
TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY

AND

SUTTON PLACE PRESERVATION LIMITED PARTNERSHIP

UNIFORM AGENCY PROJECT AGREEMENT

DATED AS OF SEPTEMBER 1, 2022

RELATING TO FINANCIAL ASSISTANCE GRANTED BY TOWN
OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY WITH
RESPECT TO A CERTAIN PROJECT LOCATED AT 113 TRAVERS
BOULEVARD IN THE TOWN OF AMHERST, NEW YORK.

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and is for convenience of reference only.)

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UNIFORM AGENCY PROJECT AGREEMENT

THIS UNIFORM AGENCY PROJECT AGREEMENT dated as of September 1, 2022 (the “Uniform Agency Project Agreement”) by and between TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at 4287 Main Street, Amherst, New York (the “Issuer”) and SUTTON PLACE PRESERVATION LIMITED PARTNERSHIP, a limited partnership duly organized and validly existing under the laws of the State of New York having an office for the transaction of business located at 401 Wilshire Boulevard – Suite 1070, Santa Monica, California (the “Company”);

WITNESSETH:

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

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of 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, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Issuer was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 579 of the 1973 Laws of New York, as amended, constituting Section 914-a of the General Municipal Law (collectively, with the Enabling Act, the “Act”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, this Uniform Agency Project Agreement is being entered into by the parties hereto in connection with the issuance by the Issuer of its Multifamily Housing Revenue Bonds (Sutton Place Preservation Limited Partnership Project), Series 2022 in the aggregate principal amount of \$45,000,000 (the “Series 2022 Bonds”), the proceeds of which will be used to finance a portion of the costs of the Project (as defined herein); and

WHEREAS, on January 4, 2022, the Company submitted an application (the “Application”) to the Issuer, a copy of which Application is on file at the office of the Issuer, which Application requested that the Issuer consider undertaking a project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of a leasehold interest in a portion of approximately 21.77 acres of land located at 113 Travers Boulevard in the Town of Amherst, New York (the “Land”), (2) the acquisition, reconstruction and renovation of twenty-four (24) existing two-story facilities consisting of 246 apartment units and containing approximately 213,100 square feet in the aggregate

known as the Sutton Place Apartments located on the Land (the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (the “Equipment”) (the Land, the Facility and the Equipment being collectively referred to hereinafter as the “Project Facility”), all of the foregoing to constitute a low-income housing facility to be operated by the Company and leased to residential tenants, and any other directly and indirectly related activities; (B) the financing of all or a portion of the costs of the foregoing by the issuance of the Series 2022 Bonds; (C) the payment of a portion of the costs incidental to the issuance of the Series 2022 Bonds, including issuance costs of the Series 2022 Bonds and any reserve funds as may be necessary to secure the Series 2022 Bonds; (D) the granting of certain other “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemption from certain sales taxes and deed transfer taxes; and (E) the lease (with an obligation to purchase) or sale of the Project Facility to Sutton Place Housing Development Fund Company, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York (the “HDFC” and together with the Company, the “Owner”), as nominee for and on behalf of the Company, or such other person as may be designated by the Company and agreed upon by the Issuer; and

WHEREAS, the Chief Executive Officer of the Issuer (A) caused notice of the public hearing of the Issuer (the “Public Hearing”) pursuant to Section 859-a(2) of the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), to hear all persons interested in the Project and the financial assistance being contemplated by the Issuer with respect to the Project, to be published on March 23, 2022 in the Amherst Bee, a newspaper of general circulation available to the residents of the Town of Amherst, Erie County, New York, (B) caused notice of the Public Hearing to be mailed on March 18, 2022 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is (or will be) located, (C) conducted the Public Hearing remotely on April 7, 2022 at 8:30 o’clock a.m., local time via Zoom as part of a meeting of the Executive Committee of the Issuer and (D) prepared a report of the Public Hearing (the “Public Hearing Report”) which fairly summarized the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Issuer and to the Town Board (the “Town Board”) of the Town of Amherst, New York (the “Town”); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Issuer on April 29, 2022 (the “SEQR Resolution”), the Issuer determined (A) that pursuant to Sections 617.5(c)(2) of the Regulations, the Project is a “Type II action” (as said quoted term is defined in the Regulations), and (B) that, therefore, no environmental impact statement or any other determination or procedure was required under the Regulations; and

WHEREAS, by resolution adopted by the members of the board of directors of the Issuer on April 29, 2022 (the “Bond Resolution”), the members of the Issuer (A) authorized the circulation of a preliminary official statement (the “Preliminary Official Statement”) in connection with the marketing of the Series 2022 Bonds and (C) authorized the issuance of the Series 2022 Bonds; and

WHEREAS, by a resolution adopted by the Town Board on May 23, 2022 (the “Public Approval”), the Town Board approved the issuance of the Series 2022 Bonds for purposes of Section 147(f) of the Code; and

WHEREAS, pursuant to Section 146 of the Code, the Issuer was awarded allocations of private activity bond volume cap in the aggregate amount of \$45,000,000 for calendar year 2022 (“Volume Cap”) and intends to use the Volume Cap to support the issuance of the Series 2022 Bonds; and

WHEREAS, the Series 2022 Bonds will be issued pursuant to the Bond Resolution and a trust indenture dated as of September 1, 2022 (the “Indenture”) by and between the Issuer and Zions Bancorporation, National Association, as trustee (the “Trustee”); and

WHEREAS, (A) the Issuer has established certain policies allowing denial of Financial Assistance (as defined herein) to any project which does not deliver the public benefits promised at the time said project was approved by the Issuer (the “Public Benefits”), (B) the Issuer is unwilling to grant Financial Assistance to a project unless the beneficiary of such project agrees that the amount of Financial Assistance to be received by such beneficiary with respect to such project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of such project in delivering the promised Public Benefits, and (C) the Issuer has created this Uniform Agency Project Agreement in order to establish the conditions under which the Issuer will be entitled to recapture some or all of the Financial Assistance that has been granted to the Company under the Financing Documents (as defined herein) if the Project is unsuccessful in whole or in part in delivering the promised Public Benefits; and

WHEREAS, the Company desires to receive certain Financial Assistance from the Issuer with respect to the Project, and accordingly is willing to enter into this Uniform Agency Project Agreement in order to secure such Financial Assistance from the Issuer; and

WHEREAS, all things necessary to constitute this Uniform Agency Project Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Uniform Agency Project Agreement have in all respects been duly authorized by the Issuer and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS TO WIT:

ARTICLE I
DEFINITIONS

SECTION 1.01. DEFINITIONS. All capitalized terms used herein and not otherwise defined herein shall have the same meanings as set forth in the Indenture. The following words and terms used in this Uniform Agency Project Agreement shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent.

“Application” means the application submitted by the Company to the Issuer in January, 2022 with respect to the Project, a copy of which is attached as Schedule C, in which the Company (A) described the Project, (B) requested that the Issuer grant certain Financial Assistance with respect to the Project, and (C) indicated the Public Benefits that would result from approval of the Project by the Issuer.

“Completion Date” means the earlier to occur of (A) July 1, 2024 or (B) such date as shall be certified by the Company to the Issuer as the date of completion of the Project pursuant to Section 4.4 of the Installment Sale Agreement.

“Contract Employee” means (A) a full-time, private-sector employee (or self-employed individual) that is not on the Company’s payroll but who has worked for the Company at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee, or (B) 2 part-time, private-sector employees (or self-employed individuals) that are not on the Company’s payroll but who have worked for the Company at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee.

“Employment Level” shall have the meaning set forth in Section 3.02(E) of this Uniform Agency Project Agreement.

“Equipment” shall have the meaning set forth in the Indenture.

“Facility” shall have the meaning set forth in the Indenture.

“Financial Assistance” means exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes as more particularly described in the Financing Documents.

“Financing Documents” shall have the meaning set forth in the Indenture, and includes this Uniform Agency Project Agreement.

“Full Time Equivalent Employee” means (A) a full-time, permanent, private-sector employee on the Company’s payroll, who has worked at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (B) two part-time, permanent, private-sector employees on Company’s payroll, who have worked at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (C) a Contract Employee.

For purposes of this Uniform Agency Project Agreement and satisfaction of the Employment Levels, the total number of Full Time Equivalent Employees will be calculated as follows: (1) using the definition of Full Time Equivalent Employee immediately above, determine the number of Full Time Equivalent Employees working at the Project Facility, (2) determine the total hours worked by such Full Time Equivalent Employees (including overtime hours), and (3) divide the total amount of hours worked by the Full Time Equivalent Employees by 35.

By way of example, if the Company employees 65 Full Time Equivalent Employees at the Project Facility, each of the Full Time Equivalent Employees works 40 regular hours per week, and total overtime in a given week is equal to 50 hours, the equation referenced in the paragraph above would be calculated as follows:

$$65 \text{ (FTE)} \times 40 \text{ (Regular Hours)} = 2600 + 50 \text{ (Overtime Hours)} = 2650 \text{ (Hours)}$$
$$2650 \text{ (Hours)} / 35 = 74.29 \text{ (FTE)}$$

“Initial Employment Plan” means the initial plan, based on the employment projections contained in the Application, regarding the number of people expected to be employed at the Project Facility and certain other matters, in substantially the form attached as Schedule E to this Uniform Agency Project Agreement.

“Installment Sale Agreement” means the installment sale agreement dated as of September 1, 2022 by and among the Issuer, as Issuer, the Company and the HDFC, pursuant to which, among other things, the Issuer has agreed to sell the Issuer’s leasehold interest in the Land and the Facility to the Owner and the Issuer’s fee interest in the Equipment to the Company, as said installment sale agreement may be amended or supplemented from time to time.

“Land” means an approximately 21.77 acre parcel of land located at 113 Travers Boulevard in the Town of Amherst, New York.

“Project” shall have the meaning set forth in the Indenture.

“Project Facility” means, collectively, the Land, the Facility, and the Equipment.

“Recapture Events” shall mean the following:

(1) failure to complete the acquisition, construction, and installation of the Project Facility;

(2) failure by the Company to meet at least eighty percent (80%) of the Employment Level requirements contained in Section 3.02(E) hereof and in the Application or Initial Employment Plan;

(3) liquidation of substantially all of the Company’s operating assets and/or cessation of substantially all of the Company’s operations;

(4) relocation of all or substantially all of Company’s operations at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility;

(5) transfer of jobs equal to at least fifteen percent (15%) of the Company’s Employment Level out of the Town of Amherst, New York;

(6) failure by the Company to comply with the annual reporting requirements or to provide the Issuer with requested information;

(7) sublease of all or part of the Project Facility in violation of the Financing Documents;

(8) a change in the use of the Project Facility, other than as low-income housing facility and other directly and indirectly related uses; or

(9) failure by the Company to make an actual investment in the Project by the Completion Date equal to or exceeding 90% of the Total Project Costs as set forth in the Application.

