

CLOSING ITEM NO.: A-9 (A)

CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

AND

1211 WESTERN AVE PROPERTY ASSOCIATES LLC

RESIDENTIAL PAYMENT IN LIEU OF TAX AGREEMENT

DATED AS OF JULY 1, 2021

RELATING TO THE PREMISES LOCATED AT 1211 WESTERN
AVENUE (TAX MAP NUMBER 64.22-1-10) IN THE CITY OF ALBANY,
ALBANY COUNTY, NEW YORK.

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RESIDENTIAL PAYMENT IN LIEU OF TAX AGREEMENT

THIS RESIDENTIAL PAYMENT IN LIEU OF TAX AGREEMENT dated as of July 1, 2021 (the "Residential 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 1211 WESTERN AVE PROPERTY ASSOCIATES LLC, a limited liability company organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 100 Wall Street, New York, 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 January, 2020, 1211 Western Ave Property Associates LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of Delaware, presented an application (the "Application") to the Agency, requesting that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in an approximately 0.92 acre parcel of land located at 1211 Western Avenue (tax map number 64.22-1-10) in the City of Albany, Albany County, New York (the "Land"), together with an approximately 30,000 square foot building located thereon (the "Existing Facility"), (2) demolition of the Existing Facility and the construction on the Land of an approximately 190,968 square foot building (the "Facility") and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the "Equipment") (the Land, the Existing Facility, the Facility, and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned by the Company and operated as an approximately 136 unit residential apartment building, with approximately 1842 square feet of commercial/retail space, with a parking garage to accommodate approximately 150 parking spaces and any other directly and indirectly related activities;

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

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on July 16, 2020 (the “Public Hearing Resolution”), the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) 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 July 28, 2020 to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be posted on August 4, 2020 on a bulletin board located at City of Albany City Hall located at 24 Eagle Street in the City of Albany, Albany County, New York, (C) caused notice of the Public Hearing to be published on August 1, 2020 in the Albany Times Union, a newspaper of general circulation available to the residents of the City of Albany, Albany County, New York, (D) as a result of the ban on large meetings or gatherings pursuant to Executive Order 202.1 and the suspension of the Open Meetings Law relating to public hearings pursuant to Executive Order 202.15, each as issued by Governor Cuomo in response to the novel Coronavirus (COVID-19) pandemic, conducted the Public Hearing on August 12, 2020 at 12:00 o’clock p.m., local time electronically via conference call and zoom video conference rather than in person, and (E) prepared a report of the Public Hearing (the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on September 17, 2020 (the “SEQR Resolution”), the Agency (A) concurred in the determination that the City of Albany Planning Board (the “Planning Board”) is the “lead agency” with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Planning Board issued on February 26, 2019 (the “Negative Declaration”), in which the Planning Board determined that the Project would not have a significant adverse environmental impact on the environment, and therefore, that an environmental statement need not be prepared with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on January 16, 2020 (the “Commercial/Retail Finding Resolution”), the Agency (A) determined that the Project constituted a “commercial project” within the meaning of the Act, (B) found that although the Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act because the Project Facility is located in a highly distressed area, (C) determined, following a review of the Hearing Report, that the Project would serve the public purposes of the Act by preserving permanent private sector jobs in the State of New York, and (D) determined that the Agency would proceed with the Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Project by the Agency unless and until the Mayor of City of Albany, as chief executive officer of City of Albany, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Project; and

WHEREAS, in connection with the Application, the Company made a request to the Agency to deviate from its uniform tax exemption policy (the “Pilot Request”) and pursuant to the Pilot Request, by

resolution adopted by the members of the Agency on September 17, 2020 (the "Pilot Deviation Approval Resolution"), the members of the Agency determined to deviate from the Agency's uniform tax exemption policy with respect to the Project; and

WHEREAS, pursuant to the Pilot Request, the Agency will enter into two (2) separate payment in lieu of tax agreements, each payment in lieu of tax agreement attributable to the residential portion of the Project and the commercial portion of the Project. The residential portion of the Project (the "Residential Project") will consist of (A) the construction on the Land of approximately 186,923 square feet of the Facility (the "Residential Facility") and the acquisition and installation of the portion of the Equipment attributable to the Residential Facility (the "Residential Equipment" and collectively with the Land and the Residential Facility, the "Residential Project Facility"). The commercial portion of the Project (the "Commercial Project") will consist of (A) construction on the Land of approximately 2,137 square feet of the Facility (the "Commercial Facility") and the acquisition and installation therein and thereon of the portion of the Equipment attributable to the Commercial Facility (the "Commercial Equipment" and collectively with the Land and the Commercial Facility, the "Commercial Project Facility"); and

