

**PRELIMINARY  
RESOLUTION**

**PRELIMINARY RESOLUTION**  
*(460 Wheatfield Street Project)*

A regular meeting of Niagara County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York on the 11<sup>th</sup> day of April, 2018 at 9:00 a.m., local time.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

PRESENT:

Stephen Brady	Chairperson
Joan G. Aul	Second Vice Chairperson
Kevin McCabe	Secretary
Jerald I. Wolfgang	Assistant Secretary
Arthur G. Pappas	Member
William L. Ross	Member
Daryl Bodewes	Member

ABSENT:

Mark A Onesi	First Vice Chairperson
Willie C. Dunn	Member

THE FOLLOWING PERSONS WERE ALSO PRESENT:

Susan C. Langdon	Interim Executive Director
Andrea Klyczek	Director of Regional & International Marketing
Michael S. Dudley	Finance Manager
Caroline M. Caruso	Accounting Associate
Barbara A. Gill	Administrative Coordinator
Mark Gabriele, Esq.	Agency Counsel

The following resolution was offered by *Mayor Pappas*, seconded by *Mr. McCabe*, to wit:

**Resolution No. 18-04-8.1.1**

RESOLUTION OF THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) ACCEPTING THE APPLICATION OF 460 WHEATFIELD STREET, LLC WITH RESPECT TO A CERTAIN PROJECT (AS MORE FULLY DEFINED BELOW) TO BE UNDERTAKEN BY THE AGENCY FOR THE BENEFIT OF 460 WHEATFIELD STREET, LLC OR AN ENTITY FORMED OR TO BE FORMED; (ii) AUTHORIZING A PUBLIC HEARING WITH RESPECT TO THE PROJECT; (iii) AUTHORIZING THE EXECUTIVE DIRECTOR OF THE AGENCY TO TAKE CERTAIN ACTIONS UNDER ARTICLE 8 OF THE ENVIRONMENTAL CONSERVATION LAW IN CONNECTION WITH THE PROJECT; (iv) PROVIDE SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE CONSTRUCTION AND EQUIPPING OF THE PROJECT AND (v) DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED BY THE AGENCY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 569 of the Laws of 1972 of the State of New York (the "Act"), **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to own, lease and sell property and to issue its bonds as authorized by the Act; and

WHEREAS, **460 WHEATFIELD STREET, LLC** for itself or on behalf of an entity formed or to be formed (the "Company"), has submitted an application to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of: (A) the acquisition of a leasehold or other interest in property located at 460 Wheatfield Street in the City of North Tonawanda, Niagara County, New York (the "Land"), together with the existing building located thereon (the "Existing Improvements"); (B) (i) the renovation of the existing 30,478 square foot building located on the Land into 37 residential market rate apartment units including, but not limited to, tenant and visitor parking areas, a common laundry area, community room with kitchen, computer room, tenant storage areas and rental office (collectively, the "Improvements"), (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the financial assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will hold a public hearing and (i) negotiate an agent agreement (the "Agent Agreement") whereby the Agency will designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project, (ii) negotiate a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback

Agreement"), payment-in-lieu-of-tax agreement (the "PILOT Agreement") and payment-in-lieu of tax mortgage (the "PILOT Mortgage") with the Company, (iii) take or retain fee title to, a leasehold or other interest in the Land, Improvements, Equipment and personal property constituting the Facility (once the Lease Agreement, Leaseback Agreement, PILOT Agreement and PILOT Mortgage have been negotiated), and (iv) provide financial assistance to the Company in the form of sales and use tax exemptions and a mortgage recording tax exemption for financing related to the Project, consistent with the policies of the Agency, a partial real property tax abatement and a mortgage recording tax exemption with respect to a certain payment-in-lieu-of-tax mortgage; and

WHEREAS, the Agency scheduled a public hearing and provided notice of the public hearing pursuant to Section 850-a of the Act; and

WHEREAS, the Agency must determine whether the undertaking of the Project and the providing of the contemplated financial assistance with respect to the same will be in conformance with Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (said law and regulations hereinafter collectively referred to as "SEQR").

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) The Agency has the authority to take the actions contemplated herein under the Act; and

(C) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Niagara County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(D) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

Section 2. For purposes of investigating the advisability of undertaking a coordinated review under SEQR with respect to the Project and determining whether the Project may have a "significant effect on the environment" (as such term is defined under SEQR), the Executive Director of the Agency is hereby authorized and directed to take the following actions:

(A) To obtain an Environmental Assessment Form (the "EAF") with respect to the Project from the Company; and

(B) To review the EAF with counsel to the Agency and prepare proceedings to allow the Agency to comply with SEQR; and

(C) To contact all other "involved agencies" with respect to the Project for the purposes of ascertaining whether they are interested in undertaking a coordinated review with respect to the Project; and

(D) Upon completion of the foregoing, to report to the Agency at its next meeting on the status of the environmental review process with respect to the Project.

Section 3. Based upon the representations and warranties made by the Company in its application for financial assistance, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to \$1,675,000.00, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$134,000.00. The Agency agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services.

Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax

exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 4. The Chairman, Vice Chairman and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to hold a public hearing in compliance with the Act and negotiate (but not execute or deliver) the terms of (A) an Agent Agreement, whereby the Agency appoints the Company as its agent to undertake the Project and to immediately provide sales tax exemption benefits for purchases and rentals related to the renovation, construction and equipping of the project, (B) a Lease Agreement, whereby the Company leases the Facility to the Agency, (C) a related Leaseback Agreement, conveying the Facility back to the Company, (D) a PILOT Agreement, whereby the Company agrees to make certain payments-in-lieu-of real property taxes, (E) a PILOT Mortgage, securing the payment of the amounts due under the PILOT Agreement and (F) related documents; *provided*, (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 5. The Agency is hereby authorized to conduct a public hearing in compliance with the Act.

Section 6. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 7. These Resolutions shall take effect immediately upon adoption.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Stephen F. Brady	[ X ]	[ ]	[ ]	[ ]
Mark Onesi	[ ]	[ ]	[ ]	[ X ]
William L. Ross	[ X ]	[ ]	[ ]	[ ]
Kevin McCabe	[ X ]	[ ]	[ ]	[ ]
William Dunn	[ X ]	[ ]	[ ]	[ X ]
Jerald I. Wolfgang	[ X ]	[ ]	[ ]	[ ]
Joan G. Aul	[ X ]	[ ]	[ ]	[ ]
Daryl Bodewes	[ X ]	[ ]	[ ]	[ ]
Arthur G. Pappas	[ X ]	[ ]	[ ]	[ ]

The Resolutions were thereupon duly adopted.

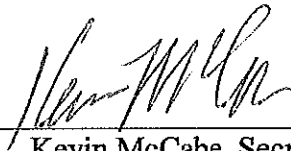
STATE OF NEW YORK    )  
  ) SS.:  
COUNTY OF NIAGARA    )

I, the undersigned Secretary of Niagara County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on April 11, 2018 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 11th day of April, 2018.



\_\_\_\_\_  
Kevin McCabe, Secretary



**FINAL  
RESOLUTION**

**FINAL RESOLUTION**  
*(460 Wheatfield Street LLC Project)*

A regular meeting of Niagara County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York on the 9<sup>th</sup> day of May, 2018 at 9:00 a.m., local time.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

**PRESENT:**

Stephen Brady	Chairperson
Mark A. Onesi	First Vice Chairperson
Joan G. Aul	Second Vice Chairperson
Jerald I. Wolfgang	Assistant Secretary
Arthur G. Pappas	Member
William L. Ross	Member
Daryl Bodewes	Member

**ABSENT:**

Kevin McCabe	Secretary
Willie C. Dunn	Member

**THE FOLLOWING PERSONS WERE ALSO PRESENT:**

Susan C. Langdon	Interim Executive Director
Andrea Klyczek	Director of Regional & International Marketing
Michael Dudley	Finance Manager
Barbara Gill	Administrative Coordinator
Mark Gabriele, Esq.	Agency Counsel

The following resolution was offered by *Mayor Pappas*, seconded by *Mr. Bodewes*, to wit:

**Resolution No. 18-05-7.1.1**

RESOLUTION OF THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) UNDERTAKE A CERTAIN PROJECT FOR THE BENEFIT OF 460 WHEATFIELD STREET, LLC AND/OR AN INDIVIDUAL(S) OR AFFILIATE, SUBSIDIARY, OR ENTITY FORMED OR TO BE FORMED ON ITS BEHALF (AS MORE FULLY DEFINED BELOW); (ii) DETERMINE THAT THE PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT; (iii) NEGOTIATE AND EXECUTE A LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT, PILOT MORTGAGE AND RELATED DOCUMENTS; AND (iv) PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A MORTGAGE RECORDING TAX EXEMPTION FOR THE FINANCING RELATED TO THE PROJECT; AND (C) A MORTGAGE RECORDING TAX EXEMPTION FOR THE MORTGAGE RELATED TO THE PILOT AGREEMENT.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 569 of the Laws of 1972 of the State of New York (the "Act"), **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to own, lease and sell property and to issue its bonds as authorized by the Act; and

WHEREAS, **460 WHEATFIELD STREET, LLC** for itself or on behalf of an entity formed or to be formed (the "Company"), has submitted an application to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of: (A) the acquisition of a leasehold or other interest in property located at 460 Wheatfield Street in the City of North Tonawanda, Niagara County, New York (the "Land"), together with the existing building located thereon (the "Existing Improvements"); (B) (i) the renovation of the existing 30,478 square foot building located on the Land into 37 residential market rate apartment units including, but not limited to, tenant and visitor parking areas, a common laundry area, community room with kitchen, computer room, tenant storage areas and rental office (collectively, the "Improvements"), (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); and (D) the leasing of the Project back to the Company, and (E) the providing of financial assistance to the Company for qualifying portions of the Project in the form of sales and use tax exemptions and a mortgage recording tax exemption, consistent with the policies of the Agency, a partial real property tax abatement and a mortgage recording tax exemption with respect to a certain payment-in-lieu-of-tax mortgage; and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the financial assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, on April 11, 2018, the Agency adopted a resolution (the "Preliminary Resolution") accepting the Application and directing that a public hearing be held; and

WHEREAS, it was contemplated that the Agency would hold a public hearing and (i) negotiate an agent agreement (the "Agent Agreement") whereby the Agency will designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project, (ii) negotiate a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement"), payment-in-lieu-of-tax agreement (the "PILOT Agreement") and payment-in-lieu of tax mortgage (the "PILOT Mortgage") with the Company, (iii) take or retain fee title to, leasehold or other interest in the Land, Improvements, Equipment and personal property constituting the Facility (once the Lease Agreement, Leaseback Agreement, PILOT Agreement and PILOT Mortgage have been negotiated), and (iv) provide financial assistance to the Company in the form of sales and use tax exemptions and a mortgage recording tax exemption for financing related to the Project, consistent with the policies of the Agency, a partial real property tax abatement and a mortgage recording tax exemption with respect to a certain payment-in-lieu-of-tax mortgage; and

WHEREAS, on the 2<sup>nd</sup> day of May, 2018, at 3:00p.m. at the Conference Room at the North Tonawanda Public Library, 505 Meadow Drive, North Tonawanda, New York 14120, the Agency held a public hearing with respect to the Project and the proposed financial assistance being contemplated by the Agency (the "Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A copy of the Minutes of the Public Hearing along with the Notice of Public Hearing published and forwarded to the affected taxing jurisdictions prior to said Public Hearing are attached hereto as Exhibit A;

WHEREAS, the Company has submitted to the Agency a Short Environmental Assessment Form (the "EAF") in compliance with Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, "SEQR") with respect to the Project, a copy of which is attached hereto as Exhibit B.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) The Agency has the authority to take the actions contemplated herein under the Act; and

(C) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities and retaining existing jobs in Niagara County and otherwise furthering the purposes of the Agency as set forth in the Act. In addition, the action taken by the Agency will among other benefits, advance a larger community need for market rate housing, as well as development of an abandoned school; and

(D) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

(E) The Project involves an "unlisted action" (as said quoted term is defined under SEQR). The review is "uncoordinated" (as said quoted term is defined under SEQR). Based upon the review by the Agency of the Short Environmental Assessment Form (the "EAF") and related documents delivered by the Company to the Agency and other representations made by the Company to the Agency in connection with the Project, the Agency hereby finds that (i) the Project will result in no major impacts and, therefore, is one which may not cause significant damage to the environment; (ii) the Project will not have a "significant effect on the environment" (as said quoted term is defined under SEQR) ; and (iii) no "environmental impact statement" (as said quoted term is defined under SEQR) need be prepared for this action. This determination constitutes a "negative declaration" (as said quoted term is defined under SEQR) for purposed of SEQR. The Agency's findings are incorporated in Part II of the EAF.

