

UNIFORM TAX EXEMPTION POLICY

SECTION 1801. PURPOSE AND AUTHORITY. Pursuant to Section 874(4)(a) of Title One of Article 18-A of the General Municipal Law (the “Act”), Albany County Industrial Development Agency is required to establish a uniform tax exemption policy applicable to the provision of any financial assistance of more than one hundred thousand dollars to any project.

SECTION 1802. DEFINITIONS. All words and terms used herein and defined in the Act shall have the meanings assigned to them in the Act, unless otherwise defined herein or unless the context or use indicates another meaning or intent. The following words and terms used herein shall have the respective meanings set forth below, unless the context or use indicates another meaning or intent:

(A) “Administrative fee” shall mean a charge imposed by the Agency to an applicant or project occupant for the administration of project.

(B) “Agency fee” shall mean the normal charges imposed by the Agency on an applicant or a project occupant to compensate the Agency for the Agency’s participation in a project. The term “Agency fee” shall include not only the Agency’s normal Administrative fee, but also may include (1) reimbursement of the Agency’s expenses, (2) rent imposed by the Agency for use of the property of the Agency, and (3) other similar charges imposed by the Agency.

(C) “Applicant” shall mean an applicant for financial assistance.

(D) “City” shall mean any city located in the County.

(E) “County” shall mean the County of Albany.

(F) “PILOT” or “Payment in Lieu of Tax” shall mean any payment made to the Agency or an affected tax jurisdiction equal to all or a portion of the real property taxes or other taxes which would have been levied by or on behalf of an affected tax jurisdiction with respect to a project but for tax exemption obtained by reason of the involvement of the Agency in such project, but such term shall not include Agency fees.

(G) “School District” shall mean any school district located in the County.

(H) “Tax exemption” shall mean any financial assistance granted to a project which is based upon all or a portion of the taxes which would otherwise be levied and assessed against a project but for the involvement of the Agency.

(I) “Town” shall mean any town located in the County.

(J) “Village” shall mean any village located in the County.

SECTION 1803. GENERAL PROVISIONS. (A) General Policy. The general policy of the Agency is to grant tax exemption as hereinafter set forth to any project which has been or will be (1) financed by the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect thereto or (2) otherwise assisted by the Agency pursuant to a straight lease transaction (as defined under Section 854(15) of the Act).

(B) Exceptions. Although the Agency has never deviated from the general policy enunciated under subsection (A) of this Section, the Agency reserves the right to deviate from such policy in special circumstances. In determining whether special circumstances exist to justify such a deviation, the Agency may consider factors which make the project unusual, which factors might include but not be limited to the following factors: (1) the magnitude and/or importance of any permanent private sector job creation and/or retention related to project; (2) whether the affected tax jurisdictions will be reimbursed by the project occupant if the project does not fulfill the purposes for which tax exemption was granted; (3) the impact of the project on existing and proposed businesses and/or economic development projects; (4) the amount of private sector investment generated or likely to be generated by the project; (5) demonstrated public support for the project; (6) the estimated value of the tax exemptions requested; and (7) the extent to which the proposed project will provide needed services and/or revenues to the affected tax jurisdictions. In addition, the Agency may consider the other factors outlined in Section 874(4)(a) of the Act.

(C) Application. No request for a tax exemption shall be considered by the Agency unless an application and environmental assessment form are filed with the Agency on the forms prescribed by the Agency pursuant to the rules and regulations of the Agency. Such application shall contain the information requested by the Agency, including a description of the proposed project and of each tax exemption sought with respect to the project, the estimated value of each tax exemption sought with respect to the project, the proposed financial assistance being sought with respect to the project, the estimated date of completion of the project, and whether such financial assistance is consistent with this part.

SECTION 1804. SALES AND USE TAX EXEMPTION. (A) General. State law provides that purchases of tangible personal property by the Agency or by an agent of the Agency, and purchases of tangible personal property by a contractor for incorporation into or improving, maintaining, servicing or repairing real property of the Agency, are exempt from sales and use taxes imposed pursuant to Article 28 of the Tax Law. The Agency has a general policy of abating sales taxes applicable only to the initial acquisition, construction, reconstruction and/or equipping of each project with respect to which the Agency grants financial assistance. The Agency has no requirement for imposing a payment in lieu of tax arising from the exemption of a project from sales and/or use taxes applicable to the initial acquisition, construction, reconstruction and/or equipping of such project, except (1) as described in subsection (E) below or (2) in the circumstance where (a) a project is offered sales tax exemption on the condition that a certain event (such as the issuance of bonds by the Agency with respect to the project) occur by a certain date and (b) such event does not occur, in which case the Agency may require that the applicant make payments in lieu of sales tax to the New York State Department of Taxation and Finance.

