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# APPLICATION FOR FINANCIAL ASSISTANCE

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## Oneida County Industrial Development Agency

584 Phoenix Drive  
Rome, New York 13441-1405  
(315) 338-0393 telephone  
(315) 338-5694 fax

Shawna M. Papale, Executive Director

*A non-refundable application fee of \$500.00 must be submitted at the time of application along with a \$1000 commitment fee that will be submitted at the time of application; the \$1000 commitment fee will be applied at closing.*

*Please submit the original application, SEQR form and Cost/ Benefit and sixteen (16) copies along with the applicable fee.*

***All applications must be submitted 10 days prior to meeting.***

The Brooklyn Brewery Corporation

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Name of Applicant

Number (to be provided by the agency)

### ***Note to Applicant:***

The information requested by this application is necessary to determine the eligibility of your project for Agency benefits. Please answer **all** questions, inserting "none" or "not applicable" where appropriate. If you are providing an estimate, please indicate by inserting "est" after the figure. Attach additional sheets if more space is needed for a response than is provided.

Return the original application and sixteen copies with a check in the amount of \$1500.00 made payable to: **Oneida County Industrial Development Agency (OCIDA)**, 584 Phoenix Drive, Rome, New York 13441-1405, Attn.: Shawna M. Papale, Executive Director. \$1000 will be applied at closing against the IDA legal fees.

Upon the submission of this application to the IDA, this applicant becomes a public document. Be advised that any action brought before the OCIDA is public information. All agenda's for the OCIDA are issued prior to full agency meetings and posted in public domain. If there is information that the applicant feels is proprietary please identify as such and that information will be treated confidentially to the extent permitted by law.

By signing and submitting this Application, the Applicant acknowledges that it received a copy of the Uniform Tax Exemption Policy and the Oneida County IDA Penalty for Failure to Meet Employment Levels as adopted by the Agency and Agency Memorandums pertaining to the benefits of projects financed through the Agency.

A project financed through the Agency involves the preparation and execution of significant legal documents. Please consult with an attorney before signing any documents in connection with the proposed project. You will receive an engagement letter from the OCIDA legal counsel. You will be asked to sign the engagement letter acknowledging you understand the legal fees you will be responsible for them and also acknowledge what the process is. Should you not close and legal services have been rendered by the OCIDA legal counsel, your company will be responsible for those costs.

If your project requires a public hearing, a representative of the applicant is required to be present. A date will be coordinated by the OCIDA legal counsel.

If you have questions how to calculate your companies IDA application fee please consult with the Memorandum to Companies Sale – Leaseback Transactions or please contact the IDA Executive Director.



**Applicant's Stockholders, Directors and Officers (or Partners)**

2(a) Provide the following information with respect to parties with 15% or more in equity holdings:

<u>Name</u>	<u>Address</u>	<u>Percentage of Ownership</u>
David B. Ottaway	c/o The Brooklyn Brewery Corporation 79 North 11 <sup>th</sup> Street Brooklyn, New York 11249	60%

2(b) Is the Applicant, or any of the individuals listed in 2(a) above, related directly or indirectly to any other entity by more than 50% common ownership? If so, indicate name of such entity and the relationship.

No.

2(c) Is the Applicant affiliated with any other entity, directly or indirectly, other than as listed in the response to 2(a) above? If yes, please indicate name and relationship of such other entity and the address thereof:

No.

## **Applicant's Counsel and Accountant**

### 3(a). Applicant's Attorney

Name/Title: Joseph E. Saunders

Firm: Saunders Kahler, L.L.P.

Address: 185 Genesee Street, Suite 1400

Utica, New York 13501

Telephone/Fax: Telephone: (315) 733-0419

Fax: (315) 7248-522

### 3(b) Applicant's Accountant

Name/Title: James Aspromonti, Partner

Firm: Marcum LLP

Address: 10 Melville Park Road

Melville, New York 11747

Telephone/Fax: Telephone: (631) 414-4000

Fax: (631) 414-4001

## **Business Description**

4(a) Describe the nature of your business and principal products and/or services. Attach additional sheets if necessary.

Applicant brews and/or distributes various year-round, seasonal and specialty beers and is recognized as one of the top craft beer producers in the world. Applicant currently distributes its beers in 25 states and 20 foreign countries. For more information on Applicant, please visit its website at <http://brooklynbrewery.com/>.

## **Part II: Project Information**

5(a) Explain your project in detail. This description should include explanation of all activities which will occur due to this project. Attach additional sheets if necessary.

Applicant's project consists of the acquisition of a 2.56+/- acre parcel of real property located at Campion Road in the City of Utica, Oneida County, New York (together with the 1-story, 41,400+/- sq. ft. warehouse building and other improvements situate thereon), and the renovation and equipping of said building, all to facilitate the use thereof in Applicant's business for the warehousing, repackaging, custom labeling and the eventual shipping and distribution of Applicant's beers. The renovation and equipping of the building which Applicant proposes to undertake would involve, among other things, the construction and/or fit-out of some administrative office space therein as well as the installation therein of a 5,000 +/- sq. ft. "cold box" (which is essentially a large, refrigerated room).

### **Reasons for Project**

6(a) Please explain in detail why you want to undertake this project.

At present, Applicant is a large customer of Matt's Brewing Co., Inc., one of the area's leading businesses. Recently, Applicant's production needs have grown to the point where Applicant is contemplating a major expansion. To that end, Applicant is hoping to build on its relationship with Matt's Brewing Co., Inc. by undertaking the aforesaid expansion in Oneida County. The project described in response to Question 5(a) above would be one component part of Applicant's overall expansion effort.

6(b) Why are you requesting the involvement of the Agency in your project?

In order to facilitate the above-described project from a financial perspective, Applicant is requesting the Agency's involvement in order to obtain an abatement of real property taxes for a period of 10 years (pursuant to the PILOT formula for an Industrial PILOT Agreement) as well as complete relief from applicable sales tax. At this time, Applicant is not requesting relief from the mortgage recording tax.

6(c) How will the Applicant's plans be affected if Agency approval is not granted?

Applicant is unlikely to undertake the above-described project in New York State if Agency approval is not granted.

6(d) Is the proposed project reasonably necessary to discourage the Applicant from removing such other plant or facility to a location outside the State of New York?

Yes  No **If yes**, please explain briefly.

If Applicant does not undertake the above-described project in Oneida County, it is unlikely to undertake the same elsewhere in New York State. Instead, Applicant would likely undertake the project outside of New York State.

Is the proposed project reasonably necessary to preserve the competitive position of the Applicant in its respective industry?  Yes  No **If yes**, please explain briefly.

Applicant must undertake a major expansion of its operations in order to maintain its competitive position. The project described above would be one component part of such an expansion.

6(e) Will financing by the Agency result in the removal or abandonment of a plant or other facility of the applicant or any related entity presently located in another area of New York State?

Yes  No **If yes**, please explain briefly the reason for the move.

6(f) Has the Applicant or any related entity previously secured financial assistance in Oneida County (whether through the Agency, the Empire State Development Corporation, or any other entity)?  Yes  No

**If yes**, please explain (indicate date of benefit, location of facility and outstanding balance).

- 6(g) Has the Applicant or any related entity secured financial assistance anywhere within the United States within the last 90 days or does the Applicant or any related entity anticipate receiving financial assistance within the next 90 days?  Yes  No  
If yes, please explain.

Applicant has made application to New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC") for assistance in undertaking a major expansion of its New York State operations in Oneida County (including the project described above). Applicant anticipates that ESDC will consider its application within the next 90 days.

- 6(h) Check all categories best describing the **type of project**:

- Manufacturing  
 Industrial Assembly or Service (Repackaging and/or Custom Labeling)  
 Research and Development  
 Warehousing  
 Commercial or Recreational (Shipping and Receiving; Distribution)  
 Pollution Control (specify) \_\_\_\_\_  
 Other (specify) \_\_\_\_\_

- 6(i) Check all categories best describing the **scope of the project**:

- Acquisition of land  
 Acquisition of existing building  
 Renovations to existing building  
 Construction of addition to existing building  
 Demolition of existing building  
 Construction of a new building  
 Acquisition of machinery and/or equipment  
 Installation of machinery and/or equipment  
 Other (specify) \_\_\_\_\_

- 6(j) Please indicate the financial assistance you are requesting of the Agency, and provide the estimated value of said assistance.



