# DELTA LUXURY TOWNHOMES LLC

105 MAIN STREET WHITESBORO, NY 13492

PHN 315-736-0865 FAX 315-768-4835


August 22, 2024

Oneida County Industrial Development Agency (OCIDA)
Attn: Shawna Papale, Executive Director
584 Phoenix Drive
Rome, NY 13441-4105

RE: Request for Extension - IDA# 3001-21-Delta

Dear Ms. Papale,

Delta Luxury Townhomes LLC (DLT) requests that the Lease and Leaseback agreements between the OCIDA and DLT, as well as the ST-123 IDA Agent/Project Operator Exempt Purchase Certificate, which all expired on August 2, 2024, be extended for an additional 12 months. We initially projected on our application that this project would be completed by this time; however, due to unforeseen limitations in hiring skilled laborers to perform the work and National Grid's undue 12-month delay from the onset, our time for construction has increased.

As of now, we have made significant strides, successfully completing 24 townhome units, including all necessary infrastructure, gas, electric, and roadways. We are currently in the process of constructing the remaining 12 units and anticipate their completion within the next 12 months. Our construction costs to date stand at approximately $8,776,175, and we have already received a tax savings of $408,075.

We request this extension due to unforeseen delays in securing the necessary labor to complete the work and National Grid's failure to complete their design in a reasonable amount of time. Extending the IDA exemption will be crucial in meeting our budget requirements and ensuring the successful completion of the project. We are deeply grateful for your ongoing support and thank you for considering our request.

Sincerely,

Steven G. Buck

Steven G. Buck, Manager

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY
OCIDA
584 Phoenix Drive,
Rome, New York 13441-4105
(315) 338-0393, fax (315) 338-5694
info@mvedge.org;
www.oneidacountyida.org

# REQUEST FOR EXTENSION OR INCREASE OF SALES TAX EXEMPTION

Companies that wish to request either an extension of time, an increase in value, or both should complete this form and submit to the IDA at least 14 days prior to (i) the expiration of the current exemption or (ii) date on which increased purchases will be made. Please submit a current certificate of insurance evidencing the IDA is named as additional insured with this request. If necessary, please attach additional sheets to provide the IDA with all relevant information to consider this request.

Company Name: Delta Luxury Townhomes, LLC IDA Project # 3001-21-Delta

Nature of Request: ✓ Extension of time until (date) 05/15/2025 (mm/dd/yyyy)

☐ Increase in value to (amount) $ _____

Current FTEs at Facility: _____

Please describe the work that has been performed to date:

Construction of 24 units, including infrastructure, site work and utilities.

Please describe the work that remains to be performed:

Construction of 12 remaining units.

Please describe the reasons that an extension of time and/or increase in value is being requested (be specific about what has changed from the time the original application was submitted). If the Project Costs have changed from the original application, please complete the attached sheet that compares the original costs to the revised costs and provide an explanation for the change.

Due to a skilled labor shortage, the amount of time required to complete construction has increased by 28%.

Value of purchases and exemptions claimed to date:

| Purchases | Exemptions |
|---|---|
| $ 8,776,175 | $ 408,075 |

Value of purchases and exemptions projected to complete the project:

| Purchases | Exemptions |
|---|---|
| $ 848,825 | $ 70,000 |

TO BE COMPLETED BY OCIDA

Date original exemption was granted: 11/19/2021 (mm/dd/yyyy)

Date of any prior extensions authorized: _____ (mm/dd/yyyy)

Has the Company remitted annual rent and reporting requirements? ☑ Yes ☐ No

Employment Obligation: 0

(If housing project, attach original Project Obligation)

REVISED BUDGET REQUEST (If applicable)

## Part IX: Estimated Project Cost and Financing

11(a) List the costs necessary for preparing the facility.

