

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (hereinafter, the "Agreement"), made as of December 13, 2023, by and between the BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, with an office for the transaction of business located at FIVE South College Drive, Suite 201, Binghamton, New York 13905 (the "Agency"), and 200 COURT STREET APARTMENTS HOUSING DEVELOPMENT FUND CORPORATION, a not-for-profit corporation organized and existing under the laws of the State of New York, having its principal offices at 555 East Genesee Street, Syracuse, New York 13202 (the "Fee Owner") and 200 COURT STREET APARTMENTS, LLC, a limited liability company organized and validly existing under the laws of the State of New York, having its principal offices located at 555 East Genesee Street, Syracuse, New York 13202 (the "Beneficial Owner" (the "Fee Owner" and the "Beneficial Owner" are, collectively, (the "Company") (collectively, the "Parties").

W I T N E S S E T H:

WHEREAS, the Agency was created by Chapter 564 of the 1970 Laws 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 "Enabling 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 an apartment building and any other directly or indirectly related activities; and

WHEREAS, by Resolution adopted on October 18, 2023 (the "Resolution"), the Agency has conferred on the Company, in connection with the Project, certain benefits, exemptions and other financial assistance consisting of a partial abatement from real property taxes through a "payment in lieu of tax agreement" with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project (the partial abatement from real property tax benefits is, hereinafter, referred to as the "Financial Assistance"); and

WHEREAS, it has been estimated and confirmed by the Company, as included within its Application for Financial Assistance, a copy of which is available for review at the office of the Agency during regular business hours, that the real property tax abatement benefits to be provided to the Company over the thirty (30) year benefit period of the anticipated payment-in-lieu-of-tax agreement are estimated to be approximately \$1,020,982.00; and

WHEREAS, the Company proposes to lease the Project to the Agency, and the Agency desires to rent the Project from the Company pursuant to the terms and conditions set forth in a certain lease agreement dated as of December 13, 2023 (the "Lease Agreement"); and

WHEREAS, the Agency proposes to lease the Project back to the Company and the Company desires to rent the Project from the Agency, pursuant to the terms and conditions set forth in a certain leaseback agreement dated as of December 13, 2023 (the “Leaseback Agreement”); and

WHEREAS, in order to define the obligations of the Company regarding payments-in-lieu-of-taxes for the Project, the Agency and the Company will enter into a payment-in-lieu-of-tax agreement dated as of December 13, 2023 (the “PILOT Agreement”); and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolution, and as more particularly described in the Lease Agreement, Leaseback Agreement, PILOT Agreement, and Agency Agreement, that the Company provide assurances with respect to the terms and conditions 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 Financial Assistance shall be provided to the Company prior to the effective date of this 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:

- P. PURPOSE OF PROJECT. It is understood and agreed by the Parties hereto that the purpose of the Agency’s provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Lease Agreement, Leaseback Agreement, PILOT Agreement and Agency Agreement in order to, promote, develop, encourage and assist in the construction, renovation and equipping of the Project, to advance job opportunities, health, general prosperity and economic welfare of the people of the City of Binghamton, Broome County, New York, and to otherwise accomplish the public purpose of the Act.
2. PILOT AGREEMENT. The Parties hereto understand and agree that Exhibit “A” to this Agreement contains a copy of the PILOT Agreement to be entered into by and between the Company and the Agency.
3. TERMINATION, MODIFICATION AND/OR RECAPTURE OF ANY FINANCIAL ASSISTANCE. It is understood and agreed by the Parties hereto that the Agency is entering into the Lease Agreement, the Leaseback Agreement, the PILOT Agreement, and the Agency Agreement in order to provide Financial Assistance to the Company for the Project and to accomplish the public purposes of the Act. The Company hereby makes the following representations and covenants in order to induce the Agency to proceed with the Project:

- P. 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 determination by the Agency resulting in the potential recapture of any and all Financial Assistance, as described below, if the Company receives, or any of its agents or subagents receive, any Financial Assistance from the Agency, and it is determined by the Agency that the Company has made a material, false or misleading statement, or omitted any information which, if included, would have rendered any information in its application for Financial Assistance, or supporting documentation, false or misleading in any material respect.

In order for the Agency to determine the foregoing, the Company shall provide annually to the Agency a certified statement and documentation, if required. Exhibit "B" contains the form of annual certification as so required as well as additional Project assessment information that the Agency requires, on an annual basis, to be submitted to the Agency by the Company.

The findings made by the Agency with respect to this Section and/or failure to provide the written confirmation as required by Section 3 may potentially be determined by the Agency in accordance with the Agency's Policy for Termination, Modification and/or Recapture of Agency Benefits for the modification of any PILOT to require increased payments. If the Agency makes a determination to recapture benefits, 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 may assess and determine the New York State and local sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

B. The Company acknowledges and understands that it is subject to New York Labor Law Section 224-a regarding, among other issues, prevailing wage requirements for this Project, a copy of which is attached hereto as Exhibit "C". A checklist to be used to confirm if a Project is so subject to prevailing wage requirements is attached hereto as Exhibit "D".

C. The Company acknowledges and understands that a determination to recapture benefits made with respect to Section 3(A) of this Agreement will, in addition, immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future Financial Assistance with respect to the Project.

4. SURVIVAL. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the

Agency.

5. NOTICES. All notices, demands or communications required to be given under this Agreement shall be forwarded simultaneously by certified mail or Federal Express, or other similar overnight delivery service, to the respective addresses of the Parties hereinafter set forth or to such other place(s) as any of the Parties hereto may, from time to time, designate by written notice to the other.