<b>Assistance</b>	<b>Estimated Value</b>
<input type="checkbox"/> Real Property Tax Abatement	\$ <u>176,268*</u>
<input type="checkbox"/> Mortgage Tax Exemption	\$ <u>N/A</u>
<input type="checkbox"/> Sales and Use Tax Exemption	\$ <u>35,000+</u>
<input type="checkbox"/> Issuance by the Agency of Tax Exempt Bonds	\$ <u>N/A</u>

\*Based on PILOT formula for an industrial PILOT Agreement, and assuming a \$600,000 assessment and a combined tax rate of \$58.756/thousand throughout the 10-year term of the PILOT Agreement.

**Part III: Facility Information**

**Facility (Physical Information) If multiple locations please provide information on all.**

7(a) Street Address of Facility:

50 Campion Road

7(b) City, Town and/or Village:

Utica

*(Note: It is important that you list **all** incorporated municipalities in which the facility lies. This information will be used in scheduling a public hearing as required by statute.)*

7(c) School District:

Utica City School District

7(d) Tax Account Number(s):

329.10-1-30 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Attach copies of the most recent real property tax bills. Include copies for all taxing jurisdiction for the site/ facility that IDA assistance is being sought.**

7(e) For what purpose was the facility site most recently used (i.e., light manufacturing, heavy manufacturing, assembly, etc.)?

Warehousing/cardboard box manufacturing

7(f) Zoning Classification of location of the project:

I-1 Light Industrial

7(g) Please describe in detail the facility to be acquired, constructed or renovated (including number of buildings, square footage, number of floors, type of construction,) and attach plot plans, photos or renderings, if available. **Please be as specific as possible.**

The building to be acquired, constructed and renovated consists of a 1-story, 41,400 +/- sq. ft. "Butler" state building. The building, which was constructed in approximately 1981, is thought to be in normal condition.

7(h) Has construction or renovation commenced?  Yes  No

If yes, please describe the work in detail, including the date of commencement.

If no, indicate the estimated dates of commencement and completion:

Construction commencement: construction/renovation will commence upon receipt of all necessary approvals

Construction completion: as soon after commencement of construction as is possible

7(i) Will the construction or operation of the facility or any activity which will occur at the site require any local ordinance or variance to be obtained or require a permit or prior approval of any state or federal agency or body (other than normal occupancy and/or construction permits)?

Yes  No

If yes, please describe.

7(j) Will the project have a significant effect on the environment?  Yes  No

**Important: please attach Environmental Assessment Form to this Application.**

7(k) What is the useful life of the facility? 40+/- years

7(l) Is the site in an Empire Zone?  Yes  No

If yes, which Empire Zone: \_\_\_\_\_

is the business Empire Zone certified at this location:  Yes  No

Attached a copy of the last Business Annual Report filed. If not certified, explain why not:

**Facility (Legal Information)**

8(a) With respect to the **present owner** of the facility, please give the following information:  
*(Note: the present owner is not necessarily the user of the facility, but that party which holds legal title to the facility.)*

Legal Name: Joe Tahan's Furniture Liquidation Centers, Inc.

Address: 1201 Thorn Street

Utica, New York 13502

Telephone: (315) 339-2330

Balance of Mortgage: Original balance was \$576,000; current balance is unknown

Holder of Mortgage: First Niagara Funding, Inc.

If the Applicant is not the present owner of the facility, please attach any written agreements and contracts concerning the acquisition of the real property and/or equipment.

8(b) Is there a legal relationship, directly or indirectly, by virtue of common control or through related persons, between the Applicant and the present owner of the facility?  
 Yes  No. If yes, please explain.

8(c) Will a related real estate holding company, partnership or other entity, be involved in the ownership structure of the transaction?  
 Yes  No. If yes, please explain.

Possibly. Applicant may arrange for a separate legal entity to be formed for the purposes of acquiring and holding title to the facility.

8(d) Will the title owner of the facility/ property also be the user of the facility?  
 Yes  No. If no, please explain.

Possibly. If Applicant acquires the facility, it will also be the user thereof. If, on the other hand, Applicant arranges for a separate legal entity to be formed for the purposes of acquiring and holding title to the facility, such entity would lease the same to Applicant (as the operating company).

8(e) Is the Applicant currently a tenant in the facility?       Yes  No

8(f) Are you planning to use the entire proposed facility?  
 Yes     No

However, please see responses given to the Questions 8(c) and 8(d) above.

If no, please give the following information with respect to tenant(s) which will remain in the facility after the completion of the project:

<u>Name of Tenant</u>	<u>Floors Occupied</u>	<u>Square Feet Occupied</u>	<u>Nature of Business</u>
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8(g) Are any of the tenants related to the owner of the facility?  
 Yes     No  
If yes, please explain.

Possibly. If Applicant forms a separate legal entity for the purposes of acquiring and holding title to the facility, said entity would lease the same to the Applicant (as the operating company). In such case, Applicant (as tenant) would be related to the owner of the facility (as landlord).

8(h) Will there be any other users other than the applicant to the IDA be utilizing the facility?  
 Yes     No  
If yes, please explain. Provide detail of the contractual arrangement including any financial exchange for the use of the site or property.

## Equipment

- 9(a) List the principal items or categories of equipment to be acquired as part of the project. (As soon as one is available but prior to final authorizing resolution, please submit a detailed inventory of said equipment.)

The principal items of equipment to be acquired as part of the project are the items of the equipment which constitute a 5,000+/-sq. ft. "cold box". As noted above, the "cold box" is essentially a large, refrigerated room.

- 9(b) Please provide a brief description of any equipment which has already been purchased or ordered, attach all invoices and purchase orders, list amounts paid and dates of expected delivery. Attach a sheet if needed.

Applicant has not yet purchased or ordered any equipment for the project.

- 9(c) What is the useful life of the equipment? Unknown years

#### Part IV: Employment Information

- 10(a) Estimate how many construction jobs will be created or retained as a result of this project.

Construction Jobs Unknown

- 10(b) Estimate how many jobs will be created as a result of this project.

Permanent Jobs to be created by Project at Applicant's facility 6 FTE

Average Salary of these jobs: \$ 30,000

- 10 (c) What is the applicant entity's current level of employment in Oneida County at the time of application. Please indicate in full time equivalents (FTE). Applicant currently employs one (1) FTE in Oneida County.

Permanent Jobs to be retained by Project at location to be assisted with the requested IDA benefits 0 FTE

Average Salary of these jobs: \$ N/A

Other locations in Oneida County 1 FTE

Average Salary of these jobs: \$ 30,000

Employment in other NYS locations, list below 46+/- FTE

Average Salary of these jobs: \$ 45,000

10( c) Please list the NIC codes for the jobs affiliated with this project.

General Warehousing and Storage	493110
Refrigerated Warehousing and Storage	493120
Packaging and Crating	488991
Office Administrative Services	561110
Packaging and Labeling Services	561910

**Part V: Estimated Project Cost and Financing**

11(a) List the costs necessary for the construction, acquisition or renovation of the facility. Do **not** include working capital needs, moving expenses, work in progress, stock in trade, Applicant's debt repayment, real estate broker fees or your legal fees.

Acquisition of Land	<u>167,650</u>
Acquisition of Building(s)	<u>707,350</u>
Renovation Costs	<u>225,000</u>
New Construction of Buildings	<u>0</u>
Machinery and Equipment (other than furniture costs)	<u>400,000</u>
Fixtures	<u>Unknown</u>
Installation Costs	<u>Included above in Renovation Costs</u>
Fees (other than your own broker and legal fees)	<u>Unknown</u>
Legal Fees (IDA legal fees, Applicant legal fees)	<u>20,000</u>
Architectural/Engineering	<u>Unknown</u>
Interest on Interim Financing	<u>0</u>
Other (specify)	<u>Unknown</u>
Subtotal	<u>1,520,000</u>
<b>Agency Fee<sup>1</sup></b>	<u>5,000</u>
<b>Total Project Cost</b>	<u><b>1,525,000</b></u>

<sup>1</sup>See Attached Fee Schedule (Page 19) for Agency Fee amount to be placed on this line

11(b) What amount of the Total Project Cost is the Applicant requesting financing by the Agency?

0



**Real Estate Taxes**

12(a) For each tax parcel which comprises the facility, please provide the following information, using figures from the most recent tax year:

Tax Acct #	Current Assessed Value (Land)	Current Assessed Value (Building)	Real Estate Taxes
329.10-1-30	\$115,000	\$485,000	\$35,253.60

12(b) Address of Receiver of Town and/or Village Taxes:

City of Utica  
Receiver of Taxes  
City Hall, 1 Kennedy Plaza  
Utica, New York 13502  
Attn: City Treasurer

12(c) Address of Receiver of School Taxes:

Utica City School District  
Receiver of Taxes  
1115 Mohawk Street  
Utica, New York 13501

12(d) Will the completion of the proposed project result in the increase of the assessment of any of the parcels named above?  Yes  No

Unknown.