| | | Original | Revised | Difference (Use minus symbol where applicable) |
|---|---|---|---|---|
| LAND Acquisition | $ | | | 0 |
| Existing Building(s) ACQUISITION | $ | | | 0 |
| Existing Building(s) RENOVATION | $ | | | 0 |
| NEW Building(s) CONSTRUCTION | $ | | | 0 |
| Site preparation/parking lot construction | $ | | | 0 |
| Machinery & Equipment that is TAXABLE | $ | | | 0 |
| Machinery & Equipment that is TAX-EXEMPT | $ | | | 0 |
| Furniture & Fixtures | $ | | | 0 |
| Installation costs | $ | | | 0 |
| Architectural & Engineering | $ | | | 0 |
| Legal Fees (applicant, IDA, bank, other counsel) | $ | | | 0 |
| Financial (all costs related to project financing)* | $ | | | 0 |
| Permits (describe below) | $ | | | 0 |
| Other (describe below) | $ | | | 0 |
| Subtotal | $ | 0 | 0 | 0 |
| Agency Fee[1] | $ | 0 | 0 | 0 |
| **Total Project Cost** | **$** | 0 | 0 | 0 |

* ***Bank fees, title insurance, appraisals, interest, environmental reviews, etc.***

[1] ***See Attached Fee Schedule (Page 25) for Agency Fee amount to be placed on this line.***

Space for Additional Information

Space for Additional Information

## REPRESENTATIONS AND CERTIFICATION BY APPLICANT

The undersigned requests that the attached materials be submitted as an amendment to the Applicant's original Application for Financial Assistance for review to the Oneida County Industrial Development Agency (the "Agency") and its Board of Directors.

Approval of the modifications to the Application can be granted solely by this Agency's Board of Directors. The Agency reserves the right to request Applicant complete a full Application for Financial Assistance if, after reviewing the attached materials, the Agency determines one is required to properly evaluate the Applicant's request. 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, Tax Exemption & Bond Status Reports. T**he 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 exemption benefits received with the action of the Agency. For Applicants not responding to the Agency's request for reports by the stated due date, a $500 late fee will charged to the Applicant for each 30-day period the report is late beyond the due date, up until the time the report is submitted. Failure to provide such reports as provided in the transaction documents will be an Event of Default under the Lease (or Leaseback) Agreement between the Agency and Applicant. In addition, a Notice of Failure to provide the Agency with an Annual Employment, Tax Exemption & Bond Status Report may be reported to Agency board members, said report being an agenda item subject to the Open Meetings Law.

3. **Absence of Conflict of Interest**. The Applicant has consulted the Agency website of the list of the Agency 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 (if none, state "none"):

4. **Hold Harmless**. Applicant hereby releases the Agency and its members, officers, servants, agents and employees 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 Agency has disclosed that the actions and activities of the Agency 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.

6. The Applicant acknowledges that the Agency is subject to New York State's Freedom of Information Law (FOIL). **Applicant understands that all Project information and records related to this application are potentially subject to disclosure under FOIL subject to limited statutory exclusions**.

7. The Applicant acknowledges that it has been provided with a copy of the Agency's recapture policy (the "Recapture Policy"). The Applicant covenants and agrees that it fully understands that the Recapture Policy is applicable to the Project that is the subject of this Application, and that the Agency will implement the Recapture Policy if and when it is so required to do so. The Applicant further covenants and agrees that its Project is potentially subject to termination of Agency financial assistance and/or recapture of Agency financial assistance so provided and/or previously granted.

8. The Applicant understands and agrees that the provisions of Section 862(1) of the New York General Municipal Law, as provided below, will not be violated if Financial Assistance is provided for the proposed Project:

   § 862. Restrictions on funds of the agency. (1) No funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

9. The Applicant confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the proposed Project is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

10. The Applicant confirms and acknowledges that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any Financial Assistance and the reimbursement of an amount equal to all or part of any tax exemption claimed by reason of the Agency's involvement the Project.

11. The Applicant confirms and hereby acknowledges that as of the date of this Application, the Applicant is in substantial compliance with all provisions of Article 18-A of the New York General Municipal Law, including, but not limited to, the provision of Section 859-a and Section 862(1) of the New York General Municipal Law.

12. 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.

STATE OF NEW YORK )
COUNTY OF ONEIDA ) ss.:

CHRISTOPHER S. BUCK, being first duly sworn, deposes and says:

1. That I am the MEMBER (Corporate Office) of DELTA Luxury Townhomes LLC (Applicant) and that I am duly authorized on behalf of the Applicant to bind the Applicant.