“Recapture Period” means period ending on February 1, 2026; *provided*, however, that if the Series 2022 Bonds are redeemed or tendered on an Optional Redemption Date or a Mandatory Tender Date (as such terms are defined in the Indenture) pursuant to the Indenture, the Recapture Period shall end on such date.

“Uniform Agency Project Agreement” means this uniform agency project agreement dated as of September 1, 2022 by and between the Issuer and the Company.

SECTION 1.2. INTERPRETATION. In this Uniform Agency Project Agreement, unless the context otherwise requires:

(A) the terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms as used in this Uniform Agency Project Agreement, refer to this Uniform Agency Project Agreement, and the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of this Uniform Agency Project Agreement;

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) words importing the singular number shall mean and include the plural number, and vice versa;

(D) any headings preceding the texts of the several Articles and Sections of this Uniform Agency Project Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Uniform Agency Project Agreement nor affect its meaning, construction or effect; and

(E) any certificates, letters or opinions required to be given pursuant to this Uniform Agency Project Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Uniform Agency Project Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.01. REPRESENTATIONS OF AND WARRANTIES BY THE ISSUER. The Issuer does hereby represent, warrant, and covenant as follows:

(A) Power. The Issuer is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State to enter into this Uniform Agency Project Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement.

(B) Authorization. The Issuer is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Uniform Agency Project Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement. By proper corporate action on the part of its members, the Issuer has duly authorized the execution, delivery, and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Issuer is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Issuer is a party or by which the Issuer is bound.

SECTION 2.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant, and covenant as follows:

(A) Power. The Company is limited partnership duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State and has the power under the laws of the State of New York to enter into this Uniform Agency Project Agreement and to perform and carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement, and by proper action on the part of the partners of the Company has been duly authorized to execute, deliver and perform this Uniform Agency Project Agreement.

(B) Authorization. The Company is authorized and has the power under its certificate of limited partnership, partnership agreement and the laws of the State to enter into this Uniform Agency Project Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement. By proper action of its partners, the Company has duly authorized the execution, delivery, and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement by (and the execution, delivery and performance of this Uniform Agency Project Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Uniform Agency

Project Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its certificate of limited partnership, operating agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Uniform Agency Project Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) 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 of the foregoing, and this Uniform Agency Project Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery, or performance of this Uniform Agency Project Agreement by the Company or as a condition to the validity of this Uniform Agency Project Agreement.

ARTICLE III

COVENANTS AND AGREEMENTS

SECTION 3.01. FINANCIAL ASSISTANCE. (A) Financial Assistance. In the Application or Initial Employment Plan, the Company certified to the Issuer employment information with respect to the Project Facility, and the operations of the Company. In reliance on the certifications provided by the Company in the Application or Initial Employment Plan, the Issuer agrees to provide the Company with the following Financial Assistance related to the Project:

- (1) sales and use tax exemptions (estimated): \$787,500.00
- (2) a mortgage recording tax exemption (estimated): \$117,500.00

(B) Description of Project and Public Purpose of Granting Financial Assistance to the Project. In the Application and in the discussions had between the Company and the Issuer with respect to the Company's request for Financial Assistance from the Issuer with respect to the Project, the Company has represented to the Issuer as follows:

(1) That the Project is described as follows: (1) the acquisition of a leasehold interest in a portion of approximately 21.77 acres of land located at 113 Travers Boulevard in the Town of Amherst, New York (the "Land"), (2) the acquisition, reconstruction and renovation of twenty-four (24) existing two-story facilities consisting of 246 apartment units and containing approximately 213,100 square feet in the aggregate known as the Sutton Place Apartments located on the Land (the "Facility") and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to hereinafter as the "Project Facility"), all of the foregoing to constitute a low-income housing facility to be operated by the Company and leased to residential tenants, and any other directly and indirectly related activities.

(2) That the Project will furnish the following benefits to the residents of the Town of Amherst, New York (the "Public Benefits").

(C) Contingent Nature of the Financial Assistance. Notwithstanding the provisions of Section 3.01(A) of this Uniform Agency Project Agreement, the Issuer and the Company agree that the amount of Financial Assistance to be received by the Company with respect to the Project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of the Project in delivering the promised Public Benefits.

(D) Application. The Company represents and warrants that the information contained in the Application is true and correct.

SECTION 3.02. COMPANY AGREEMENTS. The Company hereby agrees as follows:

(A) Filing – Closing Date. To file with the Issuer, prior to the Closing Date, an initial employment plan, based on the employment projections contained in the Application, regarding the number of people expected to be employed at the Project Facility and certain other matters, in substantially the form attached hereto as Schedule E.

(B) Filing – Annual. To file with the Issuer, on an annual basis during the Recapture Period, within sixty (60) days after the end of each calendar year, a report regarding the number of people employed at the Project Facility and certain other matters as required under Applicable Law, an annual status report (the “Annual Status Report,” in substantially the form attached hereto as Schedule D).

(C) Employment Listing. To list new employment opportunities created as a result of the Project with the following entities (hereinafter, the “JTPA Entities”): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)).

(D) Employment Consideration. Except as otherwise provided by collective bargaining agreement, the Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(E) Employment Level. (1) To maintain, as described in the Application or Initial Employment Plan, the following employment level (the “Employment Level”) during the term of this Uniform Agency Project Agreement, beginning no later than one (1) year after the Completion Date:

Year	Total Employees
2022	5 Full Time Equivalent Employees
2023 and thereafter	5 Full Time Equivalent Employees

(2) (a) To verify that the Employment Level is being achieved at the Project Facility and the information contained in the Annual Status Report, the Company is required to submit, or cause to be submitted, within sixty (60) days after the end of each calendar year: a form NYS-45 as of the last payroll date in the month of December (the “Quarterly Report,” a copy of which is attached hereto as Schedule A and, together with the Annual Status Report described in Section 3.02(B) above, being collectively referred to as the “Employment Affidavits”) or some other form that is explicitly approved by the Issuer. Full Time Equivalent Employees for each calendar year during the term of this Uniform Agency Project Agreement shall be the number reported in the Employment Affidavits delivered by the Company pursuant to Section 3.02(B) and this Section 3.02(E)(2).

(b) In the event that some or all of the Full Time Equivalent Employees employed at the Project Facility constitute Contract Employees, it shall be the responsibility of the Company to deliver, or cause to be delivered, the Quarterly Reports of the employers relating to such Contract Employees. The Company hereby agrees to provide such Quarterly Reports in accordance with the terms contained in Section 3.02(E)(2)(a) above.

(F) Non-Discrimination. (1) At all times during the term of this Uniform Agency Project Agreement, the Company shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Company shall use commercially reasonable efforts to ensure that employees and applicants for employment with the Company or any subtenant of the Project Facility are treated without regard to their race, color, creed, age, sex, or national origin. As used herein, the term “treated” shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of

compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(2) The Company agrees that, in all solicitations or advertisements for employees placed by or on behalf of the Company during the term of this Uniform Agency Project Agreement, the Company will state in substance that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

(G) Information. Whenever requested by the Issuer, to provide and certify or cause to be provided and certified by third party vendors, such information concerning the Company, its finances and other topics as the Issuer from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Issuer to verify and confirm the reports submitted by the Company pursuant to this Uniform Agency Project Agreement.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

SECTION 4.01. EVENTS OF DEFAULT DEFINED. (A) The following shall be “Events of Default” under this Uniform Agency Project Agreement, and the terms “Event of Default” or “default” shall mean, whenever they are used in this Uniform Agency Project Agreement, any one or more of the following events:

- (1) A material default in the performance or observance of any of the covenants, conditions or agreements on the part of the Company in this Uniform Agency Project Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Issuer to the Company, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.
- (2) The occurrence of an “Event of Default” under any other Financing Document.
- (3) Any representation or warranty made by the Company herein or in any other Financing Document proves to have been false, in any material respect, at the time it was made.

SECTION 4.02. REMEDIES ON DEFAULT. (A) Whenever any Event of Default hereunder shall have occurred, the Issuer may, to the extent permitted by law, take any one or more of the following remedial steps:

- (1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3(A) of the Installment Sale Agreement, and (b) all other payments due under this Uniform Agency Project Agreement (other than any recaptured Project Financial Assistance (as defined herein) unless such Event of Default is also a Recapture Event occurring during the Recapture Period) or any of the other Financing Documents; or
- (2) terminate the Installment Sale Agreement and convey to the Owner all the Issuer’s right, title and interest in and to the Project Facility (the conveyance of the Issuer’s right, title and interest in and to the Project Facility shall be effected by the delivery by the Issuer of the Termination of Lease to Issuer. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title); or
- (3) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements, or covenants of the Company under this Uniform Agency Project Agreement.

(B) No action taken pursuant to this Section 4.02 (including repossession of the Project Facility) shall relieve the Company from its obligations to make any payments required by this Uniform Agency Project Agreement and the other Financing Documents.

SECTION 4.03. RECAPTURE OF FINANCIAL ASSISTANCE. (A) General. Upon the occurrence of a Recapture Event that occurs during the Recapture Period, the Issuer may require the Company to provide for the recapture of the Financial Assistance (excluding the Series 2022 Bonds) provided as of the date of

determination (the "Project Financial Assistance"), all in accordance with the terms of this Section 4.03. The Company hereby agrees, if requested by the Issuer, to pay within thirty (30) days to the Issuer the recapture of the Project Financial Assistance, as provided in this Section 4.03.

(B) Redistribution of Project Financial Assistance to be Recaptured. Upon the receipt by the Issuer of any amount of Project Financial Assistance pursuant to this Section 4.03, the Issuer shall redistribute such amount within thirty (30) days of such receipt to the taxing entity that would have received such amount but for the granting by the Issuer of the Project Financial Assistance.

(C) Survival of Obligations. The Company acknowledges that the obligations of the Company in this Section 4.03 shall survive the conveyance of the Project Facility to the Company and the termination of the Installment Sale Agreement.