If yes, please indicate which tax account numbers will be affected.

### **Financial Information**

13(a) Has the Applicant contacted any bank, financial/lending institution or private investor with respect to the financing of the proposed project?  
 Yes  No

If yes, please provide details.

13(b) Has the Applicant received a commitment letter for said financing?  
 Yes  No

If yes, please submit a copy of said commitment letter along with this Application.

13(c) please complete the Cost/Benefit Analysis form and attach to this Application. As you complete and have questions please call.

## REPRESENTATIONS AND CERTIFICATION BY APPLICANT

The undersigned requests that this Application be submitted for review to the Oneida County Industrial Development Agency's Board of Directors.

Approval of the Application can be granted solely by this Agency's Board of Directors. The undersigned acknowledges that Applicant shall be responsible for all costs incurred by the Agency and its counsel in connection with the attendant negotiations whether or not the transaction is carried to a successful conclusion.

The Applicant further understands and agrees with the Agency as follows:

1. **Annual Sales Tax Filings.** In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the Applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the Applicant and all consultants or subcontractors retained by the Applicant.
2. **Annual Employment Reports.** The Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the Applicant agrees to file, or cause to be filed, with the Agency, on an annual basis, reports regarding the number of people employed at the project site as well as tax benefits received with the action of the OCIDA.
3. **Absence of Conflict of Interest.** The Applicant has received from the Agency a list of the members, officers and employees of the Agency. No member, officer, or employee of the Agency has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as herein after described:
4. **Hold Harmless.** Applicant hereby releases Oneida County Industrial Development Agency and the members, officers, servants, agents and employees thereof (the "Agency") from, agrees that the Agency shall not be liable for and agrees to indemnify, defend and hold the Agency harmless from and against any and all liability arising from or expense incurred by (A) the Agency's examination and processing of, and action pursuant to or upon, the attached Application, regardless of whether or not the Application or the Project described therein or the tax exemptions and other assistance requested therein are favorably acted upon by the Agency, (B) the Agency's acquisition, construction and/or installation of the Project described therein and (C) any further action taken by the Agency with respect to the Project; including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. If, for any reason, the Applicant fails to conclude or consummate necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable, proper or requested action, or withdraws, abandons, cancels or neglects

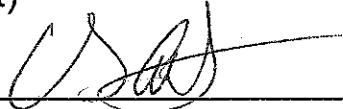
the Application, or if the Agency or the Applicant are unable to reach final agreement with respect to the Project, then, and in the event, upon presentation of an invoice itemizing the same, the Applicant shall pay to the Agency, its agents or assigns, all costs incurred by the Agency in the processing of the Application, including attorneys' fees, if any.

5. The applicant acknowledges that the OCIDA has disclosed that the actions and activities of the OCIDA are subject to the Public Authorities Accountability Act signed into law January 13, 2006 as Chapter 766 of the 2005 Laws of the State of New York.

The Applicant and the individual executing this Application on behalf of the Applicant acknowledge that the Agency will rely on the representations made herein when acting on this Application and hereby represent that the statements made herein do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein not misleading.

THE BROOKLYN BREWERY CORPORATION

(Applicant)

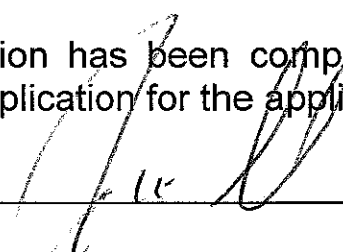
By: 

Name: Eric Ottaway

Title: Chief Operating Officer

Date: 8/17/12

If the application has been completed by or in part by other than the person signing this application for the applicant please indicate who and in what capacity:

By: 

Name: Joseph E. Saunders

Title: Attorney for Applicant

Date: 8/20/12

Return the original and sixteen copies of the application with a check in the amount of \$1500.00 made payable to: **Oneida County Industrial Development Agency**, 584 Phoenix Drive, Rome, New York 13441-1405, Attn.: Shawna M. Papale, Executive Director.

## **Agency Fee Schedule**

Commitment Fee: \$1,000 – due following the initial inducement but prior to scheduling of the public hearing; this amount is non-refundable if the applicant fails to close on the project before the IDA. Upon closing with the IDA this amount is applied to the legal closing fees.

Bond Fees: ½ of 1% of total bond amount

IDA Agency Fee: PILOT, Mortgage Recording Exemption, Sales Tax Exemption:

- Up to a \$1.0 Million project - \$5,000
- Above \$1.0 Million project up to \$10.0 Million project – ½ of 1% of total project cost.
- Above \$10.0 Million project – ½ of 1% of total project cost up to \$10.0 Million plus incremental increase of ¼ of 1% of total project above \$10.0 Million.

Agency Counsel fee:

Set by Bond/Transaction Counsel based upon the nature and complexity of the transaction. This applies to bond and non-bond transactions (leasebacks, sale-leasebacks, etc).

Agency Counsel fees in Bond and non bond transactions will not normally exceed the greater of (a) 2% of the Bond amount or project costs or (b) a minimum is in customary transactions \$8,500 to \$10,000.

Annual Fee:

For the term in which the property remains in the IDA's name, an annual lease payment is due in the amount of \$500. The first payment is due at closing. This amount is due on the anniversary date of the first date of the month in which the IDA documents were executed. For annual fees not paid and delinquent, a late charge of \$50 per month will be levied until such time the fee plus late charges are paid.

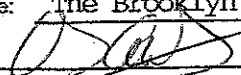
Other fees:

For an IDA property which requires follow up action – a 1/8 of one percent of the total reissuance, redemption, new or revised mortgage, refinancing, spreading agreement or other transaction requiring action of the IDA shall be 1/8 of one percent of total project amount for a minimum payment to the IDA of \$500.

Revised 3-8-12

**Appendix C**  
**State Environmental Quality Review**  
**SHORT ENVIRONMENTAL ASSESSMENT FORM**  
 For UNLISTED ACTIONS Only

**PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)**

1. APPLICANT/SPONSOR The Brooklyn Brewery Corporation	2. PROJECT NAME Campion Road Real Estate Project (2012)
3. PROJECT LOCATION: Municipality City of Utica County Oneida	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) 50 Campion Road, Utica, New York (across the Village of New Hartford NYS Route 8 entrance/exit ramp from the U.S Post Office in New Hartford)	
5. PROPOSED ACTION IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: The project consists of the aquisition of a 2.56 acre parcel of land located at 50 Campion Road, Utica, New York together with the 1-story, 41,400+/- sq. ft. building and other improvements situate thereon, and the renovation and equipping of said building	
7. AMOUNT OF LAND AFFECTED: Initially 2.56 acres    Ultimately _____ acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    If No, describe briefly	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input type="checkbox"/> Residential <input checked="" type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe: The present land use in the vicinity of the project is industrial/manufacturing/warehousing	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    If Yes, list agency(s) name and permit/approvals: Applicant has applied to New York State Urban Development Corporation d/b/c Empire State Development Corporation for financial assistance in connection with the Project	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No    If Yes, list agency(s) name and permit/approvals:	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE	
Applicant/sponsor name: The Brooklyn Brewery Corporation	Date: 8/17/12
Signature: 	

**If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment**

**PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)**

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.  
 Yes  No

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.  
 Yes  No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:

C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?

Yes  No If Yes, explain briefly:

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?

Yes  No If Yes, explain briefly:

**PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)**

**INSTRUCTIONS:** For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

- Check this box if you have identified one or more potentially large or significant adverse impacts which **MAY** occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.
- Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action **WILL NOT** result in any significant adverse environmental impacts **AND** provide, on attachments as necessary, the reasons supporting this determination.