2. That I have read the attached Application, I know the contents thereof, and that to the best of my knowledge and belief, this Application and the contents of this Application are true, accurate and complete.

(Signature of Officer)

Subscribed and affirmed to me under penalties of perjury this 26 day of August, 2024

(Notary Public)

TINA M. CONTE
Notary Public in the State of New York
Qualified In Oneida County 01CO6370793
My Commission Expires Feb. 12, 2026

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: STEVEN G BUCK

Title: MANAGER

Date: 8/26/24

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- Any applicant submitting this form should submit it with a non-refundable application fee of **$500**.
- If the applicant is requesting an increase in the value of the sales tax exemption, the applicant will also pay an additional fee equal to the increased OCIDA fee (see page 25 of original application) relating to the additional financial assistance. This fee will be payable as a condition of the sales tax exemption being issued.
- If the request is the first request for an extension of time, the $500 application fee will be the only fee payable.
- If the request is for an extension of time that is not the first request, the OCIDA has the discretion of charging an additional fee.

Please submit to the Oneida County Industrial Development Agency, 584 Phoenix Drive, Rome NY 13441-1405, **within 14 days prior to the OCIDA Board of Directors meeting at which you want the Application to be included on the Agenda**. Wire transfer and ACH payments are acceptable but all related fees incurred by the Agency are payable by the Applicant. It is advised that an electronic version of the application accompany the original application via hard copy or e-mail. An electronic version of the application must accompany the original application via physical media or e-mail.

# 2023 Report Year

**Project Code:** 3001-22-Delta **Type: Lease** **Project Name:** Delta Luxury Townhomes **Page 2b**

**Questions for Housing Projects ONLY - (Please provide additional information if needed to provide adequate detail)**

(1) Describe the housing project constructed or renovated in detail (type of housing, number of units, etc.):
18 2-UNIT SINGLE STORY TOWNHOME BUILDINGS (36 UNITS TOTAL), INCLUDING ALL NECESSARY INFRASTRUCTURE, UTILITIES, ROADS, SIDEWALKS, WATER & SEWER SYSTEMS.

If construction or renovation is incomplete, when is the issuance of a Certificate of Occupancy anticipated? 2024
If complete, please attach copy of Certificate of Occupancy.

(2) Describe how you changed the pre-Project use of the facility or property being utilized, for the Project.
THE PROPERTY WAS PREVIOUSLY UTILIZED AS FARM LAND AND IS BEING CONVERTED TO RESIDENTIAL HOUSING.

(3) Did the project have any impact on the existing infrastructure or upgrades to the current infrastructure (water, sewer, electrical, gas, etc.)? If yes please provide detail and who you are working with at the applicable organization(s).
YES. ALL NEW WATER, SEWER, ELECTRICAL AND GAS INFRASTRUCTURE ARE BEING INSTALLED TO ACCOMODATE THE NEW CONSTRUCTION.
GINA CLIFFORD-NATIONAL GRID, JOHN GLOGOWSKI-CHARTER.

(4) If your project is a multi-use facility please provide details of the project, project square footage breakdown of non-housing to housing usage: detail the job creation and retention associated with the non-housing component.
N/A

(5) Does the project provide a community benefit? If yes, provide detail substantiating the community benefit (reference the IDA policy). YES. WE ARE PROVIDING BOTH PUBLIC SIDEWALKS AND WALKING PATHS. WE WILL ALSO BE PROVIDING MIXED-INCOME RENTAL UNITS TO SUPPORT WORKFORCE HOUSING.

Transcript Document No. 4

# PROJECT COMPLETION AND RECAPTURE AGREEMENT

THIS PROJECT COMPLETION AND RECAPTURE AGREEMENT (this "Agreement"), dated as of August 3, 2022 is made by and between **DELTA LUXURY TOWNHOMES LLC,** a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 105 Main Street, Whitesboro, New York 13402 (the "Company") and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 584 Phoenix Drive, Rome, New York 13441 (the "Agency").

