21 and	19 20	•	75% 75%

Beginning in Year 13, the Proposed PILOT Agreement will also provide that the amount of payments in lieu of taxes payable by the Company will be the greater of (a) the amount determined in accordance with the above paragraph, OR (b) an amount equal to 11.5% of the gross rental revenue generated at the Project Facility.

		1			1200		<b>3</b>	Proposed Pr	oloct (Using Assess:	r's Assessment Ass		
		ì	1	Chroning	2000	2000	2	Normal Tax			Requested PILOT	
	City & County		1		<b>FIRST</b>		5					Improvement
	Tex			100	1.09			Total Improved		i	1	from
ILOT Year	Year	School Tex Year		Ceronia	C English	CONTRACTOR AND	Base Assessmente			PILOT Payment(n)		Status Quarry
ADMIN(1)	2016			(4) Sept	300,000,00	186.05	\$750,000.00	\$750,000.00	\$38,278.59	\$38,278.59	\$0.00	\$21,767.
terien <sub>(1)</sub>	2017		49,338881	<b>BOX 803</b>	206/2017/06	and the same	\$750,000.00	\$750,000.00		337.004.18	\$0.00	\$22,202
100	2018		50.325659	SECTION	20010000000	<b>在</b> 原料例93年(	\$750,000.00	\$4,173,100.00	\$310,665.33		\$272,921.08	\$22,640.
2	2019			- A	30000000	23 TO 10	\$750,000.00	\$6,173,100.00	\$316,578.64	138 499,13		\$23,099.
3	2020			10000	9074000	6.0	\$750,000.00	\$6,173,100.00	\$323,216,21	211 7539,269 31	\$283,947.10	\$23,561.
4	2021	2020/2021		10.3	300:070/90		\$750,000.00	\$8,173,100.00	\$329,580.83		\$289,826.04	\$24,032.
5	2022		54.474112	<b>建筑</b>	301,000,000	10500422	\$750,000.00	\$6,173,100.00	\$335,274.14	\$40,856,58	\$296,418.56	\$24,513.
6	2023	2022/2023	55.583594		30.00	2 15 HO 00	\$750,000.00	\$6,173,100.00	\$342,099.63	12 541 872 70	\$301,326.93	\$25,003
7	2024	2023/2024	56.674866	18 775	300,000,000	<b>建筑建设</b>	\$750,000.00	\$8,173,100.00	\$349,859.62	\$42,506,19	\$307,353.47	\$25,503
8	2025		57.806363		300,000,00		\$750,000.00	\$6,173,100.00	\$356,856.81	H3 356 27		\$26,013
9	2026		56,964531		90034030	<b>美国医力院</b>	\$750,000.00	\$6,173,100.00	\$383,993.96	\$44,223.40	\$319,770.55	\$26,534
10	2027	2026/2027			300,000,00	DESTRUCTION OF THE PARTY OF THE	\$750,000.00	\$6,173,100.00	\$371,273.83	\$45 107.67	\$328,186.98	\$27,064
11	2028	2027/2028	61.348698		300000 CO		\$750,000.00	\$6,173,100.00	\$378,899.30	448 050 02	\$332,689.28	\$27,606
12	2029		62.573632	200	100000		\$750,000.00	\$6,173,100.00	\$386,273.29	-31-5540 930.22	\$339,343.07	\$26,158
13	2030	2029/2030	83.825104	<b>EXECUTE</b>	20000000	N 1405644	\$750,000.00	\$5,173,100.00	\$393,998.76	\$210,071,72		\$190,930
14	2031	2030/2031	55.101606		Carper i	2483121814	£750,000.00	\$6,173,100.00	\$401,578.73	\$217,279.27		\$194,745
15	2032	2031/2032			S00,000,00	32/509 9287	\$750,000.00	\$8,173,100.00	\$409,918.31		\$191,351.45	\$198,643
16	2033				260,660,660	1 Sept 2 19 5	\$750,000.00	\$6,173,100.00	\$418,114.63		\$105,178.47	\$202,516
17	2034	2033/2034	69.086345		30000000	2.704(2.51)	\$750,000.00	\$6,173,100.00	\$426,476.92		\$199,082.04	\$206,668
18	2035			1000		<b>建筑20年的</b> 扩	\$750,000.00	\$6,173,100.00	\$436,008.48		\$203,083.88	\$210,802
19	2038		71.877434		300 P 300	STATE OF THE REAL PROPERTY.	\$750,000.00	\$6,173,100.00	\$443,705.59			\$215,018
20 <sub>0</sub>	2037	2036/2037	73,314982	THE SHAPE	3000000	No. of the Con-	\$750,000.00	\$6,173,100.00	\$452,580.72	\$241 313 27	\$211,267.48	\$219,318
ermanent(4)	2038	2037/2038		<b>BOARD</b>		A Zeriki	\$750,000,00	\$6,173,100.00	\$461,632,34		\$0.00	\$439,197
			Total:	5		Ct \$416,584:9	2	T	E 2 \$8 083,265 50	TTT \$2,844,234.65	25,239,030,64	- 52,425,657

....

(2) Estimated start of PILOT payments.

(3) Estimated and of PILOT payments.