To the Agency:	Broome County Industrial Development Agency FIVE South College Drive Suite 201 Binghamton, New York 13905 Attn: Executive Director
With a copy to:	Joseph B. Meagher, Esq. Thomas, Collison & Meagher 1201 Monroe Street P.O. Box 329 Endicott, New York 13761-0329
To the Fee Owner:	200 Court Street Apartments Housing Development Fund Corporation c/o Helio Health, Inc. 555 East Genesee Street Syracuse, New York 13202 Attention: John Warren, Vice President of Residential Construction and Development Email Address: jwarren@helio.health
To the Beneficial Owner:	200 Court Street Apartments, LLC 555 East Genesee Street Syracuse, New York 13202 Attention: John Warren, Vice President of Residential Construction and Development Email Address: jwarren@helio.health
With a copy to:	Heather L. Sunser, Esq. Barclay Damon Barclay Damon Tower 125 East Jefferson Street Syracuse, New York 13202
With a copy to:	USA 200 Court Street LLC 777 West Putnam Avenue Greenwich, CT 06830 Attention: Joanne D. Flanagan, Esq.

With a copy to: New York State Housing Finance Agency ("HFA")
641 Lexington Avenue
New York, New York 10022
Attention: President, Finance and Development

New York State Housing Finance Agency
641 Lexington Avenue
New York, New York 10022
Attention: General Counsel

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.

6. AMENDMENTS. No amendment, change, modification, alteration or termination of this Agreement shall be made except in writing upon the written consent of the Company and the Agency.

7. SEVERABILITY. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement, or the application thereof, shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

8. GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard or reference to its conflict of laws principles.

9. SECTION HEADINGS. The headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provision of this Agreement.

10. COUNTERPART SIGNATURES. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement. In addition, the Parties may transmit signed copies of this Agreement by e-mail and/or facsimile and both Parties intend to be bound by the signatures on any document which is transmitted by e-mail and/or facsimile. Each Party is aware that the other Party will rely on the e-mail and/or facsimile transmitted signatures, and both Parties hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

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

BROOME COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Stacey M. Duncan, Executive Director

200 COURT STREET APARTMENTS
HOUSING DEVELOPMENT FUND
CORPORATION, a New York not-for-
profit corporation

By: Kathleen Gaffney Babb
Kathleen Gaffney-Babb
Authorized Signatory

200 COURT STREET APARTMENTS, LLC
a New York limited liability company

By: 200 Court Street Apartments MM, LLC
a New York limited liability company
its manager

By: Helio Health, Inc.
a New York not-for-profit corporation
its manager

By: Kathleen Gaffney Babb
Kathleen Gaffney-Babb, President

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

BROOME COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Stacey M. Duncan, Executive Director

200 COURT STREET APARTMENTS
HOUSING DEVELOPMENT FUND
CORPORATION, a New York not-for-
profit corporation

By: _____
Kathleen Gaffney-Babb
Authorized Signatory

200 COURT STREET APARTMENTS, LLC
A New York limited liability company
By: 200 Court Street Apartments MM, LLC
a New York limited liability company
Its manager
By: Helio Health, Inc.
a New York not-for-profit corporation
Its manager

By: _____
Kathleen Gaffney-Babb, President

STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On _____, 2023, before me, the undersigned, personally appeared STACEY M. DUNCAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK :

: ss.:

COUNTY OF ONONDAGA:

On November 29, 2023, before me, the undersigned, personally appeared KATHLEEN GAFFNEY-BABB, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

DANIELLE P. WILNER
Notary Public - State of New York
Qualified in Onondaga Co. No. 02746397918
My Commission Expires September 16, 2027

STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On December 5, 2023, before me, the undersigned, personally appeared STACEY M. DUNCAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

JOSEPH B. MEAGHER
Notary Public, State of New York
Broome County 02ME4974837
Commission Expires Nov. 26, 2026

STATE OF NEW YORK :

: ss.:

COUNTY OF ONONDAGA:

On _____, 2023, before me, the undersigned, personally appeared KATHLEEN GAFFNEY-BABB, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT “A”

(SEE ATTACHED PILOT AGREEMENT)

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "Agreement"), dated as of December 13, 2023, by and between 200 COURT STREET APARTMENTS HOUSING DEVELOPMENT FUND CORPORATION, a not-for-profit corporation organized and existing under the laws of the State of New York, having its principal offices located at 555 East Genesee Street, Syracuse, New York 13202 (the "Fee Owner") and 200 COURT STREET APARTMENTS, LLC, a limited liability company organized and existing under the laws of the State of New York, having its principal offices located at 555 East Genesee Street, Syracuse, New York 13202 (the "Beneficial Owner") the "Fee Owner" and the "Beneficial Owner" are, collectively, the "Company") and the BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public-benefit corporation duly organized and validly existing under the laws of the State of New York with an office for the transaction of business located at FIVE South College Drive, Suite 201, Binghamton, New York 13905 (the "Agency"), collectively, the "Parties".