\_\_\_\_\_  
Name of Lead Agency

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print or Type Name of Responsible Officer in Lead Agency

\_\_\_\_\_  
Title of Responsible Officer

\_\_\_\_\_  
Signature of Responsible Officer in Lead Agency

\_\_\_\_\_  
Signature of Preparer (if different from responsible officer)





PARCEL: 329.10-1-30  
 LOCATION:

CURRENT OWNER:  
 JOE TAHAN'S FURNITURE  
 LIQUIDATION CENTERS, INC  
 131 HENRY ST  
 ROME NY 13440

CURRENT STATUS:  
 ACRES: 2.560  
 LAND VALUATION: 600,000  
 BUILDING VALUATION:  
 EXEMPTIONS:  
 TAXABLE VALUATION: 0

LEGAL DESCRIPTION:

DEED DATE: BOOK/PAGE: INTEREST DATE: 08/17/2012

YEAR	TYPE	BILL	BILLED	PRIN DUE	INT DUE	TOTAL DUE	PAID
2013	RE-C	405770	6,828.53	.00	.00	6,828.53	PAID
	1	CITY TAXES	3,414.25	.00	.00	3,414.25	PAID
	2	CITY TAXES	3,414.25	.00	.00	3,414.25	
	3	CITY TAXES	13,657.03	3,414.25	.00	17,071.28	

2013	RE-S	543717	200.72	200.72	.00	401.44	200.72
	1	Library Tax	7,881.00	7,881.00	.00	7,881.00	7,881.00
		SCHOOL TAX	8,081.72	8,081.72	.00	8,081.72	
	2	Library Tax	200.71	200.71	.00	200.71	200.71
		SCHOOL TAX	7,881.00	7,881.00	.00	7,881.00	
			8,081.71	8,081.71	.00	8,081.71	
			16,163.43	16,163.43	.00	16,163.43	

2012	RE-N	835771	5,746.77	.00	.00	5,746.77	PAID
	1	COUNTY	5,746.77	.00	.00	5,746.77	

GRAND TOTALS 35,567.23 19,577.68 .00 19,577.68

*cannot accept  
 school payment  
 until 8/1/12*

## REAL ESTATE PURCHASE AGREEMENT

**THIS REAL ESTATE PURCHASE AGREEMENT** (this "Agreement"), dated as of July 19, 2012 (the "Effective Date"), is by and between **JOE TAHAN'S FURNITURE LIQUIDATION CENTERS, INC.**, a New York business corporation, having an office at 1201 Thorn Street, Utica, New York 13502 (the "Seller") and **THE BROOKLYN BREWERY CORPORATION**, a New York business corporation, having an office at 79 North 11<sup>th</sup> Street, Brooklyn, New York 11249 (the "Buyer").

IN CONSIDERATION of the respective agreements hereinafter set forth, Seller and Buyer agree as follows:

1. **Property Included in Sale.** Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, the following:

(a) that certain 2.56± acre parcel of land located on Campion Road in the City of Utica, County of Oneida, State of New York, which parcel of land is designated as Parcel "B" on a map entitled "Survey Map Showing Subdivision of Lands located on Campion Road and N.Y.S. Route 8, T.M. #329.10-1-28, 29, 30, City of Utica, Oneida County, State of New York made by Steven A. Roseen, L.S. No 050522, dated May 14, 2010 and filed in the Oneida County Clerk's Office on August 27, 2010 as Instrument #M2010-000151, and is more particularly described in **Schedule A** attached hereto and made a part hereof (the "Real Property");

(b) all rights, privileges and easements appurtenant to the Real Property including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Real Property, as well as all development rights, air rights, water, water rights and water stock relating to the Real Property and any other easements, right-of-way or appurtenances used in connection with the beneficial use and enjoyment of the Real Property (all of which are collectively referred to herein as the "Appurtenances"); and

(c) the building and all other improvements, and fixtures to provide any utility services, located on the Real Property (all of which are collectively referred to herein as the "Improvements").

All of the items referred to in subparagraphs 1 (a), (b), and (c) above are hereinafter collectively referred to as the "Property."

2. **Marketable Title.**

At Closing, Seller shall transfer and convey to Buyer good and marketable title to the Property, free and clear of all liens, charges and encumbrances except for (a) building and use restrictions of record and governmental laws, regulations and/or ordinances (provided that said restrictions, laws, regulations and/or ordinances have not been violated and permit Buyer's intended use of the Property), (b) easements, rights-of-way, covenants, conditions and restrictions of record (provided that the same do not render title unmarketable), (c) any matters that would be disclosed by an accurate survey and physical inspection of the Property including possible projections and/or encroachments (provided that the same do not render title unmarketable), (d) real estate taxes and assessments that are a lien, but are not yet due, and (e) all

public utility lines, poles, wires, cables, pipes, distribution boxes and appurtenant equipment and/or apparatus (provided that the same do not render title unmarketable).

All of the items referred to in subparagraphs 2(a) through (e) above are hereinafter collectively referred to as the "Permitted Exceptions".

3. **Purchase Price.**

(a) The purchase price for the Property is a total of \$ 875,000 (the "Purchase Price").

(b) The Purchase Price shall be paid by Buyer to Seller as follows:

(i) an earnest money deposit of \$25,000, to be held by Seller's attorney in his IOLA account, shall be paid upon execution of this Agreement and credited against the Purchase Price at Closing,

(ii) the \$850,000 balance thereof (plus or minus any adjustments thereto made pursuant to paragraph 8 hereof) shall be paid at Closing by means of an official bank check, a certified check or by a wire transfer of immediately available funds, whichever means Buyer elects.

4. **Conditions to Closing.** The following conditions are conditions precedent to Buyer's obligation to purchase the Property:

(a) Buyer's review and approval of title to the Property, in Buyer's sole discretion, including Buyer's review and approval, in Buyer's sole discretion, of the following:

(i) a current title insurance commitment on the Property, accompanied by copies of all documents referred to in the commitment;

(ii) copies of all existing and proposed easements, covenants, restrictions, agreements or other documents which affect the Property and which are not disclosed by the title insurance commitment or, if no such documents exist, a certificate of Seller to that effect; and

(iii) a current "as-built" survey of the Property by a NYS-licensed surveyor or civil engineer. Said survey shall be acceptable to and certified to Buyer, Seller and Buyer's title insurance company (the "Buyer's Title Company") and be in sufficient detail to provide the basis for issuance of a survey reading in the title insurance commitment, and shall show the location of all easements, utilities, and Improvements (including underground Improvements, if any) and any and all other pertinent information with respect to the Property. The survey shall also indicate any encroachments of Improvements onto easements or onto adjacent properties or certify to their absence and shall indicate the presence of other improvements and easements on property adjoining the Real Property if located within five (5) feet of the boundaries of the Real Property. The survey shall also contain a metes and bounds description of the Real Property, which metes and bounds description shall be the legal description used in the Warranty Deed hereinafter required to be delivered by Seller to Buyer.

Buyer shall notify the Seller within thirty (30) calendar days after Buyer's actual receipt of all of the items described in subparagraphs 4(a)(i), (ii) and (iii) above of any exceptions to title (other than Permitted Exceptions) to which it objects (the "Objectionable Exceptions"). Seller shall have fourteen (14) calendar days after receipt of Buyer's notice to remove the Objectionable Exceptions from title and to provide Buyer with evidence satisfactory to Buyer, in Buyer's sole discretion, of such removal or to provide Buyer with evidence satisfactory to Buyer, in Buyer's sole discretion, that said Objectionable Exceptions will be removed at or before the Closing.

(b) Buyer's having obtained various forms of financial assistance from the Oneida County Industrial Development Agency including, without limitation, a lease-leaseback agreement and a payment in-lieu of tax agreement, and from New York State Urban Development Corporation a/b/a Empire State Development Corporation, all upon terms and conditions satisfactory to Buyer, in its sole discretion.

(c) Buyer's having satisfied itself, in its sole discretion, as to the physical condition of the Property (including, without limitation, its environmental condition) and all other matters relating to the Property including, without limitation, the suitability of the Property for Buyer's purposes.

The foregoing conditions contained in subparagraphs 4(a) through (c) above are intended solely for the benefit of Buyer. If any of the foregoing conditions contained in subparagraphs 4 (a) through (c) above are not satisfied on or before September 24, 2012, Buyer shall have the right, in its sole discretion, to either to waive the condition in question and proceed with the purchase or, in the alternative, terminate this Agreement without further obligation and receive a refund of any earnest money deposit paid hereunder. If Buyer fails to give written notice to Seller on or before September 24, 2012 that the conditions contained in the subparagraphs 4(a) through (c) above have been satisfied (or waived) and that it is ready to proceed with the Closing then, and in such event, Buyer shall be deemed to have terminated this Agreement whereupon Seller shall immediately refund to Buyer any earnest money deposit paid hereunder.

Buyer shall be responsible for obtaining the title insurance commitment, the survey, engineering, environmental, architectural and other studies of the Property and any other items necessary in order to satisfy the foregoing conditions, all at Buyer's own cost and expense.

