

PROJECT AGREEMENT  
IDA OSC Project Code: 5507-22-03A

THIS PROJECT AGREEMENT (hereinafter, the “Project Agreement”), is made as of March 9, 2023, by and between the **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 (the “Agency”), and **WHEELER BLOCK YONKERS LLC**, a New York limited liability company having offices at 25-04 40<sup>th</sup> Avenue, 2<sup>nd</sup> Floor, Long Island City, New York 11101 (the “Company”).

W I T N E S S E T H:

WHEREAS, the Agency was created by Chapter 83 of the Laws of 1982 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the “Act”) as a body corporate and politic and as a public benefit corporation of the State of New York (“State”); and

WHEREAS, the Company, for itself or on behalf of an entity to be formed has submitted an application (the “Application”) to the Agency requesting the Agency's assistance with a certain project (the “Project”) consisting of: (i) the acquisition or retention of the land commonly known as 15, 19 and 23 North Broadway (Section 2, Block 2003, Lots 22, 25 and 27) (the “Land”); (ii) the construction, renovation, improving, maintaining and equipping on the Land of the existing three, vacant, historic apartment buildings, including approximately 36 apartments (24 one-bedroom units and 12 alcove studio units, 5 units will be set aside as “HOME” rental units), accessibility improvements, a new residential lobby, and ground floor commercial space (the “Improvements”); and (iii) the acquisition and installation in and around the Land and Improvements of certain items of equipment and other tangible personal property (the “Equipment”, which together with the Land and Improvements are the “Facility”); and

WHEREAS, by Resolution adopted on December 28, 2022 (the “Resolution”), the Agency authorized the Company to act as its agent for the purposes of undertaking the Project, subject to the Company entering into this Project Agreement; and

WHEREAS, by its Resolution, the Agency approved certain financial assistance for the benefit of the Company in connection with the Project consisting of: (a) an exemption from all New York State and local sales and use tax for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility, and (b) a partial abatement from real property taxes benefit conferred through a certain tax agreement, between the Agency and the Company (the “Tax Agreement”) requiring the Company to make payments-in-lieu-of-taxes (“Tax Payments”) for the benefit of each municipality and school district having taxing jurisdiction over the Project (collectively, the sales and use tax exemption benefit, and the partial abatement from real property taxes benefit, are hereinafter collectively referred to as the “Financial Assistance”); and

WHEREAS, to advance the Project, the Company received a mortgage recording exemption from the Yonkers Economic Development Corporation in the amount of up to \$146,610.00 to finance all or a portion of the construction of the Facility (“MRTE Benefit”); and

WHEREAS, pursuant to and in accordance with Sections 859-a and 874 of the Act, the Agency requires, as a condition and as an inducement for it to provide any Financial Assistance, that the Company enter into this Project Agreement for the purposes of, among other things, to govern administration of and provide assurances with respect to the provision and recapture of said Financial Assistance upon the terms herein set forth; and

WHEREAS, this Project Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

WHEREAS, no agent status in favor of the Company or any subagent thereof, nor any amount of Financial Assistance shall be provided to the Company by the Agency prior to the effective date of this Project Agreement; and

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

## ARTICLE I. DEFINITIONS

Section 1.1 Definitions of Terms. The words and terms as used in this Project shall have the same meanings as used in **Schedule A** attached hereto and made a part hereof, unless the context or use indicates another or different meaning or intent.

## ARTICLE II. REPRESENTATIONS AND COVENANTS

Section 2.1 Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Project and provide “financial assistance”, as such term is defined in the Act, for the Facility:

(a) The Company is a limited liability company formed, validly existing and in good standing under the laws of the State, has the authority to enter into this Project Agreement, and has duly authorized the execution and delivery of this Project Agreement.

(b) Neither the execution and delivery of this Project Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Project Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute 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 such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, and building laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this Section 2.1(c).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact the Company's ability to fulfill its obligations under this Project Agreement.

(e) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility, (ii) that the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section 2.1(e) shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (other than the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section 2.1(e). In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Agency upon demand.

(f) Any personal property acquired by the Company in the name of the Agency shall be located in the City of Yonkers, Westchester County, except for temporary periods during ordinary use.

(g) The Company hereby represents to the Agency that facilities and property that are primarily used in making retail sales of goods and services to customers who personally visit the Facility will not constitute more than one-third (1/3) of the total costs of the Facility, except in accordance with New York General Municipal Law (the "GML") Section 862.

(h) The Company acknowledges and agrees that, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

(i) The Company covenants and agrees that at all times, it will, while a party or guarantor under this Project Agreement: (i) maintain its existence and not dissolve, (ii) continue to be a limited liability company subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its property, business or assets. This Project Agreement may not be assigned in whole or part without the prior written consent of the Agency or otherwise in accordance with the Leaseback Agreement.

(j) The Company confirms and acknowledges under the penalty of perjury that as of the date hereof, the Company, as owner, occupant, or operator of the Project receiving Financial Assistance from the Agency in connection with the Project, is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations. The Company agrees that it will, throughout the term of this Project Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. Notwithstanding the foregoing, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to this Section 2.1(j). In such event, the Company, with the prior written consent of the Agency (which shall not be unreasonably conditioned, delayed or withheld) may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency shall notify the Company that it must comply with such requirement or requirements.

(k) The Company acknowledges receipt of the Agency's Uniform Tax Exemption Policy, Policy for Suspension or Discontinuance of Financial Assistance and Recapture, Suspension and Discontinuance of Financial Assistance Policy.

### ARTICLE III. GENERAL

Section 3.1 Purpose of Project. The purpose of the Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Facility to advance job opportunities, health, general prosperity and economic welfare of the people of the City of Yonkers, New York, and to specifically promote the investment commitment, employment commitment, and other commitments of the Company contained herein and in the Application.

### Section 3.2 Prevailing Wage Requirements.

The Agency hereby informs the Company that, effective January 1, 2022, certain construction work done under contract in connection with “financial assistance” (as defined in the Act) from the Agency may be subject to the requirements of Section 224-a of the Labor Law of the State, including but not limited to the requirement that such Construction shall be subject to prevailing wage requirements of Section 220 and 220-b of the Labor Law of the State. In addition, such construction work may be required by Section 224-a of the Labor Law to comply with the objectives and goals of minority and women-owned business enterprises pursuant to Article Fifteen-A of the Executive Law and service-disabled veteran-owned business pursuant to Article Seventeen-B of the Executive Law. Accordingly, for any construction that commences on or after January 1, 2022, the Company shall comply with the following requirements:

- (i) The Company shall certify or cause to be certified using the Certificate attached hereto as **Schedule A-1**, under penalty of perjury within five (5) days of commencement of Construction work, to the Agency and Commissioner of Labor of the State, whether the Project is subject to the provisions of Section 224-a of the Labor Law. A copy of such certification shall be filed with the Agency no later than ten (10) days after filing with the Commissioner of Labor.
- (ii) The Company may seek guidance from the public subsidy board contained in Section 224-c of the Labor Law, and such board may render an opinion as to whether or not the Project is subject to the requirements of Section 224-a of the Labor Law. A copy of any such opinion of the public subsidy board shall be filed with the Agency no later than ten (10) days after receipt by the Company.
- (iii) The Company shall be responsible for retaining original payroll records in accordance with section two hundred twenty of this article for a period of six years from the conclusion of the Project construction work. All payroll records maintained by the Company pursuant to Section 224-a of the Labor Law shall be subject to inspection on request of the Commissioner of Labor. The Company may authorize the prime contractor of the Construction project to take responsibility for retaining and maintaining payroll records, but will be held jointly and severally liable for any violations of such contractor. All records obtained by the Commissioner of Labor shall be subject to the State Freedom of Information Law.

### ARTICLE IV. FINANCIAL ASSISTANCE AND RECAPTURE OF BENEFITS

Section 4.1 In accordance with the Resolution and the Cost-Benefit Analysis (or such other equivalent document or report, as determined by the Agency) (the “CBA”), attached hereto as **Schedule A-2**, the Company further: (i) covenants, with respect to the Sales Tax Exemption, that it shall comply with this Project Agreement, specifically, but not limited to, Section 4.3

hereof; and (ii) confirms that real property tax abatement to be provided to the Company shall conform to those disclosed within the CBA and as contained within the Tax Agreement, a copy of which Tax Agreement is attached hereto as **Exhibit A**.

Section 4.2 **Tax Agreement**. The parties hereto have executed or will execute the Lease Agreement, Leaseback Agreement and Tax Agreement. As provided in the Tax Agreement, a copy of which is attached hereto as **Exhibit A**, the Company agrees to make Tax Payments (as defined in the Tax Agreement) (in addition to paying all special ad valorem levies, special assessments or special district taxes and service charges against real property in the jurisdiction where the Facility is located.

Section 4.3 **Sales Tax Exemption**.

(a) The Agency hereby confirms its appointment of the Company as the true and lawful agent of the Agency to undertake the Project. Such appointment was made by the Agency pursuant to the Resolution.

(b) The Company, as agent for the Agency, will undertake the Project. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Authorizing Resolution to acts reasonably related to the acquisition, rehabilitation and equipping of the Facility. The right of the Company to act as agent of the Agency shall expire on the earlier of (x) the completion of the Project, or (y) December 31, 2024 (“Termination Date”); provided, however, that the Agency may extend the Company’s agent appointment at its discretion upon the written request of the Company if such activities and improvements are not completed by such time, and further provided that the Agency shall not unreasonably withhold its consent to the extension of such appointment.

(c) **Agency’s Exempt Status**. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State, and therefore, in the exercise of its governmental functions, is exempt from the imposition of Sales and Use Taxes. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required. Notwithstanding the foregoing, the Agency makes no representation to the Company, any Agent (as defined in **Schedule C** attached hereto) or any third party that any Sales Tax Exemption is available under this Project Agreement.

(d) **Scope of Authorization of Sales Tax Exemption**. The Agency hereby authorizes the Company, subject to the terms and conditions of this Project Agreement, to act as its agent in connection with the Facility for the purpose of effecting purchases and leases of certain items so that such purchases and leases are exempt from the imposition of Sales and Use Taxes. The Agency’s authorization with respect to such Sales Tax Exemption provided to the Company and its Agents pursuant to this Project Agreement shall be subject to the following limitations:

(i) The Sales Tax Exemption shall be effective only for a term commencing on the date hereof and expiring upon the earliest of (A) the termination of this Project Agreement, (B) the Termination Date, (C) failure of the Company to file Form ST-340, as described in Section 4.5(g) below, (D) the termination of the

Sales Tax Exemption authorization pursuant to Section 6.2 or (E) the date upon which the Company received the Maximum Sales Tax Exemption.

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company is in default under this Project Agreement until such default is cured to the satisfaction of the Agency.

(iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Project Agreement.

(iv) The Sales Tax Exemption shall only be utilized for items which shall be purchased, incorporated, completed or installed for use only by the Company at the Facility or in connection with the Project (and not with any intention to sell, transfer or otherwise dispose of any such item to a Person as shall not constitute the Company), it being the intention of the Agency and the Company that the Sales Tax Exemption shall not be made available with respect to any item unless such item is used solely by the Company at the Facility or in connection with the Project.

(v) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility, other than the Company, without the prior written consent of the Agency.

(vi) By execution by the Company of this Project Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of the Sales Tax Exemption by the Company or by any Agent is strictly for the purposes stated herein.

(vii) Upon the Termination Date, the Company and each Agent shall cease being agents of the Agency, and the Company shall immediately notify each Agent in writing of such termination.

(viii) The Company agrees that the aggregate amount of Sales Tax Exemption realized by the Company and by all Agents of the Company, if any, in connection with the Facility shall not exceed in the aggregate the Maximum Sales Tax Exemption.