(B) Period of Exemption. Except as set forth in subsection (A) above, the period of time for which a sales tax exemption shall be effective (the “tax exemption period”) shall be determined as follows:

(1) General. Unless otherwise determined by the Agency, the tax exemption for sales and use taxes shall be for the tax exemption period commencing with the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect to the project and ending on the date of completion of the project.

(2) Early Commencement. The tax exemption period may, at the discretion of the Agency, commence earlier than (i) the date of issuance by the Agency of the Agency’s debt relating to the project or (ii) the execution and delivery of the straight lease transaction, provided that (a) the Agency has complied with the requirements of Section 859-a of the Act, (b) the Agency thereafter adopts a resolution determining to commence such period earlier, said resolution to be substantially in the form of Appendix 18A attached hereto, (c) the applicant agrees to the conditions of such resolution and supplies to the Agency the materials required to be supplied to the Agency thereunder, and (d) the Chairman of the Agency acknowledges satisfaction of all conditions to the granting of such tax exemption set forth in such resolution.

(3) Normal Termination. The tax exemption period will normally end upon the completion of the project. On construction projects, the parties shall agree on the estimated date of completion of the project, and the tax exemption shall cease on the earlier of (a) the actual date of completion of the project or (b) the date which is six (6) months after the estimated date of such project. On non-construction project, the parties shall agree on the estimated date of completion of the project, and the tax exemption shall cease on the earlier of (a) the actual date of completion of the project or (b) the date which is three (3) months after the estimated date of completion of the project. If the Agency and the applicant shall fail to agree on a date for completion of the project, the Agency shall on notice to the applicant make the determination on the basis of available evidence.

(4) Later Termination. The Agency, for good cause shown, may adopt a resolution extending the period for completion of the project and/or extending the tax exemption period.

(C) Items Exempted. The sales and use tax exemption granted by the Agency shall normally extend only to the following items acquired during the tax exemption period described in subsection (B) above:

(1) items incorporated into the real property;

(2) tangible personal property, including furniture, furnishings and equipment used to initially equip the project or otherwise forming part of the project, if purchased as agent of the Agency;

(3) the rental of tools and other items necessary for the construction, reconstruction and/or equipping of the project, if rented as agent of the Agency; and

(4) office supplies, fuel and similar items consumed in the process of acquiring, constructing, reconstructing and/or equipping the project, if purchased as agent of the Agency.

(D) Items Not Exempted. A sales and use tax exemption shall not be granted for the following:

(1) purchases occurring beyond the tax exemption period described in subsection (B) above;

(2) repairs, replacements or renovations of the project, unless such repairs, replacements or renovations constitute major capital-type expenses approved by the Agency as a separate project in the manner contemplated by the Act; or

(3) operating expenses, unless such operating expenses constitute major capital-type expenses approved by the Agency as a separate project in the manner contemplated by the Act.

(E) Percentage of Exemption. Unless otherwise determined by resolution of the Agency, the sales and use tax exemption shall be equal to one hundred percent (100%) of the sales and/or use taxes that would have been levied if the project were not exempt by reason of the Agency's involvement in the project. If an exemption of less than one hundred percent (100%) is determined by the Agency, then the applicant shall be required to pay a PILOT to the Agency equal to the applicable percentage of sales and/or use tax liability not being abated. The Agency shall remit such PILOT within thirty (30) days of receipt by the Agency to the affected tax jurisdictions in accordance with Section 874(3) of the Act.

(F) Confirmation Letter. The final act of granting a sales and/or use tax exemption by the Agency shall be confirmed by the execution by an authorized officer of the Agency of a confirmation letter by the Agency. Such confirmation letter shall be in the form of either Appendix 17B (where the exemption is permanent, because the Agency is satisfied that any conditions precedent to such tax exemption, such as the issuance of bonds by the Agency, have been satisfied) or Appendix 17C (where such exemption is tentative, because there remain conditions precedent to such tax exemption which have not been satisfied). Each such confirmation letter shall describe the scope and term of the sales and use tax exemption being granted.

(G) Required Filings. (1) The New York State Department of Taxation and Finance requires that proper forms and supporting materials be filed with a vendor to establish a purchaser's entitlement to a sales tax exemption. For example, TSB-M-87(7) outlines the materials that must be filed to establish entitlement to sales tax exemption as "agent" of the Agency. It is the responsibility of the applicant and/or project occupant to ensure that the proper

documentation is filed with each vendor to obtain any sales tax exemptions authorized by the Agency.

(2) Pursuant to Section 874(9) of the Act, the Agency is required to file within thirty (30) days of the date that the Agency designates an applicant to act as agent of the Agency a New York State Department of Taxation and Finance form ST-60. The form identifies the agent of the Agency, provides a brief description of the project and an estimate of the value of the sales tax exemption and certain other information. The project documents shall require the applicant to assist the Agency in completing the form.