WITNESSETH:

WHEREAS, Title 1 of Article 18-A, as amended, of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "State"); and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities,

including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities on such terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes; and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to pledge the revenues and receipts from its facilities or from the lease thereof; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 564 of the Laws of 1970 of the State (collectively, the "Act") created the Broome County Industrial Development Agency (the "Agency"), which is empowered under the Act to undertake the providing, financing and leasing of the project described below; and

WHEREAS, the Agency was created as a public benefit corporation pursuant to and for the purposes specified in Title 1 of Article 18-A of the General Municipal Law; and

WHEREAS, the Company has agreed to a lease/leaseback transaction, on the real property located at 200 Court Street in the City of Binghamton, Broome County, New York, 32 Fayette Street in the City of Binghamton, Broome County, New York, 38 Fayette Street in the City of Binghamton, Broome County, New York, 34 Stuyvesant Street in the City of Binghamton, Broome County, New York, and 25 Rutherford Street in the City of Binghamton, Broome County, New York (collectively, the "Premises"), more particularly described on Exhibit "A" attached hereto, to facilitate the renovation of an existing office and warehouse building on

the Premises, as well as the construction of an addition connected to the existing building, which will result in a four-story residential building with 111 units consisting of 23 studio apartments, 70 one-bedroom apartments, and 18 two-bedroom apartments, two elevators serving all four floors, a common area, office space, an unfinished basement, conference room area, a lobby/reception area, a community room and fitness center, with lounges, laundry facilities and trash rooms on each floor (the "Project"); and

WHEREAS, the Company will lease the Project to the Agency pursuant to a certain lease agreement (the "Lease Agreement,") and the Agency will lease the Project back to the Company pursuant to a certain leaseback agreement (the "Leaseback Agreement") for a term not to exceed thirty (30) years which said term shall expire on December 13, 2053; and

WHEREAS, the Agency is exempt from the payment of taxes and assessments imposed upon real property, and, as a further condition related to the acquisition of the Project, the Company has agreed that, notwithstanding such exemption, the Company will nevertheless make payments to the City of Binghamton (the "City"), the Binghamton City School District (the "School District") and the County of Broome (the "County") while occupying the Project in lieu of general tax levies.

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed as follows:

1. Pursuant to Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law, the Parties hereto understand that, upon acquisition by lease of the Project by the Agency and the filing of an Application for Real Property Tax Exemption Form RP-412-a (the "Exemption Form") with respect to the Project, and for so long thereafter as the

Agency shall have an interest in the Project, the Project shall be assessed by the various taxing entities having jurisdiction over the Project, including, without limitation, the City, the School District and the County as exempt on their respective assessment rolls prepared subsequent to the acquisition by the Agency of a leasehold interest in the Project and the filing of the Exemption Form. The Parties hereto understand that the Project shall not be entitled to such exempt status on any tax roll until the first tax year following the tax status date subsequent to the date upon which the Agency acquires a leasehold interest in the Project and an Exemption Form is filed. The Company shall be required to pay all taxes and assessments lawfully levied and/or assessed against the Project, including taxes and assessments levied for the current tax year and all subsequent years until the Project is entitled to exempt status on the tax roll. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Project, including the preparation and filing of the Exemption Form.

2. During each tax year in which the Project shall be tax exempt, the Company agrees to pay to the City, the School District, and the County, the PILOT payments as shown on the PILOT Schedule attached hereto as Exhibit "B".

3. The City, the School District, and the County shall separately bill the Company for each in-lieu-of-tax payment due hereunder. For the purposes of this Agreement, the term "Timely Payment" shall be defined as payment made within thirty (30) days after receipt by the Company of a written bill demanding payment.

4. Should the Company use the Project for other than low income housing or allied purposes such as defined in Article 18-A of the General Municipal Law, or acquire title during the term of this Agreement to the leased Project from the Agency, this Agreement shall terminate

immediately and the Project shall be returned to the non-exempt portion of the tax roll and be subject to taxation thereafter, including any portion of a tax year not otherwise covered by this Agreement.

5. If any default shall be made in the payment referred to in Paragraph 2, supra, the Company hereby agrees to pay the same to the extent above specified:

A. Without requiring any notice of non-payment or of default to the Company, the Agency, or to any other person;

B. Without proof of demand.

6. The Parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-A of the Real Property Tax Law does not entitle the Agency to an exemption from special assessments and special ad valorem levies such as, but without limitation, charges for metered water and sewer rent. The Company hereby agrees to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project.

7. Pursuant to Section 858 (15) of the General Municipal Law, the Agency agrees to give the City, the School District, and the County a copy of this PILOT Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy thereof be given to the appropriate officer or officers with respect to each taxing jurisdiction responsible for preparing the tax rolls for said jurisdiction, together with a request that said officer or officers submit to the Company, and the appropriate receivers of taxes, periodic statements specifying the amount and due date or dates of the payments due to each hereunder. Such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such

jurisdictions.

8. The Company agrees to pay the amounts due hereunder to each particular taxing jurisdiction in any calendar year to the appropriate receiver of taxes within the period that such taxing entity allows the payment of taxes levied in such calendar year without penalty. The Company shall be entitled to receive receipts for such payments.

9. Pursuant to Section 874(5) of the General Municipal Law, if the Company shall fail to make any payment required by this PILOT Agreement when due, the Company shall pay the same, together with a late-payment penalty equal to five (5%) percent of the amount due. If the Company shall remain in default beyond the first month after such payment is due, the Company shall thereafter pay a late-payment penalty of one (1%) percent per month for each month, or part thereof, that the payment due thereunder is delinquent beyond the first month plus interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would have been payable if such amount were delinquent taxes, until so paid in full.