Section 4.4 Procedures for Appointing Subagents. If the Company desires to seek the appointment of a contractor, a subcontractor or other party to act as the Agency's agent, including, but not limited, to the individuals and entities described on **Schedule B** attached hereto (a "Subagent") for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this Project Agreement, it must complete the following steps:

(i) The Company shall have the right to amend **Schedule B** from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency. The Company's right to appoint subagents is expressly conditioned upon updating of **Schedule B** attached hereto, along with, for each Subagent, the Company must complete and submit Form ST-60 to the Agency,

attached hereto as **Exhibit B**. An Authorized Representative of the Agency must sign the Form ST-60 and return the same to the Company. Following receipt of the signed Form ST-60, the Company must file such Form ST-60 within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as a Subagent of the Agency for purposes of extending the Sales Tax Exemption to such Subagent. The Company acknowledges and agrees that it shall be the Company's sole and exclusive responsibility to file a completed Form ST-60 with respect to any Subagent.

(ii) The Company shall ensure that each Subagent shall observe and comply with the terms and conditions of this Project Agreement.

(iii) **Form ST-60 Not an Exemption Certificate.** The Company acknowledges that the executed Form ST-60 designating the Company or any Subagent as an agent of the Agency shall not serve as a sales Tax Exemption certificate or document. Neither the Company nor any other Agent may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales tax may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN LAW. IN ADDITION, THE USE BY A SUBAGENT, THE COMPANY, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY-EIGHT AND THIRTY-SEVEN OF THE NEW YORK STATE TAX AND FINANCE LAW (THE "TAX LAW"), THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(iv) **Form ST-123 Requirement and Form FT-123 Requirement.** As an agent of the Agency, the Company agrees that it will, and will cause each Subagent to, present to each seller or vendor a completed and signed Form ST-123, attached hereto as **Exhibit C-1**, for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any Subagent, as agent for the Agency, for the purpose of undertaking the Project.

As an agent of the Agency, the Company agrees that it will, and will cause each Subagent to, present to each seller or vendor a completed and signed Form FT-123, attached hereto as **Exhibit C-2**, for each contract, agreement, invoice, bill or purchase order for fuel entered into by the Company or by any Subagent, as agent for the Agency, for the purpose of undertaking the Project.

Form ST-123 and Form FT-123 require that each seller or vendor accepting Form ST-123 or Form FT-123 identify the Facility on each bill or invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project



operator of the Agency, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice should state:

“I, [NAME OF COMPANY OR SUBAGENT], certify that I am a duly appointed agent of the CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY and that I am purchasing the tangible personal property or services for use in the Wheeler Block Yonkers LLC Project located at 15, 19 and 23 North Broadway, City of Yonkers, New York (or at any lands located in the City of Yonkers, New York, and occupied by license or easement during construction or improved by third parties for the benefit of the IDA Project), being IDA OSC Project Number [5507-22-03A]”.

For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described in the prior sentence, an “Invoice Rider” (a copy of which is attached hereto as **Exhibit C-3**) can be utilized for record keeping purposes. The Company shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) years from the date thereof. For each Subagent the Form ST-123 and Form FT-123 shall be completed as follows: (i) the “Project information” section of Form ST-123 and Form FT-123, attached hereto as **Exhibit C-1 and Exhibit C-2** respectively, should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Subagent; (ii) the date that the Subagent was appointed as indicated on the Form ST-60.

All contracts entered into by the Company and Subagents thereof as agent for the Agency shall include the language contained within **Schedule C** attached hereto. **Failure by the Company and/or any Subagent thereof to include such language may disqualify the agent status and Sales Tax Exemption derived by virtue of this Project Agreement. The Company, for itself and on behalf of all duly appointed Subagents, hereby agrees that all contracts entered into by the Company and any Subagents thereof shall be available to the Agency for inspection and confirmation of the foregoing mandatory language.**

Section 4.5 **Form ST-340 Filing Requirement.** The Company shall annually file a statement with the State Department of Taxation and Finance (the “Commissioner”) on “Annual Report of Sales and Use Tax Exemptions” (NYS Form ST-340, a copy of which is attached hereto as **Exhibit D**) regarding the value of Sales Tax Exemption the Company and its Subagents, if any, have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). On or before February 15<sup>th</sup> of each year, the Company shall provide a copy of same to the Agency. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company’s authority to act as agent for the Agency and/or Recapture of Agency Benefits as described in Section 4.8 hereof.

Section 4.6 **GML Provisions Relating to Sales Tax Savings.**

(a) The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, Subagents, persons or entities to comply, with the requirements of GML Sections 875(1) and (3) (the “GML Provisions”), as such provisions may be amended from

time to time. In the event of a conflict between the other provisions of this Project Agreement and the GML Provisions, the GML Provisions shall control.

(b) The Company acknowledges and agrees that pursuant to GML Section 875(3), the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company, Sales Tax Savings taken or purported to be taken by the Company, any Subagent or any other person or entity acting on behalf of the Company to which the Company is not entitled or which are in excess of the Maximum Sales Tax Exemption or which are for property or services not authorized or taken in cases where the Company, any Subagent or any other person or entity acting on behalf of the Company failed to comply with a material term or condition to use property or services in the manner required by this Project Agreement. The Company shall, and shall require each Subagent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such Sales Tax Savings and shall promptly pay over any such amounts to the Agency or any other entity that it requests receive the Sales Tax Savings. The failure to pay over such amounts to such recipient shall be grounds for the Commissioner to assess and determine State Sales and Use Taxes due from the Company under Article 28 of the Tax Law, together with any relevant penalties and interest due on such amounts.

Subject to the provisions of Section 4.6 (b), in the event that the Company or any Subagent shall utilize the Sales Tax Exemption in violation of the provisions of this Project Agreement, the Company shall promptly deliver notice of same to the Agency, and the Company shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized Sales Tax Savings together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized Sales Tax Exemption was availed of by the Company or any Subagent (as applicable).

(c) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (i) to indicate in reasonable detail those costs for which the Company or any Subagent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (ii) to permit the Agency to determine any amounts owed by the Company under this Section 4.6(c).

Section 4.7     Intentionally Omitted.

Section 4.8     Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into this Project Agreement in order to provide the Financial Assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees that if there shall occur a Recapture Event (as defined below) after the after the date hereof, the Company shall pay to the Agency, or to the State, if so directed by the

Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits.

(b) The term “Recaptured Benefits” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency’s participation in the transaction contemplated by this Project Agreement, including, but not limited to, the amount equal to 100% of the:

- (i) MRTE Benefit;
- (ii) Sales Tax Savings realized by or for the benefit of the Company, including any savings realized by any Subagent; and
- (iii) Real property tax abatements granted pursuant to the Tax Agreement;

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of Section 4.8 (c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State if so directed by the Agency within ten (10) days after such notice.

(c) The term “Recapture Event” shall mean any of the following events:

- (i) The occurrence and continuation of an Event of Default under this Project Agreement which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or
- (ii) The Project shall cease to be a “project” within the meaning of the Act as in effect on the date hereof, through the act or omission of the Company; or
- (iii) The Company receives Sales Tax Savings in connection with property or services not authorized by the Agency as part of the Project; or
- (iv) The Company receives Sales Tax Savings in connection with the Project in excess of the Maximum Approved Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recaptured Benefits; or
- (v) The Company has made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the Application or supporting documentation false or misleading in any material respect, on the Application; or
- (vi) Failure of the Company to file a copy of the Form ST-340 with the Agency in compliance with Section 4.5 hereof; or

(vii) Failure of the Company to create or cause to be maintained at least five (5) full time equivalent (“FTE”) jobs at the Facility, which is located on real property in the City of Yonkers, commencing after the issuance of a temporary certificate of occupancy for the Facility, which failure is not reflective of the business conditions of the Company or the subtenants of the Company, including, without limitation, loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions.

(viii) Failure of the Company to comply with Section 224-a of the State Labor Law.

In order to certify and verify the foregoing, the Company shall provide annually, to the Agency, a certified statement and documentation, an example of which is attached hereto as **Exhibit E**: (i) enumerating the FTE jobs retained and the full-time equivalent jobs created as a result of the Financial Assistance, by category, including full-time equivalent independent contractors or employees of independent contractors or affiliates or related companies that work at the Project location or immediately adjacent to the Project location and are directly facilitating the operations of the Company and the Project, (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the Application is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and (iii) such other information, as so requested from time to time, to enable the Agency to assess the progress of the Project toward achieving the investment, job retention, job creation, or other objectives of the Project indicated in the Application.

(d) In the event any payment owing by the Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(e) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including, without limitation, reasonable attorney’s fees, expenses, and costs, incurred with the recovery of all amounts due under this Section 4.8, from amounts received by the Agency pursuant to this Section 4.8.

## ARTICLE V. INSURANCE

Section 5.1 Insurance Required. Effective as of the date hereof and until the expiration or termination of the right of the Company to act as agent of the Agency hereunder, the Company shall maintain, or cause to be maintained by its subagent or subcontractors, certain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type, and paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company; or as an alternative to the foregoing, the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well, provided a periodic appraisal is performed and provided to the Agency.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 7.1 hereof) and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$2,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$2,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law. Such liability limits may be satisfied by any combination of primary and excess liability policies in the aggregate amount of not less than \$5,000,000.

Section 5.2 Additional Provisions Respecting Insurance. (a) All insurance required by Section 5.1(a) hereof shall name the Agency as a named insured and the insurance required by Section 5.1(c) shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide (i) for payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) that the insurance company shall endeavor to give thirty (30) days' prior written notice or such other notice as the policy provides for, of the cancellation thereof to the Company and the Agency.

(b) All such certificates of insurance of the insurers indicating that such insurance is in force and effect, and all policies (if applicable), shall be deposited with the Agency on the date

hereof. Prior to the expiration of any such policy evidenced by said certificates, the Company shall furnish the Agency with evidence that the policy has been renewed or replaced or is no longer required by this Project Agreement.

## ARTICLE VI. EVENTS OF DEFAULT AND REMEDIES

Section 6.1 The following shall each be “Events of Default” under this Project Agreement:

(a) the failure by the Company to observe and perform any covenant contained in Sections 2.1 (e), 2.1 (g), 2.1(i), 2.1 (j), 2.1 (k), 2.1 (l), 3.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 5.1, 5.2, 7.1 and 7.6 hereof;

(b) the failure by the Company to pay the Recaptured Benefits on the date due;

(c) the occurrence and continuation of a Recapture Event;

(d) the occurrence of an Event of Default under the Leaseback Agreement or the Tax Agreement;

(e) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; or the commencement by the Company (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor, or such case or proceeding is consented to by the Company or remains undismissed for forty (40) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors.

### Section 6.2 Remedies on Default.

(a) Whenever any Event of Default shall have occurred and be continuing, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps:

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all due and owing Recaptured Benefits and (B) all other payments due under this Project Agreement; or

(ii) terminate this Project Agreement and the Sales Tax Exemption authorization; or

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

(b) No action taken pursuant to this Section 6.2 (including termination of the Project Agreement) shall relieve the Company from its obligation to make all payments required by the Leaseback Agreement, the Tax Agreement or Recaptured Benefits.

Section 6.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Project Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right and 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. In order to entitle the Agency to exercise any remedy reserved to it in this Article VI it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Project Agreement.

Section 6.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Project Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the fees of such attorneys and such other expenses so incurred.

## ARTICLE VII. MISCELLANEOUS

Section 7.1 Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, members, officers, employees, agents (other than the Company), representatives, successors and assigns harmless from and against, any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company of this Project Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective executive director, directors, members, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned

liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

Section 7.2 This Project Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

Section 7.3 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, or by a nationally-recognized overnight courier, addressed as follows:

To the Agency: City of Yonkers Industrial Development Agency  
470 Nepperhan Avenue, Suite 200  
Yonkers, New York 10701  
Attention: Chairperson

With Copy To: Harris Beach PLLC  
445 Hamilton Avenue, Suite 1206  
White Plains, New York 10601  
Attention: Michael V. Curti, Esq.

To the Company: Wheeler Block Yonkers LLC  
25-04 40<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
Long Island City, New York 11101  
Attn: Jesse Deutch

With Copy To: Veneruso, Curto, Schwartz and Curto, LLP  
35 East Grassy Sprain Road, Suite 400  
Yonkers, New York 10710  
Attention: James Veneruso, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

Section 7.4 This Project Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Westchester County, New York.