Section 2. Subject to the Company executing an Agent Agreement by and between the Agency and the Company and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency; (i) to acquire, construct and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; provided, however, the Agent Agreement shall expire on the date as indicated in the Agent Agreement (*unless extended for good cause by the Executive Director of the Agency*).

Section 3. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 4. The Agency hereby confers on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use tax exemption benefits 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, (b) an exemption benefit from mortgage recording tax, and (c) a partial abatement from real property taxes benefit conferred through a certain Payment in Lieu of Tax Agreement. The Agency will provide the Company with Project incentives totaling \$493,968.00, comprised of partial abatement from real property taxes of approximately \$336,718.00, sales and use tax exemption benefits of approximately \$134,000.00 and mortgage tax exemption benefits of \$23,250.00. To effectuate this Resolution, the Chairman, Vice Chairman and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (A) the Lease Agreement whereby the Company leases the Project to the Agency, (B) the related Leaseback Agreement conveying the Project back to the Company, and (C) the PILOT Agreement with real property tax exemption benefits; provided (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 5. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 6. These Resolutions shall take effect immediately upon adoption.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Stephen F. Brady	[ X ]	[ ]	[ ]	[ ]
Mark Onesi	[ X ]	[ ]	[ ]	[ ]
Kevin McCabe	[ ]	[ ]	[ ]	[ X ]
Jerald I. Wolfgang	[ X ]	[ ]	[ ]	[ ]
Joan G. Aul	[ X ]	[ ]	[ ]	[ ]
Willie Dunn	[ ]	[ ]	[ ]	[ X ]
William L. Ross	[ X ]	[ ]	[ ]	[ ]
Arthur G. Pappas	[ X ]	[ ]	[ ]	[ ]
David Bodewes	[ X ]	[ ]	[ ]	[ ]

The Resolutions were thereupon duly adopted.

STATE OF NEW YORK     )  
  ) SS.:  
COUNTY OF NIAGARA    )

I, the undersigned Assistant Secretary of Niagara County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on May 9, 2018 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 9<sup>th</sup> day of May, 2018.

  
\_\_\_\_\_  
Jerald I. Wolfgang, Assistant Secretary



**EXHIBIT A**

# Niagara County Industrial Development Agency

Richard E. Updegrave, County Manager  
Philo J. Brooks Building  
59 Park Avenue  
Lockport, New York 14094

Hon. Wm. McNall, Chairman  
Niagara County Legislature  
175 Hawley Street  
Lockport, New York 14094

Hon. Arthur G. Pappas, Mayor  
City of North Tonawanda  
216 Payne Avenue  
North Tonawanda, New York 14120

Mr. John Shoemaker  
Director of Real Property Tax Service  
Philo J. Brooks Building  
59 Park Avenue  
Lockport, New York 14094

Mr. Gregory J. Woytila, Superintendent  
North Tonawanda School District  
175 Humphrey Street  
North Tonawanda, New York 14120

Ms. Barbara W. Klenke, Assessor  
City of North Tonawanda  
216 Payne Avenue  
North Tonawanda, New York 14120

**April 13, 2018**

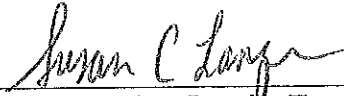
Re: 460 Wheatfield Street, LLC Project

Ladies and Gentlemen:

On **May 2, 2018 at 3 p.m.** in the **Conference Room** at North Tonawanda Public Library, 505 Meadow Drive, North Tonawanda, New York 14120, the Niagara County Industrial Development Agency (the "Agency") will conduct a public hearing regarding the above-referenced project. Attached is a copy of the Notice of Public Hearing describing the project and the financial assistance contemplated by the Agency. The Notice has been submitted to the *Niagara Gazette* for publication.

You are welcome to attend such hearing at which time you will have an opportunity to review the project application and present your views, both orally and in writing, with respect to the project. The public hearing is being conducted pursuant to Section 859-a of the General Municipal Law. We are providing this notice to you, pursuant to General Municipal Law Section 859-a, as the chief executive officer of an affected tax jurisdiction within which the project is located.

NIAGARA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Susan C. Langdon, Interim Executive Director

**NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York General Municipal Law will be held by the Niagara County Industrial Development Agency (the "Agency") on the **2<sup>nd</sup> day of May, 2018 at 3 p.m.**, local time, in the Conference Room at the North Tonawanda Public Library, 505 Meadow Drive, North Tonawanda, New York 14120, in connection with the following matter:

**460 WHEATFIELD STREET, LLC**, and/or an individual(s) or affiliate, subsidiary, or entity or entities formed or to be formed on its behalf (the "Company"), has submitted an application to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of: (A) the acquisition or retention by the Agency of fee title to, or a leasehold interest in, an approximately 2.9 acre parcel of land located at 460 Wheatfield Street in the City of North Tonawanda, Niagara County, New York (the "Land"); (B) renovation of an abandoned school into 37 residential market-rate apartment rental units (the "Improvements"); and (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and collectively with the Land and the Improvements, the "Facility").

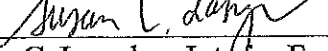
The Agency will acquire title to, or a leasehold interest in, the Facility and lease the Facility back to the Company. The Company will operate the Facility during the term of the lease. At the end of the lease term, the Company will purchase the Facility from the Agency, or if the Agency holds a leasehold interest, the leasehold interest will be terminated. The Agency contemplates that it will provide financial assistance (the "Financial Assistance") to the Company in the form of sales and use tax exemptions and a mortgage tax exemption consistent with the policies of the Agency, and a partial real property tax abatement.

A representative of the Agency will be at the above-stated time and place to present a copy of the Company's project application and hear and accept written and oral comments from all persons with views in favor of or opposed to or otherwise relevant to the proposed Financial Assistance.

This public hearing is being conducted in accordance with Subdivision 2 of Section 859-a of the New York General Municipal Law.

DATED: April 13, 2018

NIAGARA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Susan C. Langdon, Interim Executive Director

**EXHIBIT B**

617.20  
Appendix B  
Short Environmental Assessment Form

**Instructions for Completing**

**Part I - Project Information.** The applicant or project sponsor is responsible for the completion of Part I. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part I based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part I. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part I - Project and Sponsor Information</b>			
460 Wheatfield Street / David Cloy & David Sutton			
Name of Action or Project: School Conversion			
Project Location (describe, and attach a location map): 460 Wheatfield Street N. Tonawanda, NY			
Brief Description of Proposed Action: Convert existing school into multifamily apartments			
Name of Applicant or Sponsor: 460 Wheatfield Street, LLC (to be formed)		Telephone: 716932-7156	
		E-Mail: daves@design2build.com	
Address: 5409 Main Street			
City/PO: Williamsville		State: NY	Zip Code: 14221
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input checked="" type="checkbox"/> YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: City of North Tonawanda Building Dept. Niagara County Ida PILOT and other assistance.			NO <input type="checkbox"/> YES <input checked="" type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		2.9 acres	
b. Total acreage to be physically disturbed?		0 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		2.9 acres	
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____			
<input checked="" type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations?  b. Consistent with the adopted comprehensive plan?	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?  b. Are public transportation service(s) available at or near the site of the proposed action?  c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply?  If No, describe method for providing potable water: _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities?  If No, describe method for providing wastewater treatment: _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?  b. Is the proposed action located in an archeological sensitive area?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?  b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
16. Is the project site located in the 100 year flood plain?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES  b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES Existing Storm Sewer System: _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	

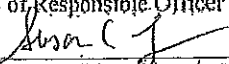
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b>		
Applicant/sponsor name: <u>David Cloy</u>		Date: <u>4/2/2018</u>
Signature: <u><i>David Cloy</i></u>		

**Part 2 - Impact Assessment.** The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:		
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Part 3 - Determination of significance.** The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
<input checked="" type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.
NCIDA	4/3/18
Name of Lead Agency	Date
S. LANGDON	DDP
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
	
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

**PRINT**



**ST-60**



# 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 Niagara County Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 18-03
Street address 6311 Inducon Corporate Drive - Suite One			Telephone number (716 ) 278-8760
City Sanborn	State NY	ZIP code 14132-9099	Email address (optional)

### Project operator or agent information

Name of IDA project operator or agent 460 Wheatfield LLC		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or Social Security number
Street address 5409 Main Street, Suite 200		Telephone number ( 716 ) 932-7156	Primary operator or agent? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
City Williamsville	State NY	ZIP code 14221	Email address (optional)

### Project information

Name of project 460 Wheatfield LLC Project			
Street address of project site 460 Wheatfield Street			
City North Tonawanda	State NY	ZIP code 14120	Email address (optional)
Purpose of project construction renovation of an abandoned school building			

Description of goods and services intended to be exempted from New York State and local sales and use taxes Goods and services used to construct/renovate a 30,478 sq. ft. building into residential market-rate apartments.			
Date project operator or agent appointed (mmdyy) 050119	Date project operator or agent status ends (mmdyy) 123120	Mark an X 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: 1,675,000.00		Estimated value of New York State and local sales and use tax exemption provided: 134,000.00	

**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 Susan C. Langdon		Print title Executive Director	
Signature 		Date 05-21-2019	Telephone number ( 716 ) 278-8760

## 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](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

**PILOT**

**NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**460 WHEATFIELD LLC**

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**PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

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Relating to the Premises located at  
460 Wheatfield Street in the City of North Tonawanda,  
Niagara County, New York

Affected Tax Jurisdictions:  
Niagara County  
City of North Tonawanda  
North Tonawanda School District

Tax Map No.  
182.14-1-79.2

**Dated as of May 1, 2019**

## PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "PILOT Agreement"), dated as of the 1<sup>st</sup> day of May, 2019, is by and between the **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with its offices at 6311 Inducon Corporate Drive, Suite 1, Sanborn, New York 14132 (the "Agency") and **460 WHEATFIELD LLC** a limited liability company formed and existing under the laws of the State of New York, with offices located at 5409 Main Street, Suite 200, Williamsville, New York 14221 (the "Company").

