

RESOLUTION INDUCING THE FINANCING OF A COMMERCIAL FACILITY FOR BOGOPA 163, LLC AS AN INDUSTRIAL INCENTIVE PROGRAM (STRAIGHT-LEASE) TRANSACTION AND AUTHORIZING THE EXECUTION AND DELIVERY OF AGREEMENTS IN CONNECTION THEREWITH

WHEREAS, the New York City Industrial Development Agency, New York, New York (the “Agency”) is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, the Agency proposes to accomplish the purposes of the Act by (i) inducing Bogopa 163, LLC (the “Lessee”), on behalf of Bogopa Washington, Inc. (the “Company”, together with the Lessee, the “Applicant”), affiliates of Bogopa Service Corp., the owner and operator of seventeen supermarkets in the New York City (the “City”) area to undertake a project consisting of the lease, construction, renovation, equipping and/or furnishing of an approximately 37,000 square foot building located on an approximately 100,000 square foot parcel of land owned by Plaza 163, LLC and located at 445 East 163 Street, in Bronx, New York (the “Facility”) to be used by the Applicant as a supermarket (together, with the Facility, the “Project”); (ii) leasing from the Lessee, pursuant to a lease agreement (the “Company Lease Agreement”) the Facility; and (iii) subleasing the Facility back to the Lessee pursuant to a lease agreement (the “Agency Lease Agreement”); and

WHEREAS, the Applicant has entered into or may enter into loan commitments with JPMorgan Chase, N.A. and/or such other commercial banks, institutional lenders or governmental entities lenders acceptable to the Applicant and the Agency (collectively, the “Lender”), which may provide funds to the Applicant in the form of a loan to finance a portion of the costs of the Project, and the Agency and the Applicant will grant one or more mortgages on the Facility to the Lender (collectively, the “Mortgage”); and

WHEREAS, for purposes of refinancing from time to time the indebtedness secured by the Mortgage (the “Original Mortgage Indebtedness”) (whether such refinancing is in an amount equal to or greater than the outstanding principal balance of the Original Mortgage Indebtedness), the Applicant may from time to time desire to enter into new mortgage arrangements, including but not limited to consolidation with mortgages granted subsequent to the Mortgage; and therefore the Applicant may request the Agency to enter into the mortgage instruments required for such new mortgage arrangements (“Refinancing Mortgage(s)”); and

WHEREAS, the Applicant has submitted an application with respect to the Project (the “Application”) to the Agency to initiate the accomplishment of the above; and

WHEREAS, the Application sets forth certain information with respect to the Applicant and the Project, including the following: that the Applicant is currently located in the City; that the Applicant and the Project will meet all requirements of the City’s Food Retail Expansion to Support Health Program (“FRESH”); that without discretionary FRESH financial incentives, the Applicant would significantly reduce the scope and size of the intended renovation, equipping and furnishing of the Facility and would significantly reduce the number of new jobs to be created at the site; that the Applicant expects to create

approximately 95 new full time jobs at the Facility within the next three years; and that the Applicant must obtain Agency financial assistance in the form of a straight-lease transaction to enable the Applicant to proceed with the Project; and that, based upon the financial assistance provided through the Agency, the Applicant desires to proceed with the Project; and

WHEREAS, the Act allows the Agency to provide financial assistance for a project at which facilities or property primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost if, among other alternative requirements:

(1) the project is located in a “highly distressed area,” defined in Section 854(18) of the Act, to include an area in which was designated an empire zone; and

(2) the Agency determines after a public hearing that undertaking the project will serve the public purposes of Article 18-A of the Act by increasing the overall number of permanent, private sector jobs in New York State; and

WHEREAS, the Agency has determined: that the Project is located within an empire zone and that, therefore, the proposed Project meets the statutory requirements of being located in a “highly distressed area” and the Project will serve the public purposes of Article 18-A of the Act by increasing the overall number of permanent, private sector jobs in New York State; and

WHEREAS, the Agency held a public hearing with respect to the Project on June 6, 2013; and

WHEREAS, based upon the Application, the Agency hereby determines that Agency financial assistance and related benefits in the form of a straight-lease transaction between the Agency and the Applicant are necessary to induce the Applicant to proceed with the Project; and

WHEREAS, in order to provide financial assistance to the Applicant for the Project, the Agency intends to grant the Applicant financial assistance through a straight-lease transaction in the form of real property tax exemptions, sales tax exemptions and mortgage recording tax deferrals all pursuant to the Act;