(D) Issuer Review of Recapture Determination. The Issuer's determination to recapture all or a portion of the Project Financial Assistance shall be made by the Issuer after an evaluation of the criteria for recapture set forth in the Issuer's "Policy for Recapture and/or Termination of Financial Assistance" as in effect as of the Closing Date (a copy of which policy is attached hereto as Schedule B). If the Issuer determines that a Recapture Event has occurred, it shall give notice of such determination to the Company. The Company shall have thirty (30) days from the date the notice is deemed given to submit a written response to the Issuer's determination and to request a written and/or oral presentation to the Issuer why the proposed recapture amount should not be paid to the Issuer. The Company may make its presentation at a meeting of the Issuer. The Issuer shall then vote on a resolution recommending (i) a termination of Financial Assistance, (ii) a recapture of Financial Assistance, (iii) both a termination and a recapture of Finance Assistance, (iv) a modification of Financial Assistance or (v) no action.

SECTION 4.04. LATE PAYMENTS. (A) One Month. If the Company shall fail to make any payment required by this Uniform Agency Project Agreement within thirty (30) days of the date that written notice of such payment is sent from the Issuer to the Company at the address provided in Section 5.05 of this Uniform Agency Project Agreement, the Company shall pay the amount specified in such notice together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Uniform Agency Project Agreement when due and such delinquency shall continue beyond the thirty (30) days after such notice, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the Issuer until such payment in default shall have been made in full, and the Company shall pay the same to the Issuer together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

SECTION 4.05. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. If the Company should default in performing any of its obligations, covenants or agreements under this Uniform Agency Project Agreement and the Issuer should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Issuer within thirty (30) days not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.06. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Uniform Agency Project Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of a Recapture Event or an Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Issuer to exercise any remedy reserved to it in this Uniform Agency Project Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Uniform Agency Project Agreement.

(D) No Waiver. In the event any provision contained in this Uniform Agency Project Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release, or modification of this Uniform Agency Project Agreement shall be established by conduct, custom, or course of dealing.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. TERM. This Uniform Agency Project Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the execution and delivery of this Uniform Agency Project Agreement by the Company and the Issuer. Unless otherwise provided by amendment hereof, this Uniform Agency Project Agreement shall continue to remain in effect until February 1, 2026.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Uniform Agency Project Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Uniform Agency Project Agreement may not be effectively amended, changed, modified, altered, or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, property addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Sutton Place Preservation Limited Partnership
401 Wilshire Boulevard – Suite 1070
Santa Monica, California 90401
Attention: Wes McLean and Hanna Jamar

WITH A COPY TO:

Levitt & Boccio, LLP
423 West 55th Street – 8th Floor
New York, New York 10019
Attention: Eleor Cohen, Esq.

IF TO THE ISSUER:

Town of Amherst Industrial Development Agency
4287 Main Street
Amherst, New York 14226
Attention: Chief Executive Officer

WITH A COPY TO:

Hurwitz Fine P.C.
1300 Liberty Building
Buffalo, New York 14202
Attention: Kevin J. Zanner, Esq.

AND A COPY TO:

Hodgson Russ LLP
677 Broadway, Suite 401
Albany, New York 12207
Attention: Christopher C. Canada, Esq.

(C) Change of Address. The Issuer and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Uniform Agency Project Agreement shall inure to the benefit of, and shall be binding upon, the Issuer, the Company and their respective successors and assigns. The provisions of this Uniform Agency Project Agreement are intended to be for the benefit of the Issuer.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Uniform Agency Project Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Uniform Agency Project Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

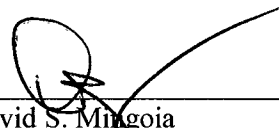
SECTION 5.08. COUNTERPARTS. This Uniform Agency Project Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Uniform Agency Project Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 5.10. SURVIVAL OF OBLIGATIONS. The obligations of the Company to make the filings and listings required by Section 3.02 hereof shall survive the termination of this Uniform Agency Project Agreement, and all such filings and reports after such termination shall be made upon demand of the party to whom such filings and reports are due.

IN WITNESS WHEREOF, the Issuer and the Company have caused this Uniform Agency Project Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

TOWN OF AMHERST INDUSTRIAL
DEVELOPMENT AGENCY

BY:  _____
David S. Mingoia
Chief Executive Officer

SUTTON PLACE PRESERVATION
LIMITED PARTNERSHIP,
a New York limited partnership

BY: Sutton Place Preservation GP LLC,
a Delaware limited liability company,
its general partner

BY: _____
Russell Condas
Vice President

SPECIAL PROJECT CERTIFICATION

As required under Section 859-a(6) of the Act, the Company hereby certifies, under penalty of perjury, that the Company is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

SUTTON PLACE PRESERVATION
LIMITED PARTNERSHIP,
a New York limited partnership

BY: Sutton Place Preservation GP LLC,
a Delaware limited liability company,
its general partner

BY: _____
Russell Condas
Vice President

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TOWN OF AMHERST INDUSTRIAL
DEVELOPMENT AGENCY

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LIMITED PARTNERSHIP,
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BY:  _____
Russell Condas
Vice President

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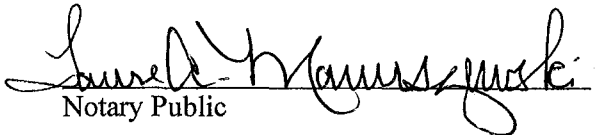
SUTTON PLACE PRESERVATION
LIMITED PARTNERSHIP,
a New York limited partnership

BY: Sutton Place Preservation GP LLC,
a Delaware limited liability company,
its general partner

BY:  _____
Russell Condas
Vice President

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

On the 15 day of September, in the year 2022, before me, the undersigned, personally appeared DAVID S. MINGOIA, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

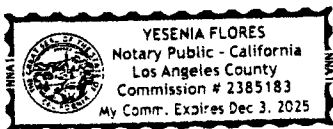
LAURE A. MANUSZEWSKI
Notary Public, State of New York
No. 01MA5034933
Qualified in Erie County 2022
Commission Expires October 24, 2022

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles }

On September 14, 2022, before me, Yesenia Flores, Notary Public, personally appeared RUSSELL CONDAS who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

SIGNATURE

PLACE NOTARY SEAL ABOVE

SCHEDULE A
NYS-45
QUARTERLY REPORT

NYS-45 (1/19)

**Quarterly Combined Withholding, Wage Reporting,
And Unemployment Insurance Return**



Reference these numbers in all correspondence:

UI Employer registration number

Withholding Identification number

Employer legal name:

Mark an X in only one box to indicate the quarter (a separate return must be completed for each quarter) and enter the year.

1 2 3 4 Y Y
Jan 1 - Mar 31 Apr 1 - Jun 30 July 1 - Sep 30 Oct 1 - Dec 31 Year

For office use only
Postmark

Are dependent health insurance benefits available to any employee? Yes No

Received date

If seasonal employer, mark an X in the box

Number of employees
Enter the number of full-time and part-time covered employees who worked during or received pay for the week that includes the 12th day of each month.

a. First month

b. Second month

c. Third month

UI SK AI SI WT SK

Part A - Unemployment insurance (UI) information

- 1. Total remuneration paid this quarter 00
- 2. Remuneration paid this quarter in excess of the UI wage base since January 1 (see instr.) 00
- 3. Wages subject to contribution (subtract line 2 from line 1) 00
- 4. UI contributions due
Enter your UI rate %
- 5. Re-employment service fund (multiply line 3 x .00076)
- 6. UI previously underpaid with interest
- 7. Total of lines 4, 5, and 6
- 8. Enter UI previously overpaid
- 9. Total UI amounts due (if line 7 is greater than line 8, enter difference) ...
- 10. Total UI overpaid (if line 8 is greater than line 7, enter difference and mark box 11 below)*
- 11. Apply to outstanding liabilities and/or refund

Part B - Withholding tax (WT) information

- 12. New York State tax withheld
- 13. New York City tax withheld
- 14. Yonkers tax withheld
- 15. Total tax withheld (add lines 12, 13, and 14)
- 16. WT credit from previous quarter's return (see instr.)
- 17. Form NYS-1 payments made for quarter
- 18. Total payments (add lines 16 and 17)
- 19. Total WT amount due (if line 15 is greater than line 18, enter difference) ...
- 20. Total WT overpaid (if line 18 is greater than line 15, enter difference here and mark an X in 20a or 20b)* ...
- 20a. Apply to outstanding liabilities and/or refund **OR**
- 20b. Credit to next quarter withholding tax
- 21. Total payment due (add lines 9 and 19; make one remittance payable to NYS Employment Contributions and Taxes)

* An overpayment of either UI contributions or withholding tax cannot be used to offset an amount due for the other.
Complete Parts D and E on back of form, if required.

Part C - Employee wage and withholding information

Quarterly employee/payee wage reporting and withholding information
(If more than five employees or if reporting other wages, do not make entries in this section; complete Form NYS-45-ATT. Do not use negative numbers; see instructions.)

a	b	c	d	e
Social Security number	Last name, first name, middle initial	Total UI remuneration paid this quarter	Gross federal wages or distribution (see instructions)	Total NYS, NYC, and Yonkers tax withheld
Totals (column c must equal remuneration on line 1; see instructions for exceptions)				

Sign your return: I certify that the information on this return and any attachments is to the best of my knowledge and belief true, correct, and complete.

Signature (see instructions) _____ Signer's name (please print) _____ Title _____

Date _____ Telephone number _____



Part D - Form NYS-1 corrections/additions

Use Part D **only** for corrections/additions for the quarter being reported in Part B of this return. To correct original withholding information reported on Form(s) NYS-1, complete columns a, b, c, and d. To report additional withholding information not previously submitted on Form(s) NYS-1, complete **only** columns c and d. Lines 12 through 15 on the front of this return **must reflect these corrections/additions**.

a Original last payroll date reported on Form NYS-1, line A (mmdd)	b Original total withheld reported on Form NYS-1, line 4	c Correct last payroll date (mmdd)	d Correct total withheld
▶	.	.	.
▶	.	.	.
▶	.	.	.
▶	.	.	.
▶	.	.	.
▶	.	.	.

Part E - Change of business information

- 22. This line is not in use for this quarter.
- 23. If you **permanently ceased paying wages**, enter the date (mmddy) of the final payroll (see Note *below*)
- 24. If you **sold or transferred all or part of your business**:
 - Mark an X to indicate whether in whole or in part
 - Enter the date of transfer (mmddy)
 - Complete the information below about the acquiring entity

Legal name	EIN
Address	

Note: For questions about other changes to your withholding tax account, call the Tax Department at 518-485-6654; for your unemployment insurance account, call the UI Employer Hotline at 1-888-899-8810. If you are using a paid preparer or a payroll service, the section below must be completed.