## WITNESSETH:

WHEREAS, Title 1 of Article 18 A of the General Municipal Law of the State of New York (the "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 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, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, housing, renewable energy, 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 Act further authorizes each such industrial development agency to lease any or all of its facilities at such rentals and on such other 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 mortgage any or all of its facilities and to pledge the revenues and receipts from the leasing of its facilities; and

WHEREAS, the Company has requested that the Agency (the "Agency") undertake a project (the "Project") consisting of the following: (A) acquisition of a 16.44± acre portion of a 52.22± acre parcel of land located at 202-221, 251-259, 261, 263, 265, 267, 269-277, 279, 281, 281, 285, 287, 289, 291, and 293 Liam Lane (f/k/a Merrick Road), City of Rome, Oneida County, New York (the "Land"); construction on the Land of eighteen, two-unit single-story townhome buildings (36 units total), together with all necessary infrastructure, utilities, roads, sidewalks, water and sewer systems to service

the same (collectively, the "Improvements"); and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of filling a demonstrated demand for rental housing to support employment in the region (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing, including exemptions from sales taxes and exemptions from mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, in order to provide such Financial Assistance to the Company under the Act, the Agency requires, among other things, that the Company and the Agency enter into certain lease/leaseback transactions and other associated agreements dated of even date herewith (collectively, the "Transaction Documents"); and

WHEREAS, the County of Oneida has released a study entitled, *Oneida County Vision 2022 – Path Toward Prosperity Initiative* (the "Vision 2022 Study"), in which it identifies certain types of housing that need to be filled to meet the demands of changing population and workplace demographics within Oneida County; and

WHEREAS, the Company submitted to the Agency a market study prepared by The Williams Group Real Estate Advisors LLC dated June 14, 2021 (the "Market Study") that provides an analysis of the multi-family housing market in the City of Rome; and

WHEREAS, based upon representations made by the Company in its Application for Financial Assistance, based upon the Market Study, and based upon the Vision 2022 Study, the Agency determined that the Project will promote employment opportunities and prevent economic deterioration in Oneida County by filling the demand for market rate housing units described in the Vision 2022 Study and providing quality housing for employers to attract a quality workforce to the region; and

WHEREAS, the Agency has appointed the Company and its agents and designees as its agent for the purposes of acquiring the Land and constructing and equipping the Facility; and

WHEREAS, Community Bank, National Association ("Bank") has agreed to finance a portion of costs of the Facility by making a loan to the Company in the principal sum of $9,400,000.00 to be secured by a Mortgage (the "Community Mortgage") from the Agency and the Company to the Bank; and

WHEREAS, pursuant to a Lease Agreement dated of even date herewith between the Company as Lessor and the Agency as Lessee (the "Lease Agreement"), the Company has agreed to lease the Facility to the Agency for a period running concurrently with the Leaseback Agreement (defined below); and

WHEREAS, pursuant to the leaseback agreement dated of even date herewith (the "Leaseback Agreement"), the Agency is leasing the Facility back to the Company for a period commencing August 3, 2022 and ending August 2, 2024 (the "Lease Term"); and

WHEREAS, the Company will further sublease individual residential units to residential tenants, to be identified from time to time (each a "Residential Sublessee" and collectively, the "Residential Sublessees"); and

WHEREAS, attached hereto as Exhibit A is the criteria the Agency used to determine the Financial Assistance the Project is entitled to receive (the "Project Scoring Criteria"), which Financial Assistance is consistent with the Agency's Uniform Tax Exemption Policy (the "Housing Policy"); and

WHEREAS, the Agency wishes to condition the Financial Assistance upon the Company completing the Facility as described and achieving at least the same score as the Project Scoring Criteria at the completion of the Project.

NOW THEREFORE, for good and valuable consideration and in consideration of the Company entering into the Lease Agreement and the Leaseback Agreement and the Agency's provision of Financial Assistance, the Company hereby covenants and agrees as follows:

1. Representations and Covenants. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) It has power to enter into and to execute and deliver this Agreement.

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

(c) The providing of the Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of a plant facility or another commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more plants or facilities of the Company located within the State.

(d) The operation of the Facility will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold

the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d).

(e) There is no litigation pending or, to the knowledge of the Company, threatened, in any court, either state or federal, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the ability of the Company to fulfill its obligations under this Agreement.