10. Pursuant to Section 874(6) of the General Municipal Law, if the Company should default in performing any of its obligations, covenants or agreements under this PILOT Agreement and the Agency or any taxing jurisdiction should employ attorneys or incur other expenses for the collection of any amounts payable hereunder, or for the enforcement or performance or observation of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefore, pay to the Agency or such taxing jurisdiction, as the case may be, not only the amounts adjudicated due hereunder, together with the late-payment penalty and interest due thereon, but also reasonable fees and

disbursements of such attorneys and all other expenses, costs and disbursements so incurred whether or not an action is commenced.

11. Notwithstanding the foregoing, the Agency reserves the right to terminate, modify, or recapture any benefits provided to the Company pursuant to this PILOT Agreement, as well as any other benefit provided to the Company, in accordance with the policy of the Agency set forth in Exhibit “C” attached hereto. The Agency shall provide copies of any notices of default sent to the Company, to the project lenders, including the New York State Homeless Housing and Assistance Corporation (the “HHAC”), the New York State Housing Finance Agency (the “HFA”), and to the investor, USA 200 Court Street LLC (the “Investor”).

12. In the event of a default in the terms of this Agreement, the Agency may, upon sixty-days (60) days’ written notice to the Company, the notice recipients, the project lenders, including the HHAC and HFA, and the Investor specified in Section 15 hereof record any documents necessary in the appropriate county clerk’s office conveying the Premises to the Company and/or terminating the lease agreement and the leaseback agreement. The Company hereby appoints the Agency as its attorney-in-fact to execute and deliver all documents necessary for such conveyance and/or termination, and the recording thereof in the county clerk’s office shall constitute delivery thereof so long as a copy of the recorded documents are provided to the Company.

13. This Agreement, and the benefits hereunder, may not be transferred, assigned, or subleased to an unrelated or unaffiliated entity without the express written consent of the Agency under terms and conditions set forth in paragraph 6.3 (ASSIGNMENT AND SUBLEASING) of the Parties’ Leaseback Agreement executed simultaneously herewith.

jurisdiction is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this PILOT Agreement or now and hereafter existing at law or in equity or by statute. No delay or admission in exercising any such right or power accruing upon a default hereunder shall impair any such right or power or be construed as a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

15. All notices, demands or communications required to be given under this Agreement shall be forwarded simultaneously by certified mail or Federal Express, or other similar overnight delivery service, to the respective addresses of the Parties hereinafter set forth or to such other addresses as any of the Parties hereto may, from time to time, designate by written notice to the other:

To the Agency:	Broome County Industrial Development Agency FIVE South College Drive Suite 201 Binghamton, New York 13905 Attn: Executive Director
With a copy to:	Joseph B. Meagher, Esq. Thomas, Collison & Meagher 1201 Monroe Street P.O. Box 329 Endicott, New York 13761-0329
To the Fee Owner:	200 Court Street Apartments Housing Development Fund Corporation c/o Helio Health, Inc. 555 East Genesee Street Syracuse, New York 13202 Attention: John Warren, Vice President of Residential Construction and Development Email Address: jwarren@helio.health
To the Beneficial Owner:	200 Court Street Apartments, LLC

555 East Genesee Street
Syracuse, New York 13202
Attention: John Warren, Vice President of Residential
Construction and Development
Email Address: jwarren@helio.health

With a copy to: Heather L. Sunser, Esq.
Barclay Damon LLP
125 East Jefferson Street
Syracuse, New York 13202

To the HFA: New York State Housing Finance Agency
641 Lexington Avenue
New York, New York 10022

With a copy to: President, Finance and Development
New York State Housing Finance Agency
641 Lexington Avenue
New York, New York 10022

With a copy to: Counsel
New York State Housing Finance Agency
641 Lexington Avenue
New York, New York 10022

To the HHCA: New York State Homeless
Housing and Assistance Corporation
c/o NYS Office of Temporary and Disability Assistance
40 N. Pearl St, #10C
Albany, New York 12243
Attn: Dana Greenberg, President

With a copy to: NYS Office of Temporary and Disability Assistance
Division of Legal Affairs
40 N. Pearl St, #16C
Albany, New York 12243
Attn: Barbara L. Guzman, Esq.

To the Investor: USA 200 Court Street LLC
777 West Putnam Avenue
Greenwich, Connecticut 06830
Attn: Joanne D. Flanagan, Esq.

16. The City, the School District, the County, the Agency and the Company as used herein shall include their successors and assigns. The terms of this Agreement shall inure to the

benefit of, and shall be binding upon, any future owners of the Project and the Company's successors and assigns.


17. This Agreement shall remain in effect until termination or expiration of the Leaseback Agreement from the Agency to the Company which, by its terms, expires December 13, 2053.

18. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement. In addition, the Parties may transmit signed copies of this Agreement by e-mail and/or facsimile and all Parties intend to be bound by the signatures on any document which is transmitted by e-mail and/or facsimile. Each Party is aware that the other Parties will rely on the e-mail and/or facsimile transmitted signatures, and all Parties hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly
executed the date set forth hereinabove.

BROOME COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Stacey M. Duncan, Executive Director

200 COURT STREET APARTMENTS
HOUSING DEVELOPMENT FUND
CORPORATION, a New York not-for-
profit corporation

By: _____
Kathleen Gaffney-Babb
Authorized Signatory

200 COURT STREET APARTMENTS, LLC
a New York limited liability company

By: 200 Court Street Apartments MM, LLC
A New York limited liability company
Its manager

By: Helio Health, Inc.
A New York not-for-profit corporation
Its manager

By: _____
Kathleen Gaffney-Babb, President

STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On December 5, 2023, before me, the undersigned, personally appeared STACEY M. DUNCAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

JOSEPH B. MEAGHER
Notary Public, State of New York
Broome County 02ME4974837
Commission Expires Nov. 26, 20__

STATE OF NEW YORK :

: ss.:

COUNTY OF ONONDAGA:

On _____, 2023, before me, the undersigned, personally appeared KATHLEEN GAFFNEY-BABB, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly
executed the date set forth hereinabove.