### WITNESSETH:

WHEREAS, the Agency was created by Chapter 569 of the Laws of 1972 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 has requested the Agency's assistance with a certain project (the "Project") consisting of: (A) the acquisition of a leasehold or other interest in property located at 460 Wheatfield Street in the City of North Tonawanda, Niagara County, New York (the "Land"), together with the existing building located thereon (the "Existing Improvements"); (B) (i) the renovation of the existing 30,478 square foot building located on the Land into 37 residential market rate apartment units including, but not limited to, tenant and visitor parking areas, a common laundry area, community room with kitchen, computer room, tenant storage areas and rental office (collectively, the "Improvements"), (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, in order to induce the Company to acquire, construct and equip the Facility, the Agency is willing to take a leasehold interest in the land, improvements and personal property constituting the Facility and lease said land, improvements and personal property back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, dated on or about the date hereof (the "Leaseback Agreement"); 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 ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; 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 Niagara County (the "County"), the City of North Tonawanda (the "City"), the North Tonawanda School District (the "School District" and, collectively with the County and City, the "Affected Tax Jurisdictions").

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 A. Subject to the completion and filing by the taxable status date (**March 1, 2020**) (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 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 hereof. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the City, County and School. The Company shall provide to 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. 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 assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. As long as the Agency has fee title to or leasehold or other interest in the Facility, the Company agrees to pay annually to the Affected Tax Jurisdictions as a payment-in-lieu-of-taxes, on or before October 1 of each calendar year for School taxes and on or before January 1 of each calendar year for County and City taxes (collectively, the "Payment Date"), commencing on October 1, 2020 and January 1, 2021, respectively, an amount equal to the PILOT Payment, as described on Schedule A attached hereto.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

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

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County, City and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date. For school district purposes, the tax rates used to determine the PILOT payment shall be the rate relating to the school year which includes the PILOT payment due date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this PILOT Agreement, other than the Project, 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 information 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 Total PILOT Payment. The Agency shall notify the Company of any proposed increase in the Total PILOT 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 PILOT payment until a different Total PILOT Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT 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 PILOT payment(s).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the **2020/2021** School tax year through the **2034/2035** School tax year, and (ii) the **2021** County and City tax year through the **2035** County and City tax year. This PILOT Agreement shall expire on **December 31, 2035**; provided, however, the Company shall pay the **2035/2036** School tax bills and the **2036** County and City tax bills 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. 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 PILOT 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 New York Real Property Tax Law ("RPTL"). 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 Assessments and Service Charges.

2.1 Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.

#### Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I herein, or this PILOT 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 as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement, as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

## 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 and Remedies.

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 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 Dates, 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 Upon the occurrence of an Event of Default hereunder, the liability of the Company hereunder shall be all amounts due pursuant to Section I hereof through, but not including, the date on which the Facility is no longer exempt from Real Estate Taxes together with all other amounts due pursuant to Section 6.2 hereof and clause (a) of Section 7 of the PILOT Mortgage (as hereinafter defined).

6.4 Subject to the rights of the mortgagees set forth in Section VIII below, whenever any Event of Default under Section 6.1 hereof shall have occurred and be continuing with respect to this PILOT Agreement, the remedies of the Agency shall be limited to the rights hereunder, under the Leaseback Agreement and under the PILOT Mortgage, subject to the rights of any lenders to cure any such Event of Default as set forth in Section VIII hereof.

#### Section VII - Assignment.

7. No portion of any interest in this PILOT 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 – Rights of Mortgagees.

8.1 For the purposes of this PILOT Agreement, the term “mortgages” shall include any mortgage, leasehold mortgage, purchase money mortgage or other security instrument or instruments encumbering the Facility, such as, without limitation, mortgages, deeds of trust, financing statements, assignments of leases, rents and/or profits, security agreements and other documentation which a mortgage may require, and the terms “holder of a mortgage” and “mortgage” shall mean the secured party under any of the foregoing instruments. ANY MORTGAGE SHALL BE A LIMITED, NON-RECOURSE OBLIGATION OF THE AGENCY AND SHALL IN NO EVENT REQUIRE THE PAYMENT BY THE AGENCY TO ANY PARTY OF ANY AMOUNT INCLUDING, BUT NOT LIMITED TO, PRINCIPAL, INTEREST OR ANY OTHER AMOUNT SECURED BY ANY SUCH MORTGAGE.

8.2 So long as the mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the Mortgagee to the Agency, the following provisions shall, subject to and unless otherwise prohibited by all applicable law including, but not limited to, the Act, apply (in respect of such mortgage and of any other mortgages which also comply with the above):

(a) There shall be no renewal, cancellation, surrender, acceptance of surrender, amendment or modification of this PILOT Agreement, or the PILOT Mortgage by joint action of the Agency and the Company along, without, in each case, the prior consent in writing of the Mortgagee, nor shall any merger result from the acquisition by, or devolution upon, any one entity of any fee and/or leasehold estates in the Facility.

(b) The Agency shall, at no cost to the Agency and at the sole cost of the Company, upon receipt of any notice or other communication, whether of default or any other matter, simultaneously serve a copy of such notice upon the Mortgagee, and no such notice of other communication to the Company shall be deemed received unless a copy is so served upon the Mortgagee in the manner provided in this PILOT Agreement for the giving of notice.

(c) Notwithstanding anything to the contrary herein, if the Agency serves a notice of default upon the Company, it shall, at no cost to the Agency and at the sole cost of the Company, also serve a copy of such notice upon the Mortgagee at the address set forth in Section 9.2 hereof.

(d) In the event of any default by the Company under this PILOT Agreement, the Mortgagee shall have fifteen (15) days for a monetary default and thirty (30) days in the case of any other default, after notice to the Mortgagee of such default (which notice shall be given in the manner set forth in Section 9.2 below), to cure or to cause to be cured the default complained of and the Agency shall accept such performance by or at the instigation of the Mortgagee as if same had been done by the Company. Each notice of default given by the Agency will state the amounts of any payments herein provided that are then claimed to be in default.

(e) If, before the expiration of the Mortgagee's cure period as provided in paragraph (3) above, the Mortgagee shall have notified the Agency in writing of its agreement to pay or cause to be paid, within fifteen (15) days after the expiration of mortgagor's cure period, all payments in this PILOT Agreement provided for and then in default, and/or in the case of non-monetary defaults, shall have agreed within forty-five (45) days to commence or cause to be commenced the cure of such non-monetary defaults, if any are then in default (other than defaults which by their nature cannot be cured), and shall prosecute or cause the prosecution of same to completion with reasonable diligence (collectively, the "extended cure period"), then the Agency shall not exercise any of its rights and remedies hereunder or under the PILOT Mortgage until expiration of the extended cure period.

(f) The Company (and not the Agency) shall give the Mortgagee notice of any arbitration or other proceeding or dispute by or between the parties hereto, and shall have the right to intervene therein and be made a party to any such arbitration or other proceeding.

(g) Except where the Mortgagee has succeeded to the interest of the Company in the Facility or assumed the right to cure as provided in this Section VIII, no liability for any payments to be made pursuant to this PILOT Agreement or the performance of any of the Company's covenants and agreements under this PILOT Agreement shall attach to or be imposed upon the Mortgagee, and if the Mortgagee or its nominee or designee succeeds to the interest of the Company in the Facility, all of the obligations and liabilities of the Mortgagee or its nominee or designee shall be limited to such entity's interest in the Facility and as otherwise imposed by this PILOT Agreement and shall cease and terminate upon assignment of this PILOT Agreement (any such further assignment to be approved by the Agency).

(h) Notwithstanding any provision of this PILOT Agreement, the Lease Agreement, the Leaseback Agreement or the PILOT Mortgage to the contrary, foreclosure of a mortgage or any sale of the Company's interest in this PILOT Agreement and/or the Facility in connection with a foreclosure, whether by judicial proceedings, or any conveyance of the Company's interest in this PILOT Agreement and/or the Facility to the Mortgagee or its nominee or designee by virtue of or in lieu of foreclosure or other appropriate proceedings, or any conveyance of the Company's interest in this PILOT Agreement and/or the Facility by the Mortgagee or its

nominee or designee, shall not require the consent or approval of the Agency and shall not be a default or Event of Default hereunder.

Section IX -- Miscellaneous.

9.1 This PILOT 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.

9.2 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, as follows:

To the Agency: Niagara County Industrial Development Agency  
6311 Inducon Corporate Drive, Suite One  
Sanborn, New York 14132-9099  
Attn: Executive Director

With Copy To: Gabriele & Berrigan, P.C.  
800 Main Street, 4<sup>th</sup> Floor  
Niagara Falls, New York 14302  
Attention: Mark J. Gabriele, Esq.

To the Company: 460 Wheatfield LLC  
5409 Main Street, Suite 200  
Williamsville, New York 14221

With Copy To: Sean Hopkins, Esq.  
5500 Main Street, Suite 343  
Williamsville, New York 14271

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.

9.3 This PILOT 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 Niagara County, New York.

9.4 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 PILOT Agreement on its behalf shall be liable personally under this PILOT 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, 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, 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 PILOT Agreement.

9.5 The Company hereby agrees that it shall, as security for its obligations hereunder, grant to the Affected Tax Jurisdictions a mortgage lien on the Facility pursuant to a certain PILOT Mortgage, dated as of May 1, 2019, from the Company and the Agency to the Agency, for the benefit of the Affected Tax Jurisdictions (the "PILOT Mortgage"), which PILOT Mortgage shall constitute a first priority mortgage lien on and security interest in the Facility.

*[Remainder of Page Intentionally Left Blank]*

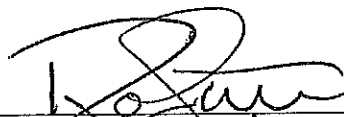
[Signature Page to PILOT Agreement]

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

NIAGARA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Name: Susan C. Langdon  
Its: Executive Director

460 WHEATFIELD LLC

By:   
Name: DAVID SUTTON  
Title: Member

**SCHEDULE A**

**TO PILOT AGREEMENT, DATED AS OF MAY 1, 2019 BETWEEN  
NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
AND  
460 WHEATFIELD LLC**

Pursuant to the terms of Section 1.2 of this PILOT Agreement, Total PILOT Payment shall mean an amount per annum as follows:

<b><u>PILOT Year</u></b>	<b><u>School Tax Year</u></b>	<b><u>County and City Tax Year</u></b>	<b><u>Percentage of Normal Tax</u></b>
Year 1	2020/21	2021	20%
Year 2	2021/22	2022	20%
Year 3	2022/23	2023	30%
Year 4	2023/24	2024	30%
Year 5	2024/25	2025	40%
Year 6	2025/26	2026	40%
Year 7	2026/27	2027	40%
Year 8	2027/28	2028	40%
Year 9	2028/29	2029	40%
Year 10	2029/30	2030	50%
Year 11	2030/31	2031	50%
Year 12	2031/32	2032	50%
Year 13	2032/33	2033	50%
Year 14	2033/34	2034	50%
Year 15	2034/35	2035	50%
Year 16 and thereafter	2035/36	2036	100%

The payments in lieu of taxes to be paid by the Company to the Affected Tax Jurisdiction pursuant to the terms of this Payment-in-Lieu-of-Tax Agreement shall be computed separately for each Affected Tax Jurisdiction as follows:

1. First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Affected Tax Jurisdiction if the Land was owned by the Company and not the Agency by multiplying the (a) Assessed Value of the Land as determined by the appropriate Assessor by (b) the tax rate or rates of such Affected Tax Jurisdiction that would be applicable to the Land if the Land was owned by the Company and not the Agency.