(H) Required Reports and Records. Pursuant to Section 874(8), the applicant and/or project occupant is required to annually file with the New York State Department of Taxation and Finance a statement of the value of all sales and use tax exemptions claimed under the Act by the applicant and/or the project occupant and/or all agents, subcontractors and consultants thereof. The project documents shall require that (1) a copy of such statement will also be filed with the Agency and (2) that the project occupant shall maintain, for a period ending seven (7) years after the last purchase made under the sales and use tax exemption, and make available to the Agency at the request of the Agency, detailed records which shall show the method of calculating the sales and use tax exemption benefit granted by the Agency.

SECTION 1805. MORTGAGE RECORDING TAX EXEMPTION. (A) General. State law provides that mortgages recorded by the Agency are exempt from mortgage recording taxes imposed pursuant to Article 11 of the Tax Law. The Agency has a general policy of abating mortgage recording taxes for the initial financing obtained from the Agency with respect to each project with respect to which the Agency issues debt which will be secured by a mortgage upon real property. In instances where the initial financing commitment provides for a construction financing of the Agency to be replaced by a permanent financing of the Agency immediately upon the completion of the project, the Agency's general policy is to abate the mortgage recording tax on both the construction financing and the permanent financing.

(B) Refinancing. In the event that the Agency retains title to a project, it is the general policy of the Agency to abate mortgage recording taxes on any debt issued by the Agency for the purpose of refinancing prior debt issued by the Agency, and on any modifications, extensions and renewals thereof, so long as the Agency fees relating to same have been paid.

(C) Non-Agency Projects. In the event that the Agency does not hold title to a project, it is the policy of the Agency not to join in a mortgage relating to that project and not to abate any mortgage recording taxes relating to that project.

(D) Non-Agency Financings. Occasionally, a situation will arise where the Agency holds title to a project, the project occupant needs to borrow money for its own purposes (working capital, for example), and the lender will not make the loan to the project occupant without obtaining a fee mortgage as security. In such instances, the policy of the Agency is to consent to the granting of such mortgage and to join in such mortgage, so long as the following conditions are met:

(1) the documents relating to such proposed mortgage make it clear that the Agency is not liable on the debt, and that any liability of the Agency on the mortgage is limited to the Agency's interest in the project;

(2) the granting of the mortgage is permitted under any existing documents relating to the project, and any necessary consents relating thereto have been obtained by the project occupant; and

(3) the payment of the Agency fee relating to same.

(E) Exemption Affidavit. The act of granting a mortgage recording tax exemption by the Agency is confirmed by the execution by an authorized officer of the Agency of an exemption affidavit relating thereto. A sample exemption affidavit is attached as Appendix 18D.

(F) PILOT Payments. If the Agency is a party to a mortgage that is not to be granted a mortgage recording tax exemption by the Agency (a "non-exempt mortgage"), then the applicant and/or project occupant or other person recording same shall pay the same mortgage recording taxes with respect to same as would have been payable had the Agency not been a party to said mortgage (the "normal mortgage tax"). Such mortgage recording taxes are payable to the County Clerk of the County, who shall in turn distribute same in accordance with law. If for any reason a non-exempt mortgage is to be recorded and the Agency is aware that such non-exempt mortgage may for any reason be recorded without the payment of the normal mortgage tax, then the Agency shall prior to executing such non-exempt mortgage collect a PILOT equal to the normal mortgage tax and remit same within thirty (30) days of receipt by the Agency to the affected tax jurisdiction in accordance with Section 874(3) of the Act.

SECTION 1806. REAL ESTATE TRANSFER TAXES. (A) Real Estate Transfer Tax. Article 31 of the Tax Law provides for the imposition of a tax upon certain real estate transfers. Section 1405(b)(2) of the Tax Law provides that transfers into the Agency are exempt from such tax, and the New York State Department of Taxation and Finance has ruled that transfers of property by the Agency back to the same entity which transferred such property to the Agency are exempt from such tax. The general policy of the Agency is to impose no payment in lieu of tax upon any real estate transfers to or from the Agency.

(B) Required Filings. It shall be the responsibility of the applicant and/or project occupant to ensure that all documentation necessary relative to the real estate transfer tax are timely filed with the appropriate officials.

SECTION 1807. REAL ESTATE TAX EXEMPTION. (A) General. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, property owned by or under the jurisdiction or supervision or control of the Agency is exempt from general real estate taxes (but not exempt from special assessments and special ad valorem levies). However, it is the general policy of the Agency that, notwithstanding the foregoing, every non-governmental project will be required to enter into a payment in lieu of tax agreement (a "PILOT Agreement"), either

separately or as part of the project documents. Such PILOT Agreement shall require payment of PILOT payments in accordance with the provisions set forth below.

(B) PILOT Requirement. Unless the applicant and/or project occupant and the Agency shall have entered into a PILOT Agreement acceptable to the Agency, the project documents shall provide that the Agency will not file a New York State Department of Taxation and Finance, Division of Equalization and Assessment Form EA-412-a (an “Exemption Form”) with respect to the project, and the project documents shall provide that the applicant and/or the project occupant shall be required to make PILOT payments in such amounts as would result from taxes being levied on the project by the taxing jurisdictions if the project were not owned by or under the jurisdiction or supervision or control of the Agency. The project documents shall provide that, if the Agency and the applicant and/or project occupant have entered into a PILOT Agreement, the terms of the PILOT Agreement shall control the amount of PILOT payments until the expiration or sooner termination of such agreement.