WHEREAS, by further resolution adopted by the members of the Agency on September 17, 2020 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of July 1, 2021 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, by certificate dated April 5, 2021 (the "Public Approval"), the Mayor, as chief executive officer of the City of Albany, New York, confirmed the proposed action to be taken by the Agency with respect to the Project for the purposes of Section 862(2)(c) of the Act; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of July 1, 2021 (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 July 1, 2021 (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 July 1, 2021 (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) certain payment in lieu of tax agreements dated as of July 1, 2021 (collectively, 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 July 1, 2021 (the "Uniform Agency Project Agreement") relating to the granting of the Financial Assistance by the Agency to the Company, (C) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the

Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency will execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (E) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

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

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to normal taxes, provided that, so long as this Residential Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Residential Payment in Lieu of Tax Agreement make payments in lieu of taxes in the amounts and in the manner provided in this Residential 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 Residential Payment in Lieu of Tax Agreement; and

WHEREAS, all things necessary to constitute this Residential 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 Residential Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Agency and the Company;

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

ARTICLE I

REPRESENTATIONS AND WARRANTIES

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

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Residential 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 Residential Payment in Lieu of Tax Agreement hereunder.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Residential 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 Residential 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 Residential Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Residential 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 Residential Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

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

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware, 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 Residential 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 Residential Payment in Lieu of Tax Agreement, and by proper action of its members has been duly authorized to execute, deliver and perform this Residential Payment in Lieu of Tax Agreement.

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

(C) Conflicts. The Company is not prohibited from entering into this Residential 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 Residential Payment in Lieu of Tax Agreement by (and the execution, delivery and performance of this Residential Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Residential 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 Residential 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 Residential 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 Residential Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

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

ARTICLE II

COVENANTS AND AGREEMENTS

SECTION 2.01. **TAX-EXEMPT STATUS OF THE RESIDENTIAL PROJECT FACILITY.** (A) Assessment of the Residential 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 Residential 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 Residential Project Facility, and for so long thereafter as the Agency shall own the Residential Project Facility, the Residential Project Facility shall be assessed by the various taxing entities having jurisdiction over the Residential Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Residential 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 Residential 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 Residential Project Facility created by the Underlying Lease, take such action as may be necessary to ensure that the Residential 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 Residential 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 Residential 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 Residential 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 Residential Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Residential 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 Residential Project Facility.

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

SECTION 2.02. **PAYMENTS IN LIEU OF TAXES.** (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Residential 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 Residential Project Facility. (1) The value of the Residential 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 Residential Payment in Lieu of Tax Agreement. The parties hereto agree that the Assessors shall (a) appraise the Existing Facility, the Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law in the same manner as other similar properties in the general area of the Residential Project Facility, and (b) place an Assessed Value upon the Land, the Existing Facility, the Equipment and the Facility, 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 the Land, the Existing Facility, the Equipment and the Facility and of any change in the Assessed Value of the Land or the Land, the Existing Facility, the Equipment and the Facility.

(2) If the Company is dissatisfied with the amount of the Assessed Value of the Residential 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 Residential Project Facility pursuant to Section 2.02(C) hereof may not be withheld by the Company pending determination of the Assessed Value.

(C) Amount of Payments in Lieu of Taxes. The payments in lieu of taxes to be paid by the Company to the Receivers of Taxes annually on behalf of each Taxing Entity pursuant to the terms of this Residential Payment in Lieu of Tax Agreement shall be the amount computed separately for each Taxing Entity as 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 Residential 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 Residential 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 Residential 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 Residential 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 Residential Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

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

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

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Residential 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 Residential Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

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

SECTION 2.04. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Residential 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 Residential 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 Residential 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 Residential Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Residential 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 Residential 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 Residential Payment in Lieu of Tax Agreement, it being expressly understood that this Residential 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 Residential Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Residential 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 Residential 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 Residential Payment in Lieu of Tax Agreement by the Agency.

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

(C) Further Limitation. Notwithstanding any provision of this Residential 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 Residential Payment in Lieu of Tax Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Residential 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 Residential Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

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

(C) Any warranty, representation or other statement by or on behalf of the Company contained in this Residential 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 Residential 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 Residential 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 Residential Payment in Lieu of Tax Agreement.

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

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

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Residential 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.

(E) Notice to Lender. The Agency will send to the Lender copies of all written notices of Events of Default sent by the Agency to the Company.

