Submitted Without Request
For Oral Argument

APL-2023-00052
Appellate Division Fourth Department Case No. OP 22-00744

Court of Appeals
of the
State of New York

BOWERS DEVELOPMENT, LLC and
ROME PLUMBING & HEATING SUPPLY CO. INC.

Petitioners-Respondents,

– against –

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY and
CENTRAL UTICA BUILDING, LLC,

Respondents-Appellants.

BRIEF OF *AMICUS CURIAE* IROQUOIS HEALTHCARE ASSOCIATION

Lippes Mathias LLP
James A. Shannon, Esq.
Frank J. Fanshawe, Esq.
Attorneys for *Amicus Curiae*
54 State Street, Suite 1001
Albany, NY 12207
Tel.: (518) 462-0110
jshannon@lippes.com
ffranshawe@lippes.com

Dated: August 29, 2023

CORPORATE DISCLOSURE STATEMENT

Pursuant to 22 N.Y.C.R.R. 500.1(f), *Amicus* Iroquois Healthcare Association submits the following Corporate Disclosure Statement:

> The Iroquois Healthcare Association, Inc. is a domestic not-for-profit corporation with no parent entity, but with the following subsidiaries and affiliates:
>
> Subsidiaries: (i) Iroquois Healthcare Consortium, Inc.; and
> (ii) United Iroquois Shared Services, Inc.
>
> Affiliates: (i) Iroquois Healthcare Alliance, Inc.

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PRELIMINARY STATEMENT
(INTEREST OF THE AMICUS)

The Iroquois Healthcare Association, Inc. ("IHA") is a regional healthcare trade organization representing more than 50 hospitals and health systems (ranging from rural, small community safety-net providers to large, academic medical centers) across 32 counties of Upstate New York. With a mission of being a leader to support its members and the communities they serve through advocacy, education, information, cost-saving initiatives and business solutions, IHA provides technical, administrative, advocacy and other services for its members and frequently advocates on behalf of its members on issues of common concern.

With respect to the present litigation, IHA submits this *amicus* brief in order to emphasize the serious negative impact the Appellate Division's decision and adoption of the Petitioners-Respondents ("Petitioners") position in this case could have upon every one of IHA's hospital members. Petitioners ask this Court to imprudently prohibit industrial development agencies ("IDA") from supporting vital development projects whenever such projects relate to a "hospital or healthcare-related facilities" in some manner. In so asking, Petitioners seek to have this Court adopt an unduly restrictive, unreasonable -- and indeed entirely outdated -- interpretation of what constitutes a commercial facility in the context of the statute

that enumerates the purposes of the Onieda County Industrial Development Agency ("OCIDA").

IHA wholeheartedly supports all of the arguments put forth by Respondents-Appellants ("Respondents"), and therefore IHA will refrain from addressing each and every issue raised by Petitioners. Instead, IHA addresses one threshold issue: Whether the Appellate Division, Fourth Department, majority erroneously adopted too narrow of an interpretation of the term "commercial" in the context of General Municipal Law § 858, an interpretation which would prevent the OCIDA -- and any IDA for that matter -- from supporting any development project which relates in some way to a hospital or other healthcare-related facilities. In this brief, IHA advances a common-sense analysis -- one which is consistent with the dissenting opinion below -- that supports a finding by this Court that the applicable law should be construed such that the OCIDA acted properly and within its statutory purposes when it issued a determination condemning the Petitioners' property to develop a commercial facility with the meaning of the law.

STATEMENT OF FACTS

IHA respectfully refers the Court to the principal Joint Brief of Respondents (hereinafter "Resp. Brief") for the statement of facts relevant to this appeal.