2. In each tax year during the term of this PILOT Agreement, commencing on the first tax year following the date on which the Land shall be assessed as exempt on the assessment roll of any Affected Tax Jurisdiction, the amount payable by the Company to the Affected Tax Jurisdiction as a payment in lieu of property tax with respect to the Land shall be an amount equal to 100% of the Normal Tax due each Affected Tax Jurisdiction with respect to the Land for such tax year.
3. Next, determine the Normal Tax which would be payable to each Affected Tax Jurisdiction if the Improvements and any portion of the Equipment assessable as real property were owned by the Company and not the Agency by multiplying the (a) Assessed Value of the Improvements and such assessable Equipment as determined by the appropriate Assessor by (b) the tax rate or rates of such Affected Tax Jurisdiction that would be applicable to the Improvements and such assessable Equipment if the Improvements and such assessable Equipment was owned by the Company and not the Agency.
4. In each tax year during the term of this PILOT Agreement, commencing on the first tax year following the date on which the Improvements and such assessable Equipment shall be assessed as exempt on the assessment roll of any Affected Tax Jurisdiction, the amount payable by the Company to the Affected Tax Jurisdiction as a payment in lieu of property tax with respect to the Improvements and such assessable Equipment shall be an amount equal to the applicable percentage of the Normal Tax due each Affected Tax Jurisdiction with respect to the Improvements and such assessable Equipment for such tax year, as shown in the table.
5. The Total PILOT Payment to be made by the Company to the Affected Tax Jurisdictions shall equal the sum of Number (2) and Number (4), above, for each tax year during the term of this PILOT Agreement.

412a



**INDUSTRIAL DEVELOPMENT AGENCIES**  
**APPLICATION FOR REAL PROPERTY TAX EXEMPTION**  
 (Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

**1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)**

Name: **Niagara County Industrial Development Agency**

Street: **6311 Inducon Corporate Drive, Suite 1**

City: **Sanborn, New York 14132**

Telephone No. Day: **(716) 278-8760**

Evening: \_\_\_\_\_

Contact: **Susan C. Langdon**

Title: **Executive Director**

**2. OCCUPANT (IF OTHER THAN IDA)**

(If more than one occupant attach separate listing)

Name: **460 Wheatfield LLC**

Street: **5409 Main Street, Suite 200**

City: **Williamsville, New York 14221**

Telephone No. Day: **(716) 510-4338**

Evening: \_\_\_\_\_

Contact: **David Sutton**

Title: **Member**

**DESCRIPTION OF PARCEL**

a. Assessment roll description (tax map no./roll year)

**182.14-1-79.2**

b. Street address: **460 Wheatfield Street**

c. City, Town or Village: **City of North Tonawanda**

d. School District: **North Tonawanda SD**

e. County: **Niagara**

f. Current assessment: **approx. \$148,000.00**

g. Deed to IDA (date recorded; liber and page)  
 Lease Agreement, a memorandum of which was  
 recorded on or about May \_\_\_\_, 2019

**4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)**

a. Brief description (include property use): **parcel of land to include construction/renovation of an abandoned 30,478 sq. ft. school.**

b. Type of construction: **Construction/Renovation**

c. Square footage: **approx. 38,478**

d. Total cost: **approx. \$3,700,000.00**

e. Date construction commenced: **Summer 2019**

f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA):  
**December 31, 2035**

**5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION (Attach copy of the agreement or extract of the terms relating to the project).**

a. Formula for payment: **See attached PILOT Agreement**

b. Projected expiration date of agreement: **December 31, 2035**

NYS BOARD OF REAL PROPERTY SERVICES

RP-412-a (1/95)

c. Municipal corporations to which payments will be made

County: Niagara Yes [X] No [ ]
Town/City: N.Tonawanda Yes [X] No [ ]
Village: N/A Yes [X] No [ ]
School District: North Tonawanda Yes [X] No [ ]

d. Person or entity responsible for payment

Name: David Sutton
Title: Member
Address: 5409 Main Street, Suite 200
Williamsville, NY 14221
Telephone: (716) 510-4338

e. Is the IDA the owner of the property? Yes/No (circle one)

If "No" identify owner and explain IDA rights or interest in an attached statement.

Occupant owns property and leases to IDA, IDA then leases property back to the Occupant.

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one) [X] Yes [ ] No

If yes, list the statutory exemption reference and assessment roll year on which granted:

Exemption \_\_\_\_\_ assessment roll year \_\_\_\_\_

7. A copy of this application, including all attachments, has been mailed or delivered on May \_\_\_\_, 2019 to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Susan C. Langdon, Executive Director of the NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Name Title Organization

hereby certify that the information on this application and accompanying papers constitutes a true statement of facts.

May 15, 2019
Date

Susan C Langdon
Signature

FOR USE BY ASSESSOR

- 1. Date application filed
2. Applicable taxable status date
3a. Agreement (or extract) date
3b. Projected exemption expiration (year)
4. Assessed valuation of parcel in first year of exemption \$
5. Special assessments and special ad valorem levies for which the parcel is liable:

Date

Assessor's signature

**SALES TAX  
EXEMPTION  
LETTER**

# Niagara County Industrial Development Agency

May 24, 2019

460 Wheatfield Street  
5409 Main Street, Suite 200  
Williamsville, New York 14221

**Re: 460 Wheatfield LLC -- Sales Tax Exemption Letter  
Expiring December 31, 2020**

Ladies and Gentlemen:

Pursuant to a resolution duly adopted on May 9, 2018, the **Niagara County Industrial Development Agency** (the "Agency"), appointed **460 Wheatfield LLC** (the "Company") its true and lawful agent to undertake a certain project (the "Project") consisting of: (A) the acquisition of a leasehold or other interest in property located at 460 Wheatfield Street in the City of North Tonawanda, Niagara County, New York (the "Land"), together with the existing building located thereon (the "Existing Improvements"); (B) (i) the renovation of the existing 30,478 square foot building located on the Land into 37 residential market rate apartment units including, but not limited to, tenant and visitor parking areas, a common laundry area, community room with kitchen, computer room, tenant storage areas and rental office (collectively, the "Improvements"), (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); all for use by the Company to construct 37 market rate apartments.

This appointment includes, and this letter evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Facility and the following activities as they relate to any renovation, erection and completion of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the renovation and equipping, (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with the renovation and equipping, and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in, upon or under such building or facility, including all repairs and replacements of such property.

This agency appointment includes the power to delegate such agency, in whole or in part to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses including but not limited to the individuals and entities described on Schedule A attached hereto. The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency. **The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (Form ST-60) for itself and each agent, subagent, contractor, subcontractor, contractors or subcontractors of such agents and subagents and to such other parties as the Company chooses who provide materials, equipment, supplies or services and execute said form as agent for the Agency (or have the general contractor, if any or other designated subagent execute) and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment. Failure to comply with these requirements may result in loss of sales tax exemptions for the Facility.**

In exercising this appointment, the Company and/or Project Operator should give the supplier or vendor "IDA Agent or Operator Exempt Purchase Certificate" (NYS Form ST-123) to show that the Company and/or Project Operator is acting as agent for the Agency. The supplier or vendor should identify the Facility on each bill or invoice and indicate thereon that the Agency or Agent or Project Operator of the Agency was the purchaser. The Company's agents, subagents, contractors and subcontractors should give the supplier or vendor a copy of this letter to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency. The supplier or vendor should identify the Facility on each bill or invoice and indicate thereon which of the Company, its agents, subagents, contractors and subcontractors acted as agent for the Agency in making the purchase. **In order to be entitled to use this exemption, your contractor should present to the supplier or other vendor of materials for the Facility, a completed "Contractor Exempt Purchase Certificate" (NYS Form ST-120.1), checking box "(a)" and "(d)".**

In addition, General Municipal Law §874(8) requires you to file an Annual Statement with the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions you, your agents, consultants or subcontractors have claimed pursuant to the agency we have conferred on you with respect to this project. The penalty for failure to file such statement is the removal of your authority to act as our agent. **Upon each such annual filing, the Company shall, within thirty (30) days of each filing, provide a copy of the same to the Agency; provided, however, in no event later than February fifteen (15<sup>th</sup>) of each year.**

The agency created by this letter is limited to the Facility, and will expire on December 31, 2020; *provided, however*, the exemption for leases executed prior to said date shall continue through the term or extended term of said lease and any acquisition of said leased property. You may apply to extend this agency authority by showing good cause.

This letter is being issued pursuant to the Agent and Financial Assistant and Project Agreement, dated May 1, 2019, by and between the Agency and the Company (the "Agent Agreement"). All agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project should be aware of the Agent Agreement and obtain a copy thereof.

This letter is provided for the sole purpose of securing exemption from New York State Sales and Use Taxes for this project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

With respect to registered vehicles acquired by the Company in name of the Agency, the Agency shall transfer title to such vehicles immediately back to the Company, or as soon thereafter as reasonably practicable; and any personal property acquired by the Company in the name of the Agency shall be located in the City of North Tonawanda, New York, except for temporary periods during ordinary use.

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. By acceptance of this letter, the vendor hereby acknowledges the limitations on liability described herein.

Very truly yours,

NIAGARA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

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

Name: Susan C. Langdon

Title: Executive Director



**AGENT &  
FINANCIAL  
ASSISTANCE  
AND PROJECT  
AGREEMENT**

## AGENT AND FINANCIAL ASSISTANCE AND PROJECT AGREEMENT

THIS AGENT AND FINANCIAL ASSISTANCE AND PROJECT AGREEMENT (hereinafter, the "Agent Agreement"), made as of the 1st day of May, 2019, by and between the **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York 14132 (the "Agency"), and **460 WHEATFIELD LLC**, a New York limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 5409 Main Street, Suite 200, Williamsville, New York 14221 (the "Company").

### WITNESSETH:

WHEREAS, the Agency was created by Chapter 569 of the Laws of 1972 of the State of New York pursuant to Title 1 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 has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (A) the acquisition of a leasehold or other interest in property located at 460 Wheatfield Street in the City of North Tonawanda, Niagara County, New York (the "Land"), together with the existing building located thereon (the "Existing Improvements"); (B) (i) the renovation of the existing 30,478 square foot building located on the Land into 37 residential market rate apartment units including, but not limited to, tenant and visitor parking areas, a common laundry area, community room with kitchen, computer room, tenant storage areas and rental office (collectively, the "Improvements"), (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, by Resolution adopted on May 9, 2018 (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 Agent Agreement; and

WHEREAS, by its Resolution, the Agency has conferred on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use tax exemption benefits 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, (b) an exemption benefit from mortgage recording tax, and (c) a partial abatement from real property taxes benefit conferred through a certain Payment in Lieu of Tax Agreement, dated as of May 1, 2019 (the "PILOT Agreement") requiring the Company to make payments in lieu of taxes ("PILOT Payments") for the benefit of each municipality and school district having taxing jurisdiction over the Project, (collectively, the sales and use tax exemption benefit, the mortgage recording tax benefit, and the partial abatement from real property taxes benefit, are hereinafter collectively referred to as the "Financial Assistance"); 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 Agent 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 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 Agent Agreement.

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:

1. Purpose of Project and Scope of Agency. The purpose of the Agency's provision of 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 Project facility to advance job opportunities, health, general prosperity and economic welfare of the people of the County of Niagara, and to specifically promote the investment commitment, employment commitment, and other commitments of the Company contained herein and within the Company's Application.

Pursuant to the Resolution, the Agency has appointed the Company as agent to undertake the Project, as defined herein and within the Resolution. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation thereof in and around the Facility. Pursuant to the Resolution and this Agent Agreement, the Company has the power to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses including but not limited to the individuals and entities described on Schedule A attached hereto (collectively, the "Subagent"). The Company shall have the right to amend Schedule A 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 A, hereto, along with the timely filing of Form ST-60 (non-primary) for each subagent, with such updated Schedule A and a copy of and proof of filing of such ST-60 (non-primary) being immediately filed with the Agency. The right of the Company and all duly appointed subagents to act as agent of the Agency shall expire on December 31, 2020, unless extended as contemplated by the Resolution. The aggregate amount of work performed by the Company and all subagents as agent for the Agency shall not exceed the amounts identified in Section 2(h)(i) of this Agreement.