BROOME COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Stacey M. Duncan, Executive Director

200 COURT STREET APARTMENTS
HOUSING DEVELOPMENT FUND
CORPORATION, a New York not-for-
profit corporation

By: Kathleen Gaffney Babb
Kathleen Gaffney-Babb
Authorized Signatory

200 COURT STREET APARTMENTS, LLC
a New York limited liability company

By: 200 Court Street Apartments MM, LLC
a New York limited liability company
its manager

By: Helio Health, Inc.
a New York not-for-profit corporation
its manager

By: Kathleen Gaffney Babb
Kathleen Gaffney-Babb, President

STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On _____, 2023, before me, the undersigned, personally appeared STACEY M. DUNCAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

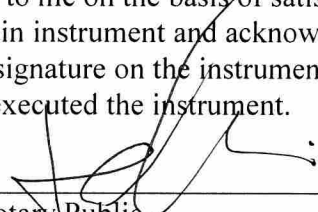
Notary Public

STATE OF NEW YORK :

: ss.:

COUNTY OF ONONDAGA:

On November 29, 2023, before me, the undersigned, personally appeared KATHLEEN GAFFNEY-BABB, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

DANIELLE P. WILNER
Notary Public - State of New York
Qualified in Onondaga Co. No. 02WM6397918
My Commission Expires September 16, 2027

EXHIBIT "A"

Parcels la-i, 2 and 3 can also be described as follows:

ALL THAT TRACT OR PARCEL OF LAND SITUATE IN THE CITY OF BINGHAMTON, COUNTY OF BROOME AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

Beginning at a point on the southeasterly highway boundary of Court Street (U.S. 11, N.Y. 17-C), said point standing at the intersection of the southeasterly highway boundary of Court Street with the northeasterly boundary of Court BC Apartments LLC (Now or Formerly), as described in a Warranty Deed filed in the Broome County Clerk's Office in Liber 2520 of Deeds at Page 271; said point of beginning being further described as standing therein distant N69°17'22"E 65.00 feet as measured along the southeasterly highway boundary of Court Street from a point standing at the intersection of the southeasterly highway boundary of Court Street with the northeasterly highway boundary of Fayette Street; thence N69°17'22"E 197.01 feet along the southeasterly highway boundary of Court Street to a point standing on a curve to the right; thence southeasterly 15.70 feet along the said aforementioned curve to the right and continuing along the southeasterly highway boundary of Court Street with a radius of 10.00 feet and a delta angle of 89°57'00" to a point standing on the southwesterly highway boundary of Stuyvesant Street; thence S20°45'38"E 342.51 feet along the southwesterly highway boundary of Stuyvesant Street to a point standing on the northwesterly boundary of lands of Court Street Binghamton LLC (Now or Formerly); thence S69°17'22"W 140.00 feet along the northwesterly boundary Court Street Binghamton LLC to a point standing on the northeasterly boundary of lands of PAMU Realty LLC (Now or Formerly); thence N20°45'38"W 53.19 feet along the northeasterly boundary of the lands reputedly owned by PAMU Realty LLC to a point standing on the northwesterly boundary of the lands reputedly owned by PAMU Realty LLC; thence S68°46'22"W 132.00 feet along the northwesterly boundary of the lands reputedly owned by PAMU Realty LLC to a point standing on the northeasterly highway boundary of Fayette Street; thence N20°45'38"W 108.00 feet along the northeasterly highway boundary of Fayette Street to a point standing on the southeasterly boundary of Court Street Binghamton LLC (Now or Formerly); thence N68°46'22"E 132.00 feet along the southeasterly boundary of Court Street Binghamton LLC to a point standing on the northeasterly boundary of Court Street Binghamton LLC; thence N20°45'38"W 58.00 feet along the northeasterly boundary of Court Street Binghamton LLC to a point standing on the northwesterly boundary of Court Street Binghamton LLC; thence S68°46'22"W 132.00 feet along the northwesterly boundary of Court Street Binghamton LLC to a point standing on the northeasterly highway boundary of Fayette Street; thence N20°45'38"W 44.60 feet along the northeasterly highway boundary of Fayette Street to a point standing on the southeasterly boundary of Court BC Apartments LLC; thence N69° 10'30"E 65.00 feet along the southeasterly boundary of Court BC Apartments LLC to a point standing on the northeasterly

EXHIBIT "A" (Continued)

boundary of Court BC Apartments LLC; thence N20°45'38"W 89.77 feet along the northeasterly boundary of Court BC Apartments LLC to the point and place of beginning.