Section 7.5 The warranties, representations, obligations and covenants of the Company under this Project Agreement shall be absolute and unconditional and shall remain in full force and effect during the term of this Project Agreement, shall be deemed to have been relied upon by the Agency, and shall survive the delivery and termination of this Project Agreement to the Agency, regardless of any investigation made by the Agency. This Project



Agreement shall survive any termination or expiration of the Leaseback Agreement or the Tax Agreement, as described below.

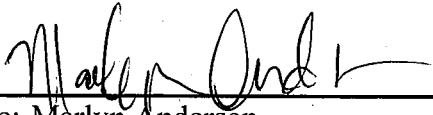
Section 7.6 By executing this Project Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (a) legal services, including but not limited to those provided by the Agency's general counsel and bond/transaction counsel, (b) other consultants retained by the Agency, if any, in connection with the Project; and (c) with respect to Agency's enforcement of any event of default or failure to comply with the terms of this Project Agreement (including reasonable attorney fees, expenses and costs). The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (i) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

[Remainder of This Page Intentionally Left Blank]

[Signature Page to the Project Agreement]

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

**CITY OF YONKERS INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Name: Marlyn Anderson  
Title: Secretary

**WHEELER BLOCK YONKERS LLC**  
A New York Limited Liability Company

By: \_\_\_\_\_  
Name: Jesse Deutch  
Title: Authorized Signatory

[Signature Page to the Project Agreement]

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

**CITY OF YONKERS INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: Marlyn Anderson  
Title: Secretary

**WHEELER BLOCK YONKERS LLC**  
A New York Limited Liability Company

By: \_\_\_\_\_  
Name: Jesse Deutch  
Title: Authorized Signatory

## SCHEDULE A

### SCHEDULE OF DEFINITIONS

“Authorized Representative” means, in the case of the Agency, the Executive Director, the Chairman or the Vice Chairman and such additional persons as, at the time, are designated to act on behalf of the Agency; and in the case of the Company, the members and such additional persons as, at the time, are designated to act on behalf of the Company.

“Independent Accountant” shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Agency (such approval not to be unreasonably withheld or delayed).

“Lease Agreement” shall mean that certain Lease Agreement, dated as of March 9, 2023, by and between the Company and the Agency.

“Leaseback Agreement” shall mean that certain Lease Agreement, dated as of March 9, 2023, by and between the Company and the Agency.

“Maximum Sales Tax Exemption” shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Company and all Subagents acting on behalf the Company are permitted to receive under this Project Agreement, which shall equal **\$279,698.11**, or such maximum dollar amount as may be determined by the Agency pursuant to such additional documents as may be required by the Agency for such increase.

“Prime Rate” means (i) if no lender, the rate designated by The Wall Street Journal from time to time as its “prime rate”, or (ii) if a lender exists, the rate designated by the lender from time to time as its “prime rate”.

“Sales Tax Exemption” shall mean an exemption from Sales and Use Taxes resulting from the Agency’s participation in the Facility.

“Sales and Use Taxes” shall mean local and State sales and compensating use taxes and fees imposed pursuant to Article 28 of the New York State Tax Law, as the same may be amended from time to time.

“Sales Tax Savings” shall mean all Sales Tax Exemption savings relating to Sales and Use Taxes realized by or for the benefit of the Company, including any savings realized by any Subagent, pursuant to this Project Agreement.

“State Sales and Use Taxes” shall mean sales and compensating use taxes and fees imposed by Article 28 of the New York State Tax Law but excluding such taxes imposed in a city by Section 1107 or 1108 of such Article 28, as the same may be amended from time to time.

## **SCHEDULE A-1**

### **CERTIFICATE SECTION 224-A OF NEW YORK LABOR LAW\***

\_\_\_\_\_, being duly sworn, deposes and says upon penalty of perjury:

1. That s/he is the duly appointed \_\_\_\_\_ of Wheeler Block Yonkers LLC, a limited liability company duly organized and validly existing under the laws of the State of New York and authorized to transact business in the State of New York, having its principal office at 25-04 40<sup>th</sup> Avenue, 2<sup>nd</sup> Floor, Long Island City, New York 11101 (the “**Company**”).

2. That the Company has previously entered into a straight-lease transaction with the City of Yonkers Industrial Development Agency (“**Agency**”).

3. That I have read and understand the provisions of the Lease Agreement, including, Section of the Lease Agreement with respect to Section 224-A of the New York Labor Law.

4. That this Certificate is hereby delivered pursuant to Section 224-A(8)(a) of the New York Labor Law and Section 3.2 of that certain Project Agreement by and between Company and Agency dated as of March 9, 2023 (“**Project Agreement**”).

5. That the Company has entered into a construction contract, dated \_\_\_\_\_ (the “**Construction Contract**”), with \_\_\_\_\_ (the “**Contractor**”) for the demolition, construction and equipping of fixtures of the Facility, as such term is defined in the Project Agreement (the “**Facility**”).

6. That the total construction costs of the demolition, construction and equipping of fixtures of the Facility is currently anticipated to be \$\_\_\_\_\_, including soft costs (“**Construction Costs**”).

7. That the total amount of benefits and other public support received by the Company with respect to the Facility, from the Agency or any other public entity, as defined in Section 224-A of the New York Law Labor Law, including sales and use tax-exemptions, mortgage recording tax exemptions and real property tax abatements shall not exceed \$\_\_\_\_\_, based upon our estimation of the otherwise applicable real estate taxes and without allowing for any discount to present value (“**Public Funds**”).

8. That the provisions of Section 224-A of the New York Labor Law [check each box as appropriate].

- ☐ Do not apply because the amount of the Construction Costs of the Facility paid for in whole or in part by Public Funds, is less than thirty percent (30%) of the total Construction Costs.

☐ Do not apply because the Facility is not a “covered project” under Section 224-a of the New York Labor Law [include section of NY Labor Law Section 224-a(4) for exemption).

☐ Does apply because the Construction Contract will be entered into on or after January 1, 2022 and the amount of the Construction Costs of the Facility paid for in whole or in part by Public Funds is equal to or greater than thirty percent (30%) of the total Construction Costs.

**WHEELER BLOCK YONKERS LLC**

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

Name:

Title: Authorized Signatory

Subscribed and sworn to before  
me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SCHEDULE A-2**

[Cost-Benefit Analysis]



December 22, 2022

# Wheeler Block Lofts

## Wheeler Block Yonkers LLC

FINANCIAL ASSISTANCE AND IMPACT ANALYSIS FOR  
YONKERS INDUSTRIAL DEVELOPMENT AGENCY  
YONKERS, NEW YORK





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# EXECUTIVE SUMMARY

## THE WHEELER BLOCK LOFTS HOUSING PROJECT

Wheeler Block Yonkers LLC (Applicant) requests financial assistance from the City of Yonkers IDA (Agency) for a redevelopment of three historic buildings into a mixed-income housing (Project.) Storrs Associates, LLC has been engaged by the Agency to conduct an objective, third-party analysis to assist the Agency with its evaluation of the application. The Project includes:

- ◆ 36 apartments, with 5 set aside for households earning no more than 60% of Area Median Income (AMI).
- ◆ Anticipated capital from the Restore NY and Yonkers HOME funds as well as a bank loan and equity.
- ◆ \$12,750,650 total project costs.

### Financial Assistance Requested

- ◆ 15-Year PILOT schedule with a 35% maximum abatement, present value of savings of \$798,987.
- ◆ Mortgage Recording Tax abatement of \$122,100.
- ◆ Construction Materials sales tax abatement of \$316,411.

## CONCLUSIONS AND RECOMMENDATION

This analysis concludes that the financial assistance is necessary for financial feasibility, and without it, the Project would not be built. With assistance, the Project is likely to operate and generate cash flow, meeting investor expectations, and would therefore be built.

### Estimated Return on Investment for Applicant

With the requested financial assistance, the Project is estimated to deliver a cash-on-cash return of 7.65% over the term of the PILOT. This is measured as an equity dividend rate, which can be benchmarked against current market conditions.

The estimated return on Applicant equity falls within the market range of 5.59% to 14.85%, and below the average of 9.76%. Without the assistance, the return would be 4.54%, well below the minimum benchmark.

### Estimated Economic Benefits in Yonkers

- ◆ Project construction is expected to generate 34 direct jobs plus another 6 indirect and induced jobs, and add \$4.2 million to the city's Gross Regional Product (GRP), the local version of U.S. GDP.
- ◆ Annual operations are estimated to support 8 jobs: 5 permanent on-site employees, and 2-3 jobs in the city from spending on local goods and services. This activity adds an estimated \$0.6 million annually to GRP in Yonkers.

### Estimated Fiscal Benefit to Cost Ratio in Yonkers

- ◆ Benefit/cost ratio within Yonkers of \$2.53 / \$1.00
- ◆ Net fiscal benefit of \$1,312,110 over 15 years

### Contents of This Report

Summary of Results.....	2
IDA Benefits to Project .....	3
Project Benefits to Yonkers .....	4
Fiscal Benefits and Cost Analysis .....	6
Project Operations.....	7
Financing Plan .....	9
PILOT Analysis .....	10
About this Report.....	12

# SUMMARY OF RESULTS

## ESTIMATED BENEFITS AND COSTS FOR YONKERS

### Estimated Fiscal Benefits and Costs for Yonkers

#### Fiscal Benefits (Total New Revenue over 15 Years)

Sales Tax from Construction Materials Purchases, Table 2	\$160,420
Sales Tax from Construction Worker Spending, Table 5	7,098
Sales Tax from On-Site Worker Spending, Table 5	14,781
Sales Tax from Household Spending, Table 5	53,010
Sales Tax from Operations, Taxable Purchases, Table 5	90,438
Mortgage Recording Tax, Table 2	33,919
Real Property Tax, Table 2	<u>1,809,801</u>
Total Fiscal Benefits	\$2,169,469

#### Fiscal Costs (Foregone Revenue)

Property Tax, Table 2	(\$663,019)
Mortgage Recording Tax, Table 2	(33,919)
Construction Sales Tax, Table 2	<u>(160,420)</u>
Total Fiscal Costs (Foregone Revenue)	(\$857,359)

**Net Benefit to Yonkers** **\$1,312,110**

**Benefit/Cost Ratio** **\$2.53 to \$1.00**

Note: Taxes are calculated for PILOT period, then discounted by 3%.

## ESTIMATED ECONOMIC IMPACT & OUTPUT<sup>1</sup>

- ◆ 8 ongoing jobs created in the City of Yonkers, 5 expected at the Project.
- ◆ \$565,730 estimated annual increase to Gross Regional Product.
- ◆ 34 jobs created by construction spending, plus another 6 indirect and induced jobs, for a total of 40 construction-related jobs.
- ◆ \$4,225,481 added to GRP during the construction period.

### Jobs and Income - Employees and Resident and Business Purchases

	<u>Direct</u>	<u>Indirect</u>	<u>Induced</u>	<u>Total</u>
New Jobs	5	1	1	8
Labor Income	\$82,848	\$61,069	\$84,605	\$228,522
Average Income	\$16,873	\$43,621	\$65,080	\$30,029
Value Added, or Contribution to Yonkers GRP				\$565,730

### Jobs and Worker Income During Construction Period

	<u>Direct</u>	<u>Indirect</u>	<u>Induced</u>	<u>Total</u>
New Jobs	34	6	0	40
Labor Income	\$3,009,425	\$775,469	\$7,336	\$3,792,231
Average Income	\$88,931	\$127,965	\$61,136	\$94,758
New Jobs are Estimated from Construction Payroll				
Value Added, or Contribution to Yonkers GRP				\$4,225,481

- ◆ Direct jobs are at the Project during construction or operation
- ◆ Indirect jobs are supported by business to business purchases
- ◆ Induced jobs are supported by employee and household spending

<sup>1</sup> Totals and averages in tables may not add because of rounding.

# IDA BENEFITS TO PROJECT

Storrs Associates analyzed pro forma cashflows and project financing details submitted by the Applicant. With Agency assistance:

- ♦ The Project is estimated to deliver an average cash-on-cash return, measured as an equity dividend rate, of 7.65% over 15 years, within the market benchmarks.
- ♦ Project operations will generate positive net cash flow each year, and repay debt service.
- ♦ Table 2 summarizes the value of the assistance over 15 years. Details of the PILOT are provided below in PILOT Analysis.