All contracts entered into by the Company and all subagents thereof as agent for the Agency shall include the language contained within Schedule B, hereto. Failure by the Company and/or any subagent thereof to include such language shall disqualify the agent status and sales tax exemptions derived by virtue of this Agent 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.

2. 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/Facility:

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

(b) Neither the execution and delivery of this Agent Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agent 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 subsection (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 on the Company's ability to fulfill its obligations under this Agent 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 except in compliance with all material applicable laws, (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, with removal of any asbestos from the Facility in compliance with applicable laws being permitted; (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 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 (except 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. 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 North Tonawanda, New York, except for temporary periods during ordinary use.

(g) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolution, the Company covenants and agrees that it may be subject to a Recapture Event Determination (as hereinafter defined) resulting in the potential recapture and/or termination of any and all Financial Assistance, as described below, if the Company receives, or any duly appointed subagents receives any Financial Assistance from the Agency, and it is determined by the Agency that:

(1) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the sales and use tax exemption benefits; or

(2) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or

(3) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(4) 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 its application for Financial Assistance; or

(5) the Company fails to meet and maintain the thresholds and requirements representing certain material terms and conditions, all as further defined below, being the purposes to be achieved by the Agency with respect to its determination to provide Financial Assistance to the Project and required by the Agency to be complied with and adhered to, as evidenced by submission, as so required by the Agency, of written confirmation certifying and confirming on an annual basis beginning in the first year in which Financial Assistance is so claimed, through the conclusion of the later of either: (i)

two (2) years following the construction completion date or (ii) the termination of this Agent Agreement or the PILOT Agreement) (said date hereinafter referred to as the "Project Completion Date" and the time period so referenced being hereinafter defined as the "Material Terms and Conditions Monitoring Period") confirming those items and conditions in respect to job creation and retention and capital investment.

In order to certify and verify the foregoing, the Company shall provide annually, to the Agency, a certified statement and documentation: i) enumerating the full time equivalent 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 that work at the project location, (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 for Financial Assistance 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 for Financial Assistance.

The Company shall annually complete and submit to the Agency the Annual Employment and Financial Assistance Certification Report in the form attached hereto as **Exhibit F**. In addition, Company shall complete and submit to the Agency upon the completion of construction the Final Project Cost and Financing Report in the form attached hereto as **Exhibit G**. **Failure by the Company to complete and submit said forms to the Agency by February 15 of each applicable year during the Material Terms and Conditions Monitoring Period shall constitute an Event of Default hereunder, whereby the Agency, in its sole and absolute discretion, may terminate this Agreement and/or the PILOT Agreement and undertake a Recapture Event Determination.**

The findings made by the Agency with respect to Section 2(g)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 2(g)(5) with respect to the thresholds and requirements as identified in Section 2(g)(5), above, and/or failure to meet the thresholds and requirements as identified in Section 2(g)(5) above, may potentially be determined by the Agency, in accordance with the Agency's "Recapture Policy", to constitute a failure to comply with Section 875(3) of the New York General Municipal Law, and/or a failure to comply with a material term or condition to use property or services or Agency Financial Assistance in the manner approved by the Agency in connection with the Project, and/or a failure to comply with the Agency's policies and Resolution (collectively, findings and determinations made as described herein with respect to Section 2(g)(1), (2), (3) and/or (4) and/or the failure under Section 2(g)(5) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 2(g)(5) are hereby defined as a "Recapture Event Determination"). If the Agency makes a Recapture Event Determination, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that in the event that

the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner and/or local taxing authorities may assess and determine the Financial Assistance due from the Company, together with any relevant penalties and interest due on such amounts.

(h) In accordance with the Resolution and the Cost-Benefit Analysis (the "CBA") disclosed by the Agency at its public hearing for the Project (the "Public Hearing"), the Company further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$1,675,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 2(g) of this Agent Agreement, cannot exceed \$134,000.00, (ii) confirms that the mortgage recording tax exemption amount shall be approximately \$23,250.00, and (iii) and confirms that real property tax abatement benefits to be provided to the Company shall conform to those disclosed within the CBA at the Public Hearing for the Project and as contained within the PILOT Agreement, a copy of such CBA and PILOT Agreement are attached hereto as **Exhibit D**.

(i) The Company further covenants and agrees to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (NYS Form ST-60), in the form attached hereto as **Exhibit A**, for each Subagent, if any, and such other parties as the Company chooses who provide materials, equipment, supplies or services and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(j) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123, and NYS Form ST-120.1, copies of which are attached hereto as **Exhibits B-1 and B-2**), and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123 and NYS Form ST-120.1. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill or invoice should state, "I, 460 Wheatfield LLC, certify that I am a duly appointed agent of the NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY and that I am purchasing the tangible personal property or services for use in the 460 Wheatfield LLC Project located at 460 Wheatfield Street, North Tonawanda, New York 14120, IDA Project Number 18-03". 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 B-3**) can be utilized for record keeping purposes.

(k) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340, a copy of which is attached hereto as **Exhibit C**) regarding the value of sales and use tax exemptions 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). The Company further covenants and agrees that it will, within



thirty (30) days of each filing, provide a copy of same to the Agency; provided, however, in no event later than February 15<sup>th</sup> of each year. 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.

(l) 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.

(m) The Company covenants and agrees that at all times during the Material Terms and Conditions Monitoring Period, it will (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 Agreement may not be assigned in whole or part without the prior written consent of the Agency

(n) 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 Agent 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(n). 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.

3. 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 (except 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 Agent Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, rehabilitating, renovating, equipping, owning and leasing of the Equipment or 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.

4. Insurance Required. At all times throughout the term of the Leaseback Agreement, including without limitation during any period of construction of the Facility, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type 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) Worker's 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.

Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed<sup>a</sup> by the Company under Section 5.2 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 **\$1,000,000** per accident or occurrence on account of personal injury, including death resulting therefrom, and **\$1,000,000** per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workmen's compensation law; and a blanket excess liability policy in the amount not less than **\$3,000,000**, protecting the Company against any loss or liability or damage for personal injury or property damage.

Additional Provisions Respecting Insurance.

(c) All insurance required by Section 3.4(a) hereof shall name the Agency as a named insured and all other insurance required by Section 3.4 above 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 for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days' written notice of the cancellation thereof to the Company and the Agency to the extent permitted by the applicable policy with the Company to provide proof of continuing insurance as required hereby on request by the Agency.

(d) All such certificates of insurance of the insurers that such insurance is in force and effect, shall be deposited with the Agency on or before the commencement of the term of this Leaseback Agreement. Prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Leaseback Agreement.

(e) Within one hundred twenty (120) days after the end of each of its fiscal years, the Company shall file with the Agency a certificate of the Company to the effect that the insurance it maintains with respect to the Project complies with the provisions of this Article III and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect.

5. Additional Provisions Respecting Insurance. (a) 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 for payment of the losses of the Company and the Agency as their respective interests may appear. The Company shall cause all contractors and agents of the Company undertaking the Project to carry and provide evidence of insurance as required within Section 4(a) and 4(b) of this Agreement, with the Agency named as an additional insured.

(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. At least thirty (30) days prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agent Agreement.

6. This Agent 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.

7. 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: Niagara County Industrial Development Agency  
6311 Inducon Corporate Drive, Suite One  
Sanborn, New York 14132

With a copy to: Gabriele & Berrigan P.C.  
800 Main Street, 4<sup>th</sup> Floor, Suite B  
Niagara Falls, New York 14304  
Attn: Mark J. Gabriele, Esq.

To the Company: 460 Wheatfield LLC  
5409 Main Street, Suite 200  
Williamsville, New York 14221  
Attn: David Sutton, Member

With a copy to: Sean Hopkins, Esq.  
5500 Main Street, Suite 343  
Williamsville, New York 14271

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.

8. This Agent 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 Niagara County, New York.

9. The warranties, representations, obligations and covenants of the Company under this Agent Agreement shall be absolute and unconditional and shall remain in full force and effect during the term of this Agent Agreement, shall be deemed to have been relied upon by the Agency, and shall survive the delivery and termination of this Agent Agreement to the Agency, regardless of any investigation made by the Agency. This Agent Agreement shall survive any termination or expiration of the Leaseback Agreement or the PILOT Agreement, as described below.

10. The parties are contemplating that unless the Agency and Company enter into a Lease Agreement (the "Lease Agreement"), and related Leaseback Agreement (the "Leaseback

Agreement"), the Company agrees not to take title to any real property as agent for the Agency. The Agency will provide the Company with a bill of sale (a form of which is attached hereto as **Exhibit E**) which sells, transfers and delivers unto the Company and its successors and assigns, all Equipment which were acquired and installed and/or are to be acquired and installed by the Company as agent for the Agency pursuant to this Agent Agreement which Equipment is located or intended to be located within and used exclusively in furtherance of the operations of the Facility.

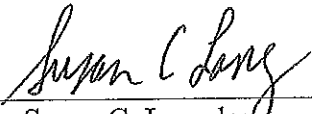
11. By executing this Agent Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (a) legal services, including but not limited to those provided by the Agency's general counsel or bond/transaction counsel, (b) other consultants retained by the Agency, 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 Agent Agreement (including reasonable attorney fees). 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 page intentionally left blank)*

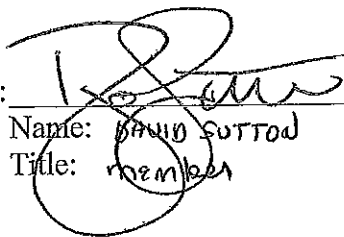
*[Signature Page to Agent and Financial Assistance and Project Agreement]*

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

**NIAGARA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Name: Susan C. Langdon  
Title: Executive Director

**460 WHEATFIELD LLC**

By:   
Name: DAVID SUTTON  
Title: member

[Acknowledgment Page to Agent and Financial Assistance and Project Agreement]

State of New York )  
County of Niagara ) ss.:

On the 21<sup>st</sup> day of May in the year 2019, before me, the undersigned, personally appeared Susan C. Langdon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public  
Mark J. Gabriele  
Qualified in Niagara county  
No. 4948558  
Notary Public, State of New York  
My Commission Expires 03/20/2023

State of New York )  
County of Niagara ) ss.:

On the 29 day of May in the year 2019, before me, the undersigned, personally appeared DAVID SUTTON, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public  
Mark J. Gabriele  
Qualified in Niagara county  
No. 4948558  
Notary Public, State of New York  
My Commission Expires 03/20/2023

**SCHEDULE A**

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

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

<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 B

### MANDATORY AGENT AND SUBAGENT CONTRACT LANGUAGE

"This contract is being entered into by **460 WHEATFIELD LLC** (the "Agent"), as agent for and on behalf of the **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency"), in connection with a certain project of the Agency for the benefit of **460 Wheatfield LLC**, 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 460 Wheatfield Street in the City of North Tonawanda, New York 14120 (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 attached sales tax exemption information letter of the Agency; and the Agent hereby represents that this contract is in compliance with the terms of the Agent and Financial Assistance Agreement by and between 460 Wheatfield LLC and the Agency dated as of May 1, 2019. 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 NYS FORM ST-60 TO BE COMPLETED BY COMPANY AND FILED WITH  
THE NYS TAX DEPARTMENT IDA UNIT FOR EACH OF ITS SUBAGENTS WITHIN  
THIRTY (30) DAYS OF APPOINTMENT**

**[Attached Next Page]**



Department of Taxation and Finance

# 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 Niagara County Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 18-03
Street address 6311 Inducon Corporate Drive - Suite One			Telephone number (716 ) 278-8760
City Sanborn	State NY	ZIP code 14132-9099	Email address (optional)

### Project operator or agent information

Name of IDA project operator or agent		Mark an X 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)

### Project information

Name of project 460 Wheatfield LLC Project			
Street address of project site 460 Wheatfield Street			
City North Tonawanda	State NY	ZIP code 14120	Email address (optional)
Purpose of project construction renovation of an abandoned school building			

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

Goods and services used to construct/renovate a 30,478 sq. ft. building into residential market-rate apartments.