(C) PILOT Agreement. Unless otherwise determined by resolution of the Agency, all PILOT Agreements shall satisfy the following general conditions:

(1) Amount of Abatement: (A) The general policy of the Agency is not to provide the applicant and/or project occupant with any abatement other than abatements allowed under Section 485-b of the Real Property Tax Law and applicable ordinances and local laws of the City, Town or Village in which the project is located. Accordingly, the amount of any PILOT payment would equal the amount of taxes that would be levied on the project by the affected taxing jurisdictions if the project were not owned by or under the jurisdiction or supervision or control of the Agency. If an applicant or project occupant desires to obtain an exemption under Section 485-b or any other abatement provided by State and/or local law, it is the responsibility of the applicant and/or project occupant to apply for same.

(2) Special District Taxes. As indicated above, the Agency is not exempt from special assessments and special ad valorem levies, and accordingly these amounts are not subject to abatement by reason of ownership of the Project by the Agency. The PILOT Agreement shall make this clear and shall require that all such amounts be directly paid by the applicant and/or project occupant.

(3) Payee. Unless otherwise determined by resolution of the Agency, all PILOT payments payable to an affected tax jurisdiction shall be assessed, billed and collected directly by the same officials which assess, bill and collect normal taxes levied by such affected tax jurisdiction. Pursuant to Section 874(3) of the Act, such PILOT payments shall be remitted to each affected tax jurisdiction within thirty (30) days of receipt.

(4) Enforcement. An affected tax jurisdiction which has not received a PILOT payment due to it under a PILOT Agreement may exercise its remedies under Section 874(6) of the Act. In addition, such affected tax jurisdiction may petition the Agency to exercise whatever remedies that the Agency may have under the project

documents to enforce payment and, if such affected tax jurisdiction indemnifies the Agency and agrees to pay the Agency's costs incurred in connection therewith, the Agency may take action to enforce the PILOT Agreement.

(D) Required Filings. As indicated in subsection (B) above, pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, no real estate tax exemption with respect to a particular project shall be effective until an exemption form is filed with the assessor of each county, city, town, village and school district in which such project is located (each, a "Taxing Jurisdiction"). Once an exemption form with respect to a particular project is filed with a particular Taxing Jurisdiction, the real property tax exception for such project does not take effect until (1) a tax status date for such Taxing Jurisdiction occurs subsequent to such filing, (2) an assessment roll for such Taxing Jurisdiction is finalized subsequent to such tax status date, (3) such assessment roll becomes the basis for the preparation of a tax roll for such Taxing Jurisdiction, and (4) the tax year to which such tax roll relates commences.

(E) Real Property Appraisals. Since the policy of the Agency stated in subsection (C)(1) is to base the value of a project for payment in lieu of tax purposes on a valuation of such project performed by the Assessor of the applicable Taxing Jurisdiction, normally a separate real property appraisal is not required. However, the Agency may require the submission of a real property appraisal if (1) the assessor of any particular Taxing Jurisdiction requires one or (2) if the valuation of the project for payment in lieu of tax purposes is based on a value determined by the applicant or by someone acting on behalf of the applicant, rather than by an assessor for a Taxing Jurisdiction or by the Agency. If the Agency requires the submission of a real property appraisal, such appraisal shall be prepared by an independent MAI certified appraiser acceptable to the Agency.

SECTION 1808. PROCEDURES FOR DEVIATION. (A) General. In the case where the Agency shall determine that any policy of the Agency as herein established is inappropriate or unfair, the Agency may determine:

(1) the amount of the tax exemption, the amount and nature of the PILOT, the duration of the exemption and of the PILOT and whether or not an exemption of any kind shall be granted and shall impose such terms and conditions as shall be just and proper; and

(2) the Agency shall give written notice of the proposed deviation from the policy set forth herein to each affected Taxing Jurisdiction setting forth the terms and conditions of the deviation and the reasons therefor. Such notice to the affected tax jurisdictions shall be given to the chief executive officer of each affected tax jurisdiction at least thirty (30) days prior to the meeting of the Agency at which the Agency shall consider whether to approve such deviation. Prior to taking any final action on a proposed deviation, the Agency shall review and respond to any correspondence received from any affected tax jurisdiction regarding the proposed deviation and allow any representative of an affected tax jurisdiction present at such meeting to address the Agency regarding the proposed deviation.

(B) Troubled Projects. Where a project is owned and operated by the Agency or has been acquired by the Agency for its own account after a failure of a project occupant, the project shall at the option of the Agency be exempt from all taxes in accordance with law.