Table 2

Table 1

Comparison of Return on Investment	15-Year PILOT, 35% Abatement	No PILOT
Project Cost	\$12,750,650	\$12,750,650
Initial Developer Equity	\$2,410,650	\$2,410,650
Initial Equity as a % of Project Costs	18.91%	18.91%
<u>Equity Dividend Rates, Benchmark 5.59% to 14.85%, Average of 9.76%</u>		
Years 1-5	5.83%	0.82%
Years 1-10	6.97%	3.15%
Years 1-15	7.65%	4.54%
<u>Debt Service Coverage Ratios, Benchmark 1.26 to 1.93, Average 1.60</u>		
Average	1.32	1.19
Minimum	1.12	0.88
Maximum	1.43	1.43

Benchmarks: RealtyRates 2022 Q4 for Retail and Hi-Rise Multifamily Housing  
Performance assumes operations begin in PILOT Year 3, with completion and issuance of a Temporary Certificate of Occupancy (TCO). An earlier TCO would improve the Project's financial performance.

Estimated Financial Assistance Requested	Total Project	City of Yonkers	Yonkers School District	Westchester County	State, MTA	Table Reference
<u>Sales Tax Exemption on Construction Materials</u>						
Construction Materials Costs, Estimated (1)	\$3,565,193	\$3,565,193	\$0	\$0	\$3,565,193	
Sales Tax Rate Subject to Exemption (2)	8.875%	4.500%	0.000%	4.000%	4.375%	
Estimated Sales Tax Exemption (3)	\$316,411	\$160,420	\$0	in State Total	\$155,991	This table
<u>Mortgage Recording Tax Exemption (4)</u>						
Estimated Mortgage Amount	\$8,140,000	\$8,140,000	\$0	\$8,140,000	0	
Mortgage Recording Tax Benefit, Percent of Mortgage (4)	1.5%	Note 4		Note 4	0	
Estimated Mortgage Recording Tax Exemption	\$122,100	\$33,919	\$0	\$88,181	0	This table
<u>Real Property Tax Abatement</u>						
Estimated Real Property Taxes if no PILOT, Present Value	\$2,180,942	\$591,573	\$1,218,228	\$371,141	n/a	Tables 11 - 12
Less: Estimated PILOT Tax Payments, Present Value	(1,381,955)	(374,851)	(771,931)	(235,174)	n/a	Tables 11 - 12
Real Property Tax Abatement, Present Value	798,987	216,722	446,297	135,967	0	
Estimated Financial Assistance Requested, Total Present Value	\$1,237,497	\$411,062	\$446,297	\$224,148	\$155,991	

Present Value Discount Rate is 3%

(1) All materials are estimated to be purchased in Yonkers, using a retail or wholesale supplier.

(2) City of Yonkers retains 50.7% of the total rate of 8.875% on purchases within the City, or 4.5%. Source: City of Yonkers IDA.

(3) Total is maximum abatement assuming all materials purchases owe the full 8.875%. Actual abatement will vary depending on sales tax rates at the location of purchase.

(4) Westchester County rate is 1.5%. City of Yonkers retains 27.78% of the total collected. Source: City of Yonkers IDA.

# PROJECT BENEFITS TO YONKERS

## Annual Operations

The Applicant anticipates 5 permanent employees for facility operations, and provided estimated operating expenses and payroll. These were used to calculate the jobs from operations and business purchases<sup>2</sup>. The 36 new households will also support jobs and GRP through annual spending.

Table 3

### Economic Impact of Project Operations in Yonkers

#### Basic Information

Timeframe	Annually		
Payroll	\$79,541	Household Income	\$2,723,570
Additional Purchases	\$189,827		

#### Jobs and Worker Income for Project Employees and Operations

	<u>Direct</u>	<u>Indirect</u>	<u>Induced</u>	<u>Total</u>
New Jobs	5	1	0	6
Labor Income	\$82,848	\$61,069	\$654	\$144,571
Average Income	\$16,873	\$43,621	\$32,720	\$22,839

Value Added, or Contribution to Yonkers GRP, Operations \$463,150

#### Jobs and Worker Income, Resident Household Spending

	<u>Induced</u>	<u>Total</u>
New Jobs	1	1
Labor Income	\$83,950	\$83,950
Average Income	\$65,586	\$65,586

Value Added, or Contribution to Yonkers GRP, Household Spending \$102,580

Total Value Added, Operations and Households \$565,730

## Construction Period

40 jobs are estimated to be required to design, build, and finance the project, including site work and infrastructure, building rehabilitation and reconstruction, architecture and engineering, and professional and financing fees. Purchase of property, reserves, and IDA fees are not included.

All of the construction jobs, regardless of where workers live, are expected to contribute to the Yonkers economy because the Project is located in the city. The Applicant expects that approximately 50% of on-site jobs will originate within the 100-mile hiring radius.

Table 4

### Economic Impact of Construction in Yonkers

#### Basic Information

Timeframe	24-36 Months, Treated as 1 Year for Calculations
Construction Costs	\$7,991,943 Without acquisition, project fees, reserves

#### Jobs and Worker Income During Construction Period

	<u>Direct</u>	<u>Indirect</u>	<u>Induced</u>	<u>Total</u>
New Jobs	34	6	0	40
Labor Income	\$3,009,425	\$775,469	\$7,336	\$3,792,231
Average Income	\$88,931	\$127,965	\$61,136	\$94,758

New Jobs are Estimated from Construction Payroll

Value Added, or Contribution to Yonkers GRP \$4,225,481

#### Construction Trades Workers Detail, All Jobs are Direct

	<u>Direct</u>
New Jobs	17
Hours Worked	33,651
Days worked	4,206.39
Compensation	\$1,183,394
Avg Hourly Rate	\$35

<sup>2</sup> Jobs, wages, and GRP calculated with the IMPLAN input-output model. Purchases estimated by IMPLAN are used to project future jobs, wages, and other purchases.

## Sales Tax Estimates, Operations and Construction

The economic activity from Project construction and operation generates sales taxes on a portion of the goods and services purchased. New sales tax revenue generated by the Project is estimated as follows, and shown in Table 5.

- ◆ Within Yonkers a sales tax rate of 8.875% applies, with 4.5% of collected taxes retained as city revenue.
- ◆ Construction workers purchase meals, gas, and workday incidentals for each day worked. The NYS per diem for Westchester County, \$50, is used. Workdays are hours worked from Table 4, above, divided by 8-hour days. 75% of purchases are expected to be taxable.
- ◆ The permanent full time workers are expected to purchase meals, gas, and incidentals, but to spend only \$25 per day because of the ongoing nature of the job. 75% of purchases are expected to be taxable.
- ◆ Based on the Applicant's pro forma cash flows, taxable operating expenses are projected, with 75% of the purchases in Yonkers and paying 4.5% sales tax to the City.

Table 5

### Sales Tax Revenue from Project Construction and Operation

#### Construction Worker Spending, Construction Period Only

Construction Worker Per Diem, \$50 for 4,206 workdays	\$210,320
75% Taxable Spending at 8.875% Tax Rate	13,999
4.5% Sales Tax Retained by City of Yonkers	<b>\$7,098</b>

#### On-Site Worker Spending

On-Site Worker Per Diem, \$25 for 245 annual workdays	\$30,074
75% Taxable Spending in Yonkers	\$22,555
4.5% Sales Tax Retained by City of Yonkers, First Year	\$1,015
Present Value of Annual Tax over PILOT Period	\$14,781

#### Facility Operations, Taxable Purchases

Estimated Value of Taxable Purchases	\$189,827
75% of Taxable Purchases Made in Yonkers	\$142,370
4.5% Sales Tax Retained by City of Yonkers	\$6,407
Present Value of Annual Tax over PILOT Period	\$90,438

#### Resident Household Spending

Household Income after Housing and Taxes	\$1,634,142
11% Spent in City of Yonkers	\$179,756
45% Spending Taxable at 8.875% Tax Rate	\$80,890
4.5% Sales Tax Retained by City of Yonkers, First Year	\$3,640
Present Value of Annual Sales Tax over PILOT Period	\$53,010

Sales Taxes from Operations and Households, PILOT Period	<b>\$158,230</b>
--	------------------

Household and Project spending are estimated to increase 3% annually. Spending is discounted Present Value at a rate of 3%.

# FISCAL BENEFITS AND COSTS

## Calculation of the Ratio

A ratio of tax benefits to foregone tax revenue, or savings to the Project, can help evaluate the effects of both the Project and the financial assistance. This is a hypothetical analysis only, as without the requested financial assistance the Project would not be built.

## Purpose and Use of this Ratio

New York State requires Industrial Development Agencies to conduct a cost/benefit analysis but does not establish a ratio or benchmark. Storrs Associates calculates a benefit/cost ratio that the Agency can use to compare similar projects over time, and to understand how the Project affects different jurisdictions.

Table 6

**Estimated Fiscal Benefits and Costs of Financial Assistance in Yonkers**

	City of Yonkers	Yonkers School District	Total Effects in Yonkers	Table Reference
<u>Fiscal Benefits</u>				
One-time Sales Tax Revenue from Construction Materials Purchase	\$160,420	\$0	\$160,420	Table 2
One-time Sales Tax Revenue from Construction Labor Per Diem	7,098	0	7,098	Table 5
Sales Tax Revenue from On-Site Employee Per Diem, Present Value	14,781	0	14,781	Table 5
Sales Tax Revenue from Household Spending, Present Value	53,010	0	53,010	Table 5
Sales Tax Revenue from On-Site Operations, Present Value	90,438	0	90,438	Table 5
Mortgage Recording Tax	33,919	0	33,919	Table 2
<u>Property Tax Revenue from Project if No PILOT is Awarded</u>	<u>591,573</u>	<u>1,218,228</u>	<u>1,809,801</u>	Tables 11 - 12
Total Fiscal Benefits	\$951,241	\$1,218,228	\$2,169,469	
<u>Fiscal Costs (Foregone Revenue)</u>				
Foregone One-Time Sales Tax on Construction Materials Sales	\$160,420	\$0	\$160,420	Table 2
Foregone One-Time Mortgage Recording Tax	33,919	0	33,919	Table 2
<u>Foregone Property Tax Revenue, Present Value (Exemption)</u>	<u>216,722</u>	<u>446,297</u>	<u>663,019</u>	Tables 11 - 12
Total Costs of Financial Assistance	\$411,062	\$446,297	\$857,359	
Benefit to Cost Ratios	2.31	2.73	2.53	
Net Fiscal Benefit	\$540,179	\$771,931	\$1,312,110	

(1) 17 workers on site per day, spending \$50 per day, the state's per diem for Westchester County. This accounts for meals, gas, and incidentals, 75% of which is taxable.

(2) 5 workers on site per day, spending \$25 per day, 75% of which is taxable, over 30 years and discounted by 3%.

(3) 36 households spending 11% of disposable income after shelter and taxes within the City of Yonkers, 45% of which is taxable. NPV at 3% discount rate over PILOT life.

# PROJECT OPERATIONS

## Rent and Affordability

The Applicant provided details of rents for the Project, shown in the tables below. Commercial space at \$31.20 is just above the Westchester County average of \$29.49<sup>3</sup>. Storrs Associates calculated an Estimated Household Income needed for each household to pay no more than 30% of annual income in rent, and confirmed the leases on income-restricted units meet the Area Median Income thresholds<sup>4</sup>.