NOW, THEREFORE, NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the Project and the providing of financial assistance to the Applicant pursuant to the Act in the form of a straight-lease transaction will promote and is authorized by and will be in furtherance of the policy of the State of New York as set forth in the Act and hereby authorizes the Applicant to proceed with the Project. The Agency further determines that:

(a) the Project is located in a “highly distressed area” (as defined in Section 854(18) of the Act);

(b) the Project shall not result in the removal of any facility or plant of the Applicant or any other occupant or user of the Project from outside of the City (but within the State of New York) to within the City or in the abandonment of one or more facilities or plants of the Applicant or any other occupant or user of the Project located within the State of New York but outside of the City;

(c) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of

advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State of New York; and

(d) the Project will create employment opportunities thereby increasing the overall number of permanent private sector jobs in the City in furtherance of the Agency's public purposes as set forth in the Act.

Section 2. To accomplish the purposes of the Act and to provide financial assistance to the Applicant for the Project, a straight-lease transaction is hereby authorized subject to the provisions of this Resolution.

Section 3. The Agency authorizes the Applicant to proceed with the Project on behalf of the Agency in accordance with this Resolution, the Company Lease Agreement and the Agency Lease Agreement; provided, however, that it is acknowledged and agreed by the Applicant that (i) the leasehold interest of the Agency in the Facility shall be for purposes of granting financial assistance, and (ii) the Applicant is hereby constituted the agent for the Agency solely for the purpose of undertaking the Project in accordance with the Agency Lease Agreement, and neither the Agency nor any of its members, directors, officers, employees or agents (other than the Applicant, as aforesaid) shall have personal liability for any such action taken by the Applicant or any director, officer, employee, agent or affiliate thereof, for such purpose.

Section 4. The execution and delivery of the Company Lease Agreement from the Applicant leasing the Facility to the Agency, the Agency Lease Agreement from the Agency subleasing the Facility to the Applicant, and a Sales Tax Letter from the Agency to the Applicant, the Mortgage and the Refinancing Mortgage (each document referenced in this Section 4 being, collectively, the "Agency Documents"), each being substantively the same as approved by the Agency for prior transactions, is hereby authorized. The Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel and Vice President for Legal Affairs of the Agency are each hereby authorized to execute, acknowledge and deliver each such Agency Document. The execution and delivery of each such agreement by one of said officers shall be conclusive evidence of due authorization and approval.

Section 5. The officers of the Agency are hereby designated the authorized representatives of the Agency, and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution. The Agency recognizes that due to the unusual complexities of the transaction it may become necessary that certain of the terms approved hereby may require modifications which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution.

Section 6. The officers of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Applicant to assist in the Project.

Section 7. Any costs and expenses incurred by the Agency with respect to the Project and the financial assistance contemplated by this Resolution shall be paid by the Applicant, whether or not the

Applicant proceeds with the financing of the Project as contemplated herein or financial assistance by the Agency to the Applicant, through the straight lease transaction between the Agency and the Applicant, is provided as herein authorized (other than by the sole fault of the Agency). By acceptance hereof, the Applicant agrees to pay such costs and expenses and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for any loss, liability, damage or injury or cost or expense incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof.

Section 8. This Resolution is subject to the approval of a private investigative report with respect to the Applicant. The provisions of this Resolution shall continue to be effective until one year from the date hereof whereupon the Agency may, at its option, terminate the effectiveness of this Resolution (except with respect to the matters contained in Section 7 hereof).

Section 9. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution, the Agency Documents or any documents related thereto and authorized hereby (collectively, the "Project Documents") shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the officers thereof by the provisions of this Resolution or any of the Project Documents shall be exercised or performed by the Agency or such officers, or by officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in any Project Document shall be deemed to be a covenant, stipulation, obligation or agreement of any member, director, officer, agent or employee of the Agency in their individual capacity thereof and neither the members nor the directors of the Agency nor any officer executing any Project Document shall be liable personally for any amounts payable thereunder or arising from claims thereon or be subject to any personal liability or accountability by reason of the execution and delivery or acceptance thereof.

Section 10. Pursuant to the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation Law and the implementing regulations, the Agency, as lead agency, hereby makes the findings set forth in Exhibit A hereto and incorporated by reference herein.