Date project operator or agent appointed (mmddyy) 050119	Date project operator or agent status ends (mmddyy) 123120	Mark an X 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: 1,675,000.00		Estimated value of New York State and local sales and use tax exemption provided: 134,000.00

**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		Print title	
Signature	Date	Telephone number ( )	

## 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](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

**EXHIBIT B-1**

**NYS FORM ST-123  
FOR  
COMPANY**

**[Attached Next Page]**



# IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

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		
Niagara County Industrial Development Agency		IDA project number (use OSC number)
Name of project		2903 18-03
460 Wheatfield LLC		
Street address of project site		
460 Wheatfield Street		
City, town, or village	State	ZIP code
North Tonawanda	NY	14120
Enter the date that you were appointed agent or project operator (mm/dd/yy) .....	05 / 01 / 19	Enter the date that agent or project operator status ends (mm/dd/yy) .....
		12 / 31 / 20

### 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).

- A. 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.
- B. 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.
- C. 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 B-2**

**NYS FORM ST-120.1  
FOR  
SUBAGENTS OF COMPANY**

**[Attached Next Page]**



Contractor Exempt Purchase Certificate

To be used only by contractors who are registered with the Tax Department for sales tax purposes.

To vendors:

You must collect tax on any sale of taxable property or services unless the contractor gives you a properly completed exempt purchase certificate not later than 90 days after the property is sold or service is rendered. In addition, you must keep the certificate for at least three years, as explained in the instructions.

This form cannot be used to purchase motor fuel or diesel motor fuel exempt from tax.

To contractors and vendors: Read the instructions on pages 3 and 4 carefully before completing or accepting this certificate.

Table with 4 columns: Name of seller, Name of purchasing contractor, Street address, and City/State/ZIP code.

1. I have been issued a New York State Certificate of Authority, (enter your sales tax identification number), to collect New York State and local sales and use tax, and that certificate has not expired or been suspended or revoked.

2. The tangible personal property or service being purchased will be used on the following project:

construction renovation of a 30,478 sq. ft. building

located at 460 Wheatfield Street, North Tonawanda, New York, Niagara County, New York

for and with 460 Wheatfield LLC

pursuant to prime contract dated

3. These purchases are exempt from sales and use tax because:

(Mark an X in the appropriate box; for further explanation, see items A through P in the instructions on pages 3 and 4.)

A. The tangible personal property will be used in the above project to create a building or structure or to improve real property or to maintain, service, or repair a building, structure, or real property, owned by an organization exempt under Tax Law section 1116(a). (For example, New York State government entities, United States governmental entities, United Nations and any international organization of which the United States is a member, certain posts or organizations of past or present members of the armed forces, and certain nonprofit organizations and Indian nations or tribes that have received New York State sales tax exempt organization status.) The tangible personal property will become an integral component part of such building, structure, or real property.

B. The tangible personal property is production machinery and equipment, and it will be incorporated into real property.

C. The tangible personal property will be used:
• in an Internet data center when the property is to be incorporated as part of a capital improvement; or
• directly and predominantly in connection with telecommunications services for sale or Internet access services for sale; or
• directly and predominantly by a television or radio broadcaster in connection with producing or transmitting live or recorded programs.

D. The tangible personal property, including production machinery and equipment, is for installation in the above project and will remain tangible personal property after installation.

E. The tangible personal property will become an integral component part of a building, structure, or real property, used predominantly (more than 50%) either in the production phase of farming or in a commercial horse boarding operation, or in both.

Note: This certificate is not valid unless the purchaser completes the certification on page 2.



- E. The tangible personal property will be used predominantly either in farm production or in a commercial horse boarding operation, or in both.
- F. The machinery or equipment will be used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.
- G. The tangible personal property will be used to erect, add to, improve, repair, maintain, or service a building, structure, or real property owned by a qualified empire zone enterprise (QEZE), and will become an integral component part of such building, structure, or real property. (Note: Item G purchases are exempt from the New York State tax rate and from the %%% Metropolitan Commuter Transportation District (MCTD) rate. Item G purchases may be exempt from local taxes. See instructions.)
- H. The tangible personal property is residential solar energy systems equipment. (Note: Item H purchases are exempt from the 4% New York State tax rate and from the %%% MCTD rate. Item H purchases may be exempt from local taxes. See instructions.)
- I. The tangible personal property will be used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property Purchased for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located, and where such property is purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year.
- J. The services are for the project described in line 2 above and will be resold. (This includes trash removal services in connection with repair services to real property.)
- K. The trash removal service being performed for the above project is in connection with a capital improvement to the real property of an organization exempt under section 1116(a) of the Tax Law.
- L. The services are to install, maintain, service, or repair tangible personal property used in an Internet data center, for telecommunication or Internet access services, or for radio or television broadcast production or transmission.
- M. The services are to install, maintain, service, or repair tangible personal property that will be used predominantly either in farm production or in a commercial horse boarding operation, or in both.
- N. The services are to install residential solar energy systems equipment.
- O. The services are to install tangible personal property purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year, that will be used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property Purchased for Leased Commercial Office Space in Lower Manhattan*.

Caution: Contractors may not use this certificate to purchase services exempt unless the services are resold to customers in connection with a project. Construction equipment, tools, and supplies purchased or rented for use in completing a project but that do not become part of the finished project may not be purchased exempt from tax through the use of this certificate.

I certify that the above statements are true and complete, and I make these statements with the knowledge that willfully issuing a false or fraudulent certificate, with the intent to evade tax, is a misdemeanor under section 1817(m) of the New York State Tax Law and Section 210.45 of the Penal Law, punishable by a fine of up to \$10,000 for an individual or \$20,000 for a corporation. I also understand that the Tax Department is authorized to investigate the validity of exemptions claimed or the accuracy of any information entered on this form.

Type or print name and title of owner, partner, etc. of purchasing contractor	
Signature of owner, partner, etc.	Date prepared

Substantial penalties will result from misuse of this certificate.

## Instructions

Only a contractor who has a valid *Certificate of Authority* issued by the Tax Department may use this exemption certificate. The contractor must present a properly completed certificate to the vendor to purchase tangible personal property, or to a subcontractor to purchase services tax exempt. This certificate is not valid unless all entries have been completed.

The contractor may use this certificate to claim an exemption from sales or use tax on tangible personal property or services that will be used in the manner specified in items A through K below. The contractor may not use this certificate to purchase tangible personal property or services tax exempt on the basis that Form ST-124, *Certificate of Capital Improvement*, has been furnished by the project owner to the contractor. The contractor must use a separate Form ST-120.1, *Contractor Exempt Purchase Certificate*, for each project.

Purchase orders showing an exemption from the sales or use tax based on this certificate must contain the address of the project where the property will be used, as well as the name and address of the project owners (see page 1 of this form). Invoices and sales or delivery slips must also contain this information (name and address of the project for which the exempt purchases will be used or where the exempt services will be rendered, as shown on page 1 of this form).

### Use of the certificate

This certificate may be used by a contractor to claim exemption from tax only on purchases of **tangible personal property** that is:

- A. Incorporated into real property under the terms of a contract entered into with an exempt organization that has furnished the contractor with a copy of Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*, governmental purchase order, or voucher.
- B. Incorporated into real property and is production machinery or equipment for which the customer has given the contractor a copy of Form ST-121, *Exempt Use Certificate*.
- C. Used in one of the following situations:
  - Machinery, equipment, and other tangible personal property related to providing Web site services for sale to be installed in an Internet data center. (Examples of qualifying machinery, equipment, and tangible personal property include: computer system hardware, pre-written software, storage racks for computers, property relating to building systems designed for an Internet data center such as interior fiber optic and copper cable, property necessary to maintain the proper temperature and environment such as air filtration and air conditioning, property related to fire control, power generators, protective barriers, property that when installed will constitute raised flooring, and property related to providing security to the center.) The customer must furnish the contractor a completed Form ST-121.5, *Exempt Use Certificate for Operators of Internet Data Centers (Web Hosting)*.
  - Used directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, re-transmitting, switching, or monitoring of switching of telecommunications services for sale, or Internet access service for sale.
  - Machinery, equipment, and other tangible personal property (including parts, tools, and supplies) used by a television or radio broadcaster directly and predominantly in the production and post-production of live or recorded programs used by a broadcaster predominantly for broadcasting by the broadcaster either over-the-air or for transmission through a cable television or direct broadcast satellite system. (Examples of exempt machinery and equipment include cameras, lights, sets, costumes, and sound equipment.) This exemption also includes machinery, equipment, and other tangible personal property used by a broadcaster directly and predominantly to transmit live or recorded programs. (Examples of exempt machinery and equipment include amplifiers, transmitters, and antennas.)
- D. Installed or placed in the project in such a way that it remains tangible personal property after installation. The contractor must collect tax from its customer when selling such tangible personal property or related services to the customer, unless the customer gives the contractor an appropriate and properly completed exemption certificate.
- E. Used predominantly (more than 50%) either in farm production or in a commercial horse boarding operation, or in both, for which the customer has provided the contractor a completed Form ST-125, *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate*. The exemption is allowed on tangible personal property whether or not the property is incorporated into a building or structure.
- F. Machinery or equipment used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.
- G. Incorporated into a building, structure, or real property located in the empire zone in which the qualified empire zone enterprise (QEZE) has qualified for tax benefits. The exemption is allowed on the New York State tax rate and on the 3/8% MCTD rate. The exemption does not apply to Municipal Assistance Corporation (MAC) taxes in New York City, or to county, city, or school district taxes, unless New York City or the county, city, or school district elects the exemption. In that case, purchases are exempt from the full, combined New York State and local tax rate. See Publication 7.18-Q, *Local Sales and Use Tax Rates on Sales to a Qualified Empire Zone Enterprise (QEZE)*, for a listing of sales tax rates pertaining to the QEZE exemption. The customer must furnish the contractor a completed Form ST-121.6, *Qualified Empire Zone Enterprise (QEZE) Exempt Purchase Certificate*.
- H. Residential solar energy systems equipment. *Residential solar energy systems equipment* means an arrangement of or combination of components installed in a residence that utilizes solar radiation to produce energy designed to provide heating, cooling, hot water, and/or electricity. The exemption is allowed on the New York State 4% tax rate and where applicable, the 3/8% MCTD rate. The exemption does not apply to local taxes unless the locality specifically enacts the exemption. Note: No local exemption may be effective before December 1, 2005. The customer must furnish the contractor with a completed Form ST-121, *Exempt Use Certificate*, by completing the box marked *other*. For the definition of *residence* and for an exception relating to recreational equipment used for storage, as well as for other pertinent information, see TSB-M-05(11)S, *Sales and Use Tax Exemption for Residential Solar Energy Systems Equipment*.
- I. Delivered and used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property*

*Purchased for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located, and where such property is purchased within the first year of the qualifying tenant's lease.

This certificate may also be used by a contractor to claim exemption from tax on the following services:

- J. Installing tangible personal property, including production machinery and equipment, that does not become a part of the real property upon installation.

Repairing real property, when the services are for the project named on the front of this form and will be resold.

Trash removal services rendered in connection with repair services to real property, if the trash removal services will be resold.