(F) Lender Opportunity to Cure. The Agency acknowledges and agrees that the Lender shall have the right, but not obligation, to cure any Events of Default hereunder which the Lender deems fit to cure to maintain this Residential Payment in Lieu of Tax Agreement as enforceable and in full force and effect.

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 Residential 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 Residential Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

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

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Residential 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 Residential Payment in Lieu of Tax Agreement.

(D) No Waiver. In the event any provision contained in this Residential 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 Residential 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 Residential 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 Residential Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Residential Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Residential Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) December 31, 2041 or (2) the date on which the Residential 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 Residential Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Residential Project Facility, the Residential 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 Residential 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 Residential 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 Residential 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 Residential Project Facility as the legal owner of record of the Residential Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Residential 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 Residential Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

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

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Residential Project Facility and other notices given by a Taxing Entity under Article

It hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

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

IF TO THE COMPANY:

1211 Western Ave Property Associates LLC
100 Wall Street
New York, New York 10005
Attention: Ariel Hai, Authorized Representative

WITH A COPY TO:

Whiteman Osterman & Hanna, LLP
One Commerce Plaza
Albany, New York 12260
Attention: Robert M. Gach, Esq.

IF TO THE AGENCY:

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

WITH A COPY TO:

Office of the Corporation Counsel
City Hall, Eagle Street - Room 106
Albany, New York 12207
Attention: Marisa Franchini, Esq.

and

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

IF TO THE LENDER:

Northwest Bank
100 Liberty Street
Warren, Pennsylvania 16365
Attention: _____

WITH A COPY TO:

Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attention: Timothy M. Fitzgerald, Esq.

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

(E) Change of Address. The Agency, the Lender 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 Residential 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 Residential Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Residential 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 Residential 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 Residential 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 Residential 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 Residential 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

1211 WESTERN AVE PROPERTY ASSOCIATES LLC

BY: _____
Authorized Officer

IN WITNESS WHEREOF, the Agency and the Company have caused this Residential 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

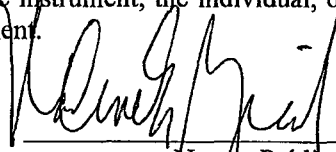
BY: _____
(Vice) Chair

1211 WESTERN AVE PROPERTY ASSOCIATES LLC

BY:  _____
Authorized Officer

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

On the 29th day of July, in the year 2021, before me, the undersigned, personally appeared TRACY L. METZGER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

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

STATE OF NEW YORK)
)ss:
COUNTY OF New York

On the 28 day of July, in the year 2021, before me, the undersigned, personally appeared Yuanlin He, 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.

Indira Basu

Notary Public

INDIRA BASU
NOTARY PUBLIC
State of New Jersey
ID # 50117765
My Commission Expires 12/13/2024

EXHIBIT A

DESCRIPTION OF THE LEASED LAND

A leasehold interest created by a certain lease to agency dated as of July 1, 2021 (the "Lease to Agency") between 1211 Western Ave Property Associates LLC (the "Company"), as landlord, and City of Albany Industrial Development Agency (the "Agency"), as tenant, in an approximately 0.92 acre parcel of land (the "Leased Land") located at 1211 Western Avenue in the City of Albany, Albany County, New York, said Leased Land being more particularly described below), together with any improvements now or hereafter located on the Leased Land (the Leased Land and all such improvements being sometimes collectively referred to as the "Leased Premises"):

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

ALL that certain plot, piece or parcel of land, situate, lying and being in the City and County of Albany and State of New York, more particularly bounded and described as follows:

BEGINNING at a point in the northerly street line of Western Avenue which said point is 252.35 feet distant as measured westerly along the said northerly street line from a City monument at the intersection of the said Western Avenue and Tudor Road, and

RUNNING THENCE northerly with an interior angle of 104 degrees 46 minutes a distance of 257.32 feet to a point;

THENCE westerly and with an interior angle of 90 degrees from the last mentioned line a distance of 145.05 feet to a point;

RUNNING THENCE southerly and with an interior angle of 90 degrees from the last mentioned line a distance of 295.55 feet to a point in the northerly street line of Western Avenue;

RUNNING THENCE easterly along said northerly street line of Western Avenue and with an interior angle of 75 degrees 14 minutes with the last mentioned line a distance of 150.00 feet to the point or place of BEGINNING.