2. Employment and Project Obligations. The Company projected that it will create zero (0) full time equivalent positions at the Facility as a result of undertaking the Facility (the "Employment Obligation"). The Company also made representations in its Application that it would construct and equip the Project as described in the Application, which is the basis for the Project Scoring Criteria and calculation of Financial Assistance. The Financial Assistance granted by the Agency is conditioned upon the Applicant constructing its Project as represented in the Project Scoring Criteria within two years after the date of this Agreement (the "Project Obligation"). If, after two years or upon completion of the Project, the Project is not completed in accordance with the Project Obligation, it may subject the Applicant to recapture of Financial Assistance as described below.

3. Project Review. The Company acknowledges that the Financial Assistance was granted based upon how the Project scored using the Project Scoring Criteria. Within ten (10) days after receipt of Certificates of Occupancy for the Project or ten (10) days prior to the expiration of the Lease Term, whichever is sooner, the Company will provide written notice to the Agency of the status of the Project. The Agency will provide the Company with a document in substantially the form attached hereto as Exhibit B such that the Company can certify that the Facility was constructed substantially in accordance with the Project Scoring Criteria (or, in the alternative, will certify any changes that were made to the Project) so the Agency can score the Project at completion and determine whether the Project achieved its stated goals (the "Project Review"). The Company is required to submit the certificate attached as Exhibit B at completion of the Project. The Company's obligation to submit the certificate is in addition to any other annual review.

4. Remedies. If the Project Review returns a score lower than 40 points, the Agency will notify the Company in writing of the Agency's intention to amend, terminate or recapture Financial Assistance. The Company will have thirty (30) days to respond to the letter and may include a request to appear before the Agency. If the Agency then determines that the Company's reasons for failing to achieve the Project Obligation are not acceptable to the Agency, the Agency, at its sole discretion, may take any one or more of the following actions:

a. Take no action if it is determined that the reason or reasons for failing to achieve the Project Obligation are temporary or, in the sole opinion of the Agency, it is in the best interest of economic development of Oneida County; or

b. Reduce the benefits granted to the Company in an amount proportionate to the percentage of the Project Obligation that was achieved (i.e., if the Company meets 75% of its projections, 25% of benefits are recaptured).

5. The Agency retains all rights to impose, delay or waive penalties and the right to deviate from these recapture provisions. Notwithstanding this right, the Agency is obligated to recapture New York State sales tax benefits where:

a) The Project is not entitled to receive those benefits; or

b) The exemptions exceed the amount authorized, or are claimed for unauthorized property or services; or

c) The Company fails to use property or services in the manner required by the Leaseback Agreement.

The Company acknowledges that the amount of sales tax exemptions currently authorized by the Agency is limited to $490,000.00.

6. Notices. All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (i) mailed by United States registered or certified mail, postage prepaid, return receipt requested or (ii) when delivered by a commercial overnight courier that guarantees next day delivery and provides a receipt, to the Agency or the Company, as the case may be, addressed as follows:

| | |
|---|---|
| To the Agency: | ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY<br>584 Phoenix Drive<br>Rome, New York 13441<br>Attn: Chairman |
| With a Copy to: | BOND, SCHOENECK & KING, PLLC<br>501 Main Street<br>Utica, New York 13501<br>Attn: Linda E. Romano, Esq. |
| To the Company: | DELTA LUXURY TOWNHOMES LLC<br>105 Main Street<br>Whitesboro, New York 13492<br>Attn.: Christopher S. Buck, Member |
| With a Copy to: | COMPSON & PIMPINELLA PLLC<br>2310 Genesee Street<br>Utica, New York 13502<br>Attn.: Paul J. Pimpinella, Esq. |

7. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Agency and the Company and their respective successors and permitted assigns.

8. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

9. Amendments, Changes and Modifications. This Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

10. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11. Applicable Law. This Agreement shall be governed exclusively by the applicable laws of the State of New York.

12. Survival of Obligations. This Agreement shall survive the performance of the obligations of the Company to make payments required by Section 2.6 of the Leaseback Agreement and all indemnities shall survive any termination or expiration of the Leaseback Agreement as to matters occurring during the period of the Company's occupancy of the Facility.