4A. **Seller's Pre-Closing Deliverables.** Within fifteen (15) days after the Effective Date, Seller or its counsel shall deliver to Buyer or its counsel a 40-year abstract of title to the Real Property (which shall have a Warranty Deed in the chain of title which has been of record for of at least forty (40) years), applicable County and City tax search certificates, applicable water/sewer rent searches and applicable bankruptcy searches against the record owners of the Real Property during the last twenty (20) years, UCC/Federal Tax Lien searches against the Seller showing all UCC filings and federal tax liens, if any, on file against Seller in the New York State Department of State and the Oneida County Clerk's Office, and a proposed Deed, proposed Form TP-584, and proposed Form RP-5217, all at Seller's own cost and expense (all of the foregoing being, collectively, the "Title Documents"). In addition, within fifteen (15) days after the Effective Date, Seller or its counsel shall deliver to Buyer or its counsel copies of all title insurance policies, survey maps, environmental assessments, engineering reports, and other

examinations, inspections, reports, studies or assessments relating to the Property in Seller's possession or under its control

5. **The Closing.** The closing (the "Closing") hereunder shall be held, and delivery of all items required to be delivered at Closing under the terms of this Agreement shall occur, at the offices of Buyer's attorneys, Saunders Kahler, L.L.P., 185 Genesee Street, Suite 1400, Utica, New York 13501 at 10:00 a.m. on or about September 28, 2012, or such other time, date and/or place as may be mutually agreed upon by the parties hereto. The date on which the Closing occurs is referred to herein as the "Closing Date".

6. **Covenants and Agreements of Seller Prior to Closing.** From and after the Effective Date until the termination of this Agreement or the Closing, Seller agrees not to (a) transfer the Property or any interest therein or part thereof, (b) grant, create or suffer to exist any mortgages, easements, liens, security interests or other encumbrances on the Property or any part thereof, other than the Permitted Exceptions, (c) enter into any contracts or commitments with respect to the Property other than contracts or commitments entered into in the ordinary course of business, (d) incur any major expenses with respect to the Property or any part thereof, other than expenses incurred in the ordinary course of business or which are necessitated by emergency situations involving the Property, or (e) commit, cause or suffer to exist, conscious waste on the Property, in each case without the prior written consent of Buyer.

Seller shall give Buyer prompt written notice of (w) any pending or threatened condemnation or eminent domain proceeding involving the Property or any part thereof known to Seller, (x) any damage or destruction caused to the Property or any part thereof known to Seller, (y) any proposed changes in zoning affecting the Property known to Seller, and (z) any violations known to Seller of applicable federal, state or local health, safety, fire, zoning or environmental laws, rules or regulations alleged by any governmental agency or authority having jurisdiction over the Property.

7. **Obligations at Closing.** At the Closing, Buyer shall be obligated to pay the Purchase Price (plus or minus any adjustments thereto made pursuant to paragraph 8 hereof) to Seller in the manner set forth in Paragraph 3 hereof, in exchange for which Seller shall be obligated to execute and deliver, or cause to be executed and delivered, as applicable, the following items to Buyer, in form and substance reasonably acceptable to Buyer:

(a) A Warranty Deed to the Property (with the trust fund provision pursuant to Section 13 of the Lien Law), in recordable form, conveying to Buyer fee simple title to the Property, free and clear of all liens, charges and encumbrances, except for the Permitted Exceptions, together with the accompanying Form TP-584 and Form RP-5217 and undisturbed possession of the Property.

(b) An assignment covering all of the transferable licenses, permits, franchises, consents and approvals pertaining to the Property, if any, held by Seller;

(c) An Affidavit indicating that on the Closing Date there is no outstanding and unsatisfied judgment, special assessment, tax lien (other than the lien of real estate taxes and assessments which are not yet due), mortgage foreclosure, or bankruptcy against or involving Seller or the Property, that there has been no skill, labor or material furnished to the Property for which mechanics' or materialmen's or other liens could lawfully be filed against the Property, and that there are no other unrecorded interests in

the Property of any kind created by Seller, together with whatever owner's affidavit or other affidavits or evidences of title may be required by Buyer's Title Company;

(d) All other documents affecting title to, and exclusive possession of, the Property and necessary or appropriate to transfer or assign the same to Buyer, free and clear of all liens, charges and encumbrances, other than the Permitted Exceptions; and

(e) A Certification of Seller's Non-Foreign Status.

8. **Prorations.** The parties shall prorate, as of the day immediately preceding the Closing Date, on a daily basis; (a) all ad valorem real estate taxes and (b) all other expensed and items customarily prorated in connection with the sale of real property in Oneida County, New York. All ad valorem real estate taxes to be prorated hereunder shall be prorated according to the most recent tax bill, with an appropriate adjustment to be made, if any upon receipt by Seller or Buyer of the actual bill for said taxes for the appropriate period.

Buyer shall pay all fees and expenses of closing customarily borne by buyers in connection with real property transfers in Oneida County, New York, and Seller shall pay all fees and expenses of closing customarily borne by sellers in connection with real property transfers in Oneida County, New York. Without limiting the generality of the foregoing, the Seller shall pay all transfer taxes, documentary stamp taxes and TP-584 filing fees charged with respect to the conveyance of the Property by Seller to Buyer and Buyer shall pay the fees for the recordation of the Warranty Deed referred to in Section 7(a) above, abstract continuation charges, survey charges, the costs of any assessments, investigations, reports, inspections, studies and the like ordered by Buyer, and all title insurance premiums.

9. **Representations and Warranties of Seller.** As of the Effective Date, Seller represents and warrants to Buyer, and as of the Closing Date, Seller will represent and warrant to Buyer, as follows, all of which representations and warranties (as well as any other warranties and representations made by Seller in this Agreement) shall automatically expire and terminate on the date (the "Representation/Warranty Expiration Date") which is six (6) months after the Closing Date.

(a) No portion of the Property is located in a flood zone.

(b) Seller has not received any notification from any governmental agency or authority of any pending public improvements and/or assessments pertaining to or affecting the Property or of any repairs, replacements or alterations to the Property that are required.

(c) Seller is fee simple owner of Property and has all power and authority to execute, deliver and perform this Agreement and all documents and instruments referred to herein to be executed, delivered and performed by Seller, and all necessary or appropriate authorizations required in connection with the execution, delivery and performance by Seller of this Agreement and the other documents and instruments referred to herein have been or, prior to Closing will be, duly obtained by Seller.

(d) The conveyance of the Property to Buyer pursuant hereto will not violate any applicable statute, ordinance, governmental restriction or regulation, or any private restriction or agreement applicable to Seller or to the Property or any part thereof.

(e) There is no lawsuit, action, litigation, investigation, condemnation or proceeding of any kind pending or, to the Seller's best knowledge, threatened against the Seller or the Property (or any part thereof).

(f) Seller knows of no contemplated or actual reassessments of the Property for ad valorem real estate tax purposes.

(g) The Property is separately assessed for ad valorem real estate tax assessment purposes under Tax Parcel I.D. No. 329.10-1-30 and is not combined with other real property for such tax assessment purposes.

(h) Seller has not granted and/or entered into commitments or other agreements including, without limitation, any right of first refusal or option to purchase granted in favor of a third party which would or could prevent Seller from completing the sale of the Property to Buyer pursuant to this Agreement or which would bind Buyer subsequent to consummation of the transaction contemplated hereby.

(i) There are no outstanding accounts payable or mechanics' liens in favor of any contractor, materialman, laborer or any other person or entity in connection with the construction and/or improvement of the Property or any of the Improvements located thereon or any part thereof; there has not been any other work performed or materials supplied to the Property or contracts entered into for work to be performed or materials to be supplied to the Property prior to the Effective Date which has not been, or at the Closing will not be, fully paid for, which could give rise to the filing of liens against the Property; and Seller shall be responsible for any and all claims for mechanics' liens against or accounts payable that have arisen or may subsequently arise due to contracts entered into for and/or work performed on, or materials supplied to, the Property on or prior to the Closing Date.

(j) Seller has complied in all material respects with each and every environmental law, rule and regulation relating to the Property.

(k) Seller has not incurred and will not incur any liability for environmental matters regarding the Property, and Seller is not aware of any fact which will result in Buyer incurring any liability for environmental matters regarding the Property.

(l) Prior to purchasing the Property, Seller had a Phase I Environmental Site Assessment thereof performed by a NYS-licensed engineer in accordance with the scope and limitations of ASTM Standard Practice for Environmental Site Assessments of commercial properties (the "Seller's Phase I ESA"), which Seller's Phase I ESA did not disclose the existence of any Recognized Environmental Condition (REC) at, on or under the Property and was otherwise a "clean" Phase I Environmental Site Assessment. (m)

During the period of its ownership thereof, Seller has not used, or permitted or suffered others to use, the Property in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste management or disposal site for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products, and no above-ground or underground storage tanks have been located on the Property, and there has been no Release or threat of Release of any Hazardous Substance on, at or from the Property.