Table 7a

### Residential Unit Rent and Household Income

Unit Type	Income Restriction	# of Units	Square Feet per Unit	Per Unit Monthly Rent	Total Monthly Rent	Per Unit Annual Rent	Estimated Household Income	First Year Income to Project
<u>Housing: Market Rate Units</u>								
Studio	None	8	498	\$1,600	\$12,800	\$19,200	\$64,000	\$153,600
1BR	None	23	668	\$2,051	\$47,173	\$24,612	\$82,040	\$566,076
<u>Housing: Income-Restricted Units (2)</u>								
Studio	60%	1	459	\$1,353	\$1,353	\$16,236	\$58,250	\$16,236
1BR	60%	4	582	\$1,478	\$5,911	\$17,733	\$66,600	<u>\$70,932</u>
Totals		36						\$806,844

Table 7b

### Commercial Rent and Income

Type	Square Feet (SF)	\$/SF	First Year Revenue
Retail/Restaurant	7,500	\$31.20	\$234,000

<sup>3</sup> Source: CBRE Westchester County Office Figures Q3 2022

<sup>4</sup> Source: Westchester County 2022 Income & Rent Program Guidelines, Area Median Income (AMI), Sales & Rent Limits



# PROJECT OPERATIONS

Table 8

## Operating Snapshot at PILOT Year 5

Year 5 of the PILOT is used to create a snapshot of Project performance. The Applicant provided clear, detailed operating information for the full PILOT period. The following factors were reviewed and found to be reasonable:

- ◆ The Applicant projects a stabilized vacancy rate of 5% for the housing units, just below the 5.4% for the New York metro area and above 4.2% for the northeast region.
- ◆ The commercial vacancy rate of 7.5% is below both the New York metro area average of 16.6% and the northeast regional average of 10.8%. However, this is a small component of Project revenue. The Project is likely to remain feasible during periods of higher vacancy.
- ◆ After stabilization, the Applicant expects income and expenses to increase at a uniform rate of 2.5% per year.
- ◆ Net Operating Income (NOI) after debt service is five times stronger with the PILOT, \$153,737 compared with \$32,721. Similarly, NOI after Debt Service is 15% compared with 3%. The higher net cash flow strengthens debt service coverage and can support operating and financial performance in different economic environments.
- ◆ Non-tax operating expenses are 22% of EGI in both scenarios, below the benchmark of 44.95%. When real property taxes are included, expenses rise in both scenarios, but not above the benchmark. It is notable that without the PILOT, real property taxes cost the Project nearly as much as operations, at 19% of EGI compared with 22%.

## Comparison of Operating Results, Stabilization in Year 5

	<u>15 Year PILOT</u>	<u>No PILOT</u>
<u>Net Operating Income</u>		
Gross Operating Income after Vacancy (EGI)	\$1,037,252	\$1,037,252
Less: Operating Expenses	(312,240)	(433,256)
<i>Non-Tax Operating Expenses and Reserve</i>	<i>(231,563)</i>	<i>(231,563)</i>
<i>Real Property Tax Expense</i>	<i>(80,677)</i>	<i>(201,694)</i>
Net Operating Income (NOI)	\$725,012	\$603,996
<u>Net Income after Debt Service</u>		
Debt Service	<u>(\$571,276)</u>	<u>(\$571,276)</u>
Net Operating Income after Debt Service	\$153,737	\$32,721
NOI after Debt Service as a % of EGI	15%	3%
Non-Tax Operating Expenses as a % of EGI	22%	22%
Real Property Tax Expense as a % of EGI	8%	19%
Expense Ratio, Benchmark 44.95%	30%	42%
Benchmark from RealtyRates.com 2022 Q4 Market Survey		

Storrs Associates flags projects where expenses increase faster than income as potentially non-feasible over the long term and notifies the Agency of concerns. Here, where expenses are expected to grow more slowly than revenues, the Applicant may experience lower net cashflows if expenses actually increase faster but the costs cannot be passed through to customers. However, this is an operating risk for all projects and reflects ordinary uncertainty when making long-term projections, rather than an expectation of declining financial performance at the outset, which could be of concern.

# FINANCING PLAN

## Capital Structure

The Applicant expects to fund construction with a combination of debt, grants from Restore NY and the Yonkers Home program, and equity. While direct equity is 19% of the capital stack, when combined with the grants it provides 36% of funding, keeping the debt to 64% and within general bank expectations. The financing terms for the long term loan are consistent with the current market<sup>5</sup>, including the interest rate which is just below the average of 5.78%.

Table 9

### Sources and Uses of Funds

Sources of Funds	Amount	Percent
<u>Debt</u>		
CPC Financial (Bank Loan)	\$8,140,000	64%
<u>Grant Funding</u>		
Restore NY	\$2,000,000	16%
Yonkers HOME Funds	200,000	2%
<u>Equity</u>		
Developer Equity	\$2,410,650	19%
<b>Total Sources</b>	<b>\$12,750,650</b>	<b>100%</b>
<u>Uses of Funds</u>		
Property Acquisition	\$3,407,000	27%
Hard Costs	7,072,591	55%
Soft Costs	806,227	6%
Financing Costs	<u>1,464,832</u>	<u>11%</u>
<b>Total Uses</b>	<b>\$12,750,650</b>	<b>100%</b>

Source: Applicant

<sup>5</sup> Source: RealtyRates .com 2022 Q4 Investor Survey

Table 10

### Leverage and Estimated Market Value

#### Financing Terms, Long Term Debt

Principal	\$8,140,000
Term in Years	30
Interest Rate	5.77%
Years of Interest Only	0

#### Market Value (NOI/CapRate) after 15 Years

Net Income (NOI)	\$828,757
Capitalization Rate (CapRate)	7.76%
Market Value (NOI/CapRate)	\$10,674,696
<u>Principal Outstanding</u>	<u>-\$6,179,520</u>
Net Proceeds	\$4,495,176

Source: Applicant. CapRate by Storrs Associates using RealtyRates.com Investor Survey, Q4 2022 and input from City of Yonkers Assessor.

# PILOT ANALYSIS

## Notes and Disclaimers

This PILOT analysis is an estimate based on currently available information, including operating information from the Applicant, and the actual Project revenue, assessed value, tax rates, and tax obligations may be different.

If construction is completed in fewer than 24-36 months and a Temporary Certificate of Occupancy (TCO) is issued prior to Year 3, the PILOT abatement will begin in that year.

## Methodology

1. Calculate the taxes on the current, or Unimproved, value and escalate by 1% annually.
2. Calculate an estimated future/full market value after completion of the Project, and estimate taxes using the income approach recommended by the city's Assessor.
3. Calculate the increase in assessment from the Project and create a PILOT schedule that (1) pays taxes only on the Unimproved value during construction, and (2) reduces taxes on the completed Project by no more than 35% in total when measured over the life of the PILOT.
4. Calculate the savings to the Project from the PILOT, annually and over 15 years, discounted to present value. Calculate the total percent abatement over the PILOT period.

Summary results are presented in Table 11 and Figure 1. The annual abatement schedule is included on the next page.

Table 11

### Real Property Tax Comparisons and New Revenue from Project

Comparison of Taxes on Full Value of Project, and Project with PILOT

	<u>City of Yonkers</u>	<u>School District</u>	<u>County</u>	<u>All Jurisdictions</u>
Taxes without PILOT	\$591,573	\$1,218,228	\$371,141	\$2,180,942
Less: PILOT Payments	(374,851)	(771,931)	(235,174)	(1,381,955)
Foregone Revenue	\$216,722	\$446,297	\$135,967	\$798,987
Abatement Percent	35%	35%	35%	35%

### Net New Taxes Compared with No Project

PILOT Payments	\$374,851	\$771,931	\$235,174	\$1,381,955
Less: Taxes without Project	(151,248)	(311,466)	(94,890)	(557,604)
Net New Tax Revenue	\$223,603	\$460,465	\$140,284	\$824,352

All taxes are present value with a discount rate of 3%

Figure 1

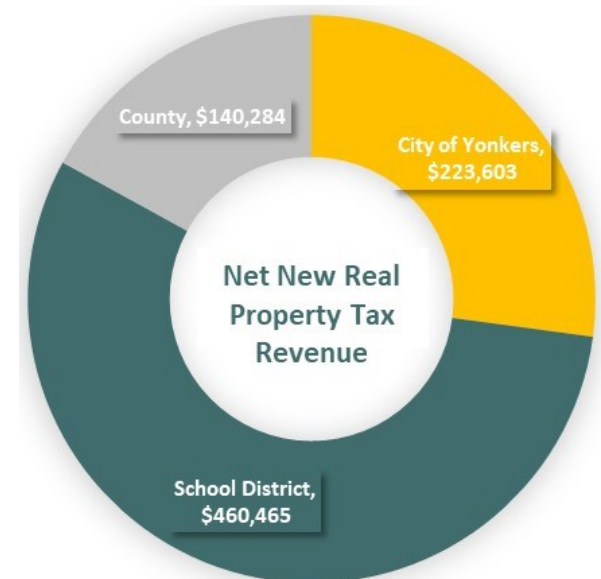


Table 12

### Annual Abatement Schedule

<u>PILOT Year</u>	<u>Abatement as a % of Full Taxes</u>
1	Unimproved
2	Unimproved
3	70%
4	65%
5	60%
6	55%
7	50%
8	40%
9	35%
10	30%
11	25%
12	20%
13	15%
14	10%
15	0%
Total Abatement over 15 Years (not an average)	35%

"Unimproved" years are the anticipated construction period, during which the Project pays taxes on the current value only.

# ABOUT THIS REPORT

## SCOPE OF SERVICES - FINANCIAL ASSISTANCE AND IMPACT ANALYSIS

The purpose of the report is to provide a consistent, accurate, and reliable analysis of a proposed project that has asked the Agency for financial assistance. The three basic components are:

1. Evaluate the capital structure, operating assumptions, and financial performance of the Project, calculate return on investment, and provide an opinion on whether the requested financial assistance is necessary and reasonable. This includes drafting a PILOT schedule for the Agency's approval.
2. Estimate the economic impact of construction, ongoing project operations, and household spending using jobs, labor income, and contribution to the Gross Regional Product (GRP) of the City of Yonkers.
3. Create a benefit/cost analysis that compares new tax revenue resulting from the Project with the costs of the financial assistance.

## DATA SOURCES

### Demographic and Housing Information



Esri is an internationally-recognized provider of Geographic Information Systems (GIS) and demographic data and visualization tools. Esri's demographic data is gathered from the U.S. Census, the Bureau of Labor Statistics, and Bureau of Economic Analysis. Esri uses current and historical data to create estimates of future demographic characteristics. Any estimates used by Storrs Associates are clearly labeled as such.

### Market Benchmarks and Trends



RealtyRates.com™ is a comprehensive resource of real estate investment and development news, trends, analytics, and market research that support real estate professionals involved with more than 50 income producing and sell-out property types throughout the U.S. RealtyRates.com™ is the publisher of the award-winning Investor, Developer and Market Surveys, providing data essential to the appraisal, evaluation, disposition and marketing of investment and development real estate nationwide

### Economic Impact



IMPLAN is a regional economic analysis software application that is designed to estimate the impact or ripple effect (specifically backward linkages) of a given economic activity within a specific geographic area through the implementation of its Input-Output model. Studies, results, and reports that rely on IMPLAN data or applications are limited by the researcher's assumptions concerning the subject or event being modeled. Studies such as this one are in no way endorsed or verified by IMPLAN Group, LLC unless otherwise stated by a representative of IMPLAN. IMPLAN® model, 2022 Data, using inputs provided by the user and IMPLAN Group LLC, IMPLAN System (data and software), 16905 Northcross Dr., Suite 120, Huntersville, NC 28078 [www.IMPLAN.com](http://www.IMPLAN.com).

# STORRS ASSOCIATES

Storrs Associates, LLC is a partner and advisor to public and private entities seeking to encourage economic growth and to make direct public and private investments. We deliver client-driven, high quality advice, customized analyses and reports, public speaking and learning sessions, and transaction management.

Victoria Storrs, the company President, founded the firm in 2021 to provide direct, responsive service to municipal governments and the public and private organizations who work with and for them. She has worked with municipal governments for more than 20 years, beginning as an investment banker at First Albany Corporation and managing debt financings for state public authorities. She taught money and capital markets at the State University of New York at Albany School of Business, and has been a development finance and economic development consultant for more than eight years, including five years at Camoin Associates of Saratoga Springs, NY, where she became the firm's first Development Finance Practice Leader.

Storrs Associates, LLC is located in Albany County, NY, and serves clients throughout New York and the Northeast. Learn more at [www.storrsassociates.com](http://www.storrsassociates.com) and on [LinkedIn](#).