Paid preparer's use	Preparer's signature	Date	Preparer's NYTPRIN	Preparer's SSN or PTIN	NYTPRIN excl. code
	Preparer's firm name (or yours, if self-employed)	Address	Firm's EIN	Telephone number	()
Payroll service's name				Payroll service's EIN	

Checklist for mailing:

- File original return and keep a copy for your records.
- Complete lines 9 and 19 to ensure proper credit of payment.
- Enter your withholding ID number on your remittance.
- Make remittance payable to *NYS Employment Contributions and Taxes*.
- Enter your telephone number in boxes below your signature.
- See *Need help?* on Form NYS-45-1 if you need forms or assistance.

Mail to:

**NYS EMPLOYMENT
CONTRIBUTIONS AND TAXES
PO BOX 4119
BINGHAMTON NY 13902-4119**

SCHEDULE B
RECAPTURE BENEFITS POLICY

- SEE ATTACHED -

**Town of Amherst Industrial Development Agency
Policy for Recapture and/or Termination of Financial Assistance
Adopted: June 17, 2016**

Purpose:

To establish and provide a fair procedure compliant with Sections 874 and 875 of the New York State General Municipal Law and Town of Amherst IDA (AIDA) policies establishing a policy for recapture and/or termination and/or modification of all or a portion of Agency Financial Assistance.

Establishment of Material Factors: For each project which is approved for Financial Assistance, the AIDA Board of Directors may establish material factors (each referred to herein as a "Material Factor"), which, along with other considerations, will be utilized in determining whether all or a portion of Agency Financial Assistance will be terminated, modified and/or recaptured. It is intended that a Material Factor will set forth an objective, measurable standard by which the AIDA Board of Directors can determine a company's success in achieving the objectives of the project. Any Material Factors for a project will be included in AIDA's inducement resolution and in the transaction documents.

Annual Review:

The AIDA will review annual reports it receives from companies to determine compliance with the Material Factors set forth in the inducement resolution. If a company is found to be in violation of a Material Factor, the project will be considered non-compliant and will enter full review. The Chairman of the AIDA will be notified of companies that are non-compliant prior to notification of the company.

Non-Compliance Process:

1. The AIDA shall notify the company in writing that in the Agency's determination they are in violation of a Material Factor. The notification will include the Material Factor(s) violated and seek an explanation from the company that may include economic or natural factors that led to the default. These factors should be discussed and predetermined to the extent possible by the Board and may include items such as, natural disaster, industry dynamics, unfair competition or economic events that were outside the control of the company. The company shall be given an opportunity to remedy the violation and will have ten (10) business days to provide a written response or seek an extension of such response.
2. Upon receipt of the company's response, AIDA staff will review with the Executive Committee. The company shall be provided the opportunity to present before the Executive Committee, any information as outlined in #1 above regarding why the Material Factor was not achieved. The Executive Committee may enter into executive session to discuss the company's non-compliance with a Material Factor to the extent permitted by Section 105 of the Open Meetings Law.
3. Upon hearing the company's position, the Executive Committee will suggest a course of action for consideration by the entire AIDA Board of Directors. The written record will clearly state the reason to, or not to, recapture and/or modify and/or reduce financial assistance

4. After a referral from the Executive Committee, the AIDA Board of Directors shall determine, in its discretion, whether, and to what degree, any Financial Assistance shall be modified, terminated and/or recaptured based on a failure to comply with a Material Factor. The decision of the AIDA Board of Directors shall be communicated by AIDA staff to the company.

Compliance Period:

For projects that involve a PILOT, unless otherwise noted in the project's inducement resolution, each Material Factor will need to be maintained for the time period that a PILOT agreement is in effect. By way of illustration, if a project involves new construction, new equipment and the creation and retention of employment, once construction is complete, and the company has met its employment targets, it must maintain those Material Factors for the duration of the PILOT agreement.

For projects that do not involve a PILOT, unless otherwise note in the project's inducement resolution, each Material Factor will need to be maintained for three calendar years after employment goals are met. By way of illustration, projects where employment is a Material Factor are typically afforded two (2) years after project completion to hire new employees. The applicant would then have to maintain that employment for an additional three (3) years to maintain compliant with this policy.

Distribution of Recaptured Financial Assistance:

Any and all such returned/recaptured amounts of Agency Financial Assistance shall be redistributed to the appropriate tax jurisdiction unless agreed to otherwise by any local taxing jurisdiction.

Other Grounds for Termination, Modification or Recapture of Financial Assistance:

Notwithstanding the foregoing, the AIDA, acting through its staff, retains the right to terminate Agency benefits for reasons other than a violation of a Material Factor. Cause for such termination of Agency benefits may include, but are not limited to, failure to make PILOT payments, failure to make reports to the AIDA as detailed in the transaction documents, failure to maintain insurance requirements, or other uncured breaches of or defaults under AIDA transaction documents.

In addition, the AIDA Board of Directors may, in its discretion, require a recapture of all or a portion of the Financial Assistance provided to a company based upon any of the following:

1. A closure of the project or relocation by the company of its operations to a location outside of the Town of Amherst within the time period during which the company is receiving AIDA Financial Assistance.
2. A determination that the company knowingly and intentionally submitted false or intentionally misleading information in its application or in any report or certification submitted to AIDA for the purpose of obtaining or maintaining any Financial Assistance from AIDA.

Statutory Requirements:

Any recapture pursuant to this policy shall be in addition to, and not in lieu of, any recapture required pursuant to Article 18-A of the New York General Municipal Law or other statutory provisions, including Section 875 of the General Municipal Law.

SCHEDULE C
COPY OF APPLICATION
- SEE ATTACHED -



Sutton Place Preservation

[Instructions and Insurance Requirements Document](#)

Section I: Applicant Background Information

Please answer all questions. Use "None" or "Not Applicable" where necessary. Information in this application may be subject to public review under New York State Law.

Applicant Information - Company Receiving Benefit

Project Name Sutton Place
Project Summary LIHTC rehab utilizing 4% noncompetitive bonds from Amherst IDA.
Applicant Name Sutton Place Preservation, Ltd.
Applicant Address 401 Wilshire Blvd Ste 1070
Applicant Address 2
Applicant City Santa Monica
Applicant State California
Applicant Zip 90401
Phone (323) 229-2076
Fax (323) 229-2076
E-mail alex@lincolnavcap.com
Website www.lincolnavcap.com
NAICS Code

Business Organization

Type of Business Partnership
Year Established 2021
State in which Organization is established New York

Individual Completing Application

Name Alex Wood
Title Development Associate
Address 401 Wilshire Blvd Ste 1070
Address 2
City Santa Monica
State California
Zip 90401

2/24/22, 5:05 PM

The Erie County Industrial Development Agency (ECIDA)

Phone (323) 229-2076
Fax
E-Mail alex@lincolnavcap.com

Company Contact (if different from individual completing application)

Name Wes McLean
Title Vice President
Address 401 Wilshire Blvd Ste 1070
Address 2
City Santa Monica
State California
Zip 90401
Phone (303) 870-6332
Fax
E-Mail wmclean@lincolnavcap.com

Company Counsel

Name of Attorney Eleor Cohen
Firm Name Levitt & Boccio, LLP
Address 423 West 55th Street, 8th Floor
Address 2
City New York
State New York
Zip 10019
Phone (212) 801-3936
Fax (212) 801-3762
E-Mail ecohen@levittboccio.com

Benefits Requested (select all that apply)

Exemption from Sales Tax	Yes
Exemption from Mortgage Tax	Yes
Exemption from Real Property Tax	No
Tax Exempt Financing*	Yes

* (typically for not-for-profits & small qualified manufacturers)

Applicant Business Description

Describe in detail company background, history, products and customers. Description is critical in determining eligibility. Also list all stockholders, members, or partners with % ownership greater than 20%.

<https://amherst-ida.ecidany.com/app/tax-incentive-application-2019/print/100166>

2/15

2/24/22, 5:05 PM

The Erie County Industrial Development Agency (ECIDA)

Lincoln Avenue Capital is a mission driven, family owned, affordable housing developer and investor. Founded in 2017, our portfolio has grown to include 95 properties with over 17,000 units across 16 states. Our experienced and agile team works to provide low-income families with quality affordable housing through federal, state, and local programs. Our affiliation with the Bronfman family office provides flexibility and unique access to capital; we utilize our balance sheet for acquisitions and can execute quickly. The applicant is Sutton Place Preservation, Ltd. which is a single purpose entity controlled and operated by individuals and entities related to Lincoln Avenue Capital. Jeremy Bronfman is CEO and Managing Partner of Lincoln Avenue Capital, one of the nation's fastest-growing developers, investors, and operators of affordable housing. Previously, Jeremy served as CEO of Enigma Technologies Inc., a software company with major Fortune 500 investors and an Investment Associate at Island Capital (the parent entity of CIII Capital Partners) and JANA Partners. Jeremy began his career at Iroquois Capital, where he became a Partner and identified opportunities in PIPE Investments in small cap public companies. Jeremy holds a B.A. from Stanford University and an M.B.A with distinction from Harvard University.

Estimated % of sales within Erie County	100 %
Estimated % of sales outside Erie County but within New York State	0 %
Estimated % of sales outside New York State but within the U.S.	0 %
Estimated % of sales outside the U.S.	0 %

(*Percentage to equal 100%)

For your operations, company and proposed project what percentage of your total annual supplies, raw materials and vendor services are purchased from firms in Erie County?

100

Describe vendors within Erie County for major purchases

Appliances, repair supplies, office supplies, and landscaping supplies.

Section II: Eligibility Questionnaire - Project Description & Details

Project Location

Address of Proposed Project Facility

113 Travers Blvd

Town/City/Village of Project Site

Amherst

School District of Project Site

Sweet Home Central School District

Current Address (if different)

Current Town/City/Village of Project Site (if different)

SBL Number(s) for proposed Project

What are the current real estate taxes on the proposed Project Site

\$399,663.56

If amount of current taxes is not available, provide assessed value for each.

Land

\$ 0

Building(s)

\$ 0

If available include a copy of current tax receipt.

Are Real Property Taxes current at project location?

Yes

If no please explain

Does the Applicant or any related entity currently hold fee title or have an option/contract to purchase the Project site?

Yes

If No, indicate name of present owner of the Project Site

Does Applicant or related entity have an option/contract to purchase the Project site?

Yes

Describe the present use of the proposed Project site (vacant land, existing building, etc.)