13. Section Headings Not Controlling. The headings of the several sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Agreement.

14. Merger of the Agency.

(a) Nothing contained in this Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other body corporate and politic and public instrumentality of the State of New York or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all the agreements and conditions of this Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) As of the date of any such consolidation, merger or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger or assignment as the Company reasonably may request.

15. No Assignment. This Agreement may not be assigned by the Company except with the written consent of the Agency, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, no consent from the Agency shall be required if an assignment of this Agreement is made by the Company to the Company's parent, any direct or indirect subsidiary or affiliate of the Company, or a successor to the Company by way of merger, consolidation, corporate reorganization, or the purchase of all or substantially all of the Company's assets.

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

17. No Additional Waiver Implied By One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

18. Inducement Agreement. The Transaction Documents represent the entire agreements of the Agency and the Company and supersede the terms of the Inducement/Project Agreement dated November 19, 2021 between the same parties.

[signature page follows]

IN WITNESS WHEREOF, the Company and the Agency have executed and delivered this **Project Completion and Recapture Agreement** as of the day and year first above written.

DELTA LUXURY TOWNHOMES LLC

By: _____
Christopher S. Buck
Member

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: _____
David C. Grow
Chairman

EXHIBIT A

PROJECT OBLIGATION – AGENCY SCORING CRITERIA

# Delta Luxury Townhomes

**Oneida County Industrial Development Agency Uniform Tax Exemption and Agency Benefits Policy Market Rate Rental Housing Development Initiatives (Effective March 1, 2015 and revised on April 20, 2018)**

1. **Criteria:**

OCIDA will entertain applications for assistance that fall within the following criteria, using the following 100 point scoring system for each application received:

| Criteria | Description of Criteria | Possi ble | Score |
|---|---|---|---|
| Adaptive Reuse Projects | Projects that propose a change in use to an existing building (e.g., reuse of vacant or underutilized facility) or propose development on a vacant urban infill site[2] that is being repurposed or redeveloped for an eligible housing project. **Project is in an Urban Area Cluster and is on vacant property.** | **25** | **15** |
| Eligible Area Locations | Projects located within Eligible Areas (see attached map) that have a Minimum of 5 units in a renovation or conversion of a building and 24 units for new construction, except for urban infill development projects where the IDA will entertain applications for projects located on a vacant urban infill site that has less than 24 units of eligible housing . **36 units in Urban Area Cluster area.** | **20** | **20** |
| Utilizes Existing Infrastructure | Projects that ***utilize existing infrastructure*** (i.e. utilizing both existing sewer and water services and do not require system expansion. Modernizations, such as replacing existing pipes where service is already provided, are viewed favorably). | **20** | **0** |
| Community Benefits | Projects that create other benefits that inure to the benefit of the community that may include: rebuilding community infrastructure, pays sewer credits, creates or contributes to a community amenity, dedicates land to a municipality for a public improvement which benefits health and safety, removes slums and blighting influences (e.g., demolition or supports in-fill development within a neighborhood, commercial corridor, downtown, or main street area), provides an environmental enhancement (e.g., flooding wetlands creation/restoration, is part of a Brownfield, utilizes federal/state historic tax credit programs, provides mixed income rental units to support workforce housing, or provides other benefits deemed important and relevant by OCIDA. **Project includes walking trails paths.** | **5** | **5** |

[2] Urban infill site would include infill rental housing being constructed on vacant or underutilized property.

| | | | |
|---|---|---|---|
| Green Projects | (1) Projects to be constructed on a New York State or federal defined Brownfield, such as a site designated as a federal or state Superfund site; a participant in the State Voluntary Cleanup Program; a former, verified Manufacturing Gas Plant, or within a Brownfield Opportunity Area; or (2) Projects whose plans qualify for a LEED Certification from the US Green Building Council (final certification required prior to commencement of the PILOT Agreement); or (3) Projects that incorporate geothermal technologies that are projected to make a significant impact on the stability, reliability and resilience of the grid. The physical geothermal plant providing energy to the Project must be located within Oneida County, turned on and connected to the grid, the energy generated must provide at least fifty percent (50%) of the energy needs for the Project, and more than fifty percent (50%) of the energy generated must be used in Oneida County. | **10** | **0** |
| Mixed Use Dev. Projects | Projects that are mixed use development with housing being at least –50% or more of a building's total area and the project induces job growth (mixed use development project proposes direct job creation with non-residential uses). To reach 20 points, must create at least 2 FTEs. | **20** | **0** |
| **Total Points:** | | **100** | **40** |