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## Terms of Use

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THIS REPORT WAS PREPARED BY STORRS ASSOCIATES, LLC FOR  
YONKERS INDUSTRIAL DEVELOPMENT AGENCY  
YONKERS, NY



**SCHEDULE B**

**LIST OF APPOINTED AGENTS<sup>1</sup>**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_

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<sup>1</sup> FOR EACH AGENT APPOINTED BY THE COMPANY, A NYS FORM ST-60 MUST BE COMPLETED AND FILED BY THE COMPANY WITH THE NYS DEPARTMENT OF TAXATION AND FINANCE IDA UNIT INDICATING THE APPOINTMENT OF SUCH AGENT OF THE COMPANY.



## **SCHEDULE C**

### **MANDATORY AGENT AND SUBAGENT CONTRACT LANGUAGE**

“This contract is being entered into by **WHEELER BLOCK YONKERS LLC [OR, NAME OF SUBAGENT]** (the “Agent”), as agent for and on behalf of the **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY** (the “Agency”), in connection with a certain project of the Agency for the benefit of the **WHEELER BLOCK YONKERS LLC PROJECT**, consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 1097 North Broadway, City of Yonkers, New York, and any lands located in the City of Yonkers, New York, and occupied by license or easement during construction or improved by third parties for the benefit of the Agency Project (the “Premises”). The acquisition of the machinery, equipment and building materials to be incorporated and installed in the Premises and all services and rentals of equipment related to the acquisition, construction and equipping of the Project shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions set forth in the Project Agreement, dated as of March 9, 2023 (the “Project Agreement”), by and between the Agency and Wheeler Block Yonkers LLC; and the Agent hereby represents that this contract is in compliance with the terms of the Project Agreement. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

**EXHIBIT A**

**FORM OF TAX AGREEMENT**

**[Attached]**

**CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**WHEELER BLOCK YONKERS LLC**

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**TAX AGREEMENT**

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*Dated as of March 9, 2023*

**Affected Tax Jurisdictions:**

**Westchester County  
City of Yonkers**

**Street Address:**

15, 19 and 23 North Broadway  
City of Yonkers  
Westchester County, New York

**Tax Map No.:**

Section: 2  
Block: 2003  
Lots: 22, 25 and 27

## TAX AGREEMENT

THIS TAX AGREEMENT (the “Agreement”), dated as of March 9, 2023, by and between **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with its offices located at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 (the “Agency”) and **WHEELER BLOCK YONKERS LLC**, a New York limited liability company having offices at 25-04 40th Avenue, 2nd Floor, Long Island City, New York 11101 (the “Company”).

### W I T N E S S E T H :

WHEREAS, the Agency was created by Chapter 83 of the Laws of 1982 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the “Act”) as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company, for itself or on behalf of an entity to be formed has submitted an application (the “Application”) to the Agency requesting the Agency's assistance with a certain project (the “Project”) consisting of: (i) the acquisition or retention of the land commonly known as 15, 19 and 23 North Broadway (Section 2, Block 2003, Lots 22, 25 and 27) (the “Land”) more fully described on Exhibit A attached hereto; (ii) the construction, renovation, improving, maintaining and equipping on the Land of the existing three, vacant, historic apartment buildings, including approximately 36 apartments (24 one-bedroom units and 12 alcove studio units, 5 units will be set aside as “HOME” rental units), accessibility improvements, a new residential lobby, and ground floor commercial space (the “Improvements”); and (iii) the acquisition and installation in and around the Land and Improvements of certain items of equipment and other tangible personal property (the “Equipment”, which together with the Land and Improvements are the “Facility”); and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to hold a leasehold interest in the Land, Improvements and Equipment constituting the Facility pursuant to the terms and conditions contained in that certain Lease Agreement, dated as of March 9, 2023, by and between the Agency and the Company (the “Lease Agreement”); and

WHEREAS, the Agency proposes to lease the Facility back to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions hereinafter set forth in that certain Leaseback Agreement, dated as of March 9, 2023, by and between the Agency and the Company (the “Leaseback Agreement”); and

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

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

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special charges as defined by Section 2.1 which shall be paid by the Company outside this Tax Agreement as billed by the respective third parties; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Westchester County (the "County") and the City of Yonkers (the "City), inclusive of the City of Yonkers Dependent School District (the "Dependent School District", which together with the City and the County are collectively, the "Affected Tax Jurisdictions"); and

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

#### Section I - Payment in lieu of Ad Valorem Taxes.

Section 1.1 Exemption Application. A.) Subject to the completion and filing by the Agency or its designee at the direction of the Agency on or before the taxable status date **October 15, 2023** (the "Taxable Status Date") of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law ("RPTL") and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes for the periods set forth in Section 1.3. For purposes of the foregoing, "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County and City, including Real Estate Taxes levied by the City for its Dependent School District. The Company shall provide the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due, specifically including but not limited to Real Estate Taxes for years prior to and after the tax years covered by this Tax Agreement. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessor by the Taxable Status Date.

B.) Agreement to Make Payments. The parties agree and acknowledge that payments made under this Agreement are for purposes of obtaining revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are exempt from the payment of real property taxes pursuant to Section 412-a of the RPTL and Section 874 of the General Municipal Law. The Company shall pay to the Agency, on September 1 (“Payment Date”) of each year beginning on September 1, 2024 (for the benefit of the Affected Tax Jurisdictions), as an in lieu of tax payment, an amount equal to the Tax Payments as set forth on Schedule A (the “Tax Payments”) for the periods described in Section 1.3. **All Tax Payments shall be mailed to the Agency at: 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701,** or as otherwise directed by the Agency. The Company hereby agrees to make all such Tax Payments without further notice or invoice from the Agency or the Affected Tax Jurisdictions. All checks shall be made payable as directed by the Agency from time to time.

(i) The Company hereby agrees for the benefit of the Affected Tax Jurisdictions to not seek a refund of any taxes paid or to be paid for the periods prior to the periods described in Section 1.3 and expressly waives and releases any and all rights it may have to any and all such refunds.

(ii) The Agency and the Company intend to establish a fixed payment schedule of Tax Payments that are in lieu of real estate taxes with respect to the Facility that, absent a default by the Company or a change in law, shall provide tax certainty for the Company and revenue certainty for the Affected Tax Jurisdictions.

(iii) Right to Grieve Assessed Value of the Property for Purposes of Calculating Full Taxes. Notwithstanding the foregoing, the Company shall have the right to institute a judicial or other review of the assessed value of the Facility, whether pursuant to the provisions of Article 7 of the RPTL or other applicable law, as the same may be amended from time to time; provided, however, that no such judicial or other review or settlement thereof shall have any effect on the Company’s obligations under this Agreement, including, without limitation, the Company’s obligation to make the Tax Payments when due. Such judicial or other review shall only be for purposes of setting the assessed value of the Facility as though the Facility was on the tax rolls of each Affected Tax Jurisdiction as taxable real property, but shall have no effect on the other terms of this Agreement or the tax-exempt status of the Facility during the term of this Agreement. Furthermore, the Company shall not seek a refund of any Tax Payments or taxes paid or to be paid and expressly waives and releases its right to seek such refund.

(iv) Right to Grieve Assessed Value of the Property for Purposes of Calculating Special Charges. At any time during the term of this Agreement, the Company shall be entitled to institute a grievance which would cause an adjustment of the Special Charges (as defined in Section 2.1) and the Company shall be limited to the right to refunds related to grievances involving Special Charges.

(v) Except as set forth herein, the Tax Payments as set forth in **Schedule A** shall not

be contested, grieved or refuted during and for the term of this Agreement and the Company shall not seek a refund of any taxes paid or to be paid.

(vi) Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder, if any, within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.2 Valuation of Future Additions to the Facility. If there shall be a future addition to the Facility that has not been described in the Application constructed or added in any manner after the date of this Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant evidence that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Tax Payment. The Agency shall notify the Company of any proposed increase in the Tax Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased Tax Payment until a different Tax Payment shall be established. If a lesser Tax Payment is determined in any proceeding or by subsequent agreement of the parties, the Tax Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding Tax Payment(s).

### 1.3 Period of Benefits.

The tax benefits provided for herein shall be deemed to include: (i) the 2025 County tax year through the 2039 County tax year and (ii) the 2024-2025 City tax year through the 2038 - 2039 City tax year. **This Tax Agreement shall expire on December 31, 2039** (with the understanding that the Company will be making a payment hereunder for the 2040 County tax year and the 2039 - 2040 City tax year in the amounts as if the Agency were not in title on the tax lien date with respect to said tax years). In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the RPTL; provided, the foregoing shall not be interpreted to limit the Company and Agency from subsequently agreeing to additional benefits based upon commitments to make additional improvements or changes in use from time to time between the Agency and the Company. It is hereby agreed and understood that the Affected Tax

Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

## Section II - Special District Charges, Special Assessments and other charges.

2.1 *Special District Charges and other payments:* Special district charges, special assessments, special ad valorem levies specifically including but not limited to charges imposed by the City of Yonkers for frontage feet (“CC001”); Housing Units (“CC002”); ETPA Charge (“CC003”); and a Safety Inspection Fee (“CC004”) and district charges including but not limited to pure water charges and Westchester County sewer district charges (collectively the “Special Charges”), are not included in the amount of the Tax Payment and are to be paid in full in accordance with normal billing practices.

## Section III - Transfer of Facility.

3.1 In the event this Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

## Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer with respect to any Special Charges as if and to the same extent as if the Company were the owner of the Facility.

4.2 The Company shall file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers and provide information to the Agency as requested from time to time.

## Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

## Section VI - Events of Default.

6.1 The following shall constitute “Events of Default” hereunder. The failure by the Company to: (i) make the payments described in Section I within thirty (30) days of the Payment Date (the “Delinquency Date”); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Leaseback Agreement after the expiration of any applicable cure periods. Upon the occurrence of any Event of Default



hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I herein are not made by the Delinquency Date, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

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

## Section VII - Assignment.

7.1 No portion of any interest in this Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

## Section VIII – Miscellaneous.

8.1 This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

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

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

With Copy To: Harris Beach PLLC  
445 Hamilton Avenue, Suite 1206  
White Plains, New York 10601  
Attention: Michael V. Curti, Esq.

To the Company: Wheeler Block Yonkers LLC  
25-04 40th Avenue, 2nd Floor  
Long Island City, New York 11101  
Attn: Jesse Deutch

With Copy To: Veneruso Curto, Schwartz, and Curto  
35 East Grassy Sprain Road, Suite 400  
Yonkers, New York 10710  
Attention: James Veneruso, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section. Any notice hereunder may be given by counsel for a party with the same force and effect as if given by such party.

8.3 This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Westchester County, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent (other than the Company), servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, (other than the Company) servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

[The Balance of This Page Intentionally Left Blank]

[Signature Page to Tax Agreement]

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

**CITY OF YONKERS INDUSTRIAL  
DEVELOPMENT AGENCY**

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

Name: Marlyn Anderson

Title: Secretary

**WHEELER BLOCK YONKERS LLC**  
A New York Limited Liability Company

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

Name: Jesse Deutch

Title: Authorized Signatory

**SCHEDULE A**

to

Tax Agreement

Dated as of March 9, 2023

by and between

City of Yonkers Industrial Development Agency  
and Wheeler Block Yonkers LLC

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

City Tax Year	County Tax Year	Tax Agreement Year	Tax Agreement Payment
2024-2025	2025	1	100% of Full Taxes <sup>1</sup>
2025-2026	2026	2	100% of Full Taxes
2026-2027	2027	3	30% of Full Taxes
2027-2028	2028	4	35% of Full Taxes
2028-2029	2029	5	40% of Full Taxes
2029-2030	2030	6	45% of Full Taxes
2030-2031	2031	7	50% of Full Taxes
2031-2032	2032	8	60% of Full Taxes
2032-2033	2033	9	65% of Full Taxes
2033-2034	2034	10	70% of Full Taxes
2034-2035	2035	11	75% of Full Taxes
2035-2036	2036	12	80% of Full Taxes
2036-2037	2037	13	85% of Full Taxes
2037-2038	2038	14	90% of Full Taxes

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<sup>1</sup> Full Taxes shall mean all property taxes, not including Special District Charges, payable with respect to the Facility calculated in an amount equal to the amounts that would have been paid if the Agency were not in title and no exemption was available.

2038-2039	2039	15	100% of Full Taxes
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- The Agency interest in the Facility shall expire on **December 31, 2039**. The Company shall pay the 2040 County tax bill and the 2039-2040 City tax bill and tax bills for all subsequent tax years on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. Tax Payments shall be no less than the Full Taxes paid prior to the Tax Agreement.
- Does NOT include Special District Charges - City will send separate bill.
- The Project contemplates a two year construction period and thirteen years of operations. The first and second years of the Tax Agreement Schedule assumes the Project is assessed at 100% of the then full market value.

**EXHIBIT A**

Legal Description of Land

**EXHIBIT B**

**FORM OF NYS FORM ST-60**

**[See Attached Page]**



# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

**ST-60**  
(1/18)

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only****IDA information**

Name of IDA City of Yonkers Industrial Development Agency	IDA project number (use OSC numbering system for projects after 1998) 5507-22-03A		
Street address 470 Nepperhan Avenue, Suite 200	Telephone number (914 ) 509-8651		
City Yonkers	State NY	ZIP code 10701	Email address (optional) N/A

**Project operator or agent information**

Name of IDA project operator or agent	Mark an <b>X</b> in the box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or Social Security number	
Street address	Telephone number ( )	Primary operator or agent? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City	State	ZIP code	Email address (optional) N/A

**Project information**

Name of project Wheeler Block Yonkers LLC Project			
Street address of project site 15, 19, 23 N Broadway*	*and any lands located in the City of Yonkers and occupied by license or easement during construction or improved by third parties for the benefit of the Project		
City Yonkers	State NY	ZIP code 10701	Email address (optional) N/A
Purpose of project The construction, renovation, improving, maintaining and equipping of the existing three vacant apartment buildings on the land for use as a 36-unit apartment building facility with new residential lobby and ground floor commercial space.			

Description of goods and services intended to be exempted from New York State and local sales and use taxes

Goods and services, inclusive of fuel and utilities, whether the goods and services are purchased or rented, and notwithstanding that they continue to constitute personal property or the item is used after the completion of the Project, or the item is geographically located outside the legal boundaries of the Project Facility; provided there is a reasonable basis to acquire the item to benefit the Project.

Date project operator or agent appointed (mmddyy) 030923	Date project operator or agent status ends (mmddyy) 031524	Mark an <b>X</b> in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: All agents; all in 3,151,527.00		Estimated value of New York State and local sales and use tax exemption provided: All agents; all in 279,698.00

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA Marlyn Anderson	Print title Secretary	
Signature	Date	Telephone number ( 914 ) 509-8651



## Instructions

### When to file

An IDA must file this form within 30 days of the date they appoint any project operator or other person as agent of the IDA, for purposes of extending any sales and use tax exemptions.

### Requirements to file

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA should not file this form if they do not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, they must, within 30 days of the change, file a new form with the new information.

### If the information on this form changes

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA, within 30 days, must send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. They must attach to the letter a copy of the form it originally filed. The IDA should not send a letter for a form that is not valid merely because the *Completion date of project* has passed.

### Mailing instructions

Mail completed form to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0866**

**Private delivery services** – See Publication 55, *Designated Private Delivery Services*.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our website at ***www.tax.ny.gov***

- get information and manage your taxes online
- check for new online services and features

### Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

**EXHIBIT C-1**

**NYS FORM ST-123 FOR USE BY THE COMPANY**

**[See Attached Page]**

**IDA Agent or Project Operator  
Exempt Purchase Certificate****Effective for projects beginning on or after June 1, 2014****ST-123**  
(7/14)

This certificate is not valid unless all entries have been completed.

**Note:** To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller	Name of agent or project operator <b>Wheeler Block Yonkers LLC</b>		
Street address	Street address <b>25-04 40th Ave 2nd Floor</b>		
City, town, or village	State	ZIP code	
<b>Yonkers</b>	<b>NY</b>	<b>10701</b>	
Agent or project operator sales tax ID number (see instructions)			

Mark an **X** in one: ☐ Single-purchase certificate ☒ Blanket-purchase certificate (valid only for the project listed below)**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

**Project information**

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA <b>City of Yonkers Industrial Development Agency</b>		
Name of project <b>Wheeler Block Yonkers LLC Project</b>	IDA project number (use OSC number) <b>5507-22-03A</b>	
Street address of project site * and any lands located in the City of Yonkers and occupied by license or easement during construction or improved by third parties for the benefit of the Project. <b>15, 19, 23 N Broadway*</b>		
City, town, or village <b>Yonkers</b>	State <b>NY</b>	ZIP code <b>10701</b>
Enter the date that you were appointed agent or project operator (mm/dd/yy) ..... <b>03 / 09 / 23</b>	Enter the date that agent or project operator status ends (mm/dd/yy) ..... <b>03 / 15 / 24</b>	

**Exempt purchases**(Mark an **X** in boxes that apply)

- ☒ A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- ☐ B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- ☐ C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter **N/A**.

*Industrial development agencies and authorities (IDAs)* are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our Web site at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features



**Sales Tax** Information Center:

(518) 485-2889

To order forms and publications:

(518) 457-5431



**Text Telephone (TTY) Hotline**

(for persons with hearing and speech disabilities using a TTY):

(518) 485-5082

**EXHIBIT C-1**

**NYS FORM ST-123 FOR USE BY SUBAGENTS OF COMPANY**

**[See Attached Page]**

**IDA Agent or Project Operator  
Exempt Purchase Certificate****Effective for projects beginning on or after June 1, 2014****ST-123**  
(7/14)

This certificate is not valid unless all entries have been completed.

**Note:** To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller	Name of agent or project operator
Street address	Street address
City, town, or village                      State              ZIP code	City, town, or village                      State              ZIP code
Agent or project operator sales tax ID number (see instructions)	

Mark an **X** in one:    ☐ Single-purchase certificate    ☒ Blanket-purchase certificate (valid only for the project listed below)**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

**Project information**

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA City of Yonkers Industrial Development Agency		
Name of project Wheeler Block Yonkers LLC Project	IDA project number (use OSC number) 5507-22-03A	
Street address of project site      * and any lands located in the City of Yonkers and occupied by license or easement 15, 19, 23 N Broadway*      during construction or improved by third parties for the benefit of the Project.		
City, town, or village Yonkers	State NY	ZIP code 10701
Enter the date that you were appointed agent or project operator (mm/dd/yy) .....	Enter the date that agent or project operator status ends (mm/dd/yy) ..... 03 / 15 / 24	

**Exempt purchases**(Mark an **X** in boxes that apply)

- ☒ A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- ☐ B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- ☐ C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	



## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter **N/A**.

*Industrial development agencies and authorities (IDAs)* are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



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- get information and manage your taxes online
- check for new online services and features



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To order forms and publications:

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**Text Telephone (TTY) Hotline**

(for persons with hearing and speech disabilities using a TTY):

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**EXHIBIT C-2**

**NYS FORM FT-123 (FUEL)  
FOR USE BY THE  
COMPANY**



**IDA Agent or Project Operator  
Exempt Purchase Certificate for Fuel**

This certificate is not valid unless all entries have been completed.

To be completed by the purchaser and given to the seller.

Name of seller	Name of agent or project operator <b>Wheeler Block Yonkers LLC</b>		
Street address	Street address <b>25-04 40th Ave 2nd Floor</b>		
City, town, or village	City, town, or village	State	ZIP code
	<b>Yonkers</b>	<b>NY</b>	<b>10701</b>
Agent or project operator sales tax ID number (see instructions)			

Mark an **X** in one: ☐ Single-purchase certificate ☒ Blanket-purchase certificate (valid only for the project listed below)**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

**Project information**

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the fuel for use in the following IDA project and that such purchases qualify as exempt from excise taxes and sales and use taxes under my agreement with the IDA.

Name of IDA <b>City of Yonkers Industrial Development Agency</b>			
Name of project <b>Wheeler Block Yonkers LLC Project</b>		IDA project number (use OSC number) <b>5507-22-03A</b>	
Street address of project site <b>15, 19, 23 N Broadway*</b>		<b>**and any lands located in City of Yonkers and occupied by license or easement during construction or improved by third parties for the benefit of the Project</b>	
City, town, or village <b>Yonkers</b>		State <b>NY</b>	ZIP code <b>10701</b>
Enter the date that you were appointed agent or project operator (mm/dd/yy) ..... <b>03 / 09 / 23</b>		Enter the date that agent or project operator status ends (mm/dd/yy) ..... <b>03 / 15 / 24</b>	

**Exempt purchases** – Only fuel or residual petroleum product used to **complete** the project may be purchased by IDA agents or project operators exempt from the fuel excise tax, petroleum business tax, and sales and use tax. Fuel or residual petroleum product used to **operate** a business after the project is completed does not qualify for this exemption (see instructions).Mark an **X** in boxes that apply:

- |  |  |
|--|--|
| <input type="checkbox"/> <b>A.</b> Motor fuel                | <input type="checkbox"/> <b>C.</b> Non-highway diesel motor fuel |
| <input type="checkbox"/> <b>B.</b> Highway diesel motor fuel | <input type="checkbox"/> <b>D.</b> Residual petroleum product    |

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that excise taxes and state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

# Instructions

## To the purchaser

You may use Form FT-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from excise taxes and sales and use tax as described in the IDA contract.

You may use Form FT-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** – If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter **N/A**.

*Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.*

IDAs are exempt from the payment of sales and use tax on their purchases. However, IDAs do not normally make direct purchases for projects. Commonly, an IDA instead appoints a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax. Purchases made by an agent or project operator to operate a business after the project is completed are subject to tax.

**Example:** *An IDA agreement with its agent, Contractor X, states that Contractor X may make all purchases of materials and equipment necessary for completion of the project as agent for the IDA.*

*Contractor X purchases non-highway diesel motor fuel for use in construction equipment that will be used to prepare the site for construction. Since the fuel is being used to complete the project, Contractor X may purchase the fuel exempt from taxes.*

*When the project is completed, Contractor X purchases motor fuel and highway diesel motor fuel for use in snowplows and other maintenance vehicles used to maintain the parking lots for the business. Contractor X may not purchase this fuel exempt from tax because it is being used to operate, not to complete, the project.*

## Exempt purchases

To qualify for exemption, the purchases must be made within the authority granted by the IDA and used to **complete** the project, but not to **operate** the completed project.

**Box A – Motor fuel** is gasoline, benzol, reformulated blend stock for oxygenate blending, conventional blend stock for oxygenate blending, E85, fuel grade ethanol that meets the ASTM International active standards specification D4806 or D4814, or other product which is suitable for use in the operation of a motor vehicle engine. If you are purchasing motor fuel exempt from tax, mark this box.

**Box B – Highway diesel motor fuel** is any diesel motor fuel that is **not** non-highway diesel motor fuel. If you are purchasing highway diesel motor fuel exempt from tax, mark this box.

**Box C – Non-highway diesel motor fuel** is any diesel motor fuel designated for use other than on a public highway, and is dyed diesel motor fuel. If you are purchasing non-highway diesel motor fuel exempt from tax, mark this box.

*Diesel motor fuel is No. 1 diesel fuel, No. 2 diesel fuel, biodiesel, kerosene, fuel oil, or other middle distillate, and also motor fuel suitable for operating a diesel engine. Diesel motor fuel does not include any product specifically designated "No. 4 diesel fuel."*

**Box D – Residual petroleum product** means the topped crude of refinery operations, including No. 5 fuel oil, No. 6 fuel oil, bunker C, and the special grade of diesel product designated as No. 4 diesel fuel, that is not suitable for use in the operation of a motor vehicle engine. If you are purchasing residual petroleum product exempt from tax, mark this box.

## Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

## To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

## Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

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**EXHIBIT C-2**

**NYS FORM FT-123 (FUEL)  
FOR USE BY SUBAGENTS OF THE  
COMPANY**

**IDA Agent or Project Operator  
Exempt Purchase Certificate for Fuel**

This certificate is not valid unless all entries have been completed.