The Leased Land will consist of an approximately 190,968 square foot-136 unit multifamily residential apartment building, of which approximately 2,137 square feet will consist of commercial/retail space (the "Commercial Space"). The remaining 186,923 square feet will consist of the residential space with parking (the "Residential Space"). The Residential Payment in Lieu of Tax Agreement covers the Residential Space which is more particularly described in the attached floor plan.

- SEE ATTACHED -

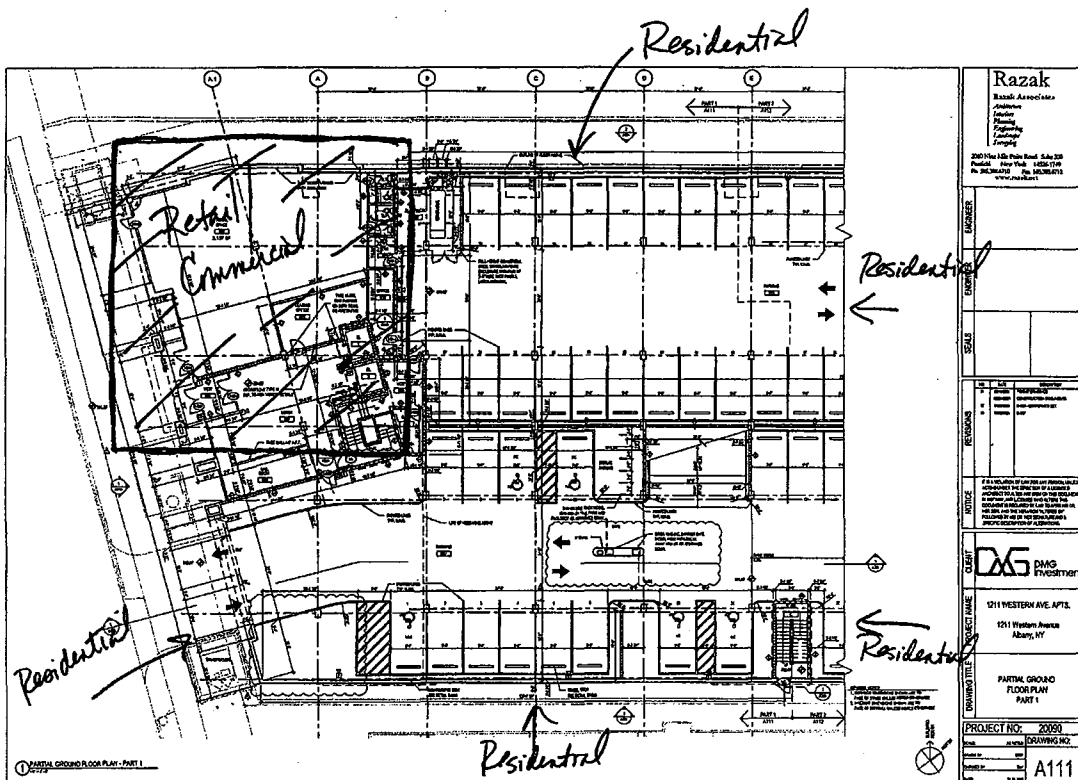


EXHIBIT B

PILOT PAYMENT TERMS

I. Background:

The Agency will enter into two (2) separate payment in lieu of tax agreements, each payment in lieu of tax agreement attributable to the residential portion of the Project and the commercial portion of the Project. The residential portion of the Project (the "Residential Project") will consist of (A) the construction on the Land of approximately 186,923 square feet of the Facility (the "Residential Facility") and the acquisition and installation of the portion of the Equipment attributable to the Residential Facility (the "Residential Equipment" and collectively with the Land and the Residential Facility, the "Residential Project Facility"). The commercial portion of the Project (the "Commercial Project") will consist of (A) construction on the Land of approximately 2,137 square feet of the Facility (the "Commercial Facility") and the acquisition and installation therein and thereon of the portion of the Equipment attributable to the Commercial Facility (the "Commercial Equipment" and collectively with the Land and the Commercial Facility, the "Commercial Project Facility").

II. Defined Terms:

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

"Gross Revenue" means the total amount of income generated at the Residential Project Facility, including tenant rent, unreturned security deposits (to the extent applied to rental payments due and owing and not to damages to a rental unit), lease cancellation/termination payments (net of damage) 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 Residential Project Facility relating to parking fees for tenant parking at a parking facility or parking lot not included in or on the Land. Revenue for such activities shall be considered Pass Through Revenue only if (1) the Company serves as a pass-through for such revenues between the tenant and the actual vendor, (2) the payee or recipient of the fees is not a Related Person to the Company, and (3) there is no "mark-up" or "profit" accruing to the Company relating to such fees (except as hereinafter provided). In connection with the determination of Pass Through Revenue, Gross Revenue will be subject to further adjustment as described as follows: if there is any "mark-up" or "profit" accruing to the Company, the amount of such "mark-up" or "profit" shall be included in the determination of Gross Revenue.