ARGUMENT

POINT I

THE PROPOSED ACQUISITION IS CONSISTENT WITH OCIDA'S STATUTORY PURPOSES AND IS NOT BARRED DUE TO THE INCLUSION OF AN AMBULATORY SURGERY CENTER AS A TENANT

In original proceedings under Eminent Domain Procedure Law § 207, "[t]he scope of review is very limited—the Appellate Division must 'either confirm or reject the condemnor's determination and findings,' and its review is confined to whether: (1) the proceeding was constitutionally sound; (2) the condemnor had the requisite authority; (3) its determination complied with SEQRA and EDPL article 2; and (4) the acquisition will serve a public use (EDPL 207 [C])." *In re City of New York*, 6 N.Y.3d 540, 546 (2006). The majority below annulled the OCIDA's determination, holding that the OCIDA lacked the requisite authority to make such a determination under the second factor of the four-factor test set forth in Section 207. In so holding, the majority below erroneously observed that "the primary purpose of the acquisition was not a commercial purpose. Rather, the property was

to be acquired because it was a necessary component of a larger hospital and healthcare facility project."[1] [R.990][2]

The Appellate Division majority, however, fails to cite any authority whatsoever that would support the conclusion that hospitals and healthcare facilities somehow do not constitute commercial facilities under General Municipal Law ("GML) § 858. Petitioners, meanwhile, essentially advance two alternative arguments to support the Appellate Division majority's erroneous decision to strike down the OCIDA's determination. One of Petitioners' flawed arguments is that the OCIDA lacked authority to condemn in this case because GML § 858 -- the section setting forth the IDA's statutory purposes -- does not explicitly reference development projects that involve hospitals and healthcare facilities; and, in the event the Court refuses to agree with that argument, Petitioners advance a second flawed argument which is the Court should uphold the majority decision on the ground that a hospital or healthcare facility is not a commercial facility within the meaning of GML § 858. In advancing their second flawed argument, the Petitioners

[1] The decision fails to specify whether the "larger hospital and healthcare facility project" the majority refers to is the new Wynn Hospital or the medical office building ("MOB") planned for development by Respondent Central Utica Building, LLC ("CUB") and that will be occupied in part by an ambulatory surgery center ("ASC") [*Resp. Brief*, pp. 4-7], but given the specific context of the OCIDA action [R. 5286-5288; 5875-5897], Respondents, like Petitioners, presume for purposes of their arguments here that the majority was referring only to the MOB and ASC [Pet. Brief, pp. 21-24].

[2] References to numbers in brackets preceded by "R" refer to the numbered pages of the Record on Appeal.

rely on two outdated New York State Attorney General Opinions (dated 1980 and 1981, respectively) that simply are not controlling on the issue [Pet. Brief, pp. 20-22]. Petitioners' two arguments should be rejected.

A) Scope of GML § 858

GML § 858 provides in relevant part:

> The purposes of the [IDA] shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research, renewable energy and recreation facilities including industrial pollution control facilities, educational or cultural facilities, railroad facilities, horse racing facilities, automobile racing facilities, renewable energy projects and continuing care retirement communities …

Petitioners assert that the GML § 858 sets forth an exhaustive "list of the only projects" that may be undertaken by IDAs [Pet. Brief, p. 18], and argue that the statute should be interpreted such that the absence of any explicit reference to hospitals or health-related facilities is dispositive of a finding that the OCIDA lacks authority to support a health care-related development project [Pet. Brief, p. 19]. In doing so, Petitioners ignore the obvious, *i.e.* rather than setting forth a narrow exhaustive "list" of projects, GML § 858 instead references broad "categories" of economic endeavors that may be undertaken by IDAs.

Petitioners argue that the statute should be strictly construed [Pet. Brief, p. 22], but fail to recognize that the statute should "not to be construed so literally,

as to defeat the evident purposes of the legislature." *New York & H.R. Co. v. Kip*, 46 N.Y. 546, 546 (1871). Indeed, in Article 18-a (the article that established the IDAs), the legislature expressly declared its intent to confer broad authority on the then newly created IDAs. Namely, the legislature said clearly that:

> It is hereby declared to be the policy of this state to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation, economically sound commerce and industry … through governmental action for the purpose of preventing unemployment and economic deterioration by the creation of industrial development agencies …
>
> GML § 852

It is patently obvious that the IDA's statutory purposes are of the utmost importance and will be severely undermined if this Court adopts an overly restrictive interpretation of the categories set forth in GML § 858. For instance, should the term "manufacturing" in the context of GML § 858 be strictly construed so as to refer to only those types of manufacturing that were prevalent at the time Article 18-a was enacted in 1969? Such a construction would be nonsensical. In 1960, apparel manufacturing was reportedly the second largest private sector industry in terms of employment in New York City (employing 315,000 individuals),[3] but in 2022 the apparel manufacturing industry employed a mere 8,900 employees across the entire

[3] Samuel M. Ehrenhalt and John L. Weiting, *Economic and demographic change: the case of New York City*, U.S. Bureau of Labor Statistics Monthly Labor Review, February 1993, page 44, Table 1, available at: https://www.bls.gov/opub/mlr/1993/02/art4full.pdf.

State.[4] The economic landscape has changed dramatically since 1969. Indeed, needless to say, in 1969 the legislature could not possibly have anticipated the eventual ubiquitous rise of silicon processors,[5] which would -- under Petitioners' restrictive construction approach -- not be considered an enumerated development project that an IDA would be authorized to support when in fact some of this State's largest economic development projects in the past few decades have involved silicon processors.[6]

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[4] Federal Reserve Economic Data, *All Employees: Non-Durable Goods: Apparel Manufacturing in New York*, available at: https://fred.stlouisfed.org/series/SMU36000003231500001A.

[5] *The Story of the Intel 4004*, launched in 1971 and described as the first general-purpose programmable processor, available at: https://www.intel.com/content/www/us/en/history/museum-story-of-intel-4004.html.

[6] Caitlin Morris, *Saratoga County IDA approves $387M tax break for GlobalFoundries projects*, The Saratogian, March 18, 2013, available at: https://www.saratogian.com/2013/03/18/saratoga-county-ida-approves-387m-tax-break-for-globalfoundries-projects/; John Cropley, *GlobalFoundries marks 10th anniversary in Saratoga County*, The Daily Gazette, July 24, 2019, "GlobalFoundries on Wednesday marked the 10th anniversary of the start of construction of Fab 8, its $15 billion computer chip factory where more than 3,000 people now work," available at: https://dailygazette.com/2019/07/24/globalfoundries-marks-10th-anniversary-in-saratoga-county/; David Hill, *Cree gets initial approval for local incentive package*, Daily Sentinel, September 28, 2019, "A local incentive package to help Cree Inc. set up its planned half-billion-dollar silicon carbide fabrication factory in Marcy – and to create more than 600 jobs – has won initial approval without dissent from the Oneida County Industrial Development Agency," available at: https://www.romesentinel.com/news/city/rome/cree-gets-initial-approval-for-local-incentive-package/article_93acb6e9-5623-5d8e-b37b-91e601ed759e.html; Governor Hochul Press Release, October 4, 2022, "Micron, a U.S.-based memory and storage manufacturer and the fourth-largest producer of semiconductors in the world, will invest up to $100 billion over the next 20-plus years to construct the project, with the first phase investment of $20 billion planned by the end of this decade, creating nearly 50,000 jobs statewide," available at: https://www.governor.ny.gov/news/hochul-schumer-mcmahon-announce-micron-coming-onondaga-county-micron-will-invest-unprecedented; Ellen Abbott, *Micron requesting largest tax break in Onondaga County history*, WRVO Public Media, July 19, 2023, "The Onondaga County Industrial Development Agency is considering the largest pilot, or payment in lieu of taxes deal, in county history, as part of the Micron deal," available at: https://www.wrvo.org/business/2023-07-19/micron-requesting-largest-tax-in-onondaga-county-history.

B) The Development Project Involves a Commercial Facility

Regarding GML § 858's reference to the term "commercial," IHA agrees with Respondents that the Appellate Division should have been guided below by its earlier decisions in *Matter of Nearpass v. Seneca County Indus. Dev. Agency*, 152 A.D.3d 1192, 1193 (4th Dept. 2017) and *Matter of Genesee Hosp. v. Wagner*, 47 A.D.2d 37 (4th Dept. 1975), *aff'd* 39 N.Y.2d 863 (1976). It is hard to fathom how the project in this case -- the development of a building by a for-profit entity, for rental of space to individuals or entities providing services to the public for payment -- does not in the first instance represent a commercial facility. If this Court were to so hold, it would be contrary to long-standing precedent that holds such a project is the type that IDAs are authorized to support. *See Sun Co. (R & M) v. City of Syracuse Indus. Dev. Agency*, 209 A.D.2d 34, 45 (4th Dept. 1995)("As noted, different projects have already been undertaken in the redevelopment area, including Franklin Square (**office buildings** and residential units) and Carousel Center."); *Fagliarone, Grimaldi & Assocs. v. Tax Appeals Tribunal*, 167 A.D.2d 767, 768 (3rd Dept. 1990)("Previously, petitioner had arranged with the Syracuse Industrial Development Agency (hereinafter SIDA) for issuance of an industrial development bond (hereinafter IDB) to cover the costs of renovating the property into modern **commercial office space**."); *St. Francis Hosp. v. Taber*, 76 A.D.3d 635, 637 (2d Dept. 2010)("Pursuant to a 1999 ground lease with St. Francis [Hospital],

Columbia SHF Group, LLC (hereinafter Columbia), **constructed a medical office building, known as the Atrium**, on a parcel of St. Francis's property adjacent to the hospital building. As provided in the ground lease, a portion of the Atrium parcel was subleased by Columbia to private physician tenants, and a portion was leased back to St. Francis for hospital use. … The hospital building itself is exempt from real property taxation pursuant to RPTL 420–a and, with respect to the Atrium, Columbia makes certain "Payments in Lieu of Taxes" (hereinafter PILOT) pursuant to a PILOT agreement with the Dutchess County Industrial Development Agency.")[bolding added][7] Indeed, the *St. Francis Hospital* decision holds that "the private practice of medicine by a hospital's attending physicians is primarily a commercial enterprise." *Id*. at 640.

The majority below appears to say that the MOB cannot be considered a commercial facility because one of the proposed tenants (*i.e.* Mohawk Valley ASC, LLC) -- which will occupy less than 30% of the total MOB space [R. 5370] -- transforms the MOB from being a commercial facility into a hospital or healthcare facility -- which, according to the majority below, are not commercial facilities

[7] *See also* New York State Comptroller Report, *Performance of Industrial Development Agencies in New York State*: 2023 – City of Syracuse IDA project to turn a vacant building into a mix of commercial and retail space and apartments [https://www.osc.state.ny.us/files/local-government/publications/pdf/ida-performance-report-2023.pdf]; 2022 – NYC IDA for construction of a $2.4 billion commercial office tower that is part of the Hudson Yards development, Town of Hempstead project for development of commercial and residential rental property [https://www.osc.state.ny.us/files/local-government/publications/pdf/performance-of-idas-in-nys-2022-annual-report.pdf].

within the context of GML § 858. If the overall MOB project is a commercial facility, it seems odd in the extreme that the Appellate Division considers the characteristics of just one tenant, that pays rent like any other and uses only a minority of the available space, to transform the entire MOB from a commercial facility to a hospital or health-care facility.[8] That is simply illogical. For instance, under such flawed reasoning, if the ASC tenant vacated the premises in five years, would the MOB then be transformed back to a commercial facility? What would the effect of such a transformation be? Would the OCIDA at that point be authorized to provide development assistance to the MOB? The legislature never intended for the economic development IDA law to function in such an economically inefficient manner.

Moreover, it is illogical that the mere presence of an ASC as a tenant would impact the status of the MOB as a commercial facility for another reason: ASCs are commercial enterprises within the meaning of GML § 858. A 2022 article in Healthcare Finance reports that:

> ASCs continue to perform more than half of all U.S. outpatient surgical procedures, and they can expect to see greater volumes as the number of outpatient procedures increase by an estimated 15% by 2028, according to Fortune Business Insights. … The reason for the increase in ASC growth is cost, according to Kemal Erkan, chairman of the board at the American Surgery Center and CEO of United Medical, an

[8] Amicus IHA concurs with Respondents that the Appellate Division inaccurately uses the term "health-related facility" in this matter, as neither the MOB nor the ASC have any connection to a facility of that type as defined under 10 N.Y.C.R.R. § 700.2(4).

> ACO platform which he owns. An average gallbladder surgery costs $12,000 when done at a hospital while the same procedure costs $2,200 at the surgery center, according to Erkan. … The United States ambulatory surgical centers market size is estimated to reach $58.85 billion by 2028, according to the Fortune Business Insights report. The market value reached $34.73 billion in 2020 and rose to $36.96 billion in 2021.[9]

The number of people employed in health care and social assistance in New York State between 1990 and 2022 has nearly doubled from 841,600 to 1,641,600.[10] In other words, ASCs have a significant impact on the State's economy, including by promoting employment, which is directly in line with the IDA purposes as set forth in GML § 858. Simply put, ASCs are commercial enterprises within the meaning of GML § 858.

C) Attorney General Opinions

Petitioners also rely heavily on the 1980 and 1981 Attorney General Opinions in support of their argument that GML § 858 projects may not include those related to "hospitals or other health-related facilities" [Pet. Brief, pp. 20-21].[11] Those

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[9] Healthcare Finance, *Ambulatory surgery centers compete with hospitals for outpatient dollars*, August 17, 2022, available at: https://www.healthcarefinancenews.com/news/ambulatory-surgery-centers-compete-hospitals-outpatient-dollars#:~:text=Ambulatory%20surgical%20centers%20are%20gaining,according%20to%20Fortune%20Business%20Insights.

[10] Federal Reserve Economic Data, *All Employees: Health Care and Social Assistance in New York*, available at: https://alfred.stlouisfed.org/series?seid=SMU36000006562000001A.

[11] IHA respectfully refers to the Court to Respondents' Joint Brief at pages 28-29 and Reply brief at pages 3 & 10 to address the apparent confusion of the Appellate Division and Petitioners when referring to various derivations of "healthcare-related facilities" and "healthcare facility" [R.990; Pet. Brief, pp. 1, 20-21].

outdated opinions are neither controlling nor persuasive in this case.

As the Court of Appeals noted in *Am. Tel. & Tel. Co. v. State Tax Comm'n*, 61 N.Y.2d 393, 404 (1984), "an opinion of the Attorney-General is an element to be considered but is not binding on the courts (*Ferraiolo v. O'Dwyer*, 302 N.Y. 371, 376, 98 N.E.2d 563; *Matter of Fertig v. Caso*, 49 A.D.2d 573, 370 N.Y.S.2d 176; *McKinney's Cons.Laws of N.Y.*, Book 1, Statutes, § 129, subd. b)." Even so, Petitioners' reliance on the Attorney General's analysis is fundamentally flawed and should not be used as persuasive authority either.

In the 1980 Attorney General Opinion, the Attorney General responded to the question "whether nursing homes and other health-related facilities are among those that industrial development agencies may assist."[C.1][12] There, the Attorney General -- without citing any explicit authority -- notes the absence of any recorded discussion by the legislature during original enactment about whether IDAs may assist hospital and healthcare facilities and the lack of subsequent amendments to expressly allow such assistance, as support for its now-outdated conclusion that:

> … the general thrust of Article 18-A – that is, that it is primarily designed to assist commerce and industry in the traditional understanding of that phrase … [i]t is obvious that a nursing home or other health-related facility can be drawn into the grant of power only under the umbrella of the word "commercial". The legislative history set forth above is devoid of even a hint that "commercial" is to be read so broadly [C.1].

[12] References to numbers in brackets preceded by "C" refer to the numbered pages of the Compendium of Authorities Cited in Respondents' Joint Brief.

The Attorney General reached the same conclusion in another non-binding opinion in 1981 when addressing a similar question.

The commercial landscape, however, has changed dramatically since the Attorney General issued its opinions long ago in 1980 and 1981. In fact, in the early 1980s, all general hospitals and most nursing homes[13] were primarily operated by local governments or non-profit organizations. A 2018 report by the Empire Center for Public Policy notes that "[d]ue in large part to its ownership restrictions, New York is one of only a handful of states, and by far the largest, without a single for-profit hospital."[14] The ownership restrictions are found at Public Health Law Section 2801-a(d), (e) and (f). With respect to nursing homes, a 2013 study by the Center for Governmental Research determined that at that time non-profit organizations and/or government entities operated 51% of the nursing home facilities and that was after an 11% decline in the number of non-profit operators of nursing homes and a 20% decline in the number of government operators of nursing homes since 2001.[15]

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[13] Pursuant to Public Health Law § 2801(1) a "hospital" is defined to include both a nursing home and a general hospital (*c.f.* Public Health Law § 2801(10) for the definition of a general hospital).

[14] Empire Center for Public Policy, *Profit Potential, Revisiting New York's Restrictive Hospital Ownership Laws*, May 2018, page 6, available at: https://www.empirecenter.org/wp-content/uploads/2018/05/Hospital-Ownership_May-2018_FINAL.pdf; Note: the report is referring to general hospitals and points out that a handful of for-profit psychiatric hospitals operate in New York.

[15] Center for Governmental Research, *The Future of County Nursing Homes in New York State*, August 2013, page 30, available at: https://www.cgr.org/NY-county-nursing-homes/docs/FutureofNursingHomes_NYS.pdf.

It is not surprising, therefore, that -- way back in the early 1980s -- the Attorney General concluded that hospitals and other health care facilities -- the vast majority of which were then operated by government or non-profit organizations -- were incompatible with the understanding of what constituted commercial facilities within the meaning of GML § 858. The Attorney General could not possibly have known or even contemplated in its opinions that -- in the next century -- for-profit enterprises that pay taxes, employ people, drive innovation and otherwise stimulate economic activity -- like Respondent CUB -- would become such a large part of the health care landscape in New York State. Hospitals and healthcare facilities, unlike in the 1980s, are now commercial enterprises that are an integral part of the State's economic fabric. For this reason alone, the Court should decline to follow the misguided conclusions of the Attorney General opinions.

The 1981 Attorney General Opinion is inapplicable to this case for another reason. In that opinion, the Attorney General responded to the question "whether hospitals as defined in Section 2801(1) of the Public Health Law are among the facilities that may be assisted by industrial development agencies." [C.3] After repeating essentially the same analysis as in its 1980 Opinion, the Attorney General found another reason to support its conclusion that IDAs somehow lacked authority to assist all hospitals. Specifically, the Attorney General said:

> We note also that simultaneously with the enactment of the industrial development agency law, Article 28-B, the Hospital Mortgage Loan

> Construction Law, was added to the Public Health Law (L 1969, ch 1035. The Governor approved the two bills on the same day). Article 28-B was designed to provide financial assistance to hospitals. It seems unlikely that a Legislature would simultaneously provide two sources of financial assistance for hospitals, one source denominated for hospitals, the other denominated for industrial development [C.4].

Importantly, the Attorney General's conclusion is predicated on a flawed analysis. Since its enactment in 1969, the Hospital Mortgage Loan Construction Law ("HMLC") defined an "eligible borrower" as "A **non-profit** hospital corporation…."[16] [bolding added] This means that for-profit hospitals -- such as Respondent CUB -- were not eligible borrowers under the HMLC law. The Attorney General missed that critical point in its opinion. Thus, the Attorney General was wrong to conclude that all hospitals would be eligible for financing under both the IDA law and the HMLC law if it were to conclude that IDAs were authorized to provide financial assistance to all hospitals. That was not so. To the contrary, the legislature was clear in 1969 when it passed the IDA law and HMLC law: for-profit hospitals such as ASCs would be eligible to obtain assistance from the IDAs while non-profit hospitals would be eligible to obtain such assistance under the HMLC law. That is the correct statutory construction. Any other conclusion would leave

[16] *See* Public Health Law § 2872(3). A copy of Chapter 1035 of the Laws of 1969, received from the New York State Library Reference Services on August 9, 2023, is provided as Exhibit A to the accompanying Affirmation of James A. Shannon. The law was subsequently amended to also include non-profit medical corporations.

for-profit entities with no means of obtaining financial assistance under the two 1969 legislative acts, which result the legislature could not have intended when it passed these measures to drive widespread economic development. Under these circumstances, the Court also should decline to follow the Attorney General's erroneous interpretation of the IDA and HMLC laws.

CONCLUSION

For all of the foregoing reasons, IHA urges the Court to reverse the majority decision of the Appellate Division, Fourth Department.

Dated: Albany, New York
August 29, 2023

Respectfully submitted,

LIPPES MATHIAS LLP

By: 

James A. Shannon
Frank J. Fanshawe
Attorneys for Amicus Curiae
Iroquois Healthcare Association
54 State Street, Suite 1001
Albany, New York 12207
Tel.: (518) 462-0110
jshannon@lippes.com
ffanshawe@lippes.com

CERTIFICATE OF COMPLIANCE

Pursuant to the State of New York, Court of Appeals Rules of Practice, 22 N.Y.C.R.R. §§ 500.1(j) and 500.13(c)(l), I certify that the foregoing brief was prepared on a word processor, using 14-point Times New Roman proportionally spaced typeface, double-spaced, with 12-point single-spaced footnotes and 14-point single-spaced block quotations. The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the disclosure statement, table of contents, table of authorities and certificate of compliance is 3,965.

Dated: Albany, New York
August 29, 2023

James A. Shannon
Attorney for Amicus Curiae

COURT OF APPEALS
STATE OF NEW YORK

BOWERS DEVELOPMENT, LLC and ROME PLUMBING & HEATING SUPPLY CO. INC. *Petitioners-Respondents,* - Against - **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY and CENTRAL UTICA BUILDING, LLC,** *Respondents-Appellants.*	**APL-2023-00052** Appellate Division Fourth Department Case No. OP 22-00744 **AFFIDAVIT OF SERVICE BY OVERNIGHT COURIER**

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

SAMANTHA J. MERRY, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age and reside at 1361 Main Street, Rotterdam Junction, NY 12150.

That on the 29th day of August 2023, I served the following items:

1. One (1) copy of the Notice of Motion, returnable September 11, 2023, and the annexed Affirmation of James A. Shannon dated August 29, 2023, with Exhibit A thereto; and
2. Three (3) copies of the proposed *Amicus Curiae* brief of Iroquois Healthcare Association, Inc.

upon the following persons by tendering same in a secured, properly addressed, postpaid envelope to United Parcel Service ("UPS") for standard overnight delivery service:

Michael A. Fogel, Esq.
FOGEL & BROWN, P.C.
Attorneys for Petitioners-Respondents
120 Madison Street, Suite 1620
Syracuse, New York 13202

Paul J. Goldman, Esq.
GOLDMAN ATTORNEYS PLLC
Attorneys for Respondent-Appellant
Oneida County Industrial Development Agency
255 Washington Avenue Extension, Suite 108
Albany, New York 12205

Laura L. Spring, Esq.
COHEN COMPAGNI BECKMAN
APPLER KNOLL PLLC
Attorneys for Respondent-Appellant
Central Utica Building, LLC
507 Plum Street, Suite 310
Syracuse, New York 13204

Samantha J. Merry

Sworn to before me this
29th day of August, 2023

Notary Public

Michele M Korkemaz
Notary Public, State of New York
Qualified in Saratoga County
No. 01KO4911062
Commission Expires November 2, 2025