To be completed by the purchaser and given to the seller.

Name of seller	Name of agent or project operator
Street address	Street address
City, town, or village                      State              ZIP code	City, town, or village                      State              ZIP code
Agent or project operator sales tax ID number ( <i>see instructions</i> )	

Mark an **X** in one:    ☐ Single-purchase certificate    ☒ Blanket-purchase certificate (valid only for the project listed below)

**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

**Project information**

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the fuel for use in the following IDA project and that such purchases qualify as exempt from excise taxes and sales and use taxes under my agreement with the IDA.

Name of IDA City of Yonkers Industrial Development Agency		
Name of project Wheeler Block Yonkers LLC Project		IDA project number ( <i>use OSC number</i> ) 5507-22-03A
Street address of project site                      **and any lands located in City of Yonkers and occupied by license or easement during construction or improved by third parties for the benefit of the Project 15, 19, 23 N Broadway*		
City, town, or village Yonkers		State              ZIP code NY              10701
Enter the date that you were appointed agent or project operator ( <i>mm/dd/yy</i> ) ..... / /		Enter the date that agent or project operator status ends ( <i>mm/dd/yy</i> ) ..... 03 / 15 / 24

**Exempt purchases** – Only fuel or residual petroleum product used to **complete** the project may be purchased by IDA agents or project operators exempt from the fuel excise tax, petroleum business tax, and sales and use tax. Fuel or residual petroleum product used to **operate** a business after the project is completed does not qualify for this exemption (*see instructions*).

Mark an **X** in boxes that apply:

- |  |  |
|--|--|
| <input type="checkbox"/> <b>A.</b> Motor fuel                | <input type="checkbox"/> <b>C.</b> Non-highway diesel motor fuel |
| <input type="checkbox"/> <b>B.</b> Highway diesel motor fuel | <input type="checkbox"/> <b>D.</b> Residual petroleum product    |

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that excise taxes and state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative ( <i>include title and relationship</i> )	Date
Type or print the name, title, and relationship that appear in the signature box	

# Instructions

## To the purchaser

You may use Form FT-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from excise taxes and sales and use tax as described in the IDA contract.

You may use Form FT-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** – If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter **N/A**.

*Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.*

IDAs are exempt from the payment of sales and use tax on their purchases. However, IDAs do not normally make direct purchases for projects. Commonly, an IDA instead appoints a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax. Purchases made by an agent or project operator to operate a business after the project is completed are subject to tax.

**Example:** *An IDA agreement with its agent, Contractor X, states that Contractor X may make all purchases of materials and equipment necessary for completion of the project as agent for the IDA.*

*Contractor X purchases non-highway diesel motor fuel for use in construction equipment that will be used to prepare the site for construction. Since the fuel is being used to complete the project, Contractor X may purchase the fuel exempt from taxes.*

*When the project is completed, Contractor X purchases motor fuel and highway diesel motor fuel for use in snowplows and other maintenance vehicles used to maintain the parking lots for the business. Contractor X may not purchase this fuel exempt from tax because it is being used to operate, not to complete, the project.*

## Exempt purchases

To qualify for exemption, the purchases must be made within the authority granted by the IDA and used to **complete** the project, but not to **operate** the completed project.

**Box A – Motor fuel** is gasoline, benzol, reformulated blend stock for oxygenate blending, conventional blend stock for oxygenate blending, E85, fuel grade ethanol that meets the ASTM International active standards specification D4806 or D4814, or other product which is suitable for use in the operation of a motor vehicle engine. If you are purchasing motor fuel exempt from tax, mark this box.

**Box B – Highway diesel motor fuel** is any diesel motor fuel that is **not** non-highway diesel motor fuel. If you are purchasing highway diesel motor fuel exempt from tax, mark this box.

**Box C – Non-highway diesel motor fuel** is any diesel motor fuel designated for use other than on a public highway, and is dyed diesel motor fuel. If you are purchasing non-highway diesel motor fuel exempt from tax, mark this box.

*Diesel motor fuel is No. 1 diesel fuel, No. 2 diesel fuel, biodiesel, kerosene, fuel oil, or other middle distillate, and also motor fuel suitable for operating a diesel engine. Diesel motor fuel does not include any product specifically designated "No. 4 diesel fuel."*

**Box D – Residual petroleum product** means the topped crude of refinery operations, including No. 5 fuel oil, No. 6 fuel oil, bunker C, and the special grade of diesel product designated as No. 4 diesel fuel, that is not suitable for use in the operation of a motor vehicle engine. If you are purchasing residual petroleum product exempt from tax, mark this box.

## Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

## To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

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- get information and manage your taxes online
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(for persons with hearing and speech disabilities using a TTY):

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**EXHIBIT C-3**

**INVOICE RIDER FORM**

I, \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ certify that I am a duly appointed agent of the CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (the “Agency”) and that I am purchasing the tangible personal property or services for use in the following Agency Project and that such purchases qualify as exempt from sales and use taxes under Project Agreement, dated as of March 9, 2023 by and between the Agency and WHEELER BLOCK YONKERS LLC.

Name of the Project:	The Wheeler Block Yonkers LLC Project
Street address of the Project Site:	15, 19, and 23 North Broadway and any lands located in the City of Yonkers, New York, and occupied by license or easement during construction or improved by third parties for the benefit of the Project City of Yonkers, New York
IDA OSC project number:	5507-22-03A

**EXHIBIT D**

**NYS FORM ST-340**

**[See Attached Page]**





# Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

**ST-340**  
(1/18)

For period ending December 31, \_\_\_\_\_ (enter year)

**Project information**

Name of IDA agent/project operator <b>Wheeler Block Yonkers LLC</b>		Employer identification number (EIN) <b>84-3293298</b>	
Street address <b>25-04 40th Ave 2nd Floor</b>		Telephone number (      )	
City <b>Yonkers</b>		State <b>NY</b>	ZIP code <b>11101</b>
Name of IDA <b>City of Yonkers Industrial Development Agency</b>	Name of project <b>Wheeler Block Yonkers LLC Project</b>		IDA project number <b>5507-22-03A</b>
Street address of project site <b>15, 19, 23 N Broadway*</b>		<b>* and any lands located in City of Yonkers and occupied by license or easement during construction or improved by third parties for the benefit of the Project</b>	
City <b>Yonkers</b>		State <b>NY</b>	ZIP code <b>10701</b>
Date project began <b>030923</b>		Completion date of project <b>031524</b> Actual <input type="checkbox"/> Expected <input checked="" type="checkbox"/>	
Total sales and use tax exemptions (actual tax savings; not total purchases) .....			\$

**Representative information (not required)**

Authorized representative, if any	Title
Street address	Telephone number (      )
City	State      ZIP code

**Certification**

I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.		
Print name of officer, employee, or authorized representative		Title of person signing
Signature		Date

**If you do not** annually file a complete report, **we may remove** your authority to act as an IDA agent/project operator.

Mail completed report to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0866**If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.



# Instructions

## General information

### Who must file

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as the *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person **directly** appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operators directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operators should **not** themselves file Form ST-340. However, the agent/project operators must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

### What you must report

The report must show the **total value** of all state and local **sales and use taxes exempted** during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions the agent/project operator (you) obtained; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

Include only the **total combined** exemptions obtained by the above people. A breakdown of the total is not required. However, since the report must include the value of the exemptions they obtained, you must keep records of the amounts others report to you.

You must make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available, so that you can comply with the annual reporting requirements.

Do not include on this report the amount of any sales and use tax exemptions from other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

### When the report is due

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

### Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

**Name of IDA agent/project operator:** Enter your name, address, employer identification number (EIN), and telephone number.

**Name of IDA and IDA project number:** Enter the name and address of the IDA. If more than one IDA is involved in a particular project, you must file a separate report for the tax exemptions attributable to each IDA. Also enter the ID project number.

**Name of project:** Enter the name of the project and the address of the project site. If you are involved in more than one project, you

must file a separate report for each project, even if authorized by the same IDA.

**Date project began:** Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

**Completion date of project:** Enter the date installation, lease, or rental of property (for example, machinery or computers) on the project ended, or the date the project is expected to be completed. Mark an **X** in the appropriate box to indicate if the date entered is actual or expected.

**Total sales and use tax exemptions:** Enter the total amount of New York State and local sales and use taxes exempted during the reporting period as a result of the project's receipt of IDA financial assistance (*if none, enter 0*). This includes exemptions obtained at the time of purchase, as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do **not** enter total purchases.

### Representative information

If applicable, enter the name, address, title (for example, attorney or accountant), and telephone number of the individual you authorize to submit this report. This section is not required.

### Certification

Enter the name and title of the person signing on your behalf (for example, the IDA agent/project operator's officer, employee, or other authorized representative). Your officer, employee, or authorized representative must sign and date the report.

Mail completed report to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0866**

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

## Need help?



Visit our website at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features

### Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

**EXHIBIT E**

**FORM OF ANNUAL EMPLOYMENT AND  
FINANCIAL ASSISTANCE CERTIFICATION LETTER**

Company name and address: Wheeler Block Yonkers LLC  
25-04 40<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
Long Island City, New York 11101

Project Name: **WHEELER BLOCK YONKERS LLC PROJECT**

**Job Information**

Current number of full-time equivalent employees ("FTE") retained at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

Category	FTE	Average Salary and Fringe Benefits or Ranges
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____
Other	_____	_____

Current number of full-time equivalent employees ("FTE") created at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

Category	FTE	Average Salary and Fringe Benefits or Ranges
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____
Other	_____	_____

A copy of the NYS 45 form for the project location is required to be submitted with this report. If the NYS 45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created, an internal payroll report or other appropriate documentation verifying the total jobs by employment category as outlined above at the location is required with this submission.

Financing Information

Has the Agency provided project financing assistance (generally through issuance of a bond or note)

Yes      No

If financing assistance was provided, please provide:

Original principal balance of bond or note issued

\$ \_\_\_\_\_

Outstanding principal balance of such bond or note as of December 31

\$ \_\_\_\_\_

Outstanding principal balance of such bond or note as of December 31

\$ \_\_\_\_\_

Final maturity date of the bond or note

\_\_\_\_\_

#### Sales Tax Abatement Information

Did your Company or any appointed subagents receive Sales Tax Abatement for your Project During the prior year?

Yes      No

If so, please provide the amount of sales tax savings received by the Company and all appointed subagents

\$ \_\_\_\_\_

(Attach copies of all ST-340 sales tax reports that were submitted to New York State by the Company and all subagents for the reporting period. Please also attached all ST-60's filed for subagents for the reporting period)

#### Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project during the prior year?

Yes      No

(note this would only be applicable to the year that a mortgage was placed upon the Project, so if the Agency did not close a mortgage with you during the reporting period, the answer should be no)

The amount of the mortgage recording tax that was exempted during the reporting period:

\$ \_\_\_\_\_

#### PILOT INFORMATION:

County Real Property Tax without PILOT

\$ \_\_\_\_\_

City/Town Property Tax without PILOT

\$ \_\_\_\_\_

School Property Tax without PILOT

\$ \_\_\_\_\_

TOTAL PROPERTY TAXES WITHOUT PILOT

\$ \_\_\_\_\_

Total Tax Payments made for reporting period:

\$ \_\_\_\_\_

Whether paid separately or lump sum to Agency for distribution, please provide break down of allocation of Tax Payment to individual taxing jurisdictions:

County PILOT	\$ _____
City/Town PILOT	\$ _____
Village PILOT	\$ _____
School PILOT	\$ _____
TOTAL PILOTS	\$ _____

Net Exemptions (subtract Total PILOTS from TOTAL property taxes without PILOT)	\$ _____
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I certify that to the best of my knowledge and belief all of the information on this form is correct. I further certify that the salary and fringe benefit averages or ranges for the categories of jobs retained and the jobs created that was provided in the Application for Financial Assistance is still accurate and if not, I hereby attach a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. I also understand that failure to report completely and accurately may result in enforcement of provisions of my agreement, including but not limited to voidance of the agreement and potential claw back of benefits.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_  
(Authorized Company representative)

Date: \_\_\_\_\_