Section 11. The Applicant agrees to comply, and to cause each of its contractors, subcontractors, agents, persons or entities to comply, with the terms and conditions of Section 875(1) and (3) of the General Municipal Law, attached hereto as Exhibit C, as such provisions may be amended from time to time.

Section 12. The Chairperson, the Vice Chairperson, the Secretary, the Assistant Secretary, the Executive Director and the Deputy Executive Director, the Vice President for Legal Affairs and the General Counsel of the Agency, and any member of the Agency, are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits, agreements and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and the Project Documents.

Section 13. In connection with the Project, the Agency intends to grant the Applicant real property tax exemptions, sales tax exemptions and mortgage recording tax deferrals.

Section 14. This Resolution shall take effect immediately.

ADOPTED: June 11, 2013

ACCEPTED: _____, 2013

BOGOPA 163, LLC

By: _____

Name:

Title:

Exhibit A

NYCIDA Findings Statement Pursuant to the New York State Environmental Quality Review Act

1. Introduction and Description of the Proposed Action

This Findings Statement has been prepared in accordance with Article 8 of the Environmental Conservation Law, the State Environmental Quality Review Act (SEQRA), and its implementing regulations promulgated at 6 NYCRR Part 617. This Findings Statement sets forth the findings of the New York City Industrial Development Agency (the "Agency") with respect to the potential environmental impacts.

Bogopa 163, LLC (the "Company"), affiliate of Bogopa Service Corp., is the owner and operator of seventeen supermarkets in the New York City area. The Company is seeking approval of a straight-lease (Industrial Incentive Program) transaction for the benefit of Bogopa 163 LLC on behalf of Bogopa Washington, Inc., a supermarket, in connection with the leasing, construction, equipping and/or furnishing of an approximately 37,000-square-foot building to be constructed on an approximately 99,000-square-foot parcel of land owned by Plaza 163, LLC and located at 445 East 163 Street, Bronx, New York 10451. The financial assistance proposed to be conferred by the Agency will consist of payments in lieu of City real property taxes, deferral of City and State mortgage recording taxes, and exemption from City and State sales and use taxes.

This Findings Statement is based on the (a) Environmental Assessment Statement ("EAS") dated November 2002 and (b) Negative Declaration dated February 13, 2003, which the latter is attached hereto as Exhibit B.

2. The EAS

This Environmental Assessment Statement ("EAS") was filed under the City Environmental Quality Review ("CEQR") in connection with a zoning map change and Mayoral approval of the disposition of City-owned property on Block 2385 in the Morissania neighborhood of the Bronx, in Community District 3. The block rezoned is bound by Brook Avenue to the west, Washington Avenue to the east, East 164th Street to the north and East 163rd Street to the south. As analyzed in the EAS, the proposed action would allow the applicant at the time to develop "Washington Plaza" which was to consist of a supermarket and separate neighborhood retail establishment. This development would occupy approximately 99,300 square feet of the 121,100 square-foot block, while the entirety of Block 2385 would be rezoned from the current M1-1 to C4-4. Washington Plaza was expected to consist of approximately 50,000 square feet of commercial development, including a 45,000 square-foot supermarket and approximately 5,000 square feet of neighborhood retail. Approximately 123 parking spaces would be provided on site with an accessory surface lot.

The Deputy Mayor for Economic Development and Rebuilding assumed the role of Lead Agency and conducted an environmental review of the proposed action and has documented relevant information about the project in the Final EAS, CEQR No. 02DME017X, dated November 2002.

3. The Lead Agency Findings Statement

The EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character;

Natural Resources; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health.

The EAS identified hazardous materials present on the subject site. Phase I and II environmental site investigations revealed the presence of residual contamination on the development site and the potential for residual contamination on the remaining lots in Block 2385 which were not part of the proposed Washington Plaza development. Therefore, the Department of City Planning placed an "E" designation on those lots in the rezoning area that are not part of the Washington Plaza project (Lots 17, 18, 23, 38 49 and the western portion of Lot15) to prevent future exposure to either construction workers or residents. This "E" designation restricts the manner in which the properties may be developed or redeveloped by requiring additional testing and, if required, remediation measures as a condition precedent to any change of use or sub-surface excavation conducted as part of any future development or redevelopment of the property. In addition, the Washington Plaza developer, by deed restriction, shall prepare and implement a New York City Department of Environmental Protection-approved construction health and safety plan; properly dispose of all excavated soils, fill material and construction and demolition debris at an off-site disposal or recycling facility; cover all landscaped/grass covered areas with one foot of clean imported fill/top soil; and submit for DEP's approval a report certifying the implementation of these measures. With the implementation of these measures no significant health risks will be expected to occur as a result of this project.