(n) To the best of the Seller's knowledge, prior to the period of its ownership thereof, the Property was not used in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substances or as a landfill or other waste management or disposal site for the military, manufacturing, or industrial purposes or for the storage of petroleum or petroleum based products, and no above-ground or underground storage tanks were located on the Property, and there was no Release or threat of Release of any Hazardous Substance on, at or from the Property.

(o) Except for Seller, there are no persons in possession or occupancy of the Property or any part thereof, nor are there any persons who have possessory rights with respect to the Property or any part thereof.

Seller hereby agrees that the truthfulness of each of said representations and warranties and of all other representations and warranties herein made is a condition precedent to the performance by Buyer of its obligations hereunder. Upon the breach of any of the representations and warranties made by Seller in this Section 9 or elsewhere in this Agreement which Buyer first learns of at or prior to Closing, Buyer may, at or prior to the Closing, and as Buyer's sole remedy, either terminate this Agreement whereupon Seller shall refund to Buyer any earnest money deposit made by Buyer pursuant to this Agreement and reimburse Buyer for Buyer's Documented Pre-Closing Expenses (in an amount not to exceed \$5,000.00), or, in the alternative, elect to waive such breach and close on the purchase of the Property in accordance with the provisions hereof. Upon any breach of any of the representations and warranties made by Seller in this Section 9 or elsewhere in this Agreement which Buyer first learns of after the Closing, Buyer shall be entitled to exercise whatever legal rights and remedies it may have.

As used in this Agreement, the term "Buyer's Documented Pre-Closing Expenses" shall mean the documented out-of-pocket expenses incurred by Buyer in connection with preparing to close on the Property including, but not limited to, the expenses of examining title, obtaining a title insurance commitment, the costs of obtaining an abstract, tax searches, bankruptcy searches, water/sewer rent searches and any other necessary searches, survey costs, and the costs of making and/or obtaining any assessments, studies, inspections, and reports with respect to the Property, the costs of obtaining any necessary subdivision approval, and attorneys' fees.

As used in this Agreement, the capitalized words below shall have the following meanings:

(a) "Environmental Laws" mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection, preservation or remediation of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations and written and published policies of federal, state and local governmental agencies and authorities with respect thereto.



(b) "Hazardous Substance" means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum constituents, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, pollutants, toxic pollutants, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.), the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Sections 1251 et seq.), Articles 17 and 27 of the New York State Environmental Conservation Law or any other applicable Environmental Law and the regulations promulgated thereunder.

(c) "Release" has the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), and the regulations promulgated thereunder.

10. **Notices.** All notices or other communications necessary or desirable to be given hereunder shall be in writing and either delivered in person or sent by certified mail, return receipt requested, or by a nationally-recognized overnight delivery service:

If to Seller, addressed to Seller at:

Joe Tahan's Furniture Liquidation Centers, Inc.  
1201 Thorn Street  
Utica, New York 13502  
Attn: President

With a copy (which shall not constitute notice) to;

Armond J. Festine, Esq.  
258 Genesee Street  
Utica, New York 13502

and if to Buyer, addressed to Buyer at:

The Brooklyn Brewery Corporation  
78 North 11<sup>th</sup> Street  
Brooklyn, New York 11249  
Attn: Eric Ottaway, Chief Operating Officer

With a copy (which shall not constitute notice) to:

Saunders Kahler, L.L.P.

185 Genesee Street, 14<sup>th</sup> Floor  
Utica, New York 13501  
Attn: Joseph E. Saunders, Esq.

or to such other address as is stated in a notice given in compliance herewith. Any notice or other communication made in accordance with the foregoing shall be deemed to have been given when delivered in person or, if mailed or sent by a nationally-recognized overnight delivery service (e.g, UPS, FedEx), on the day deposited with the U.S Postal Service or nationally recognized overnight delivery service. A notice or other communications may be given on behalf of a party hereto by such party's attorney(s) as identified above.

11. **Inspection.** From and after the Effective Date and so long as this Agreement remains in effect, Buyer, its nominees, agents, servants, independent contractors and/or employees, shall be permitted to inspect the Property and to conduct engineering, environmental, architectural and other studies in connection with it and all of the Improvements located thereon.

12. **Default and Cancellation.** If the Buyer fails to perform under this Agreement, then the Seller may, at the Seller's option, declare this Agreement in default and receive all sums deposited by the Buyer as liquidated damages, the exact amount of actual damage being incapable of ascertainment, all as Seller's sole remedy. If the Seller fails to perform under this Agreement, then the Buyer may, at Buyer's option and as Buyer's sole remedy either (a) declare this Agreement in default whereupon Seller shall refund to Buyer any earnest money deposit made by Buyer pursuant to this Agreement and reimburse Buyer for Buyer's Pre-Closing Expenses (in an amount not to exceed \$5,000.00), or (b) obtain an order of specific performance compelling Seller to convey such title to the Property as Seller is able to convey, without reduction in, or offset against, the Purchase Price, or (c) exercise any remedies available to it at law or in equity. In any litigation concerning this Agreement, the losing party shall pay the successful party's litigation expenses, including reasonable attorneys' fees.

13. **Assignment.** Seller expressly acknowledges that the rights granted hereby may be assigned by Buyer with written consent of Seller, which written consent shall not be unreasonably withheld; provided, however, that Buyer may assign its rights hereunder to a third party affiliated by common ownership with Buyer without the consent of Seller. No assignment shall relieve Buyer of its obligations under this Agreement.

14. **Brokers.** Seller and Buyer warrant and represent to each other that no broker or other person entitled to broker's fees, real estate commissions or other compensation has been instrumental in bringing about this Agreement for the sale of the Property other than Pavia Real Estate Services, for whose compensation, if any, Seller shall be solely responsible, pay and hold Buyer harmless. In the event any person or entity, other than Pavia Real Estate Services, makes claim for broker's fees, real estate commissions or other compensation by virtue of this Agreement for the sale of the Property, the party whose acts are determined to have been responsible therefor shall hold the other party harmless therefrom and shall indemnify such other party in the event such other party is required to pay the same. The warranty, representation and indemnity obligations of Seller and Buyer under this Section shall survive the Closing and/or the termination of this Agreement.

15. **Condemnation/Damage.** If at any time prior to the Closing Date all or any part of the Property is condemned or taken by eminent domain and/or is substantially destroyed or damaged, Buyer shall have the option: (a) to terminate this Agreement, in which event the same shall be null and void and all liabilities and obligations of the parties hereunder shall cease, or (b) to proceed to close, in which event Seller shall assign to Buyer at the Closing all condemnation awards and/or insurance proceeds theretofore received by Seller and all rights of Seller in and to future condemnation awards in respect for such condemnation or eminent domain proceeding and/or insurance proceeds in respect of such destruction or damage.

16. **"AS IS" Sale.** Buyer covenants and warrants that Buyer will make its own inspection of the Property prior to Closing and agrees to accept title to the Property in its "AS IS" condition, "WITH ALL FAULTS", subject to reasonable use, wear, tear and natural deterioration between the Effective Date and the Closing.

17. **Waivers.** No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

19. **Remedies Cumulative.** All rights, privileges and remedies afforded the parties by this Agreement shall be deemed cumulative and the exercise of one of such remedies shall not be deemed to be a waiver of any other right, remedy or privilege provided for herein.

20. **Applicable Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

21. **Partial Invalidity.** If any provisions of this Agreement or the application thereof to any party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

22. **Section Headings and Exhibits.** The section headings in this Agreement are for convenience and for reference only and in no way define or limit the scope or contents of this Agreement or in any way affect its provisions. All exhibits attached hereto are hereby made a part of this Agreement.

23. **Counterparts.** This Agreement may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. Any counterpart to which is attached the signatures of all parties shall constitute an original of this Agreement.

24. **Further Assurances.** Each party hereto agrees to use all reasonable efforts to obtain all consents and approvals and to do all other things necessary to consummate the transactions contemplated by this Agreement. The parties agree to take such further action and

to deliver or cause to be delivered any additional agreements or instruments as any of them may reasonably request for the purpose of carrying out this Agreement and the agreements and transactions contemplated hereby.

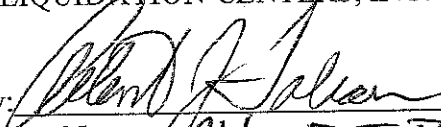
25. **Entire Agreement.** It is understood and agreed that all understandings and agreements heretofore had between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement with respect to the subject matter hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Purchase and Sale Agreement has been executed as of Effective Date.