Existing 246-unit affordable multifamily housing. The property is fully occupied.

Provide narrative and purpose of the proposed project (new build, renovations) square footage of existing and new construction contemplated and/or equipment purchases. Identify specific uses occurring within the project. Describe any and all tenants and any/all end users: (This information is critical in determining project eligibility)

LAC intends to close on an acquisition/rehab of the Property in the 2nd quarter of 2022 utilizing tax exempt bonds fully cash collateralized by a new FHA loan from Harper Capital, 4% Low-Income Housing Tax Credits from NYSHCR, and deferred developer fee. Pursuant to a Nominee Agreement, the fee interest of the property is held by Sutton Place Housing Development Fund Company, Inc., a New York not-for-profit corporation (the "HDFC"). Sutton Place of Amherst LLC, a New York limited liability company, (the "Current Owner") holds a beneficial interest in the Project and currently serves as the beneficial owner of the real property for the purposes of operating the Project, including the obligations of the HAP Contract. Sutton Place Preservation Limited Partnership, a New York limited partnership (the "Purchaser") will acquire the beneficial interest from the Current Owner at closing. The full site renovation of approximately \$20,000,000 (\$81,300/unit) will encompass the following. • In-unit work will include replacement of the kitchen cabinets; kitchen countertops; kitchen appliances; bathroom vanity mirrors; blinds; entry doors; and painting in kitchens and bathrooms. • In-unit electrical appliances will be upgraded to Energy Star rated appliances. • Water fixtures with be replaced with more efficient low-flow toilets, showerheads, and aerators. • Lighting fixtures in the units and common areas will be upgraded to energy efficient LED fixtures. • External work will include replacing all roofs; windows; siding; masonry repairs; painting; steps to apartment buildings; concrete patios; sidewalk improvements; parking lot improvements; playground improvements. • Clubhouse will be redesigned to include a new space for community events separate from leasing offices.

Municipality or Municipalities of current operations

Town of Amherst

Will the Proposed Project be located within a Municipality identified above?

Yes

Will the completion of the Project 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?

No

If the Proposed Project is located in a different Municipality within New York State than that Municipality in which current operations are being undertaken, is it expected that any of the facilities in any other Municipality will be closed or be subject to reduced activity?

No

(If yes, you will need to complete the Intermunicipal Move Determination section of this application)

Is the project reasonably necessary to prevent the project occupant from moving out of New York State?

No

If yes, please explain and identify out-of-state locations investigated, type of assistance offered and provide supporting documentation available

Have you contacted or been contacted by other Local, State and/or Federal Economic Development Agencies?

No

If yes, please indicate the Agency and nature of inquiry below

If the Project could be undertaken without Financial Assistance provided by the Agency, then provide a statement in the space provided below indicating why the Project should be undertaken by the Agency:

Describe the reasons why the Agency's financial assistance is necessary, and the effect the Project will have on the Applicant's business or operations. Focus on competitiveness issues, project shortfalls, etc... Your eligibility determination will be based in part on your answer (attach additional pages if necessary)

Please confirm by checking the box, below, if there is likelihood that the Project would not be undertaken but for the Financial Assistance provided by the Agency

Yes

If the Applicant is unable to obtain Financial Assistance for the Project, what will be the impact on the Applicant and Erie County?

If we are unable to obtain tax exempt bonds from the Amherst IDA we will not qualify for low income housing tax credits. The project will not receive a much needed renovation and the affordability will not be further extended.

Will project include leasing any equipment?

No

If yes, please describe equipment and lease terms.

Site Characteristics

Is your project located near public transportation?

Yes

If yes describe if site is accessible by either metro or bus line (provide route number for bus lines)

The project is located on bus route 34. Stop ID 51280 located at the intersection of Sundridge Dr and Travers Blvd.

Has a project related site plan approval application been submitted to the appropriate planning department?

No

Will the Project meet zoning/land use requirements at the proposed location?

Yes

Describe the present zoning/land use

The current use is permitted as multifamily. Zoning Jurisdiction: Town of Amherst, NY Zoning District: MFR-5 (Multifamily Residential District 5)

Describe required zoning/land use, if different

N/A

If a change in zoning/land use is required, please provide details/status of any request for change of zoning/land use requirements

N/A

Is the proposed Project located on a site where the known or potential presence of contaminants is complicating the development/use of the property?

No

If yes, please explain

Has a Phase I Environmental Assessment been prepared, or will one be prepared with respect to the proposed Project Site?

Yes

If yes, please provide a copy.

Have any other studies, or assessments been undertaken with respect to the proposed Project Site that indicate the known or suspected presence of contamination that would complicate the site's development?

No

If yes, please provide copies of the study.

If you are purchasing new machinery and equipment, does it provide demonstrable energy efficiency benefits?

No

If yes, describe the efficiencies achieved

You may also attach additional information about the machinery and equipment at the end of the application.

Does or will the company or project occupant perform research and development activities on new products/services at the project location?

No

If yes, include percentage of operating expenses attributed to R&D activities and provide details.

Select Project Type for all end users at project site (you may check more than one)

For purposes of the following, the term "retail sales" means (i) sales by a registered vendor under Article 28 of the Tax Law of the State of New York (the "Tax Law") primarily engaged in the retail sale of tangible personal property (as defined in Section 1101(b)(4)(i) of the Tax Law), or (ii) sales of a service to customers who personally visit the Project.

Will customers personally visit the Project site for either of the following economic activities? If yes with respect to either economic activity indicated below, you will need to complete the Retail section of this application.

Retail Sales	No	Services	No
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Please check any and all end uses as identified below.

Yes Acquisition of Existing Facility	No Assisted Living	No Back Office
No Civic Facility (not for profit)	No Commercial	No Equipment Purchase
No Facility for the Aging	No Industrial	No Life Care Facility (CCRC)
No Market Rate Housing	No Mixed Use	No Multi-Tenant
No Retail	No Senior Housing	No Manufacturing
No Renewable Energy	Yes Other	
	Affordable Housing	

For proposed facility please include the square footage for each of the uses outlined below

If applicant is paying for FFE for tenants, include in cost breakdown.

2/24/22, 5:05 PM

The Erie County Industrial Development Agency (ECIDA)

			Cost	% of Total Cost
Manufacturing/Processing	square feet	\$	0	0%
Warehouse	square feet	\$	0	0%
Research & Development	square feet	\$	0	0%
Commercial	square feet	\$	0	0%
Retail	square feet	\$	0	0%
Office	square feet	\$	0	0%
Specify Other	square feet	\$	0	0%

If you are undertaking new construction or renovations, are you seeking LEED certification from the US Green Building Council?
No

If you answered yes to question above, what level of LEED certification do you anticipate receiving? (Check applicable box)
<BLANK>

Provide estimate of additional construction cost as a result of LEED certification you are seeking < BLANK >

Will project result in significant utility infrastructure cost or uses No

What is the estimated project timetable (provide dates)

Start date : acquisition of equipment or construction of facilities
6/1/2022

End date : Estimated completion date of project
6/1/2023

Project occupancy : estimated starting date of occupancy
6/1/2022

Capital Project Plan / Budget

Estimated costs in connection with Project

1.) Land and/or Building Acquisition

\$ 40,770,000 square feet acres

2.) New Building Construction

\$ 0 square feet

3.) New Building addition(s)

\$ 0 square feet

4.) Reconstruction/Renovation

\$ 23,457,084 square feet

5.) Manufacturing Equipment

\$ 0

6.) Infrastructure Work

\$ 0

7.) Non-Manufacturing Equipment: (furniture, fixtures, etc.)

<https://amherst-ida.ecidany.com/app/tax-incentive-application-2019/print/100166>

7/15

\$ 0

8.) Soft Costs: (Legal, architect, engineering, etc.)

\$ 469,210

9.) Other Cost

\$ 12,488,588

Explain Other Costs Financial Costs \$4,601,278 Developer Financing \$7,887,310

Total Cost \$ 77,184,882

Construction Cost Breakdown:

Total Cost of Construction	\$ 23,457,084 (sum of 2, 3, 4 and 6 in Project Information, above)
Cost of materials	\$ 7,000,000
% sourced in Erie County	75%

Sales and Use Tax:

Gross amount of costs for goods and services that are subject to State and local sales and use tax- said amount to benefit from the Agency's sales and use tax exemption benefit \$ 9,000,000

Estimated State and local Sales and Use Tax Benefit (product of 8.75% multiplied by the figure, above): \$ 787,500

** Note that the estimate provided above will be provided to the New York State Department of Taxation and Finance. The Applicant acknowledges that the transaction documents may include a covenant by the Applicant to undertake the total amount of investment as proposed within this Application, and that the estimate, above, represents the maximum amount of sales and use tax benefit that the Agency may authorize with respect to this Application. The Agency may utilize the estimate, above, as well as the proposed total Project Costs as contained within this Application, to determine the Financial Assistance that will be offered.

Project refinancing estimated amount, if applicable (for refinancing of existing debt only) \$ 0

Have any of the above costs been paid or incurred as of the date of this Application? No

If Yes, describe particulars:

Sources of Funds for Project Costs:

Equity (excluding equity that is attributed to grants/tax credits): \$ 26,056,373

Bank Financing: \$ 6,128,509

Tax Exempt Bond Issuance (if applicable): \$ 45,000,000

Taxable Bond Issuance (if applicable): \$ 0

Public Sources (Include sum total of all state and federal grants and tax credits): \$ 0

Identify each state and federal grant/credit: (ie Historic Tax Credit, New Market Tax Credit, Brownfield, Cleanup Program, ESD, other public sources) 0

Total Sources of Funds for Project Costs: \$77,184,882

Have you secured financing for the project? Yes

Mortgage Recording Tax Exemption Benefit:

Amount of mortgage, if any that would be subject to mortgage recording tax:

Mortgage Amount (include sum total of construction/permanent/bridge financing). 15,700,000

Lender Name, if Known

Estimated Mortgage Recording Tax Exemption Benefit (product of mortgage amount as indicated above multiplied by 3/4 of 1%): \$117,750

Real Property Tax Benefit:

Identify and describe if the Project will utilize a real property tax exemption benefit other than the Agency's PILOT benefit (485-a, 485-b, other):

IDA PILOT Benefit: Agency staff will indicate the estimated amount of PILOT Benefit based on estimated Project Costs as contained herein and anticipated tax rates and assessed valuation, including the annual PILOT Benefit abatement amount for each year of the PILOT benefit and the sum total of PILOT Benefit abatement amount for the term of the PILOT as depicted in the PILOT worksheet in the additional document section.