(C) Unusual Projects. Where a project is unusual in nature and requires special considerations related to its successful operations as demonstrated by appropriate evidence presented to the Agency, the Agency shall consider the granting of a deviation from the established exemption policy in accordance with the procedures provided in the title. The Agency may authorize a minimum payment in lieu of tax or such other arrangement as may be appropriate.

SECTION 1809. ANNUAL REVIEW OF POLICIES. (A) General. At least annually, the Agency shall review its tax exemption policies to determine relevance, compliance with law, effectiveness, and shall adopt any modifications or changes that it shall deem appropriate. Unless otherwise provided by resolution, such annual review shall take place at the regular June meeting of the Agency, notice for comments on such policies shall be circulated at least thirty (30) days prior to such meeting to Albany County and all the other affected tax jurisdictions, and adoption of any changes shall take effect upon approval by the Agency. The Chairman shall be responsible for conducting an annual review of the tax exemption policy and for an evaluation of the internal control structure established to ensure compliance with the tax exemption policy which shall be submitted to the Agency for approval. The thirty (30) day comment period shall not apply to the adoption of the original policies of the Agency which said policies shall become effective as herein provided.

APPENDIX A

SAMPLE INTERIM SALES TAX EXEMPTION RESOLUTION

Resolution No. _____

RESOLUTION TEMPORARILY APPOINTING _____ (THE “COMPANY”) AS AGENT OF ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY FOR THE PURPOSE OF UNDERTAKING AND COMPLETING A PROJECT TO BE LOCATED AT _____ IN THE _____ OF _____, ALBANY COUNTY, NEW YORK.

WHEREAS, Albany County Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”), and Chapter 178 of the 1975 Laws of New York, as amended, constituting Section 903-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to issue its industrial development revenue bonds to finance the cost of acquisition, construction and installation of one or more “projects” (as defined in the Act), to acquire, construct and install said projects or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, _____ (the “Company”) has presented an application (the “Application”) to the Agency, a copy of which was presented at this meeting and copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking a project (the “Project”) consisting of: [insert project description]; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended, and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “SEQR Act”), by resolution adopted on _____ (the “SEQR Resolution”), the Agency has determined that the Project will not have a significant effect on the environment and therefore that an environmental impact statement is not required to be prepared with respect to the Project; and

WHEREAS, by further resolution adopted on _____ (the “Inducement Resolution”), the Agency has (A) determined that the procedural requirements of Section 859-a of the Act have been fulfilled and therefore has decided to proceed with the granting of the financial assistance described in Section 2 of the Inducement Resolution (the

“Financial Assistance”), and (B) approved the execution of a lease agreement or an installment sale agreement (the “Project Agreement”) and related documentation between the Agency and the Company with respect to the Project; and

WHEREAS, although the Project Agreement and the related documentation have not yet been prepared, the Company has indicated to the Agency that the Company desires to commence the Project prior to completion of said Project Agreement and related documentation; and

WHEREAS, in order to preserve the sales tax exemption which forms a major portion of the Financial Assistance, the Agency now desires to temporarily formalize its understandings with the Company regarding the undertaking and completion of the Project by the Company as agent of the Agency;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. In order to preserve the sales tax exemption which forms a major part of the Financial Assistance, and in order to facilitate the commencement of the Project, the Company is hereby temporarily appointed the true and lawful agent of the Agency (A) to undertake and complete the Project, as the stated agent for the Agency, (B) to make, execute, acknowledge and deliver all contracts, orders, receipts, writings and instruments necessary in connection therewith, and in general to do all things as may be requisite or proper for completing the Project with the same powers and the same validity as the Agency could do if acting in its own behalf and (C) to pay all fees, costs and expenses incurred in the undertaking and completion of the Project from its own funds, subject to reimbursement from the proceeds of the Bonds, if and when the Bonds shall be issued, said temporary appointment to last until earlier to occur of (1) the execution and delivery of the Project Agreement or (2) _____, and said temporary appointment to be subject to the following conditions:

(1) The Company will, on behalf of the Agency, undertake and complete the Project in accordance with the plans (the “Plans”) of the Company described in the Inducement Resolution and the application of the Company to the Agency referred to therein (the “Application”).

(2) The Company will not revise the Plans in any material respect without the prior written consent of the Agency, which consent may not be unreasonably withheld or delayed but may be subject to such reasonable conditions as the Agency may deem appropriate.

(3) Title to all materials, equipment, machinery and other items of property intended to be incorporated in or installed as part of the Project shall vest in the Agency immediately upon delivery to the Project site, at which time such materials, machinery and other items of property shall become the sole property of the Agency. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest title in the Agency and shall take all action necessary or appropriate to protect such title

against claims of any third persons. Title to the Project shall be conveyed by the Agency to the Company pursuant to the provisions of the Project Agreement.