The above described parcel containing 1.731 acres (75,420.5 sq.ft.) of land, more or less. Parcels 4 and 5 can also be described as follows:

ALL THAT TRACT OR PARCEL OF LAND SITUATE IN THE CITY OF BINGHAMTON, COUNTY OF BROOME AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

Beginning at a point on the northeasterly highway boundary of Stuyvesant Street, said point standing at the intersection of the northeasterly highway boundary of Stuyvesant Street with the southeasterly boundary of Robert J. Pornbeck (Now or Formerly), as described in a Deed dated May 19, 1994 and filed in the Broome County Clerk's Office in Liber 1836 of Deeds at Page 71; said point of beginning being further described as standing therein distant S20°45'38"E 136.52 feet as measured along the northeasterly highway boundary of Stuyvesant Street from a point standing at the intersection of the northeasterly highway boundary of Stuyvesant Street with the southeasterly highway boundary of Court Street (U.S. 11, N.Y. 17-C); thence N68°56'22"E 280.00 feet along the southeasterly boundary of Robert J. Pornbeck, the southeasterly boundary of AJEM Group LLC (Now or Formerly), the southeasterly boundary of the Greek Orthodox Community Holy Trinity, Binghamton, NY, Inc. (Now or Formerly) and then along the southeasterly boundary of CSBW Realty Corp. (Now or Formerly) to a point standing on the southwesterly highway boundary of Rutherford Street; thence S20°45'38"E 54.50 feet along the southwesterly highway boundary of Rutherford Street to a point standing on the northwesterly boundary of Oliver B. Babcock (Now or Formerly); thence S68°56'22"W 140.00 feet along the northwesterly boundary of Oliver B. Babcock to a point standing on the southwesterly boundary of Oliver B. Babcock; thence S20°45'38"E 54.50 feet along the southwesterly boundary of Oliver B. Babcock to a point standing on the northwesterly boundary of Robert J. Pornbeck (Now or Formerly); thence S68°56'22"W 140.00 feet along the northwesterly boundary of Robert J. Pornbeck to a point standing on the northeasterly highway boundary of Stuyvesant Street; thence N20°45'38"W 109.00 feet along the northeasterly highway boundary of Stuyvesant Street to the point and place of beginning.

The above described parcel containing 0.525 acres (22,890.1 sq.ft.) of land, more or less.

EXHIBIT “B”

(SEE ATTACHED PILOT PAYMENT SCHEDULE)

30 Year PILOT - CSD Affordable Housing

	<u>Year Ending</u>	<u>PILOT Payment</u>		<u>W/O PILOT</u>	
1	2024	\$ 31,672.73	*frozen	\$ 31,672.73	
2	2025	\$ 31,672.73	*frozen	\$ 31,672.73	
3	2026	\$ 88,506.00		\$ 116,061.97	
4	2027	\$ 90,276.12		\$ 118,383.21	
5	2028	\$ 92,081.64		\$ 120,750.87	
6	2029	\$ 93,923.28		\$ 123,165.89	
7	2030	\$ 95,801.74		\$ 125,629.21	
8	2031	\$ 97,717.78		\$ 128,141.79	
9	2032	\$ 99,672.13		\$ 130,704.63	
10	2033	\$ 101,665.57		\$ 133,318.72	
11	2034	\$ 103,698.89		\$ 135,985.10	
12	2035	\$ 105,772.86		\$ 138,704.80	
13	2036	\$ 107,888.32		\$ 141,478.89	
14	2037	\$ 110,046.09		\$ 144,308.47	
15	2038	\$ 112,247.01		\$ 147,194.64	
16	2039	\$ 114,491.95		\$ 150,138.53	
17	2040	\$ 116,781.79		\$ 153,141.30	
18	2041	\$ 119,117.42		\$ 156,204.13	
19	2042	\$ 121,499.77		\$ 159,328.21	
20	2043	\$ 123,929.77		\$ 162,514.78	
21	2045	\$ 126,408.36		\$ 165,765.07	
22	2046	\$ 128,936.53		\$ 169,080.37	
23	2047	\$ 131,515.26		\$ 172,461.98	
24	2048	\$ 134,145.57		\$ 175,911.22	
25	2049	\$ 136,828.48		\$ 179,429.45	
26	2050	\$ 139,565.05		\$ 183,018.04	
27	2051	\$ 142,356.35		\$ 186,678.40	
28	2052	\$ 145,203.47		\$ 190,411.96	
29	2053	\$ 148,107.54		\$ 194,220.20	
30	2054	\$ 151,069.69		\$ 198,104.61	
					Benefit
TOTAL		\$ 3,342,599.88		\$ 4,363,581.92	\$ 1,020,982.04

EXHIBIT “C”

(SEE ATTACHED AGENCY POLICY FOR
TERMINATION, MODIFICATION AND/OR RECAPTURE OF AGENCY BENEFITS)

**BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY
POLICY FOR TERMINATION, MODIFICATION
AND/OR RECAPTURE OF AGENCY BENEFITS**

The goal of this Policy is to establish and provide a procedure as required by Section 875 of the New York State General Municipal Law for the termination, modification and/or recapture of Broome County Industrial Development Agency (the “Agency”) benefits provided to an applicant in order to induce such applicant to undertake a project in Broome County. For purposes of this policy, Agency benefits shall include any or all of the following:

- (i) exemptions from New York State and local sales and use tax;
- (ii) an exemption from the New York State mortgage recording tax; and/or
- (iii) an abatement from real property taxes provided through a payment-in-lieu-of-tax (“PILOT”) Agreement.

The Agency reserves the right to terminate, modify, or recapture Agency benefits if :

- (i) an applicant or its sub-agency (if any) authorized to make purchases for the benefit of the project is not entitled to the sales and use tax exemption benefits;
- (ii) sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the applicant or its sub-agents;
- (iii) sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the project;
- (iv) the applicant has made material, false, or misleading statements in its application for financial assistance;
- (v) the applicant has committed a material violation of the terms and conditions of a Project Agreement; and/or
- (vi) there is a material shortfall in job creation and retention projections as set forth in its application.