A Remedial Action Work Plan ("RAWP") dated April 2, 2007, was prepared under the New York State Brownfield Cleanup Program and approved by the New York State Department of Environmental Conservation ("NYSDEC") in their letter dated September 11, 2007. The RAWP summarized the Remedial Investigation ("RI") results as follows:

- Levels of chlorinated volatile organic compounds ("VOCs") in groundwater beneath the site exceeding NYS Groundwater Quality Standards.
- VOCs detected in groundwater were attributed to poor background groundwater quality in the area surrounding the site.
- Levels of VOCs in soil gas were detected above New York State Department of Health Soil Vapor Intrusion Guidance Values
- Semi-volatile organic compounds ("SVOCs") and inorganic compounds in soil exceeding the NYS TAGM 4046 cleanup objectives.

Based on the RI results, the RAWP detailed the following health, safety, and remediation activities:

- A community air monitoring plan for construction and remediation activities
- Selection of most efficient construction traffic routes.
- Removal of the top 6-inches of soil over the entire site and all urban fill removed during construction.
- Capping the site with new buildings and pavement so that no exposed soils will remain after redevelopment
- Periodic groundwater monitoring
- Installation of an active sub-slab ventilation system beneath all buildings
- Preparation of a site management plan according to NYSDEC guidelines
- Imposition of an environmental easement
- Periodic certification of the institutional and engineering controls.

The top six inches of soil were removed from the site (approximately 6,000 tons) in August 2008. No additional environmental or construction activities were performed and the site was removed from the NYS Brownfield Cleanup Program.

4. Updated Phase I Environmental Site Assessment

An updated Phase I Environmental Site Assessment was prepared by Pressly Associates, Inc. on May 30, 2013. Based on the scope of work completed for this assessment, the update Phase I concluded the following:

- Environmental impacts on the subject property were delineated during the previous Remedial Investigation (RI) conducted when the site was enrolled within the NYS Brownfield Cleanup Program.
- Future site development will require soil disposal at an appropriate permitted facility and a vapor barrier or sub-slab depressurization (SSDS) system per NYC Office of Environmental Remediation (OER) guidelines.

5. NYCIDA Findings

The proposed project is seeking approval for the straight-lease (Industrial Incentive Program) transaction for the benefit of Bogopa 163 LLC on behalf of Bogopa Washington, Inc., a supermarket, in connection with the leasing, construction, equipping and/or furnishing of an approximately 37,000-square-foot building to be constructed on an approximately 99,000 square foot parcel of land owned by Plaza 163, LLC and located at 445 East 163 Street, Bronx, New York 10451. The financial assistance proposed to be conferred by the Agency will consist of payments in lieu of City real property taxes, deferral of City and State mortgage recording taxes, and exemption from City and State sales and use taxes.

The Agency has carefully considered the Lead Agency Findings Statement as set forth in the Negative Declaration and finds that this document is a thorough and comprehensive evaluation of the EAS. In particular, the Agency finds that the Lead Agency Findings as set forth in the Negative Declaration identify the relevant areas of concern under SEQRA and its implementing regulations, assesses the potential environmental of the EAS thereto; identifies measures to avoid or mitigate adverse impacts to the extent practicable, considers a reasonable range of alternatives, and sets forth appropriate conditions to be imposed as conditions of approval. Furthermore, the Agency has carefully considered the Updated Phase I Environmental Site Assessment and finds this finds that this document is a thorough and comprehensive evaluation of hazardous material conditions. The Agency hereby adopts and incorporates by reference the Lead Agency Findings Statement and as set forth in the Negative Declaration, including the conditions therein.

The Agency finds that the proposed project would not generate any additional significant adverse environmental impacts beyond those identified and analyzed in the EAS and therefore concludes that an Environmental Impact Statement need not be prepared for such actions.