(4) Proporty materia to inscible attitum. (5) 2014 lass roles per Department of Assessment & Taseform (chas not include any special distinct of valorem lass that are skil payable under PH.OT). Assumed an extinuted exceletion of 2% thereafter.

(U) Proposed revised intresement of existing fond. (7) Estimated Issus II proposed project did not nower (i.e. left white quo

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(9) Par Commissions of Department of Assessment & Taustin based on extensit of 50,173,160 (mc. lend and Improvement assessment value), Assessment value is not Essel (10) Estimated asses if Proposed project Construct within Pri.C.O sections.

(1) PLOT represed solvedule proposed by Applicant, PRLOT perprised by providing the providing providing providing the providing providing providing are only efficient.

(1) Publishment solvedule proposed by Applicant, PRLOT perprised by providing are only efficients.

(12) Estimated abasement, using Assessor's total improved assessment assumptions, if proposed project accurred with above PHLOT assistance.
(13) Estimated difference between City revenue from Proposed PHLOT and Status Quo

(14) Totals for screparison and analysis until one year effer PSLOT agreement period which exple on December 31, 203

"Analysis Only on Estimate"

#### SCHEDULE E

## ANNUAL EMPLOYMENT VERIFICATION/COMPLIANCE REPORT

This Annual Employment Verification/Compliance Report and all applicable attachments must be completed and provided to the Agency by (INSERT DATE). Kindly provide the following information for calendar year YEAR (January 1, YEAR - December 31, YEAR). Project or Company Name: 1. Original Estimate of Jobs to be Created and Retained (from the project Application or Initial Employment Plan)..... 2. Number of Current Full Time Employees (as of 12/31/xx)...... 3. Number of Full Time Construction Jobs During Fiscal Year (20xx)...... 4. If "Original Estimate of Jobs to be Created and Retained" does not equal "Number of Current Full Time Employees (as of 12/31/xx)," please explain: 5. Did the Company receive a mortgage recording tax exemption in 20xx (Y/N)? ...... If yes, indicate the amount (\$) of mortgage recording tax exemption received in 20xx ...... 6. Did the Company receive a real property tax exemption in 20xx (Y/N)? ...... If yes, indicate if the Company has paid its annual PILOT payments in 20xx (Y/N) ..... If outstanding 20xx PILOT payments remain due, please explain: 7. Did the Company receive a sales tax exemption in 20xx (Y/N)? ...... If yes, please attach a copy of a filed NYS Dept. of Taxation and Finance Form ST-340 Annual Report of Sales and Use Tax Exemptions for 20xx (applicable to projects with sales tax exemption letters for construction phase). 8. Does the Company have a Uniform Agency Project Agreement (Y/N)? ......

If yes, *please attach* a copy of a filed 20xx **NYS-45** Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return for the last payroll date in the month of December 20xx (applicable to project applicants that submitted a project application after **March 19, 2015** and that have a Uniform Agency Project Agreement).

<ol> <li>Attach an updated Certificate of Insurance naming the A to your Project Documents for information about require</li> </ol>	
10. Has an event of default under the Project Documents occ (Y/N) If yes, please explain:	
CERTIFICATIO	<u>ON</u>
I hereby certify that I am the owner of the project site or a	m the duly authorized representative and may
sign this data submission on behalf of the owner(s) of said	project site. I have read and understand all of
the requirements contained within the Project Documer	nts and I have read the foregoing Annual
Employment Verification/Compliance Report and know the	contents thereof; and that the same is true and
complete and accurate to the best of my knowledge.	
	Name (Print)
	,
	Title
	Signature
	•
	Phone Number
	Email Address
	Company Address

**NOTE**: The following must be completed for all Projects <u>closed</u> on or after **June 15, 2016**:

# **RETAINED JOBS**

	Professional	Skilled	Semi-Skilled	<b>Un-Skilled</b>	Total
Full Time					
Part Time					
Seasonal					
Independent					
Contractors					
Contract					
Employees					

# **CREATED JOBS**

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent					
Contractors					
Contract					111
Employees					

# **SALARY AND FRINGE BENEFITS**

Is the salary and fringe benefit averages or ranges for categories of jobs retained and jobs creat	ted
described in the Application or the Initial Employment Plan still complete, true, and accurate:	
Yes: No:	
If not, please provide the revised amounts using the table below and attach an explanation of the change	es:
If not, please provide the revised amounts using the table below and attach an explanation of the change	es:

RELATED EMPLOYMENT INFORMATION				
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled
Estimated Salary and Fringe Benefit Averages or Ranges				
Estimated Number of Employees Residing in the Capital Region Economic Development Region <sup>2</sup>				

<sup>&</sup>lt;sup>2</sup> The Capital Region Economic Development Region consists of the following counties: Albany, Schenectady, Rensselaer, Greene, Columbia, Saratoga, Warren, and Washington.

## Officer's Certification

I further certify that to the best of my knowledge and belief all of the information under the headings "Retained Jobs," "Created Jobs," and "Salary and Fringe Benefits" above is complete, true, and accurate. I also understand that failure to report completely and accurately may result in enforcement of provisions of the Uniform Agency Project Agreement dated as of April 1, 2018 by and between the Company and City of Albany Industrial Development Agency (the "Project Agreement"), including but not limited to the suspension, discontinuance, and potential claw back of financial assistance provided for the project.

Signed:	
	(Authorized Company Representative)
Date:	