Upon the occurrence of any of the above conditions, the Agency Board may, upon

recommendation of the Executive Director, terminate, modify and/or recapture the Agency benefits provided to a specific project. Prior to undertaking such action, the Agency shall give written notice of its intention to terminate, modify and/or recapture Agency benefits to the applicant specifying the reasons why the Agency is considering such action. The applicant shall have twenty (20) days to respond to the Agency, either in writing or in person, providing such information and documentation as it deems appropriate for the Board to consider prior to making its decision. All such recaptured Agency benefits shall be redistributed to the appropriately affected taxing jurisdictions unless agreed to otherwise by such jurisdictions.

Notwithstanding the foregoing, the Agency retains the right to terminate Agency benefits as otherwise provided in project transaction documents including, but not limited to, failure of the applicant to make timely PILOT payments, to provide required reports, or to cooperate with Agency personnel in providing data regarding project progress.

EXHIBIT "B"

FORM OF ANNUAL EMPLOYMENT AND SALARY AND FRINGE BENEFITS AND
RELATED PROJECT INFORMATION CERTIFICATION LETTER

_____, _____

Re: New Project Verification Dear _____:

The Broome County Industrial Development Agency (the "Agency") is currently providing assistance in connection with the your project in the (municipality)

The Agency is required to file an annual report with the New York State Comptroller providing information on its activities, and the activities of projects that are assisted by the Agency. In order for the Agency to compile that report, it is necessary that we obtain information relating to assistance provided and benefits derived from all entities that receive such assistance. Failure by the Agency to file the report information required by New York State could result in the Agency losing its ability to provide future assistance or the entity suffering claw-back provisions and forfeiting benefits previously received. Therefore, it is important that this information be provided in an accurate and timely manner.

Attached please find a questionnaire to be completed and returned to the Agency by _____. If you have any questions regarding the required information, please do not hesitate to call our office.

We appreciate your assistance in this matter. A self-addressed stamped envelope is enclosed for your convenience.

Very truly yours,

Company name and address: Project Name:

Company contact: Contact phone number:
(Please correct any information above)

Financing Information

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

Yes No

If financing assistance was provided, please provide:

- Original principal balance of bond or note issued _____
- Outstanding principal balance of such bond or note at _____
- Principal paid during _____
- Outstanding principal balance of such bond or note at _____

Interest rate on mortgage as of _____ Final maturity date of the bond or note

Is the Company a not-for-profit? _____

Sales Tax Abatement Information

Did your company receive Sales Tax Abatement on your Project during _____

Yes No

If so, please provide the amount of sales tax savings received _____

(A copy of the ST-340 sales tax report submitted to New York State for the reporting period is required to be attached with this report)

Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project during _____

Yes No

(NOTE: Only be applicable the year that a mortgage was placed upon the project)

The amount of the mortgage recording tax that was abated during _____

Job Information

Number of full time equivalent employees ("FTE") existing jobs by category and average Hourly wage for each **before IDA status**

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Current number of FTE employees for _____ by category and average hourly wage.

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Number of FTE jobs created during _____ as a result of the assistance received through the IDA by category and average hourly wage.

Category		
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

FTE Average Hourly Wage

Number of FTE jobs retained during _____ by category and average hourly wage.

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Total annual payroll for _____

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 report verifying the total jobs by employment category as outlined above at the location is required with this submission.

Number of FTE construction jobs created during _____ Number of FTE construction jobs during _____

_____ Capital Investment Real Estate Construction

Machinery and Equipment Other Taxable Expenses _____

Other Non-Taxable Expenses Total Capital Investment

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

200 COURT STREET APARTMENTS
HOUSING DEVELOPMENT FUND
CORPORATION
a New York not-for-profit corporation

Dated: _____, 2023

By: _____
Kathleen Gaffney-Babb
Authorized Signatory

EXHIBIT “C”

(SEE ATTACHED SECTION 224-a OF THE
NEW YORK STATE LABOR LAW)

SECTION 224-a OF THE NEW YORK STATE LABOR LAW

"The Company hereby acknowledges and agrees that the foregoing Agency Financial Assistance constitutes "public funds" unless otherwise excluded under Section 224-a(3) of the New York Labor Law, and by executing this Agreement, (i) confirms that it has received notice from the Agency pursuant to Section 224-a(8)(d) of the New York Labor Law and (ii) acknowledges its obligations pursuant to Section 224-a(8)(a) of the New York Labor Law. Other than the Agency Financial Assistance estimates provided herein and disclosed to the Company, the Agency makes no representations or covenants with respect to the total sources of "public funds" received by the Company in connection with the Project. If and to the extent that the Company determines that it is necessary and desirable to reduce the overall amount of "public funds" to be received by the Company in connection with the Project, the Agency agrees to work cooperatively with the Company to adjust the total amount of Agency Financial Assistance to be provided to the Company, which will include, but may not be limited to amending this Agreement and/or the PILOT Agreement (and if the term of the PILOT Agreement is modified, the corresponding terms of the Lease Agreement and Leaseback Agreement shall be modified accordingly)."