2. **Scoring of Housing Applications:**

OCIDA shall use this scoring system to determine the level of Agency benefits:

- Tier 1 Benefits: projects that score at least 60 points may receive abatement of real property taxes, exemptions from sales taxes and exemptions from mortgage recordingtaxes
- Tier 2 Benefits: projects that score between 50 to 59 points may receive abatement of real property taxes, exemptions from sales taxes and exemptions from mortgage recordingtaxes
- Tier 3 Benefits: projects that score 40 to 49 points may receive exemptions from sales taxes and exemptions from mortgage recording taxes (not eligible for abatement of real property taxes)

| Term of PILOT Exemption Schedule | Tier 1 – PILOT Exemption Schedule | Tier 2 – PILOT Exemption Schedule |
|---|---|---|
| 1 | 100% | 75% |
| 2 | 100% | 75% |
| 3 | 100% | 75% |
| 4 | 100% | 75% |
| 5 | 75% | 50% |
| 6 | 50% | 25% |
| 7 | 50% | |
| 8 | 25% | |
| 9 | 10% | |
| 10 | 10% | |

Applicants will pay 100% of all taxes due and owed until a Certificate of Occupancy is issued for a project, and then the first exemption year in the schedule will begin effective the first taxable status date after a Certificate of Occupancy is issued.

EXHIBIT B

FORM OF CERTIFICATE FOR PROJECT REVIEW

Delta Luxury Townhomes LLC Facility

I, the undersigned member of DELTA LUXURY TOWNHOMES LLC (the "Company") attest as follows:

1. I am a member of the Company, I have actual knowledge of the facts contained herein and I am authorized to make this statement on behalf of the Company.

2. I understand Oneida County Industrial Development Agency (the "Agency") will rely upon this statement to complete its Project Review under the Project Completion and Recapture Agreement dated August 3, 2022 (the "Recapture Agreement") by and between the Company and the Agency, and if any statements made herein are found to be false it could subject the Company to recapture of all or a portion of financial assistance under the Recapture Agreement.

3. The Company has completed the acquisition of a 16.44± acre portion of a 52.22± acre parcel of land located at 202-221, 251-259, 261, 263, 265, 267, 269-277, 279, 281, 281, 285, 287, 289, 291, and 293 Liam Lane (f/k/a Merrick Road), City of Rome, Oneida County, New York (the "Land"); construction on the Land of eighteen, two-unit single-story townhome buildings (36 units total), together with all necessary infrastructure, utilities, roads, sidewalks, water and sewer systems to service the same (collectively, the "Improvements"); and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of filling a demonstrated demand for rental housing to support employment in the region (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project").

4. The Facility was constructed substantially in accordance with the Project Scoring Criteria, except as follows: (list all changes or state "None")

5. I am submitting with this statement copies of all Certificates of Occupancy that were issued by the governing municipality having authority over the Facility.

DELTA LUXURY TOWNHOMES LLC

By: Christopher S. Buck, member
Christopher S. Buck, Member

Sworn to before me this 27th day
of AUGUST 2024

TINA M. CONTE
Notary Public in the State of New York
Qualified in Oneida County 01CO6370793
My Commission Expires Feb. 12, 2026

Tina M Conte
Notary Public

**Resolution – Extend Leasehold Interest and Sales Tax Exemption**
**Delta Luxury Townhomes LLC Facility**

Date: September 5, 2024

At a meeting of the Oneida County Industrial Development Agency (the "Agency") held at 584 Phoenix Drive, Rome, New York 13441 on September 5, 2024, the following members of the Agency were:

**Members Present**:

**EDGE Staff Present**:

**Other Attendees:**

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to the extension of leasehold interest and sales tax exemption for the Delta Luxury Townhomes, LLC Facility.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye | Voting Nay