Note: Purchases of services for resale can occur between prime contractors and subcontractors or between two subcontractors. The retail seller of the services, generally the prime contractor, must charge and collect tax on the contract price, unless the project owner gives the retail seller of the service a properly completed exemption certificate.

- K. Trash removal services purchased by a contractor and rendered in connection with a capital improvement to an exempt organization's property.
- L. Installing, maintaining, servicing, or repairing tangible personal property used for Web hosting, telecommunication or Internet access services, or by a broadcaster (described in C on page 3).
- M. Installing, maintaining, servicing, or repairing tangible personal property that will be used predominantly either in farm production or in a commercial horse boarding operation, or in both (described in E on page 3).
- N. Installing residential solar energy systems equipment (described in H on page 3).
- O. Installing tangible personal property delivered to and used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property Purchased for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an

integral component part of the building in which the leased premises are located.

### To the purchaser

#### Warning for misuse of this form

Any person who intentionally issues a false exemption certificate to evade sales and compensating use tax may be assessed for the tax evaded, and will be subject to a penalty of 100% of the tax due and a penalty of \$50 for each such certificate issued. The purchaser will also be guilty of a misdemeanor punishable by a fine not to exceed \$10,000 (\$20,000 for a corporation). Other penalties may also apply.

In addition, your *Certificate of Authority*, allowing you to make certain tax-free purchases, may be revoked, prohibiting you from conducting any business in New York State for which a *Certificate of Authority* is required.

### To the vendor

Do not accept this certificate unless all entries have been completed. The contractor must give you a properly completed exemption certificate no later than 90 days after delivery of the property or service; otherwise, the sale will be deemed to have been taxable at the time the transaction took place. When a certificate is received after the 90 days, both the seller (vendor) and contractor assume the burden of proving that the sale was exempt, and both may have to provide additional substantiation.

Your failure to collect sales or use tax, as a result of accepting an improperly completed exemption certificate or receiving the certificate more than 90 days after the sale, will make you personally liable for the tax plus any penalty and interest charges due.

You must keep this exemption certificate for at least three years after the due date of the last return to which it relates, or after the date when the return was filed, if later. You must also maintain a method of associating an exempt sale made to a particular customer with the exemption certificate you have on file for that customer.

**Caution:** You will be subject to additional penalties if you sell tangible personal property or services subject to tax, or purchase or sell tangible personal property for resale, without possessing a valid *Certificate of Authority*. In addition to the criminal penalties imposed under the New York State Tax Law, you will be subject to a penalty of up to \$500 for the first day on which such a sale or purchase is made, plus up to \$200 for each subsequent day on which such a sale or purchase is made, up to the maximum allowed.

### Need help?



Internet access: [www.nystax.gov](http://www.nystax.gov)  
(for information, forms, and publications)



Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week. 1 800 748-3676



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.  
To order forms and publications: 1 800 462-8100  
Business Tax Information Center: 1 800 972-1233  
From areas outside the U.S. and outside Canada: (518) 485-6800



#### Hotline for the hearing and speech impaired:

If you have access to a telecommunications device for the deaf (TDD), contact us at 1 800 634-2110. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

**EXHIBIT B-3**

**INVOICE RIDER FORM**

I, \_\_\_\_\_, the  
\_\_\_\_\_ of \_\_\_\_\_ certify

that I am a duly appointed agent of the Niagara County Industrial Development Agency ("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 the Agent and Financial Assistance Agreement, dated as of May 1, 2019, by and between the Agency and 460 Wheatfield LLC.

Name of the Project: 460 Wheatfield LLC Project  
Street address of the Project Site: 460 Wheatfield Street  
North Tonawanda, New York 14120

IDA OSC project number: 18-03

**EXHIBIT C**

**NYS FORM ST-340 TO BE COMPLETED BY THE COMPANY AND FILED  
ANNUALLY WITH THE NYS TAX DEPARTMENT IDA UNIT NO LATER THAN  
FEBRUARY 15<sup>TH</sup> OF EACH YEAR**

**[Attached Next Page]**



Department of Taxation and Finance

ST-340  
(1/18)

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

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

## Project information

Name of IDA agent/project operator		Employer identification number (EIN)	
Street address		Telephone number ( )	
City		State	ZIP code
Name of IDA	Name of project	IDA project number	
Street address of project site			
City		State	ZIP code
Date project began		Completion date of project Actual <input type="checkbox"/> Expected <input 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  
WA 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  
WA 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 D**

**COST BENEFIT ANALYSIS AND PILOT AGREEMENT**

[attached]



**REGIONAL ECONOMIC IMPACT ANALYSIS**  
 460 Wheatfield Street (David Cloy and David Sutton for LLC to be formed)

<b>Estimated State &amp; Regional Benefits / Estimated Project Incentives Analysis</b>		
Total State and Regional Benefits	\$558,705	
Total Project Incentives	\$493,968	
Benefit to Cost Ratio	1.1:1	
	<b>State</b>	<b>Region</b>
Projected Employment	30	30
Total Employment	1	1
Direct*	0	0
Indirect**	0	0
Induced***	29	29
Temporary Construction (Direct and Indirect)	0	0

<b>Estimated State and Regional Benefits</b>	
Total State and Regional Benefits	\$ 558,705
Income Tax Revenue	\$ 67,945
Property Tax/PILOT revenue	\$ 447,062
Sales Tax Revenue	\$ 43,669

<b>Estimated Project Incentives</b>	
Total Project Incentives	\$ 493,968
Property Tax	\$ 336,718
Sales Tax	\$ 134,000
Mortgage Recording Tax	\$ 23,250

\*\* Direct - The recipient of IDA assistance adds new jobs to the regional economy and/or retains jobs at risk of being lost to another region. Investments that result in displacing existing jobs (e.g., most retail and many service sector industries) do not fall under this definition.  
 \*\* Indirect - The recipient of IDA assistance makes purchases from regional firms, which stimulates suppliers to add jobs and payroll that are new to the regional economy or are saved from being lost to competitors outside the region.  
 \*\*\* Induced - The recipient of IDA assistance by adding to and/or retaining payroll stimulates household spending that is new to the regional economy and/or saved from being lost to competitors outside the region.

Utilizing InformANALYTICS modeling software, an economic impact analysis was conducted to measure new investment and employment for the project. This software is a widely accepted and an industry standard for economic impact modeling measuring employment and salary impacts and facility output on the community for a given project.

**NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**460 WHEATFIELD LLC**

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**PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

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Relating to the Premises located at  
460 Wheatfield Street in the City of North Tonawanda,  
Niagara County, New York

Affected Tax Jurisdictions:  
Niagara County  
City of North Tonawanda  
North Tonawanda School District

Tax Map No.  
182.14-1-79.2

**Dated as of May 1, 2019**

## PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "PILOT Agreement"), dated as of the 1<sup>st</sup> day of May, 2019, is by and between the **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with its offices at 6311 Inducon Corporate Drive, Suite 1, Sanborn, New York 14132 (the "Agency") and **460 WHEATFIELD LLC** a limited liability company formed and existing under the laws of the State of New York, with offices located at 5409 Main Street, Suite 200, Williamsville, New York 14221 (the "Company").

### WITNESSETH:

WHEREAS, the Agency was created by Chapter 569 of the Laws of 1972 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 has requested the Agency's assistance with a certain project (the "Project") consisting of: (A) the acquisition of a leasehold or other interest in property located at 460 Wheatfield Street in the City of North Tonawanda, Niagara County, New York (the "Land"), together with the existing building located thereon (the "Existing Improvements"); (B) (i) the renovation of the existing 30,478 square foot building located on the Land into 37 residential market rate apartment units including, but not limited to, tenant and visitor parking areas, a common laundry area, community room with kitchen, computer room, tenant storage areas and rental office (collectively, the "Improvements"), (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, in order to induce the Company to acquire, construct and equip the Facility, the Agency is willing to take a leasehold interest in the land, improvements and personal property constituting the Facility and lease said land, improvements and personal property back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, dated on or about the date hereof (the "Leaseback Agreement"); 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 ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; 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 Niagara County (the "County"), the City of North Tonawanda (the "City"), the North Tonawanda School District (the "School District" and, collectively with the County and City, the "Affected Tax Jurisdictions").

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 A. Subject to the completion and filing by the taxable status date (**March 1, 2020**) (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 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 hereof. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the City, County and School. The Company shall provide to 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. 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 assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. As long as the Agency has fee title to or leasehold or other interest in the Facility, the Company agrees to pay annually to the Affected Tax Jurisdictions as a payment-in-lieu-of-taxes, on or before October 1 of each calendar year for School taxes and on or before January 1 of each calendar year for County and City taxes (collectively, the "Payment Date"), commencing on October 1, 2020 and January 1, 2021, respectively, an amount equal to the PILOT Payment, as described on Schedule A attached hereto.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

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

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County, City and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date. For school district purposes, the tax rates used to determine the PILOT payment shall be the rate relating to the school year which includes the PILOT payment due date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this PILOT Agreement, other than the Project, 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 information 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 Total PILOT Payment. The Agency shall notify the Company of any proposed increase in the Total PILOT 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 PILOT payment until a different Total PILOT Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT 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 PILOT payment(s).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2020/2021 School tax year through the 2034/2035 School tax year, and (ii) the 2021 County and City tax year through the 2035 County and City tax year. This PILOT Agreement shall expire on **December 31, 2035**; provided, however, the Company shall pay the 2035/2036 School tax bills and the 2036 County and City tax bills 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. 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 PILOT 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 New York Real Property Tax Law ("RPTL"). 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 Assessments and Service Charges.

2.1 Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.

## Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I herein, or this PILOT 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 as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement, as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

## 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 and Remedies.

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 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 Dates, 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 Upon the occurrence of an Event of Default hereunder, the liability of the Company hereunder shall be all amounts due pursuant to Section I hereof through, but not including, the date on which the Facility is no longer exempt from Real Estate Taxes together with all other amounts due pursuant to Section 6.2 hereof and clause (a) of Section 7 of the PILOT Mortgage (as hereinafter defined).

6.4 Subject to the rights of the mortgagees set forth in Section VIII below, whenever any Event of Default under Section 6.1 hereof shall have occurred and be continuing with respect to this PILOT Agreement, the remedies of the Agency shall be limited to the rights hereunder, under the Leaseback Agreement and under the PILOT Mortgage, subject to the rights of any lenders to cure any such Event of Default as set forth in Section VIII hereof.

#### Section VII - Assignment.

7. No portion of any interest in this PILOT 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 - Rights of Mortgagees.

8.1 For the purposes of this PILOT Agreement, the term "mortgages" shall include any mortgage, leasehold mortgage, purchase money mortgage or other security instrument or instruments encumbering the Facility, such as, without limitation, mortgages, deeds of trust, financing statements, assignments of leases, rents and/or profits, security agreements and other documentation which a mortgage may require, and the terms "holder of a mortgage" and "mortgage" shall mean the secured party under any of the foregoing instruments. ANY MORTGAGE SHALL BE A LIMITED, NON-RECOURSE OBLIGATION OF THE AGENCY AND SHALL IN NO EVENT REQUIRE THE PAYMENT BY THE AGENCY TO ANY PARTY OF ANY AMOUNT INCLUDING, BUT NOT LIMITED TO, PRINCIPAL, INTEREST OR ANY OTHER AMOUNT SECURED BY ANY SUCH MORTGAGE.

8.2 So long as the mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the Mortgagee to the Agency, the following provisions shall, subject to and unless otherwise prohibited by all applicable law including, but not limited to, the Act, apply (in respect of such mortgage and of any other mortgages which also comply with the above):

(a) There shall be no renewal, cancellation, surrender, acceptance of surrender, amendment or modification of this PILOT Agreement, or the PILOT Mortgage by joint action of the Agency and the Company along, without, in each case, the prior consent in writing of the Mortgagee, nor shall any merger result from the acquisition by, or devolution upon, any one entity of any fee and/or leasehold estates in the Facility.

(b) The Agency shall, at no cost to the Agency and at the sole cost of the Company, upon receipt of any notice or other communication, whether of default or any other matter, simultaneously serve a copy of such notice upon the Mortgagee, and no such notice of other communication to the Company shall be deemed received unless a copy is so served upon the Mortgagee in the manner provided in this PILOT Agreement for the giving of notice.



(c) Notwithstanding anything to the contrary herein, if the Agency serves a notice of default upon the Company, it shall, at no cost to the Agency and at the sole cost of the Company, also serve a copy of such notice upon the Mortgagee at the address set forth in Section 9.2 hereof.

(d) In the event of any default by the Company under this PILOT Agreement, the Mortgagee shall have fifteen (15) days for a monetary default and thirty (30) days in the case of any other default, after notice to the Mortgagee of such default (which notice shall be given in the manner set forth in Section 9.2 below), to cure or to cause to be cured the default complained of and the Agency shall accept such performance by or at the instigation of the Mortgagee as if same had been done by the Company. Each notice of default given by the Agency will state the amounts of any payments herein provided that are then claimed to be in default.

(e) If, before the expiration of the Mortgagee's cure period as provided in paragraph (3) above, the Mortgagee shall have notified the Agency in writing of its agreement to pay or cause to be paid, within fifteen (15) days after the expiration of mortgagor's cure period, all payments in this PILOT Agreement provided for and then in default, and/or in the case of non-monetary defaults, shall have agreed within forty-five (45) days to commence or cause to be commenced the cure of such non-monetary defaults, if any are then in default (other than defaults which by their nature cannot be cured), and shall prosecute or cause the prosecution of same to completion with reasonable diligence (collectively, the "extended cure period"), then the Agency shall not exercise any of its rights and remedies hereunder or under the PILOT Mortgage until expiration of the extended cure period.

(f) The Company (and not the Agency) shall give the Mortgagee notice of any arbitration or other proceeding or dispute by or between the parties hereto, and shall have the right to intervene therein and be made a party to any such arbitration or other proceeding.

(g) Except where the Mortgagee has succeeded to the interest of the Company in the Facility or assumed the right to cure as provided in this Section VIII, no liability for any payments to be made pursuant to this PILOT Agreement or the performance of any of the Company's covenants and agreements under this PILOT Agreement shall attach to or be imposed upon the Mortgagee, and if the Mortgagee or its nominee or designee succeeds to the interest of the Company in the Facility, all of the obligations and liabilities of the Mortgagee or its nominee or designee shall be limited to such entity's interest in the Facility and as otherwise imposed by this PILOT Agreement and shall cease and terminate upon assignment of this PILOT Agreement (any such further assignment to be approved by the Agency).

(h) Notwithstanding any provision of this PILOT Agreement, the Lease Agreement, the Leaseback Agreement or the PILOT Mortgage to the contrary, foreclosure of a mortgage or any sale of the Company's interest in this PILOT Agreement and/or the Facility in connection with a foreclosure, whether by judicial proceedings, or any conveyance of the Company's interest in this PILOT Agreement and/or the Facility to the Mortgagee or its nominee or designee by virtue of or in lieu of foreclosure or other appropriate proceedings, or any conveyance of the Company's interest in this PILOT Agreement and/or the Facility by the Mortgagee or its

nominee or designee, shall not require the consent or approval of the Agency and shall not be a default or Event of Default hereunder.

Section IX -- Miscellaneous.

9.1 This PILOT 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.

9.2 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, as follows:

To the Agency: Niagara County Industrial Development Agency  
6311 Inducon Corporate Drive, Suite One  
Sanborn, New York 14132-9099  
Attn: Executive Director

With Copy To: Gabriele & Berrigan, P.C.  
800 Main Street, 4<sup>th</sup> Floor  
Niagara Falls, New York 14302  
Attention: Mark J. Gabriele, Esq.

To the Company: 460 Wheatfield LLC  
5409 Main Street, Suite 200  
Williamsville, New York 14221

With Copy To: Sean Hopkins, Esq.  
5500 Main Street, Suite 343  
Williamsville, New York 14271

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.

9.3 This PILOT 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 Niagara County, New York.

9.4 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 PILOT Agreement on its behalf shall be liable personally under this PILOT 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, 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, 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 PILOT Agreement.

9.5 The Company hereby agrees that it shall, as security for its obligations hereunder, grant to the Affected Tax Jurisdictions a mortgage lien on the Facility pursuant to a certain PILOT Mortgage, dated as of May 1, 2019, from the Company and the Agency to the Agency, for the benefit of the Affected Tax Jurisdictions (the "PILOT Mortgage"), which PILOT Mortgage shall constitute a first priority mortgage lien on and security interest in the Facility.

*[Remainder of Page Intentionally Left Blank]*

[Signature Page to PILOT Agreement]

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

NIAGARA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: *Susan C Lang*  
Name: Susan C. Langdon  
Its: Executive Director

460 WHEATFIELD LLC

By: \_\_\_\_\_  
Name: DAVID SUTTON  
Title: Member

**SCHEDULE A**

**TO PILOT AGREEMENT, DATED AS OF MAY 1, 2019 BETWEEN  
NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
AND  
460 WHEATFIELD LLC**

Pursuant to the terms of Section 1.2 of this PILOT Agreement, Total PILOT Payment shall mean an amount per annum as follows:

<b><u>PILOT Year</u></b>	<b><u>School Tax Year</u></b>	<b><u>County and City Tax Year</u></b>	<b><u>Percentage of Normal Tax</u></b>
Year 1	2020/21	2021	20%
Year 2	2021/22	2022	20%
Year 3	2022/23	2023	30%
Year 4	2023/24	2024	30%
Year 5	2024/25	2025	40%
Year 6	2025/26	2026	40%
Year 7	2026/27	2027	40%
Year 8	2027/28	2028	40%
Year 9	2028/29	2029	40%
Year 10	2029/30	2030	50%
Year 11	2030/31	2031	50%
Year 12	2031/32	2032	50%
Year 13	2032/33	2033	50%
Year 14	2033/34	2034	50%
Year 15	2034/35	2035	50%
Year 16 and thereafter	2035/36	2036	100%

The payments in lieu of taxes to be paid by the Company to the Affected Tax Jurisdiction pursuant to the terms of this Payment-in-Lieu-of-Tax Agreement shall be computed separately for each Affected Tax Jurisdiction as follows:

1. First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Affected Tax Jurisdiction if the Land was owned by the Company and not the Agency by multiplying the (a) Assessed Value of the Land as determined by the appropriate Assessor by (b) the tax rate or rates of such Affected Tax Jurisdiction that would be applicable to the Land if the Land was owned by the Company and not the Agency.

2. In each tax year during the term of this PILOT Agreement, commencing on the first tax year following the date on which the Land shall be assessed as exempt on the assessment roll of any Affected Tax Jurisdiction, the amount payable by the Company to the Affected Tax Jurisdiction as a payment in lieu of property tax with respect to the Land shall be an amount equal to 100% of the Normal Tax due each Affected Tax Jurisdiction with respect to the Land for such tax year.
3. Next, determine the Normal Tax which would be payable to each Affected Tax Jurisdiction if the Improvements and any portion of the Equipment assessable as real property were owned by the Company and not the Agency by multiplying the (a) Assessed Value of the Improvements and such assessable Equipment as determined by the appropriate Assessor by (b) the tax rate or rates of such Affected Tax Jurisdiction that would be applicable to the Improvements and such assessable Equipment if the Improvements and such assessable Equipment was owned by the Company and not the Agency.
4. In each tax year during the term of this PILOT Agreement, commencing on the first tax year following the date on which the Improvements and such assessable Equipment shall be assessed as exempt on the assessment roll of any Affected Tax Jurisdiction, the amount payable by the Company to the Affected Tax Jurisdiction as a payment in lieu of property tax with respect to the Improvements and such assessable Equipment shall be an amount equal to the applicable percentage of the Normal Tax due each Affected Tax Jurisdiction with respect to the Improvements and such assessable Equipment for such tax year, as shown in the table.
5. The Total PILOT Payment to be made by the Company to the Affected Tax Jurisdictions shall equal the sum of Number (2) and Number (4), above, for each tax year during the term of this PILOT Agreement.

**EXHIBIT E**

**BILL OF SALE**

**NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York with offices at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York 14132 (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from **460 WHEATFIELD LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York with offices at 5409 Main Street, Suite 200, Williamsville, New York 14221 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee and its successors and assigns, the Equipment as defined in the Agent and Financial Assistance Agreement dated May 1, 2019 (the "Agent Agreement"), as may be amended from time to time, which were acquired and installed and/or are to be acquired and installed by the Grantee as agent for the Grantor pursuant to the Agent Agreement, which Equipment is located or intended to be located at the Grantee's Facility located at 460 Wheatfield Street, in the City of North Tonawanda, New York 14120.

TO HAVE AND TO HOLD the same unto the Grantee and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT "AS IS," WITHOUT RECOURSE OF ANY NATURE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by the officer described below on the date indicated beneath the signature of such officer and dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**NIAGARA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

**Form Only - Do Not Sign**

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

Name:

Title:

**EXHIBIT F**

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

Company name and address: 460 Wheatfield LLC

5409 Main Street, Suite 200, Williamsville, New York 14120

Project Name: 460 Wheatfield LLC

**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:

<b>Category</b>	<b>FTE</b>	<b>Average Salary and Fringe Benefits or Ranges</b>
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
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:

<b>Category</b>	<b>FTE</b>	<b>Average Salary and Fringe Benefits or Ranges</b>
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
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 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:

- o Original principal balance of bond or note issued \_\_\_\_\_
- o Outstanding principal balance of such bond or note as of December 31 \_\_\_\_\_
- o 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 PILOT Payments made for reporting period: \$ \_\_\_\_\_

Whether paid separately or lump sum to Agency for distribution, please provide break down of allocation of PILOT 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)

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: \_\_\_\_\_

**EXHIBIT G**

**FINAL PROJECT COST AND FINANCING REPORT**

A. **Actual costs for the construction, acquisition, rehabilitation, improvement and/or equipping of the project by the applicant.**

**Actual Costs Eligible for Sales Tax Exemption Benefit**

a. Building Construction or Renovation Costs	a.	\$
b. Sitework	b.	\$
c. Non-manufacturing Equipment	c.	\$
d. Furniture, Fixtures	d.	\$
e. Other (specify)	e.	\$
f. <b>Subtotal</b>	f.	\$

**Actual Costs Not Subject to Sales Tax**

g. Land and/or building purchase	g.	\$
h. Manufacturing Equipment	h.	\$
i. Soft Costs (Legal, Architect, Engineering)	i.	\$
j. Other (specify)	j.	\$
k. <b>Subtotal</b>	k.	\$

**Total Project Costs**

**f & k** \$

**B. Indicate how the project was financed**

a. Tax-Exempt IRB	a. \$
b. Tax-Exempt Bond	b. \$
c. Taxable IRB	c. \$
d. Bank Financing	d. \$
e. Public Financing	e. \$
f. Equity	f. \$
<b>TOTAL SOURCES</b>	\$
<b>Estimated Amount of Mortgage</b>	\$

I certify that to the best of my knowledge and belief all the information on this form is correct. I also understand that failure to report completely and accurately may be subject to penalty of perjury and result in enforcement of provisions of my agreement, including but not limited to voidance of the agreement and potential claw back of benefits.

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

(authorized company representative)

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