6. Conclusion

Having considered the EAS and Lead Agency Findings as set forth in the Negative Declaration, the Agency certifies that:

- The requirements of SEQRA, including 6 NYCRR §617.9, have been met and fully satisfied.
- The proposed project has been designed and is expected to achieve goals and objectives while minimizing the potential for significant adverse environmental impacts.
- The Agency has considered the relevant environmental impacts, facts and conclusions disclosed in the EAS, Lead Agency Findings and Updated Phase I Environmental Site Assessment. The Agency has weighed and balanced relevant environmental impacts with social, economic and other considerations. Based on the foregoing, the Agency certifies that, consistent with social, economic and other essential considerations from among the reasonable alternatives available, the proposed project would avoid or minimize adverse environmental impacts to the maximum extent practicable, and that significant adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable in the EAS, Lead Agency Findings as set forth in the Negative Declaration, and Updated Phase I Environmental Site Assessment.

Exhibit B



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

To: Distribution

From: Robert R. Kulikowski, Ph.D.
Assistant to the Mayor

A handwritten signature in black ink, appearing to read "R. Kulikowski", written over the "From:" field.

Date: February 13, 2003

Re: Washington Plaza
CEQR # 02DME017X

Please find attached a revised Negative Declaration for CEQR# 02DME017X, Washington Plaza. This revised declaration replaces the Negative Declaration issued December 17, 2002 and clarifies that the proposed rezoning applies to all lots within Block 2385 while the Washington Plaza project will encompass only those lots specified in the revised declaration. In addition, a supporting statement to the declaration has been revised to reflect that the proposed (E) designation will only apply to those lots in the block which are not part of the Washington Plaza project.

Contact Person:
Douglas Rice
New York City Economic Development Corporation
(212) 312-3750

cc: Gail Benjamin, City Council
Office of Environmental Coordination
Andrew Alper, Economic Development Corporation
Sharon Greenberger, Office of the Deputy Mayor for Economic Development & Rebuilding
Naim Rasheed, DOT
Robert Dobruskin, DCP
Gina Santucci, LPC
Angela Licata, DEP
Gloria Alston, Bronx CB#3



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N. Y. 10007

Negative Declaration
(REVISED)

Project No. 02DME017X

Date Issued: February 13, 2003

NAME: Washington Plaza
APPLICANT Procida Construction
LOCATION: Block 2385 - Bronx
Community Board 3

SEQR CLASSIFICATION: This project is classified as an unlisted action pursuant to 6 NYCRR Part 617.4.

DESCRIPTION:

The project is the rezoning of Block 2385, bounded by 163rd and 164th Street, Washington and Brook Avenues, from M1-1 to C4-4 and the construction of 50,000 s.f. of retail space and 123 accessory parking spaces on a 99,000 s.f. parcel which includes Lots 7, 11, 30, 33-36, 44, 50, 51 & 55, p/o Lots 1, 3, 15, and 59, and the Mayoral approval of the business terms of the sale of the development parcel to Procida Construction, and is accordingly subject to the City Environmental Quality Review (CEQR) process. The project does not involve any other discretionary actions pursuant to CEQR regulations.

Statement of No Significant Effect

Pursuant to Executive Order 91 of 1977, as amended, and the Rules of Procedure for City Environmental Quality Review, found at Title 62, Chapter 5 of the Rules of the City of New York, the Office of the Deputy Mayor for Economic Development and Rebuilding assumed the role of lead agency for the purpose of making the following determination. Based on a review of information about the project contained in an Environmental Assessment Statement dated November 2002, pursuant to Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617.7, the Office of the

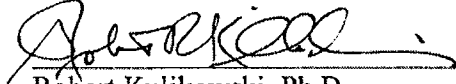
Deputy Mayor for Economic Development and Rebuilding has determined that the proposed action will not have a significant adverse effect on the environment.

Supporting Statements

The above determination is based on an Environmental Assessment Statement (EAS) dated November 2002 and incorporated by reference herein. The EAS finds that:

1. The project as proposed would not have significant adverse impacts on land use or the character of the surrounding community.
2. The project as proposed would not result in significant adverse traffic, noise or air quality impacts.
3. The project as proposed would not result in significant adverse impacts on cultural resources.
4. Phase I and II environmental site investigations revealed the presence of residual contamination on the development site and the potential for residual contamination on the remaining lots in Block 2385 which are not part of the proposed Washington Plaza development. Therefore the Department of City Planning will place an "E" designation on those lots in the rezoning area that are not part of the Washington Plaza project (Lots 17,18,23, 38 49 and the western portion of Lot15) to prevent future exposure to either construction workers or residents. This "E" designation restricts the manner in which the properties may be developed or redeveloped by requiring additional testing and, if required, remediation measures as a condition precedent to any change of use or sub-surface excavation conducted as part of any future development or redevelopment of the property. In addition, the Washington Plaza developer, by deed restriction, shall prepare and implement a New York City Department of Environmental Protection- approved construction health and safety plan; properly dispose of all excavated soils, fill material and construction and demolition debris at an off-site disposal or recycling facility; cover all landscaped/grass covered areas with one foot of clean imported fill/top soil; and submit for DEP's approval a report certifying the implementation of these measures. With the implementation of these measures no significant health risks will be expected to occur as a result of this project.