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

percent (1%) is substituted for fifty percent (50%) for purposes of applying Sections 267 and 707(b), and (b) one percent (1%) is substituted for eighty percent (80%) for purposes of applying Section 1563(a).

III. Assessed Value:

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

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

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

(D) The parties hereto understand and agree that the Residential Project Base Assessed Value and the Residential Project Improvements Assessed Value shall change during the term of this Residential Payment in Lieu of Tax Agreement as the Assessors appraise and re-appraise, as the case may be, the Residential Project Facility during the term of this Residential Payment in Lieu of Tax Agreement, as provided in Section 2.02(B) of this Residential Payment in Lieu of Tax Agreement; provided, however, that the Residential Project Base Assessed Value shall never be lower than the Residential Project Base Assessed Value in effect on the Closing Date.

IV. 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 Residential Facility based on the Residential Project Base Assessed Value, and (2) the amount of payments in lieu of taxes payable with respect to the Improvements based on the Residential Project Improvements Assessed Value.

(1) Payments - Residential 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 Residential Project Base Assessed Value (as set forth in II(B) above) by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Land and the 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 Residential 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 Residential 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 for such tax year.

(2) Payments - Residential Project Improvements Assessed Value. (a) First, determine the Normal Tax which would be payable to each Taxing Entity if the Improvements were

owned by the Company and not the Agency by multiplying (i) the Residential Project Improvements Assessed Value determined pursuant to Section 2.02(B) of this Residential 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 Residential 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 Residential Payment in Lieu of Tax Agreement with respect to the Improvements shall be the product of: (i) the amount set forth in Section III(A)(2)(a) above and (ii) the applicable percentage of the Normal Tax due each Taxing Entity with respect to the Improvements for such tax year, as shown in the following table:

<u>Tax Year Commencing in Calendar Year</u>	<u>County/ City Percentage of Normal Tax on Assessed Value of the Improvements</u>	<u>School Percentage of Normal Tax on Assessed Value of the Improvements</u>
2021	100%	100%
2022	100%	100%
2023	100%	10%
2024	10%	10%
2025	10%	10%
2026	10%	10%
2027	10%	10%
2028	10%	10%
2029	10%	10%
2030	10%	10%
2031	10%	10%
2032	10%	15%
2033	15%	20%
2034	20%	30%
2035	30%	40%
2036	40%	50%
2037	50%	55%
2038	55%	60%
2039	60%	70%
2040	70%	80%
2041	80%	100%
2042 and thereafter during the term of this Residential Payment in Lieu of Tax Agreement	100%	100%

(c) The parties acknowledge that the tax years shown in the table above do not reflect assessment roll years. For example, the 2021 assessment roll will be used to generate the 2021-22 School payment in lieu of tax bill and the 2022 City/County payment in lieu of tax bill.

(B) Except as otherwise provided in Section IV below, in each tax year during the term of this Residential Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which any portion of the Residential 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 Residential Payment in Lieu of Tax Agreement with respect to the Residential 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.

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

(A) Beginning on January 1, 2035, 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 Residential Project Facility.

(B) On each September 1, beginning on September 1, 2034, the Company will provide the Treasurer of the City of Albany with a complete and executed copy of the Company Affidavit, a form of which is attached as Exhibit C.

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

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

EXHIBIT C

COMPANY AFFIDAVIT REGARDING
GROSS REVENUE

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

I, the undersigned, an Authorized Officer of 1211 Western Ave Property Associates LLC (the "Company"), do hereby depose and state as follows:

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

2. Initial capitalized words used in this Affidavit shall have the meanings ascribed to such terms in the payment in lieu of tax agreement dated as of July 1, 2021 (the "Residential Payment in Lieu of Tax Agreement") by and between the Agency and the Company.

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

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

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

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

IN WITNESS WHEREOF, the undersigned has set forth their hand as of the ____ day of _____, 20__.

1211 WESTERN AVE PROPERTY ASSOCIATES LLC

BY: _____
Authorized Officer

Sworn to before me this ____ day
of _____, 20__.

Notary Public

SCHEDULE A
SUMMARY MEMORANDUM/REPORT
DESCRIBING GROSS REVENUE

[To Be Completed By The Company]