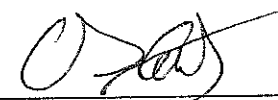
SELLER:

JOE TAHAN'S FURNITURE  
LIQUIDATION CENTERS, INC.

By:   
Name: ALBERT J TAHAN  
Title: President

BUYER:

THE BROOKLYN BREWERY  
CORPORATION

By:   
Name: ERIC OTTAWAY  
Title: COO.

**SCHEDULE A**

SCHEDULE A

ALL THAT TRACT, PIECE OR PARCEL OF LAND, situate in the City of Utica, County of Oneida and State of New York, said parcel shown on the map entitled "Survey Map Showing Subdivision of Lands located on Campion Road & N.Y.S. Route 8" dated May 14, 2010 prepared by Steven A. Roseen, L.S., said parcel more particularly described as follows:

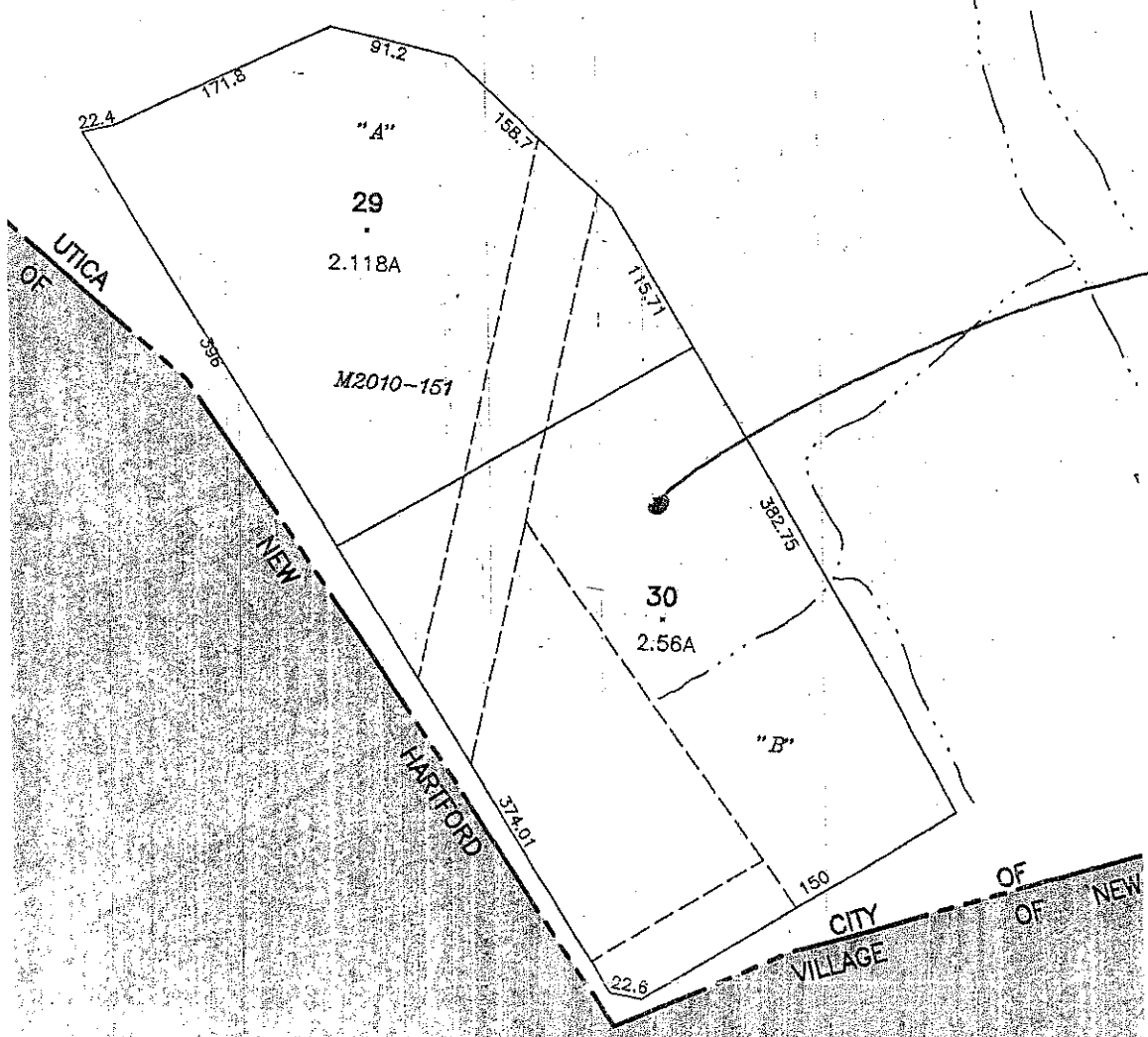
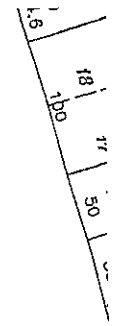
BEGINNING at the intersection of the northeasterly highway boundary of Campion Road with the existing highway boundary of North-South Arterial and New York State Route 8; Thence S 32° 00' 40" E, along said boundary of Campion Road 350.21 feet to the point of beginning of Parcel B; thence N 59° 25' 25" E along the division line between lands designated as Parcel A on the northwest and lands designated as Parcel B on the southeast 296.57 feet to a point; thence S 30° 34' 35" E 498.50 feet to a point; thence S 58° 10' 56" W 266.00 feet to a point; thence N 80° 12' 12" W 22.69 feet to a point on the aforementioned highway boundary of Campion Road; thence N 32° 24' 00" W 232 feet to a point; thence N 33° 27' 05" W 95.69 feet to the point of beginning, being 2.560 +/- acres, more or less.

SUBJECT TO A PERMANENT EASEMENT FOR DRAINAGE reserved by People of the State of New York in, on and over the property described as follows:

COMMENCING at the point of beginning of Parcel B described hereinabove; thence S 33° 27' 05" E along boundary of Campion Road 95.69 feet to a point; thence S 32° 24' 00" E along said highway boundary 58.81 feet to the EASEMENT POINT OF BEGINNING; thence N 58° 10' 56" E through the lands designated as Parcel "B" 288.82 feet to point; thence S 30° 34' 35" E along the northerly boundary of Parcel "B" 50.01 feet to a point; thence S 58° 10' 56" W through lands designated as Parcel "B" a distance of 287.21 feet to a point on the boundary of Campion Road; thence N 32° 24' 00" W 50 feet to the EASEMENT POINT OF BEGINNING.

**This Deed is given to correct an erroneous description in the Deed between the same parties dated August 27, 2010 and recorded that same date as Instrument #2010-012597.**

1



Subject Property  
2.256± Acres

Compliments of  
Leatherstocking Abstract  
& Title Corp.

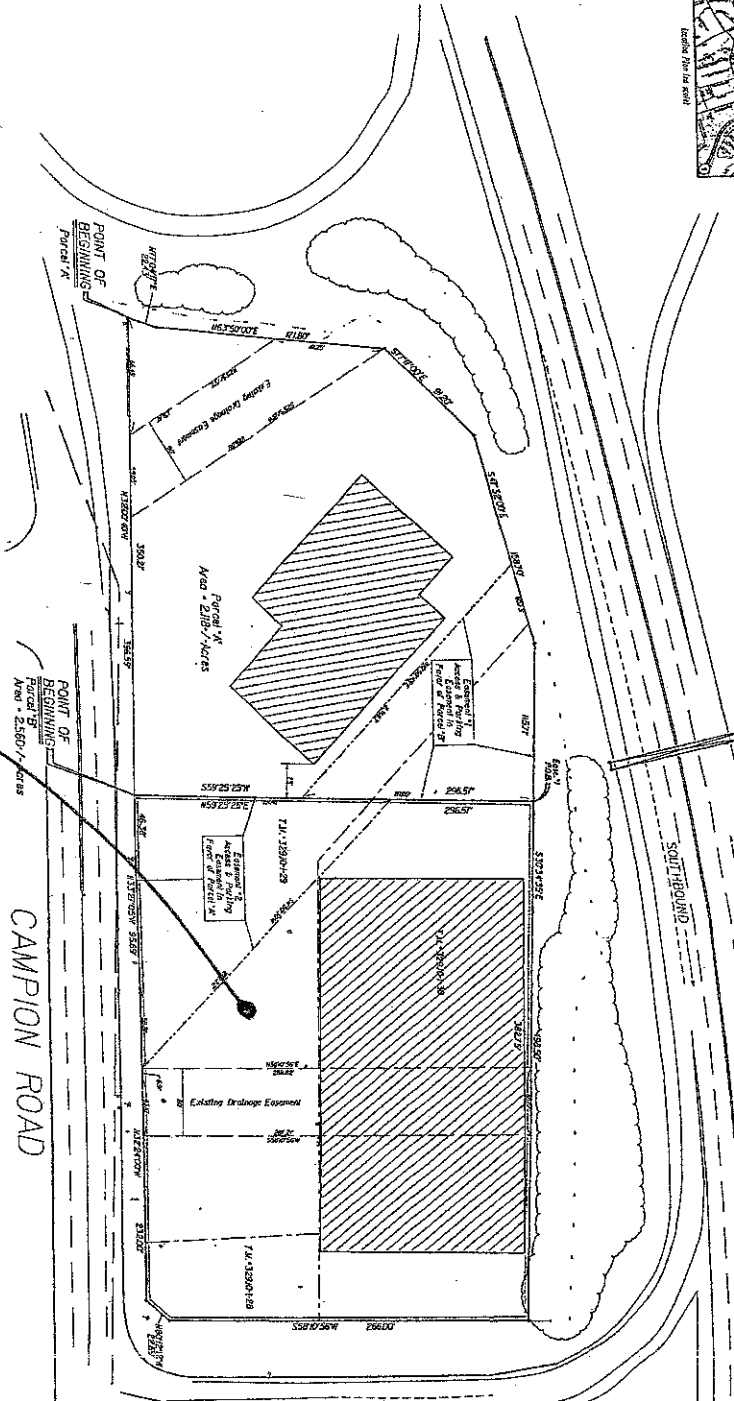




- MAP REFERENCES!**
- 1. NEW YORK STATE DEPARTMENT OF TRANSPORTATION, PRELIMINARY MAP OF UTICA, NORTH-SOUTH AVENUE, PROJECT No. 60225, Map No. 100, 1962.
  - 2. NEW YORK STATE DEPARTMENT OF TRANSPORTATION, PRELIMINARY MAP OF UTICA, NORTH-SOUTH AVENUE, PROJECT No. 60225, Map No. 100, 1962.
  - 3. NEW YORK STATE DEPARTMENT OF TRANSPORTATION, PRELIMINARY MAP OF UTICA, NORTH-SOUTH AVENUE, PROJECT No. 60225, Map No. 100, 1962.
  - 4. NEW YORK STATE DEPARTMENT OF TRANSPORTATION, PRELIMINARY MAP OF UTICA, NORTH-SOUTH AVENUE, PROJECT No. 60225, Map No. 100, 1962.



NY.S. ROUTE 8  
NORTH HIGHLAND  
SOUTH HIGHLAND



**DEED REFERENCES!**

1. Deed from The People of the State of New York to Adolph Condit, dated December 16, 1887, and filed in the Office of the County Clerk in Book 11, Page 316.

2. Deed from Adolph Condit to Samuel Diamond, dated August 7, 1888, and filed in the Office of the County Clerk in Book 11, Page 317.

Subject Property  
2.56± Acres



**REQUIREMENTS**

1. The applicant must file a copy of this map with the County Clerk of the County of Albany, New York, for recording.

2. The applicant must file a copy of this map with the Village of Utica, New York, for recording.

3. The applicant must file a copy of this map with the State Department of Transportation, Albany, New York, for recording.

**LAND OWNERS**

1. Adolph Condit, deceased.

2. Samuel Diamond, deceased.

3. The People of the State of New York.

NO.	DATE	BY	REMARKS
1	12/16/87	Adolph Condit	Deed to Adolph Condit
2	8/7/88	Adolph Condit	Deed to Samuel Diamond

**Cornerstone**  
Lands Subverting

State of New York  
Department of Transportation  
Albany, New York

Subject Parcels  
Area - 2.56± Acres  
of 4.87± Acres

Compliments of  
Leatherstocking Abstract  
& Title Corp.

**MAP REFERENCES!**

1. NEW YORK STATE DEPARTMENT OF TRANSPORTATION, PRELIMINARY MAP OF UTICA, NORTH-SOUTH AVENUE, PROJECT No. 60225, Map No. 100, 1962.

2. NEW YORK STATE DEPARTMENT OF TRANSPORTATION, PRELIMINARY MAP OF UTICA, NORTH-SOUTH AVENUE, PROJECT No. 60225, Map No. 100, 1962.

M2010-0001571

**ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
COST/BENEFIT ANALYSIS  
Required by §859-a(3) of the  
New York General Municipal Law**

Name of Applicant: Brooklyn Brewery Corp

Description of Project: \_\_\_\_\_

Name of All Sublessees or Other Occupants of Facility: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Principals or Parent of Applicant: \_\_\_\_\_

Products or Services of Applicant to be produced or carried out at facility: \_\_\_\_\_  
\_\_\_\_\_

Estimated Date of Completion of Project: \_\_\_\_\_

Type of Financing/ Structure: \_\_\_\_\_ Tax-Exempt Financing  
\_\_\_\_\_ Taxable Financing  
 Sale/ Leaseback  
\_\_\_\_\_ Other: \_\_\_\_\_

Type of Benefits being Sought by Applicant: \_\_\_\_\_ Taxable Financing  
\_\_\_\_\_ Tax-Exempt Bonds  
 Sales Tax Exemption on Eligible Expenses Until Completion  
\_\_\_\_\_ Mortgage Recording Tax Abatement  
 Real Property Tax Abatement

**Project Costs**

Land	167650		
Existing Building	707,350		
Existing Bldg. Rehab	225,000		
Construction of New Building			
Addition or Expansion	50000		
Engineering/ Architectural Fees			
Equipment	400,000		
Legal Fees (Bank, Bond, Transaction, Credit Provider, Trustee)	20000		
Finance Charges (Title Insurance, Environmental Review, Bank Commitment Fee, Appraisal, Etc.)		1570000	0.005
Agency Fee	7850		
Other (provide detail)			
<b>TOTAL COST OF PROJECT</b>	<b>1577850</b>		

**Assistance Provided by the Following:**

EDGE Loan:		unknown ESDC
MVEDD Loan:		
Grants - Please indicate source & Amount:		
Other Loans - Please indicate source & Amount:		

**Company Information**

**Average Salary of these Positions**

Existing Jobs	0	0	0
Created Jobs (over three years)	6	30000	180000
Retained Jobs	0	0	0
			180000
			1800

**Earnings Information for Oneida County**

Average Salary of Direct Jobs for Applicant	30000
Average of County Indirect Jobs	25000
Average of Construction Jobs	32000

Note: \$1,000,000 in construction expenditures generates 15 person - years of employment

Construction Person Years of Employment:

**Calculation of Benefits (3 Year Period)**

	Total Earnings	Revenues
Direct Jobs		
Created	540000	22950
Existing	0	0
Indirect Jobs		
Created	1125000	47812.5
Existing	0	0
Construction - only one year		
Person Years	158400	6732
<b>TOTALS Calculation of Benefits (3 Year Period)</b>	<b>1823400</b>	<b>77495</b>

**TAXABLE GOODS & SERVICES**

	Spending Rate	Expenditures	State & Local Sales Tax Revenues
Direct Jobs			
Created	36%	194400	18954
Existing	0.36	0	0
Indirect Jobs			
Created	0.36	405000	39487.5

Existing	0.36	0	0
Construction - only one year Person Years	0.36	57024	5560
<b>TOTAL TAXABLE GOODS &amp; SERVICES</b>		<b>656424</b>	<b>64001</b>

Local (3 year) real property tax benefit (assuming 60% of jobs existing and created own a residence) with an average assessment of \$80,000 and the remainder of jobs existing created pay real property taxes through rent based on an average assessment per apartment of \$50,000.

288000

Tax Rate for School District where facility is located:	
Tax Rate for Municipality where facility is located:	
Tax Rate for County:	
	58.756

120000

Real Property Taxes Paid: 23972.448

**COSTS:**

Real Property Taxes Abated on Improvements Only (10 yr. Period):  Amount of Taxes that would be abated by applying PILOT.

Mortgage Tax Abated (1.0%)  
 Estimated Sales Tax Abated During Constructions Period (8.75%)  (40% of the construction and Rehab costs times the NYS & Local Sales tax)

NOTE: If there is a tax-exempt financing of all or a portion of the project cost, there is a neutral cost/benefit because of lower interest rates by reason of exclusion of interest from gross income of bondholders for purposes of Federal and State income taxes. Taxable financing carries the same cost/benefit for State Income Tax purposes. Such cost/benefits cannot be quantified.