(4) All materials, equipment, machinery and other items of personal property intended to be incorporated in or installed as part of the Project shall be ordered and purchased by the Company, as agent of the Agency, and invoices therefore shall be directed to the Company, as agent of the Agency. The Agency hereby appoints the Company as agent of the Agency to make such purchases of said materials, equipment, machinery and other items of personal property; provided, however, that NO SUCH CONTRACT SHALL RESULT IN THE ASSUMPTION BY THE AGENCY OF ANY OBLIGATION TO PAY ANY COSTS AND EXPENSES, EXCEPT OUT OF THE PROCEDURES OF THE BONDS (IF AND WHEN ISSUED, AND THEN ONLY TO THE EXTENT PROVIDED IN THE INITIAL RESOLUTION), and the Company shall agree to pay all funds necessary to make all payments required under such contracts, subject to reimbursement from the proceeds of the Bonds if the Bonds are issued. It is understood that if the Bonds shall be issued and the proceeds of the Bonds are not sufficient to pay in full all costs of the acquisition, construction and installation of the Project Facility, the Company shall pay such excess costs and shall not be entitled to any reimbursement therefor from the Agency or otherwise.

(5) The Company shall indemnify, defend and hold the Agency (and its members, officers, agents, employees and servants) harmless from all claims and liabilities for labor, services, materials and supplies, including equipment, ordered or used in connection with the undertaking and completion of the Project (including any expenses incurred by the Agency and its members, officers, agents, employees and servants, in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether or not such claims or liabilities arise as a result of the Company acting as agent for the Agency pursuant to the authority conferred upon it by this Resolution.

(6) The Company shall indemnify, defend and hold the Agency (and its members, officers, agents, employees and servants) harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever in relation to the Project, including any expenses incurred by the Agency (and its members, officer, agents, employees and servants) in defending any claims, suits or actions which may result as a result of the foregoing.

(7) The Company shall give or cause to be given all notices and comply or cause compliance with all laws, ordinances, rules, regulations and requirements of all governmental agencies and public authorities applying to or affecting the undertaking and completion of the Project (the applicability of all such laws, ordinances, rules, regulations and requirements shall be determined both as if the Agency were deemed to be the owner of the Project and as if the Company and not the Agency were deemed to be the owner of the Project), and the Company will defend and save the Agency and its officers, members, agents, employees and servants harmless from all fines and penalties due to

failure to comply therewith. All permits and licenses necessary for the undertaking and completion of the Project shall be procured promptly by the Company.

(8) The Company shall agree, and by executing this Resolution does agree, that as agent for the Agency the Company will comply with all laws applicable to the Agency in connection with the undertaking and completion of the Project by the Agency (the applicability of all such laws, ordinances, rules, regulations and requirements shall be determined both as if the Agency were deemed to be the owner of the Project and as if the Company and not the Agency were deemed to be the owner of the Project). Such laws shall include, if applicable, Article 8 of the Labor Law of the State of New York, as amended from time to time.

(9) Any costs or expenses incurred by the Agency or by the Company as agent of the Agency with respect to the Project shall, to the extent permitted by law and the Initial Resolution, be paid or reimbursed out of the proceeds of the Bonds, or if the Bonds are not issued by the Agency, shall be paid by the Company.

(10) The Company shall supply the Chairman of the Agency with a general liability insurance policy naming the Company and the Agency as insureds and providing coverage in minimum amounts reasonably acceptable to the Chairman and Counsel of the Agency, including coverage for accidents or occurrences on account of personal injury, including death resulting therefrom, and damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law, which insurance policies shall (a) also name the members, officers, agents, employees and servants of the Agency as additional insureds, as their interests shall appear, and (b) also provide contractual liability insurance coverage insuring the Company's obligations pursuant to paragraphs (5) and (6) hereof to indemnify, defend and save harmless the Agency and its members, officers, agents, employees and servants, as their interests shall appear.

(11) The Company shall supply the Chairman of the Agency with policies, or certificates evidencing such policies, of workmen'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 or the Agency who are located at or assigned to work on the Project.

(12) The obligations and agreements of the Agency contained herein shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent (other than the Company), employee or servant of the Agency in his individual capacity, and the members, officers, agents (other than the Company), employees and servants of the Agency shall not be liable personally hereon or be subject to any personal liability of accountability based upon or in respect hereof or of any transaction contemplated hereby.

(13) The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or Albany County, New York, and neither the State of New York nor Albany County, New York shall be liable thereon, and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project (excepting funds payable pursuant to paragraphs (5), (6) and (14) hereof).

(14) Notwithstanding any provision of this resolution to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (a) the Agency shall have been requested to do so in writing by the Company and (b) if compliance with such request is reasonable expected to result in the incurrence by the Agency (or any member, officer, agent (other than the Company), employee or servant of the Agency) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability and for the reimbursement of all such fees, expenses and other costs.

(15) Payment by the Company of the Agency's administrative fee with respect to the Project.