EXHIBIT “D”

(SEE ATTACHED CHECKLIST)

PREVAILING WAGE CHECKLIST & MWBE GUIDANCE (NY Labor Law§ 224-a)

On January 1, 2022, certain projects receiving financial assistance from a public entity (e.g., industrial development agencies (IDA) and local development corporations (LDC)) will be subject to prevailing wage requirements. While prevailing wage was previously limited to government contracting, this legislation will subject certain projects approved by an IDA or an LDC to prevailing wage under the New York Labor Law and MWBE requirements. Please use the following table as a checklist to confirm if a project will be subject to prevailing wage if approved:

1. Exempt Project:	<ul style="list-style-type: none"> a. Residential real estate (less than 4 units), b. Certain not-for-profit corporations with revenue under \$5 million, c. Certain Affordable Housing projects, d. Certain manufactured home park projects, e. Certain projects performed under a pre-hire collective bargaining agreement (e.g., labor peace agreement or project labor agreement), f. Projects funded by§ 16-n of the Urban Development Corporation Act or the Downtown Revitalization Initiative, g. The installation of renewable energy systems, renewable heating or cooling systems, or energy storage systems with a capacity of five (5) megawatts (AC) or less, h. NYC IDA Food Retail Expansion to Support Health projects, i. NYC EDC Small Business Incubator programs under 10,000 sq. ft., J. NYC Dept. of Education school construction under 60,000 sq. ft., and k. Projects that receive certain tax benefits related to historic rehabilitation. 	Yes <input type="checkbox"/> No <input type="checkbox"/>
2. Covered Project:	Construction projects throughout the state whose total costs exceed \$5 million and for which at least 30% of these costs are met through use of public subsidies. ¹	Yes <input type="checkbox"/> No <input type="checkbox"/>
3. Public Fund Exemptions:	<ul style="list-style-type: none"> a. Affordable New York Housing Program benefits, b. Funds that are not provided primarily to promote, incentivize, or ensure that construction work is performed, which would otherwise be considered public funds (as defined below), c. Funds received for sewer projects or connections to existing sewer lines, d. Tax benefits where the value is unknown at time of construction, e. Tax benefits for Brownfield Cleanup Program, f. Funds for charter school facilities, and g. Any public monies, credits, savings or loans deemed exempt by the Public Subsidy Board. 	Exclude from above total.

¹ "Notice of Expanded Legal Obligations under NYS Prevailing Wage" published on or about September 21, 2021 by the NYS Department of Labor.

4 . Public Funds (Public Subsidies):	1. Public entity grants, 2. Savings from fees, rents, interest rates, or loan costs, or insurance costs that are lower than market rate costs, 3. Savings from reduced taxes as a result of tax credits, tax abatements, tax exemptions (i.e., sales tax and mortgage recording tax), or tax increment financing, PILOTs, and 4. Savings from reduced, waived, or forgiven costs (e.g., contingent loan repayments).	Total: \$
5 . Effective Date	The prevailing wage and MWBE requirements take effect on January 1, 2022, and shall apply to contracts for construction executed, incentive agreements executed, procurements or solicitations issued, or applications for building permits on or after such date.	
6 . Reporting Requirement	A project beneficiary must certify if a project is a Covered Project within five (5) days of commencement of construction. A Covered Project is subject to stop work orders by the NY Commissioner of Labor.	

MWBE&SDVOB

This new Labor Law section has two specific sections set forth in paragraphs 9 and 10 respectively, related to compliance by developers and owners with the objectives and goals under Article 15-A of New York Executive Law related to Minority and Women-Owned Business Enterprises ("**MWBE**") and Article 17-B of New York Executive Law related to Service Disabled Veteran Owned Businesses ("**SDVOB**").

To assist with compliance, training and resources shall be available for such firms to comply with prevailing wage requirements. Further, the fiscal officer for the project is required to report on the diversity practices of contractors and subcontractors, utilization of MWBE firms, employment of minorities and women in construction related jobs and practice and policies to provide diversity in the workforce.

The newest participation goal is 30% for MWBE and 6% for SDVOB. Contractors must demonstrate a "good faith" effort to comply with the MWBE and SDVOB requirements. Good faith efforts can include the identification of participation areas for MWBEs and SDVOBs and full utilization of lists of certified MWBEs and SDVOBs.

If, despite good faith efforts, a contractor is not able to retain an MWBE or SDVOB for a project, the company must submit a Request for Waiver along with documentation of good faith efforts and the reason they were unable to obtain an MWBE or SDVOB.

GOOD FAITH EFFORTS CAN BE EVIDENCED BY:

- Copies of solicitations (advertisements in MWBE or SDVOB-centered publications, those made to vendors in MWBE or SDVOB directories, those made to MWBE or SDVOB-oriented trade and labor organizations, etc.)
- If these solicitations are answered, the contractor must also record specific reasons why the MWBE or SDVOB enterprise was not selected.
 - o Dates of any pre-bid, pre-award or other meetings attended by the contractor, if any, scheduled by the Department of Labor with certified MWBE or SDVOB enterprises.
 - o Information describing the steps taken to ensure MWBE and SDVOB participation in a project.
 - o Descriptions of any other actions undertaken by the bidder to document good faith efforts to hire and contract with MWBE and SDVOB enterprises.

COMPLIANCE:

Project beneficiaries of Covered Projects may want to engage a diversity compliance consultant or monitor to ensure good faith efforts, proper waiver application, if necessary or warranted and proper documentation of compliance efforts to avoid penalties and sanctions. Under Article 15-A, §316 and §316-A provide penalties such as fines and ineligibility to bid on projects for one year, as well as liquidated damages for willful or intentional non-compliance.

RESOURCES:

Helpful resources and administration forms for the MWBE and SDVOB programs can be found on the NYS Department of Labor website in the middle of the page at the following address: <https://dol.ny.gov/contract-bid-grant-opportunities>.