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RESOLUTION AUTHORIZING THE AGENCY TO EXTEND THE LEASEHOLD INTEREST AND SALES TAX EXEMPTION, AND EXECUTE RELATED DOCUMENTS WITH RESPECT TO THE DELTA LUXURY TOWNHOMES, LLC FACILITY, CITY OF ROME, ONEIDA COUNTY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 372 of the Laws of 1970 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, Delta Luxury Townhomes LLC (the "Company") previously requested that the Agency provide certain financial assistance, consisting of exemptions from mortgage recording taxes and exemptions from sales taxes (the "Financial Assistance"), for a project consisting of acquisition of a 16.44± acre portion of a 52.22± acre parcel of land located at 202-221, 251-259, 261, 263, 265, 267, 269-277, 279, 281, 281, 285, 287, 289, 291, and 293 Liam Lane (f/k/a Merrick Road), City of Rome, Oneida County, New York (the "Land"); construction on the Land of eighteen, two-unit single-story townhome buildings (36 units total), together with all necessary infrastructure, utilities, roads, sidewalks, water and sewer systems to service the same (collectively, the "Improvements"); and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of filling a demonstrated demand for rental housing to support employment in the region (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"); and

WHEREAS, the Company leases the Facility to the Agency pursuant to a Lease Agreement dated as of August 3, 2022 (the "Lease Agreement") and the Agency leases the Facility back to the Company pursuant to a Leaseback Agreement dated as of August 3, 2022 (the "Leaseback Agreement" and together with the Lease Agreement, the "Leases") for terms that expired on August 2, 2024; and

WHEREAS, by resolution adopted March 5, 2022 the Agency authorized sales tax exemptions for the Project in an amount not to exceed $490,000 for a period not to be extended beyond August 3, 2024; and

WHEREAS, the Company has submitted to the Agency a letter detailing the reasons that the Project was not completed prior to August 2, 2024 and has requested the Agency extend the terms of the Leases through August 2, 2025 and extend the period of the agency appointment under which the Company may utilize the exemption to August 2, 2025 (collectively, the "Extended Financial Assistance") to complete the Project.

NOW, THEREFORE, BE IT RESOLVED by the Oneida County Industrial Development Agency (a majority of the members thereof affirmatively concurring) as follows:

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

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) The Extended Financial Assistance will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Oneida County



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and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The Extended Financial Assistance is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

(e) The SEQRA findings adopted by the Agency on November 19, 2021 encompassed the actions to be undertaken by this resolution and no changes have been made since that time to the proposed action that would create new or increased adverse environmental impacts; and

(f) It is desirable and in the public interest for the Agency to approve the Extended Financial Assistance.

Section 2. In consequence of the foregoing, the Agency hereby determines to (i) extend the terms of the Leases through August 2, 2025; (ii) extend the agency appointment to August 2, 2025 and (iii) execute and deliver amendments to the Leases and an agency appointment letter, Form ST-60 and related documents (the "Extended Sales Tax Documents") in support of the Project.

Section 3. The Agency is hereby authorized to to do all things necessary or appropriate for the accomplishment of the Extended Financial Assistance, and all acts heretofore taken by the Agency with respect to such Extended Financial Assistance are hereby approved, ratified and confirmed.

Section 4. The form and substance of the Extended Sales Tax Documents (each in the Agency's standard forms and subject to counsel approval) are hereby approved.

Section 5.

(a) The Chairman, Vice Chairman, Executive Director, Secretary or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Extended Sales Tax Documents, all in substantially the forms thereof presented to or approved by this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Executive Director, Secretary or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution. The execution thereof by the Chairman, Vice Chairman, Executive Director or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, Executive Director, Secretary or member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Leaseback Agreement).

Section 6. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Extended Sales Tax Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the



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foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Extended Sales Tax Documents binding upon the Agency.

Section 7. This resolution shall take effect immediately.

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STATE OF NEW YORK )
) ss.:
COUNTY OF ONEIDA )

I, the undersigned Secretary of the Oneida County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Agency, including the resolutions contained therein, held on September 5, 2024 with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

IN WITNESS WHEREOF, I have hereunto set my hand as of September 5, 2024.

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By:_____
Shawna M. Papale, Secretary

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