(16) The Company acknowledges receipt of notice of Section 874(8) of the Act, which requires that the Company as agent of the Agency must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency.

(17) The foregoing appointment of the Company as agent of the Agency is subject to the condition that, in the event that the Bonds are not sold and delivered on or before _____ (or such later date as may be agreed to in writing by the Agency), the foregoing appointment of the Company as agent of the Agency may be revoked by the Agency, retroactive to the date of this resolution, and thereupon the Agency shall notify the New York State Department of Taxation and Finance of such revocation.

(18) The Company acknowledges receipt of notice of Section 858-b of the Act, which requires that the Company list new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (a) the New York State Department of Labor Community Services Division and (b) the administrative entity of the service delivery area created by the federal job training partnership act (P.L. No. 97-300) in which the project is located. The Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(19) The following additional conditions: None.

Section 2. This Resolution shall take effect upon the date that all of the following shall have occurred: (a) the Company shall have accepted the provisions of this Resolution; (b) the Company shall have delivered two copies of this Resolution, with the acceptance clauses thereof fully executed by the Company, to the Chairman of the Agency; (c) the Company shall have obtained the insurance policies required by paragraphs (10) and (11) of Section 1 hereof and shall have delivered evidence thereof to the Chairman of the Agency, such evidence to be in such form as the Chairman of the Agency shall deem appropriate, (d) the Company shall have paid the Agency's administrative fee with respect to the Project and (e) the Agency shall deliver to the Company a copy of this Resolution with the receipt and acknowledgment executed by the Agency.

ACCEPTANCE

The Company hereby accepts the appointment to act as agent of the Agency in connection with the Project and the Company accepts the provisions of this Resolution, including the conditions contained in Section 2 of this Resolution, and agrees to comply with such provisions and conditions.

IN WITNESS WHEREOF, the Company has caused this Acceptance to be executed in its name as of this _____ day of _____, _____.

BY: _____
Title: _____

RECEIPT

The undersigned hereby acknowledges receipt of the items called for in Section 2 of this Resolution and acknowledges that therefore this Resolution is in full force and effect.

ALBANY COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
(Vice) Chairman

APPENDIX B

SAMPLE SALES TAX CONFIRMATION LETTER
WHERE EXEMPTION IS PERMANENT

_____ , _____

To Whom It May Concern:

Re: New York State Sales or Use Tax Exemption
Albany County Industrial Development Agency
_____ Project

Pursuant to TSB-M-87(7) issued by the New York State Department of Taxation and Finance on April 1, 1987 (the "Policy Statement"), you have requested a letter from Albany County Industrial Development Agency (the "Agency") containing the information required by the Policy Statement regarding the temporary appointment by the Agency of _____ (the "Company") as agent of the Agency for purposes of affording the Company a sales tax exemption with respect to supplies, materials, fixtures and equipment intended to be incorporated in or installed as part of the following described project (the "Project"), as well as a sales tax exemption for all labor and other services used in connection with the acquisition and installation of said Project, to wit: [insert project description].

Please be advised that on _____, _____, the Agency, a public benefit corporation and a governmental agency of the State of New York, adopted a resolution whereby the Issuer appointed the Company as its agent to undertake and complete the Project.

This is to certify that, under the Policy Statement, purchases by the Agency, through its agent, the Company, of materials and equipment to be incorporated into the Project, as well as purchases of supplies, tools, equipment, or services necessary to undertake and/or complete the Project, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York.

It is hereby further certified that, under the Policy Statement, since the Agency is a public benefit corporation, neither the Agency, nor the Company as its agent, is required to furnish an "Exempt Organization Certificate" in order to secure exemption from any sales or use tax for such items or services.

Under the Policy Statement, a copy of this letter retained by any vendor or seller to the Company, as agent for the Agency, may be accepted by such vendor or seller as a “statement and additional documentary evidence of such exemption” as provided by New York State Tax Law 1132(c)(2), thereby relieving such vendor or seller from the obligation to collect any sales or use tax upon purchases or rentals of such materials, supplies, tools, equipment, or services by the Issuer through its agent, the Company.

THIS LETTER SHALL BE IN EFFECT UNTIL _____.

In the event you have any questions with respect to the above, please do not hesitate to call me.

Very truly yours,

ALBANY COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

BY: _____
(Vice) Chairman

APPENDIX C

SAMPLE SALES TAX CONFIRMATION LETTER
WHERE EXEMPTION IS TENTATIVE

_____ , _____

To Whom It May Concern:

Re: Tentative New York State Sales or Use Tax Exemption
Albany County Industrial Development Agency
_____ Project

Pursuant to TSB-M-87(7) issued by the New York State Department of Taxation and Finance on April 1, 1987 (the "Policy Statement"), you have requested a letter from Albany County Industrial Development Agency (the "Agency") containing the information required by the Policy Statement regarding the temporary appointment by the Agency of _____ (the "Company") as agent of the Agency for purposes of affording the Company a sales tax exemption with respect to supplies, materials, fixtures and equipment intended to be incorporated in or installed as part of the following described project (the "Project"), as well as a sales tax exemption for all labor and other services used in connection with the acquisition and installation of said Project, to wit: [insert project description].