5. No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable.



Robert Kulikowski, Ph.D.
Assistant to the Mayor, Acting on behalf of the
Office of the Deputy Mayor for Economic Development
And Rebuilding

13 FEB 03

Date

Exhibit C

**SPECIAL PROVISIONS RELATING TO STATE SALES TAX SAVINGS
General Municipal Law, Section 875(1) and (3)**

Section 875. Special provisions applicable to State sales and compensating use taxes and certain types of facilities.

1. For purposes of this Section: "State sales and use taxes" means sales and compensating use taxes and fees imposed by Article twenty-eight or twenty-eight-A of the tax law but excluding such taxes imposed in a City by Section eleven hundred seven or eleven hundred eight of such Article twenty-eight. "IDA" means an industrial development agency established by this Article or an industrial development authority created by the public authorities law. "Commissioner" means the Commissioner of taxation and finance . . .

3. (A) An IDA shall include within its resolutions and project documents establishing any project or appointing an agent or project operator for any project the terms and conditions in this subdivision, and every agent, project operator or other person or entity that shall enjoy State sales and use tax exemption benefits provided by an IDA shall agree to such terms as a condition precedent to receiving or benefiting from such State sales and use exemptions benefits.

(B) The IDA shall recover, recapture, receive, or otherwise obtain from an agent, project operator or other person or entity State sales and use exemptions benefits taken or purported to be taken by any such person to which the person is not entitled or which are in excess of the amounts authorized or which are for property or services not authorized or taken in cases where such agent or project operator. Or other person or entity failed to comply with a material term or condition to use property or services in the manner required by the person's agreement with the IDA. Such agent or project operator, or other person or entity shall cooperate with the IDA in its efforts to recover, recapture, receive, or otherwise obtain such State sales and use exemptions benefits and shall promptly pay over any such amounts to the IDA that it requests. The failure to pay over such amounts to the IDA shall be grounds for the Commissioner to assess and determined State sales and use taxes due from the person under article twenty-eight of the tax law, together with any relevant penalties and interest due on such amounts.

(C) If an IDA recovers, recaptures, receives, or otherwise obtains, any amount of State sales and use tax exemption benefits from an agent, project operator or other person or entity, the IDA shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report of such amount. An IDA commences to recover, recapture, obtain, or otherwise seek the return of, State sales and use tax exemption benefits from an agent, project operator or other person or entity.

(D) An IDA shall prepare an annual compliance report detailing its terms and conditions described in paragraph (A) of this subdivision and its activities and efforts to recover, recapture, receive, or otherwise obtain State sales and use exemptions benefits described in paragraph (B) of this subdivision, together with such other information as the Commissioner and the Commissioner of economic development may require. The report required by this subdivision shall be filed with the Commissioner, the Director of the division of the budget, the Commissioner of economic development, the State Comptroller, the governing body of the municipality for whose benefit the agency was created, and may be included with the Annual financial statement required by paragraph (B) of subdivision one of Section eight hundred fifty-nine of this Title. Such report required by this subdivision shall be filed regardless of whether the

IDA is require to file such financial statements described by such paragraph (B) of subdivision one of Section eight hundred fifty-nine, and the consequences shall be the same as provided in paragraph (E) of subdivision one of such Section eight hundred fifty-nine.

(E) This subdivision shall apply to any amounts of State sales and use tax exemption benefits that an IDA recovers, recaptures, receives, or otherwise obtains, regardless of whether the IDA or the agent, project operator or other person or entity characterizes such benefits revered, recaptures, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The provisions of this subdivision shall also apply to any interest or penalty that the IDA imposes on any such amounts or that are imposed on such amounts by operator of law or by judicial order or otherwise. Any such amounts or payments that an IDA recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be State sales and use taxes and the IDA shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for an on account of the State.