Percentage of Project Costs financed from Public Sector sources: Agency staff will calculate the percentage of Project Costs financed from Public Sector sources based upon the Sources of Funds for Project Costs as depicted above. The percentage of Project Costs financed from public sector sources will be depicted in the PILOT worksheet in the additional document section.

Is project necessary to expand project employment?

No

Is project necessary to retain existing employment?

No

Will project include leasing any equipment?

No

If yes, please describe equipment and lease terms.

Employment Plan (Specific to the proposed project location)

The Labor Market Area consists of the following six counties: Erie, Niagara, Chautauqua, Cattaraugus, Wyoming and Genesee.

By statute, Agency staff must project the number of FTE jobs that would be retained and created if the request for Financial Assistance is granted. Agency staff will project such jobs over the TWO Year time period following Project completion. Agency staff converts PT jobs into FTE jobs by dividing the number of PT jobs by two (2).

	Current # of jobs at proposed project location or to be relocated at project location	If financial assistance is granted – project the number of FT and PT jobs to be retained	If financial assistance is granted – project the number of FT and PT jobs to be created upon 24 months (2 years) after Project completion	Estimate number of residents of the Labor Market Area in which the project is located that will fill the FT and PT jobs to be created upon 24 months (2 years) after project completion **
Full time	5	5	0	0
Part time	0	0	0	0
Total	5	5	0	0

If you estimated new job growth over the next 2 years, please provide a short description of how those estimates were calculated (i.e. jobs per square foot, new contracts/increased revenues, etc.)

According to a study completed in 2015 by the National Association of Home Builders¹, \$1M of residential remodeling/rehab has significant impacts of the local economy and job support. \$1M investment in a rehabilitation of a multifamily project leads to \$840k in local income, \$250k in local business owners' income, \$585k of local salaries, \$70k of local taxes, and 11.5 of local jobs supported. The benefits come in two phases: 1) direct and indirect impact of construction activity and 2) ripple effect of spending income and taxes from Phase I. Based on our current development budget, an estimated 18 jobs are expected to be supported by the project.

Salary and Fringe Benefits for Jobs to be Retained and Created

Category of Jobs to be Retained and/or Created	# of Employees Retained and/or Created	Average Salary for Full Time	Average Fringe Benefits for Full Time	Average Salary for Part Time (if applicable)	Average Fringe Benefits for Part Time (if applicable)
Management	1	\$ 65,000	\$ 16,025	\$ 0	\$ 0
Professional	2	\$ 47,500	\$ 11,875	\$ 0	\$ 0
Administrative	2	\$ 45,000	\$ 11,250	\$ 0	\$ 0
Production	0	\$ 0	\$ 0	\$ 0	\$ 0
Independent Contractor	0	\$ 0	\$ 0	\$ 0	\$ 0
Other	0	\$ 0	\$ 0	\$ 0	\$ 0

** Note that the Agency may utilize the foregoing employment projections, among other items, to determine the financial assistance that will be offered by the Agency to the Applicant. The Applicant acknowledges that the transaction documents may include a covenant by the Applicant to retain the number of jobs and create the number of jobs with respect to the Project as set forth in this Application.

No By checking this box, I certify that the above information concerning the current number of jobs at the proposed project location or to be relocated to the proposed project location is true and correct.

Employment at other locations in Erie County: (provide address and number of employees at each location):

Address	Full time	Part time	Total
	0	0	0
	0	0	0
	0	0	0

Payroll Information

Annual Payroll at Proposed Project Site upon completion

320,000

Estimated average annual salary of jobs to be retained (Full Time)

50,000

Estimated average annual salary of jobs to be retained (Part Time)

0

Estimated average annual salary of jobs to be created (Full Time)

50,000

Estimated average annual salary of jobs to be created (Part Time)

0

Estimated salary range of jobs to be created

From (Full Time) 0 To (Full Time) 0

From (Part Time) 0 To (Part Time) 0

Section III: Facility Type - Single or Multi Tenant

Is this a Single Use Facility or a Multi-Tenant Facility?

Multi-Tenant Facility

Multi-Tenant Facility (to be filled out by developer)

Please explain what market conditions support the construction of this multi-tenant facility

Sutton Place Apartments is an existing 246-unit affordable multifamily property. It is consistently 99% occupied and we will not be building additional units. There is no retail or commercial space.

Have any tenant leases been entered into for this project?

No

If yes, please list below and provide square footage (and percent of total square footage) to be leased to tenant and NAICS Code for tenant and nature of business

Tenant Name	Current Address (city, state, zip)	# of sq ft and % of total to be occupied at new project site	SIC or NAICS-also briefly describe type of business, products services, % of sales in Erie Co.
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*fill out table for each tenant and known future tenants

Section V: Retail Determination

To ensure compliance with Section 862 of the New York General Municipal Law, the Agency requires additional information if the proposed Project is one where customers personally visit the Project site to undertake either a retail sale transaction or to purchase services.

Please answer the following:

Will any portion of the project (including that portion of the costs to be financed from equity or other sources) consist of facilities or property that are or will be primarily used in making sales of goods or services to customers who personally visit the project site?

No

If yes, complete the Retail Questionnaire Supplement below. **If no, proceed to the next section.**

Section VI: Adaptive Reuse Projects

Adaptive Reuse is the process of adapting old structures or sites for new purposes.

Are you applying for tax incentives under the Adaptive Reuse Program?

No

Section VII: Inter-Municipal Move Determination

The Agency is required by state law to make a determination that, if completion of a Project benefiting from Agency Financial Assistance results 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, Agency financial Assistance is required to prevent the project occupant from relocating out of the state, or is reasonably necessary to preserve the project occupant's competitive position in its respective industry.

Current Address

City/Town

State

Zip Code

Will the project 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?

No

Will the project result in the abandonment of one or more plants or facilities of the Project occupant located within the state?

No

If Yes to either question, explain how, notwithstanding the aforementioned closing or activity reduction, the Agency's Financial Assistance is required to prevent the Project from relocating out of the State, or is reasonably necessary to preserve the Project occupant's competitive position in its respective industry:

Does this project involve relocation or consolidation of a project occupant from another municipality?

Within New York State

No

Within Erie County

No

If Yes to either question, please, explain

Will the project result in a relocation of an existing business operation from the City of Buffalo?

No

If yes, please explain the factors which require the project occupant to relocate out of the City of Buffalo (For example, present site is not large enough, or owner will not renew leases etc.)

What are some of the key requirements the project occupant is looking for in a new site? (For example, minimum sq. ft., 12 foot ceilings, truck loading docs etc.)

If the project occupant is currently located in Erie County and will be moving to a different municipality within Erie County, has the project occupant attempted to find a suitable location within the municipality in which it is currently located?

No

What factors have lead the project occupant to consider remaining or locating in Erie County?

If the current facility is to be abandoned, what is going to happen to the current facility that project occupant is located in?

Please provide a list of properties considered, and the reason they were not adequate. (Some examples include: site not large enough, layout was not appropriate, did not have adequate utility service, etc.) Please include full address for locations.

Section VIII: Senior Housing

IDA tax incentives may be granted to projects under the Agency's Senior Citizen Rental Housing policy when the project consists of a multi-family housing structure where at least 90% of the units are (or are intended to be) rented to and occupied by a person who is 60 years of age or older.

Are you applying for tax incentives under the Senior Rental Housing policy?

No

LINCOLN AVENUE CAPITAL

Sutton Place Apartments - Amherst, NY

Project Description

Sutton Place Apartments ("the Project"), is an affordable housing community located at 113 Travers Blvd. Amherst, New York, approximately 5 miles north-northeast from Buffalo's central business district. The property consists of 246 residential rental units housed in 24 buildings along with one clubhouse and leasing office. The property was originally constructed in 1973 and underwent a tax credit rehab in 2003. 137 units are covered by a Section 8 HAP contract and the remainder are restricted at 60% of the area median income through the Low-Income Housing Tax Credit Program. One unit is set aside as an employee non-revenue unit.

Below is a summary of the unit mix showing the rents and LIHTC income limits. The HAP rent is based on market rent comps and tenants' rent is subsidized on the amount greater than 30% of their monthly income.

Unit Mix					
Bedrooms	Baths	AMI % / Type	Units	Square Feet	Current Allowable Rent (2021 Max / HAP)
1	1.0	60%	31	700	\$888
1	1.0	HAP	25	700	\$1,240
2	1.0	60%	32	850	\$1,066
2	1.0	60%	25	850	\$1,066
2	1.0	HAP	86	950	\$1,400
2	1.0	Non-Rev	1	950	\$0
3	2.0	60%	20	1,050	\$1,231
3	2.0	HAP	26	1,050	\$1,620
Total / Weighted Average			246	885	\$1,250

LIHTC Income Limits for 2021	
1 Person	\$ 33,180
2 Person	\$ 37,920
3 Person	\$ 42,660
4 Person	\$ 47,340
5 Person	\$ 51,180
6 Person	\$ 54,960

Project Sources & Uses

LAC intends to close on an acquisition/rehab of the Property in the 2nd quarter of 2022 utilizing \$45,000,000 of tax-exempt bonds issued by the Amherst IDA. The tax-exempt bonds will be cash collateralized by a \$15,700,000 FHA 241(a) loan, a \$12,000,000 tax-exempt seller note, and a \$21,500,000 tax-exempt equity bridge loan. The Project will also be sourced by assuming \$19,134,813 of existing FHA 223(f) debt and \$26,058,613 of LIHTC equity.

Below is a detailed summary of the Project Sources & Uses.