Please be advised that on _____, _____, the Agency, a public benefit corporation and a governmental agency of the State of New York, adopted a resolution whereby the Issuer appointed the Company as its agent to undertake and complete the Project, SUBJECT TO THE CONDITION THAT IN THE EVENT THAT THE BONDS ARE NOT SOLD AND DELIVERED ON OR BEFORE _____ (OR SUCH LATER DATE AS MAY BE AGREED TO IN WRITING BY THE AGENCY), THE FOREGOING APPOINTMENT OF THE COMPANY AS AGENT OF THE AGENCY MAY BE REVOKED BY THE AGENCY, RETROACTIVE TO THE DATE OF THIS RESOLUTION, AND THEREUPON THE AGENCY SHALL NOTIFY THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE OF SUCH REVOCATION.

This is to certify that, under the Policy Statement, purchases by the Agency, through its agent, the Company, of materials and equipment to be incorporated into the Project, as well as purchases of supplies, tools, equipment, or services necessary to undertake and/or complete the Project, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York.

It is hereby further certified that, under the Policy Statement, since the Agency is a public benefit corporation, neither the Agency, nor the Company as its agent, is required to furnish an “Exempt Organization Certificate” in order to secure exemption from any sales or use tax for such items or services.

Under the Policy Statement, a copy of this letter retained by any vendor or seller to the Company, as agent for the Agency, may be accepted by such vendor or seller as a “statement and additional documentary evidence of such exemption” as provided by New York State Tax Law 1132(c)(2), thereby relieving such vendor or seller from the obligation to collect any sales or use tax upon purchases or rentals of such materials, supplies, tools, equipment, or services by the Issuer through its agent, the Company.

THIS LETTER SHALL BE IN EFFECT UNTIL _____.

In the event you have any questions with respect to the above, please do not hesitate to call me.

Very truly yours,

ALBANY COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

BY: _____
(Vice) Chairman

APPENDIX D

SAMPLE MORTGAGE TAX EXEMPTION AFFIDAVIT

payments are to be paid directly to _____, as [holder (the “Holder”)] [trustee for the holders (the “Trustee”)] of the Bond(s).

6. That, contemporaneously with the issuance of the Bond(s), the Agency will deliver to the [Holder] [Trustee] (A) a mortgage from the Agency and the Company to the [Holder] [Trustee] dated as of _____ (the “Mortgage”) whereby the Agency grants to the [Holder] [Trustee] a Lien on and security interest in the Project Facility to secure the payment of the Bond(s) and the Company joins in said Mortgage to subject its interest in the Project Facility to the lien thereof, (B) a pledge and assignment from the Agency to the [Holder] [Trustee] dated as of _____ (the “Pledge and Assignment”) whereby the Agency assigns to the [Holder] [Trustee] certain of its rights in the Installment Sale Agreement and certain moneys due the Agency thereunder to further secure the payment of the principal of, premium, if any, and interest on the Bond(s), and (C) an assignment of leases and rents from the Agency and the Company to the [Holder] [Trustee] dated as of _____ (the “Assignment of Rents”) which assigns to the [Holder] [Trustee] all leases affecting the Project Facility (the “Leases”) and the rents payable thereunder.

7. Pursuant to Article 18-A of the General Municipal Law, the Agency is regarded as performing a governmental function and is generally not required to pay taxes or assessments upon any property acquired by it or under its jurisdiction or control or supervision or upon its activities, and any bonds or notes issued by the Agency, together with the income therefrom, as well as the property of the Agency, together with the income therefrom, as well as the property of the Agency, pursuant to such legislation, are exempt from taxation, except for transfer and estate taxes.

8. Deponent submits that no mortgage tax should be imposed upon the Installment Sale Agreement (or a memorandum thereof), the Pledge and Assignment, the Leases (or memoranda thereof), the Assignment of Rents, or the Mortgage (collectively, the “Recording Documents”) because (A) said Recording Documents are being executed and delivered under the state authority creating the Agency, (B) the use by the Agency of its powers to additionally secure the payment of principal, premium, if any, and interest on the Bond(s) and to assist in the acquisition of the Project Facility is deemed by Article 18-A of the General Municipal Law to be a public purpose essential to the public interest, and (C) both the New York State Department of Taxation and Finance and the Counsel have expressed their opinion that the recording of similar documents by similar agencies organized under Article 18-A of the General Municipal Law are operations of said agencies entitled to exemption from the mortgage recording tax.

ALBANY COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

BY: _____
(Vice) Chairman

Sworn to before me this
____ day of _____, ____

Notary Public

EXHIBIT A
DESCRIPTION OF LAND
(TO BE PROVIDED BY THE COMPANY)