SOURCES OF FUNDS				
		Construction	Permanent	Total
Permanent Financing	FHA 223(f)	\$ 19,134,813	\$ 19,134,813	\$ 19,134,813.00
Permanent Financing	FHA 241(a)	\$ 15,700,000	\$ 15,700,000	\$ 15,700,000.00
Seller Note		\$ 12,000,000	\$ 12,000,000	\$ 12,000,000.00
Repayment of Seller Note				\$ -
Equity Bridge Loan		\$ 21,500,000		\$ 21,500,000.00
Repayment of Equity Bridge Loan				\$ (21,500,000.00)
Tax Credit Equity		\$ 1,330,069	\$ 26,058,613	\$ 26,058,613.00
Total Sources		\$ 69,664,882	\$ 77,191,195	\$ 77,191,195.00
Paid Developer Fee		\$ 898,000	\$ 3,590,362	\$ 3,590,362.00
USES OF FUNDS				
		Construction	Permanent	Total
Acquisition Costs		\$ 40,770,000	\$ 40,770,000	\$ 40,770,000.00
Construction Costs		\$ 23,457,084	\$ 23,457,084	\$ 23,457,084.00
Predevelopment Costs		\$ 469,210	\$ 469,210	\$ 469,210.00
Interim/Finance Costs		\$ 2,608,030	\$ 2,608,030	\$ 2,608,030.00
Professional Fees		\$ 478,850	\$ 498,850	\$ 498,850.00
Compliance Fees		\$ 237,259	\$ 237,259	\$ 237,259.00
Reserves		\$ 746,449	\$ 1,262,631	\$ 1,262,631.00
Developer Fee		\$ 898,000	\$ 7,888,131	\$ 7,888,131.00
Total Uses		\$ 69,664,882	\$ 77,191,195	\$ 77,191,195.00

Construction Scope of Work

The full site renovation of approximately \$20,000,000 (\$81,300/unit) will encompass the following.

- In-unit work will include replacement of the kitchen cabinets; kitchen countertops; kitchen appliances; bathroom vanity mirrors; blinds; entry doors; and painting in kitchens and bathrooms.
- In-unit electrical appliances will be upgraded to Energy Star rated appliances.
- Water fixtures will be replaced with more efficient low-flow toilets, showerheads, and aerators.
- Lighting fixtures in the units and common areas will be upgraded to energy efficient LED fixtures.
- External work will include replacing all roofs; windows; siding; masonry repairs; painting; steps to apartment buildings; concrete patios; sidewalk improvements; parking lot improvements; playground improvements.
- Clubhouse will be redesigned to include a new space for community events separate from leasing offices.

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: (i) the Agency's examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the proposed Project described herein or the tax exemptions and other assistance requested herein are favorably acted upon by the Agency; (ii) the Agency's acquisition, construction and/or installation of the proposed Project described herein; and (iii) any further action taken by the Agency with respect to the proposed Project including, without limiting the generality of the foregoing, all causes of action and attorney's fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing.

6. Applicant understands that, in granting financial assistance, the Agency is required to comply with the New York State Environmental Quality Review Act (SEQRA) and must complete required determinations under SEQRA. The Applicant has completed and submitted with this Application the appropriate Environmental Review Form with respect to the Project and understands that it is required, at its sole expense, to take all necessary action in order for the Agency to comply with SEQRA.
7. Applicant has received and agrees to the Agency's sales tax procedures and understands that, if the Project is approved for a sales tax exemption through the Agency, the Applicant will be required to comply with the Agency's sales tax procedures, including filing required forms and providing information regarding the amount of sales exemptions claimed in connection with the Project. Failure to comply with the Agency's sales tax procedures, or claiming a sales tax exemption in excess of that authorized by the Agency, could result in loss of benefits and recapture of sales tax exemptions claimed.
8. Applicant understands that if the Project receives any financial assistance from the Agency, the Applicant and any occupant of the Project will be required to comply with requirements regarding the listing of jobs created as a result of the Project and reporting of employment by the Applicant and any occupant of the Project.
9. The Applicant represents and warrants that the provisions of Section 862(1) of the New York General Municipal Law (GML), contained 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.

10. 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.
11. 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.

12. Applicant acknowledges receipt of and agrees to the Agency's fee schedule which is attached hereto and made a part hereof.
13. Applicant acknowledges and agrees to the Agency's Inducement Resolution Policy as follows:

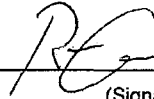
It shall be the policy of the Town of Amherst Industrial Development Agency that any inducement resolution adopted by the Board of Directors shall remain in full force and effect for a period of one (1) year from the date of its adoption. Thereafter, the Board of Directors may, in its discretion and upon good cause shown, adopt a further resolution extending the period of inducement for one (1) additional year from the date of the expiration of the original inducement. An Agency Extension Fee in the amount of \$500.00 shall be charged to the applicant for each such extension granted. Such Extension Fee shall be in addition to any other Administrative Fee or other fees incurred with respect to the project. Any request for an extension of the period of inducement beyond the one (1) additional year extension contemplated herein shall be addressed by the Board of Directors on a case-by-case basis.

14. The Applicant and the individual executing this Application on behalf of Applicant acknowledge that the Agency and its counsel will rely on the representations and covenants made in this Application when acting hereon and hereby represents 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. This Application is subscribed and affirmed under penalties of perjury.

Russell Condas Vice President

(Applicant Name)

By:



(Signature of Officer)

NOTARY

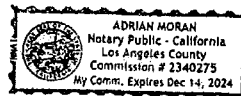
Sworn to before me this

4

day of JANUARY, 20 22



Notary Public



**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY/
TOWN OF AMHERST DEVELOPMENT CORPORATION
FEE AND EXPENSE SCHEDULE**

The following sets forth the Administrative Fee and Expense Policy of the Town of Amherst Industrial Development Agency ("Agency") and the Town of Amherst Development Corporation ("ADC"), effective as of December 13, 2019.

Application Fee: At the time of application for approval by the Agency or the ADC of any transaction there shall be a non-refundable application fee of Five Hundred Dollars (\$500.00).

For an extension of an inducement, each extension of six months shall require payment of one quarter of the Agency Administrative Fee.

Agency Administrative Fees:

1. New Projects

The Agency Administrative Fee for For-Profit Projects shall be the greater of: (a) one percent (1%) of the bond amount, if bonds are to be issued, (b) one percent (1%) of the mortgage amount, if a mortgage with note is utilized or (c) one percent (1%) of the project value. One quarter of the Agency Administrative Fee, or .25%, must be received by the Agency prior to the issuance of a Sales Tax Letter by the Agency except for installment sale transactions when the entire Agency Administrative Fee of 1% is due at time of the issuance of the Sales Tax Letter. The balance of the Agency Administrative Fee or .75% shall be due on the closing of the transaction.

2. Re-financings

The Agency Administrative Fee for For-Profit Re-financings shall be \$1,000 plus one half of one percent (.5%) of any new money being financed for projects that provide additional economic benefit to the community.

3. Second Mortgage

The Agency fee for a second mortgage is one half of one percent (.5%) for all projects requiring a second mortgage that provide additional economic benefit to the community. Second Mortgages that occur for strictly financial purposes are not eligible for a Mortgage Recording Tax Exemption. If the project involves additional PILOT or sales tax benefits, then the fee is one percent (1%) and calculated as explained previously under "New Projects".

4. Approval of Lease Assignment and Assumptions

The Agency Administrative Fee for approval of Lease Assignments and Assumptions shall one percent (1%) of the Project Cost except as otherwise agreed to by the Agency-

5. **Tax-Exempt Financing**

The Agency Administrative Fee for approval of all Tax-Exempt projects shall be one half of one percent (.5%) based on the issuance amount of the bond as agreed to by the Agency. This is the fee regardless of whether it is a refinancing of a previous AIDA or ADC bond or a new issuance for a new project. For those bond issuances where a PILOT is necessary, the project fee is one percent (1%) and calculated as previously detailed under "**New Projects**". The fee is due in full at closing.

Tax-exempt Bond Counsel fees for tax-exempt financing projects will be charged separately, based upon time expended with respect to such project. Agency Counsel fees will be charged in accordance with the Bond/Mortgage/Lease schedule below.

6. **Additional Fees**

Additional costs associated with meeting the Agency's current environmental policy are the responsibility of the Applicant.

If the Project Application is withdrawn at any time following submission, or the inducement or authorizing resolution of the Agency relating to the Project expires without extension, or the Project does not close for any reason, the Applicant is responsible for and shall pay costs, including without limitation Agency Counsel Fees, incurred by the Agency in connection with the Project.

Agency Counsel Fees

Agency Counsel fees will be paid by the Applicant in accordance with the following schedules:

Bond/Mortgage/Lease Transactions:

<u>Project Costs:</u>	<u>Legal Fee*:</u>
to \$750,000	\$5,000**
\$750,001 to \$1,500,000	\$9,000
\$1,500,001 to \$3,000,000	\$12,500
\$3,000,001 to \$5,000,000	\$15,000
\$5,000,001 to \$10,000,000	\$17,500
above \$10,000,000	\$22,500 minimum with additional legal fees payable based upon the circumstances and work involved

*The Legal Fee will be paid as follows: One-quarter of the Legal Fee will be due and payable prior to issuance of a Sales Tax Exemption Letter (if applicable). The balance of the Legal Fee will be due at closing or at such time it is determined by the Agency that the Project will not proceed to closing.

** With respect to legal fees for Bond/Mortgage/Lease Transactions up to \$750,000, this Legal Fee would include only two drafts of documents. In addition, if due to delays caused by the Applicant or the Lender, the closing is delayed beyond a sixty-day period from the date of the first draft, additional time may also be billed by Agency Counsel in his or her discretion. If further drafts are required or the closing is unreasonably delayed, additional time shall be billed at the Agency Counsel's standard hourly rate then in effect.

Re-financing Transactions

Legal Fees for re-financings shall be based upon the dollar amount refinanced in accordance with the above schedule. In the case of minor amendments of the prior loan documents, Agency Counsel Fees shall be charged on a time basis at the Agency Counsel's standard hourly rate then in effect. Agency Counsel shall determine whether the amendment to the prior loan documents is a minor amendment in his or her sole but reasonable discretion.

Normal Installment Sale Transactions

<u>Project Cost:</u>	<u>Legal Fee:*</u>
to \$750,000	\$3,000**
\$750,001 to \$1,500,000	\$5,000
\$1,500,001 to \$3,000,000	\$7,500
over \$3,000,000	\$10,000 minimum with additional legal fees payable based upon the circumstances and work involved

*The Legal Fee will be paid as follows: One-quarter of the Legal Fee will be due and payable prior to issuance of a Sales Tax Exemption Letter (if applicable). The balance of the Legal Fee will be due at closing or at such time it is determined by the Agency that the Project will not proceed to closing.

** With respect to legal fees for Normal Installment Sale Transactions up to \$750,000, this Legal Fee would include only two drafts of documents. In addition, if due to delays caused by the Lessee or the Lender, the closing is delayed beyond a sixty-day period from the date of the first draft, additional time may also be billed by Agency Counsel in his or her discretion. If further drafts are required or the closing is unreasonably delayed, additional time shall be billed at the standard hourly rate of Agency Counsel then in effect.

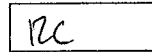
Other Transactions:

Legal Fees for the following transactions will be billed on a time basis at Agency Counsel's current standard hourly rate:

- Lease Assignments and Assumptions
- Lease and PILOT Agreement amendments
- Sublease approvals and modifications
- Lease terminations
- Project reconveyances
- Other miscellaneous transactions

In addition to Agency Counsel fees, disbursements of up to \$1,000 will be added to each closing. If additional transcripts above the normal amount are required (5 for lease only and 7 for bond or mortgage transactions), they will be billed to reflect the additional copy cost and the additional binding costs and may exceed the \$1,000 total.

The above Administrative Fee and Expense Policy have been reviewed and agreed to by the Applicant.


Initial

617.20
Appendix B
Short Environmental Assessment Form

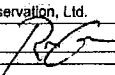
Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information			
Sponsor: Sutton Place Preservation, Ltd.			
Name of Action or Project: Project: Sutton Place Apartments			
Project Location (describe, and attach a location map): 113 Travers Blvd, Buffalo, NY 14228			
Brief Description of Proposed Action: LAC intends to close on an acquisition/rehab of the Property in the 2nd quarter of 2022 utilizing \$42,000,000 of tax-exempt bonds issued by the Amherst IDA. The full site renovation of approximately \$20,000,000 (\$81,300/unit) will go towards the apartment unit interiors, building exteriors, building systems, and common areas. Additional detail on the financing and rehab is included in the bond application.			
Name of Applicant or Sponsor: Wes McLean, Vice President		Telephone: 303-870-6332 E-Mail: wmclean@lincolnavecap.com	
Address: 401 Wilshire Blvd Ste 1070			
City/PO: Santa Monica	State: CA	Zip Code: 90401	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: Town of Amherst, Site Plan Approval		NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		21.7 acres	
b. Total acreage to be physically disturbed?		21.7 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		21.7 acres	
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____ <input type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO	YES	N/A
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation service(s) available at or near the site of the proposed action?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Is the proposed action located in an archeological sensitive area?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
16. Is the project site located in the 100 year flood plain?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: _____			

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor name: Sutton Place Preservation, Ltd.		Date: 1/4/2022
Signature: Russell Condas, Vice President 		

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing: a. public / private water supplies? b. public / private wastewater treatment utilities?	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input type="checkbox"/>	<input type="checkbox"/>

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input type="checkbox"/>	<input type="checkbox"/>

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Name of Lead Agency	Date

Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer

Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

PRINT

ATTACHMENT TO AIDA APPLICATION FOR FINANCIAL ASSISTANCE

Local Labor Workforce Certification

Project applicants (the "Company"), as a condition to receiving Financial Assistance (including a sales tax exemption, mortgage recording tax exemption, real property tax abatement, and/or bond proceeds) from the Town of Amherst Industrial Development Agency (the "Agency"), will be required to utilize Local Labor, as defined below, for all projects involving the construction, expansion, equipping, demolition and/or remediation of new, existing, expanded or renovated facilities (collectively, the "Project").

Local Labor Defined

Local Labor is defined as individuals residing in Erie County, Niagara County, Chautauqua County, Cattaraugus County, Allegany County, Wyoming County, Genesee County, and Orleans County (collectively, the "Local Labor Area").

Local Labor Requirement

At least 90% of all Project employees of the general contractor, subcontractor, or subcontractor to a subcontractor (collectively, the "Workers") working on the Project must reside within the Local Labor Area. Companies do not have to be local companies as defined herein, but must employ local Workers residing within the Local Labor Area to qualify under the 90% local labor criteria.

It is understood that at certain times, Workers residing within the Local Labor Area may not be available with respect to a Project. Under this condition, the Company is required to contact the Agency to request a waiver of the Local Labor Requirement (the "Local Labor Waiver Request") based on the following circumstances:

- (i) Warranty issues related to installation of specialized equipment whereby the manufacturer requires installation by only approved installers;
- (ii) Specialized construction for which Local Labor Area Workers are not available;
- (iii) Documented lack of Workers meeting the Local Labor Area requirement. The Agency shall evaluate the Local Labor Waiver Request and make its determination related thereto based upon the supporting documentation received with such waiver request; or
- (iv) Significant cost differentials in bids whereby use of Local Labor significantly increases the cost of the project. A cost differential of 25% is deemed significant.

December 27, 2021

Local Labor Reporting Requirement

Companies authorized to receive Financial Assistance from the Agency will be required to file or cause to be filed a Local Labor Utilization Report (the "Report") on such form as made available by the Agency, and as directed by the Agency, which will identify, for each Worker, the city, town, or village and associated zip code that each such Worker is domiciled in. The Report shall be submitted to the Agency as follows: (i) immediately prior to commencement of construction activities; and (ii) on or by the next following quarterly dates of January 1, April 1, July 1, and October 1 and each quarterly date thereafter through the construction completion date.

In addition, the Agency, or its designated agents, shall have the right, during normal business hours, to examine and copy the applicable books and records of the Company and to perform spot checks of all Workers at the Project site to verify compliance with the Local Labor Requirement throughout the construction period.

Enforcement

If Agency staff determines that: (i) the Local Labor Requirement is not being met; or (ii) Agency staff, upon use of its reasonable discretion, discovers or becomes aware of a compliance issue related to the Local Labor Requirement, then written notice of said Local Labor Requirement violation (the "Notice of Violation") shall be provided to the Company. The Company shall have 10 business days thereafter to either: (i) provide written confirmation to the Agency indicating that it has cured the violation and is now in compliance with the Local Labor Requirement; (ii) submit the Local Labor Waiver Request as described above; or (iii) confirm in writing its inability to meet the Local Labor Requirement. If the Company does not respond to the Agency's Notice of Violation, or if the Company confirms its inability to meet the Local Labor Requirement then the Agency shall immediately terminate any and all Financial Assistance being provided to the Project in accordance with the terms of the underlying agreements between the Agency and the Company with respect to the Project. If a Local Labor Waiver Request is submitted and the Agency declines to issue the requested waiver, then the Company shall have 10 business days after receipt of the notice of the waiver request denial to provide written confirmation to the Agency indicating that it has cured the violation and is now in compliance with the Local Labor Requirement. If the Agency does not receive such confirmation, the Agency shall then immediately terminate any and all Financial Assistance being provided to the Project in accordance with the terms of the underlying agreements between the Agency and the Company with respect to the Project.

December 27, 2021

The foregoing terms have been read, reviewed and understood by the Company and all appropriate personnel. The undersigned agrees and understands that the information contained herein must be transmitted and conveyed in a timely fashion to all applicable subcontractors, suppliers and materialmen. Furthermore, the undersigned realizes and understands that failure to abide by the terms herein could result in the Agency revoking all or any portion of Financial Assistance, whether already received or to be received by the Company, as it deems reasonable in its sole discretion for any violation hereof.

Legacy Construction Services, LLC

By: *Cory Mamek*

Name: CORY MAMEK

Title: PRESIDENT

Sworn to before me this 27 day
of DEC., 2021.

Rosemary B. Leuhsler
Notary Public



ROSEMARY B. LEUHSLER
Notary Public, State of Ohio
My Commission Expires:
July 27, 2025

SCHEDULE D

ANNUAL STATUS REPORT

_____, 20____

Project Address:

Project ID:

Dear Sir or Madam:

Please confirm the following information. We must receive this information no later than **JANUARY 15, 20__** so our office can meet the New York State Public Authorities Office compliance requirements. Please mail, email or fax your completed form directly to my attention at: laure@amherstida.com or fax - 716-688-0205.

Should you have any questions regarding this letter please contact me, Laure Manuszewski, at the Town of Amherst Industrial Development Agency at 716-688-9000.

Employment

Please list total number of full time equivalent (FTE) employees for calendar year 20__ at the project location listed above, including full time equivalent independent contractors or employees of independent contractors that work at the project location, and specify full time equivalent jobs created during calendar year 20__. **For multi-tenant facilities, please provide a rent roll listing the name of each tenant and the number of employees - FULL TIME AND PART TIME.**

Number of FTE (full time equivalent) jobs at 12/31/20__ _____
 Number of FTE (full time equivalent) jobs created during calendar year 20__ _____

Please provide a copy of your Form NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance return for the fourth quarter of 20__.

Please provide the salary and fringe benefits averages or ranges for jobs created and retained, by category.

Category of Jobs Retained and Created	Average Salary or Range of Salary	Average Fringe Benefits or Range of Fringe Benefits
Management		
Professional		
Administrative		
Production		
Independent Contractor		
Other		

Tax Exemptions

Did you purchase any goods or services using a sales tax exemption in 20__? Yes__ No__

Value of sales tax exemption taken in 20__: (applies only to exemptions taken using the Town of Amherst Industrial Development Agency's sales tax exemption letter)

State (4%)__ Local (4.75%)__

Value of Mortgage Recording Tax exemption taken in 20__: _____
(1% of mortgage issued in 20__)

Project Costs

Please confirm the amount of costs incurred and paid in connection with the project.

Total to date \$ _____
In calendar year 20__ \$ _____

Certification

The information furnished on the report is complete and correct to the best of my knowledge and belief according to our records as of December 31, 20__.

Signature: _____ Date: _____
Name: _____ Phone: _____
Title: _____ E-Mail: _____

SCHEDULE E

INITIAL EMPLOYMENT PLAN

COMPANY NAME:

ADDRESS:

BUSINESS TYPE:

CONTACT PERSON:

TELEPHONE NUMBER

Please complete the following chart describing your projected employment plan following receipt of financial assistance (the "Financial Assistance") from Town of Amherst Industrial Development Agency (the "Agency"):

Current and Planned Full Time Occupations in Company	Current Number of Full Time Jobs Per Occupation	Estimated Hiring Dates	Will any special recruitment or training be required? Yes/No.	Estimated Number of Full Time Jobs After Completion of the Project		
				1 year	2 year	3 year

Please indicate the estimated hiring dates for the new jobs shown above and any special recruitment or training that will be required.

Are the employees of your firm currently covered by a collective bargaining agreement? Yes ___ No ___

If yes, Name and Local _____.

In the event that the Company receives any Financial Assistance from the Issuer, we agree to schedule a meeting with _____ (insert name of local New York State Job Service

Superintendent) and _____ (insert name of representative of the Issuer's area under the Federal Job Training Partnership Act) prior to the hiring of any employees for the purpose of supplying such information as may be requested in connection with this Employment Plan and to notify the regional office of the Department of Economic Development, in advance, of the time and place of such meeting.

Prepared by:

Title:

Signature:

Date: