

**AMHERST CENTRAL PARK
INFRASTRUCTURE FUND AND
PILOT APPLICATION AGREEMENT**

THIS AGREEMENT (“Agreement”), entered into as of December 20, 2021, is by and among the **TOWN OF AMHERST, NEW YORK**, a municipal corporation of the State of New York with offices at 5583 Main Street, Williamsville, New York 14221 (the “Town”); **TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation with offices at 4287 Main Street, Amherst, New York 14226 (“AIDA”); and **SWEET HOME CENTRAL SCHOOL DISTRICT**, a public school district with offices at 1901 Sweet Home Road, Amherst, New York 14228 (the “School District”). Capitalized letters used in this Agreement shall have the meanings set forth in Schedule A attached hereto and made a part hereof.

RECITALS:

A. The Town desires to encourage the redevelopment of Amherst Central Park for commercial purposes to facilitate investment, job creation and thereby increase the economic prosperity of the Town and its residents.

B. It is anticipated that there will be significant public infrastructure and other costs associated with the redevelopment of Amherst Central Park, for which funding may not be readily available from private or other public sources.

C. The Town desires to establish a private-public source of funding that can be utilized to help fund public infrastructure costs at within the PIF District at Amherst Central Park, and to provide financial assistance for the Northwest Community Center and to Amherst Central Park-related or park-displaced projects as designated by the Town.

D. In furtherance of the foregoing, the parties desire to establish a PILOT increment financing (“PIF”) program that will apply to the Lots located within the PIF District at Amherst Central Park. The PIF program will provide for the redirection of a portion of Town PILOT payments and a portion of School District PILOT payments made by End Users to the Fund established pursuant to this Agreement.

E. The establishment of the Fund and creation and administration of the PIF program is consistent with and in furtherance of the statutory purposes of AIDA as described in Section 858 of the New York General Municipal Law (“GML”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
Incorporation of Recitals

1.1 **Recitals.** The foregoing recitals are hereby incorporated into this Agreement and made a part hereof as if fully set forth herein.

ARTICLE II
Establishment of the Amherst Central Park
Infrastructure Fund

2.1 **Establishment and Financing of Fund.** The parties hereby establish the Amherst Central Park Infrastructure Fund (the "**Fund**") in accordance with terms and conditions set forth herein. The Fund will be financed through a payment in lieu of real estate tax program for End Users of Lots located in the PIF District. The program will redirect a portion of Town PILOT payments and a portion of School District PILOT payments (to be paid by End Users in connection with the Lots) to the Fund to be used for Eligible Projects. AIDA will administer the Fund pursuant to that certain Fund Administration Agreement described in Section 2.3 of this Agreement.

2.2 **AIDA PILOT Terms.** The real property tax abatement schedule applicable for projects developed by End Users on Lots is attached as **Schedule B** to this Agreement. The percentage abatement shall apply only to the increase in the assessed value of the Lot resulting from the improvements constructed on the Lot.

2.3 **Agreements with End Users.** It is anticipated that End Users will seek real property tax abatement incentives from AIDA for eligible projects to be undertaken in the PIF District. Subject to AIDA application procedures and AIDA Board approval, AIDA will enter into appropriate tax abatement/leaseback documentation with an End User pursuant to which the End User will be obligated to make PILOT payments in accordance with **Schedule B** attached hereto and made a part hereof. PILOT payments shall be made by the End User to AIDA, with AIDA to remit to the Fund and the taxing jurisdictions (as applicable) their respective share within thirty (30) days after receipt by AIDA.

2.3 **Fund Administration Agreement.**

2.3.1 **Fund Administrator.** Contemporaneously with the execution of this Agreement, AIDA and the Town will enter into a Fund Administration Agreement with respect to the administration and management of the Fund. The Fund Administration Agreement designates AIDA as the Fund Administrator. As the Fund Administrator, AIDA shall be responsible for depositing the Fund's share of Town PILOT payments and School District PILOT payments made by End Users to a dedicated, interest-bearing depository account (the "**Fund Account**") to be established at the banking institution at which AIDA regularly maintains its accounts. The Fund Administrator will have the discretion to invest and manage the Fund Account, subject to the investment limitations set forth in Section 10 of the GML. The Fund Administration Agreement also sets forth the criteria and methodology for the disbursement of monies from the Fund towards the payment of Fund Administration Expenses and Eligible Project costs.

2.3.2 Reporting Requirements; Audit Rights. The Fund Administration Agreement obligates AIDA and the Town to prepare and submit an annual joint report to the Town and School District within one hundred twenty (120) days after the end of each calendar year. Each joint report shall identify the End Users, the amount of PILOT Payments made by each End User, the respective shares of the PILOT Payments remitted to the Town, the County, the School District, and the Fund as applicable, and shall include a schedule setting forth the Fund balance at the beginning and end of the calendar year, all disbursements made to the Town from the Fund and the amount of interest earned on the Fund balance during the calendar year. The School District shall have the right, at its sole expense, to audit the Fund upon thirty (30) days prior written notice to AIDA.

ARTICLE III
Town and School District Consents

3.1 Acknowledgment. Based upon the PILOT Schedule set forth on Schedule B, the PILOT payments to be received by the Town and the School District will not be allocated in proportion to the amount of real property tax and other taxes which would have been received by the Town and the School District; however, based upon the public benefits to be derived by the Town and the School District, the Town and the School District each hereby agree to such disproportionate treatment as required under Section 858(15) of the GML. It is understood that no portion of any County PILOT payment will be redirected to the Fund.

3.2 Town Consent. The Town hereby irrevocably (a) consents to the terms of each PILOT Agreement (including a consent to the disproportionate treatment of the Town, as required under GML Section 858(15)) entered into between AIDA and an End User pursuant to which such End User will make PILOT payments as provided in this Agreement, (b) directs and authorizes End Users to make Town PILOT payments to AIDA pursuant to the terms of such PILOT Agreement, (c) directs and authorizes AIDA to accept the Town PILOT payments on behalf of the Town, (d) acknowledges and agrees that receipt of each Town PILOT payment by AIDA and the remittance thereof, in accordance with Section 2.3 of this Agreement, constitutes receipt by the Town pursuant to GML Section 874(3), and (e) waives any rights (including rights for late payment penalties under GML Section 874(5) and rights to sue AIDA to recover payments under GML Section 874(6)), as long as AIDA complies with the provisions of this Agreement; provided, however, that nothing contained in this Section 3.2 shall constitute a waiver by the Town of its right to collect late penalties under GML Section 874(5) from any End User or to pursue an action against an End User pursuant to GML Section 874(6) in the event the End User fails to make a Town PILOT payment or makes a partial Town PILOT payment.

3.3 School District Consent. The School District hereby irrevocably (a) consents to the terms of each PILOT Agreement (including a consent to the disproportionate treatment of the School District, as required under GML Section 858(15)) entered into between AIDA and an End User pursuant to which such End User will make PILOT payments as provided in this Agreement, (b) directs and authorizes End Users to make School District PILOT payments to AIDA pursuant to the terms of each such PILOT Agreement, (c) directs and authorizes AIDA to accept the School District PILOT payments on behalf of the Town, (d) acknowledges and agrees that receipt of each School District PILOT payment by AIDA and the remittance thereof, in

accordance with Section 2.3 of this Agreement, constitutes receipt by the School District pursuant to GML Section 874(3), and (e) waives any rights (including rights for late payment penalties under GML Section 874(5) and rights to sue AIDA to recover payments under GML Section 874(6)), as long as AIDA complies with the provisions of this Agreement; provided, however, that nothing contained in this Section 3.3 shall constitute a waiver by the School District of its right to collect late penalties under GML Section 874(5) from any End User or to pursue an action against an End User pursuant to GML Section 874(6) in the event the End User fails to make a School District PILOT payment or makes a partial School District PILOT payment.

ARTICLE IV **TERM;WITHDRAWAL**

4.1 **Term.** The term of this Agreement shall commence as of the date first written above and continue for a period of five (5) years. Within six months prior to the expiration of the term, the Town, the School District and AIDA will evaluate whether to extend the term of this Agreement for additional period. The term may only be extended by the express written agreement of each of the parties hereto.

4.2 **Withdrawal.** The School District may withdraw from this Agreement upon sixty (60) days' prior written notice to the Town and AIDA upon the occurrence of an Event of Default that is continuing and has not been waived or cured in accordance with the provisions of that certain Northwest Amherst Community Center Intergovernmental Agreement (the "Intergovernmental Agreement") dated _____, 2021 by and between the Town and the School District. Upon such withdrawal, the School District's authorization hereunder permitting AIDA to redirect School District PILOT payments to the Fund shall immediately cease, and the School District shall thereafter receive the full amount of future School District PILOT payments.

4.3 **Effect of Withdrawal or Expiration.** Notwithstanding any withdrawal from the Agreement by the School District or the expiration of this Agreement, all projects that were induced by AIDA prior to expiration of the term of this Agreement will continue to be subject to the terms of this Agreement, the applicable PILOT Agreement between the End User and AIDA shall remain unaffected, and all funds in the Fund as of the date of withdrawal or expiration will continue to be administered by AIDA until all such funds have been distributed in accordance with the Fund Administration Agreement, provided that future PILOT payments on all such projects not yet in the Fund and coming due after such withdrawal shall be redirected by the AIDA to the School District.

ARTICLE V **EXCULPATORY PROVISIONS**

5.1 **Exculpatory Provisions.** No provision, covenant or agreement contained in this Agreement, and any other agreement entered into in connection herewith, nor any obligations herein imposed upon the parties, nor the breach thereof, shall constitute or give rise to or impose upon such party a pecuniary liability or a charge upon its general credit. All covenants, stipulations,

promises, agreements and obligations of the parties contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of such party and not of any member, director, officer, employee or agent thereof in his or her individual capacity, and no recourse shall be had for any claim hereunder against any member, director, officer, employee or agent of such party.

ARTICLE VI GENERAL PROVISIONS

6.1 Entire Agreement; Amendment. This Agreement (including the Schedules attached hereto) sets forth the entire agreement and understandings of the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto. No amendment or modification of this Agreement shall be effective unless in writing and signed by all of the parties hereto.

6.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

6.3 Waiver. No waiver by any party of any breach, default or violation of any term, warranty, representation, agreement, covenant, condition or provision hereof shall constitute a waiver of any subsequent breach, default or violation of the same or any other term, warranty, representation, agreement, covenant, condition or provision hereof.

6.4 Binding Effect; No Assignment. The provisions of this Agreement shall bind and benefit the successors and assigns of the parties hereto, provided that no party shall assign this Agreement, or any of their rights or obligations hereunder, without the prior written consent of the other parties hereto.

6.5 Notices. All notices given in connection with this Agreement shall be in writing and shall be delivered personally or both sent by overnight courier service and mailed to the parties at their addresses as set forth above. Notices shall be effective from the date of delivery if delivered personally, or from one (1) business day after the day of deposit with the U.S. mail and deposited with the chosen overnight courier service, if mailed and delivered by overnight courier. All notices to the School District shall be addressed to:

Superintendent of Schools
Sweet Home Central School District
1901 Sweet Home Road
Amherst, New York 14228

Any party may change the address for notices to it by a written notice comporting with this paragraph.

6.6 Severability. The provisions of this Agreement shall be severable, and if any clause, sentence, paragraph, provision or other part hereof shall be determined by any court of competent

jurisdiction to be invalid, such determination shall not affect, impair or invalidate the remainder hereof, which remainder shall continue in full force and effect.

6.7 Headings. The headings and captions herein are for convenience only and are not to be construed as a part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.

6.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The exchange of a fully-executed Agreement by electronic transmission in .pdf format or by facsimile shall be sufficient to bind the parties.

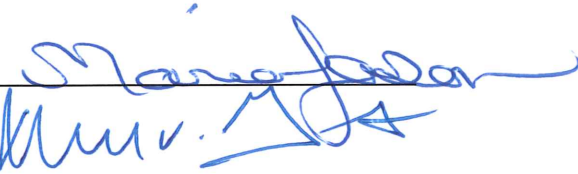
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IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above.

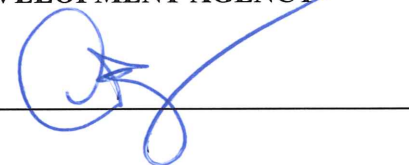
TOWN OF AMHERST, NEW YORK

By:  _____

SWEET HOME CENTRAL SCHOOL DISTRICT

By:  _____

**TOWN OF AMHERST INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____

SCHEDULE A
Definitions

The following terms as used in the Agreement shall have the meanings set forth below:

AIDA – Town of Amherst Industrial Development Agency, a New York public benefit corporation.

County – The County of Erie, New York, a New York municipal corporation.

Eligible Projects – shall include: (i) the undertaking of public infrastructure improvements and public streetscape improvements and/or enhancements, sidewalk reconstruction, curb reconstruction, tree planting, installation of street lighting, paving and public parking, smart city technologies, traffic signals, within the PIF District; and (ii) financial assistance for the Northwest Community Center, Amherst Central Park and park-displaced projects located elsewhere in the Town.

End User – Private companies that purchase and develop Lots within the PIF District who apply for and are determined by AIDA (in its sole discretion) to be eligible for real property tax abatement incentives from AIDA.

Event of Default – an event of default as defined in that certain Intergovernmental Agreement dated _____, 2021, by and between the Town and the School District.

Fund – The Amherst Central Park Infrastructure Fund, which fund is established pursuant to this Agreement and financed with Town PILOT payments and School District PILOT payments to be made by End Users.

Fund Account – As defined in Section 2.3.1 of this Agreement.

Fund Administration Agreement – The Fund Administration Agreement of even date entered into by and between AIDA and the Town.

Fund Administration Expenses – All out-of-pocket third party costs and expenses incurred by the Fund Administrator in connection with the performance of its duties under the Fund Administration Agreement, including, without limitation, any fees assessed by the financial institution(s) referenced in the Fund Administration Agreement with respect to the Fund Account and any expenses incurred in connection with any audit with respect to the Fund Account. Fund Administration Expenses shall also include standard time charges of the Fund Administrator for its personnel with regard to the performance by such personnel of the Fund Administrator's responsibilities under the Fund Administration Agreement, provided that such time charges are fully documented and do not exceed 1% of the balance of the Fund in any given calendar year.

Fund Administrator – AIDA, or any successor to AIDA as Fund Administrator under the Fund Administration Agreement.

Lot(s) – The individual lots within the PIF District.

PIF District- The PIF District shall refer to that portion of Amherst Central shown on the map attached hereto as Schedule C.

PILOT Agreement – An agreement between AIDA and an End User to make payments in lieu of real estate taxes in connection with the Lot owned and developed by such End User.

PILOT Payments – Payments made by an End User under a PILOT Agreement.

School District- shall mean the Sweet Home Central School District.

Town - shall mean the Town of Amherst, New York, a New York municipal corporation.

SCHEDULE B

PILOT Schedule and PILOT Redirection Schedule

<u>Year</u>	<u>COLUMN 1:</u> <u>PILOT Abatement</u> <u>Schedule Applicable to</u> <u>Improvements</u> <u>Constructed on Lots</u>	<u>COLUMN 2:</u> <u>Percentage of</u> <u>Town and</u> <u>School District</u> <u>PILOT</u> <u>Payments to be</u> <u>Directed to the</u> <u>Fund</u>	<u>COLUMN 3:</u> <u>Percentage of</u> <u>Town and School</u> <u>District PILOT</u> <u>Payments to be</u> <u>Directed to the</u> <u>Town and School</u> <u>District</u>	<u>COLUMN 4:</u> <u>Percentage of</u> <u>County PILOT</u> <u>Payments to be</u> <u>Paid to the</u> <u>County</u>
1	20%	100%	0	100%
2	20%	100%	0	100%
3	20%	100%	0	100%
4	20%	100%	0	100%
5	20%	100%	0	100%
6	10%	100%	0	100%
7	10%	100%	0	100%
8	10%	100%	0	100%
9	10%	100%	0	100%
10	10%	100%	0	100%
11	0	90%	10%	100%
12	0	90%	10%	100%
13	0	90%	10%	100%
14	0	90%	10%	100%
15	0	90%	10%	100%
16	0	80%	20%	100%
17	0	80%	20%	100%
18	0	80%	20%	100%
19	0	80%	20%	100%
20	0	80%	20%	100%

For purposes of exemplification only, assume the following scenario under year 1:

Assessed Land Value:	\$500,000.00
Assessed Value attributable to Improvements:	\$2,000,000.00

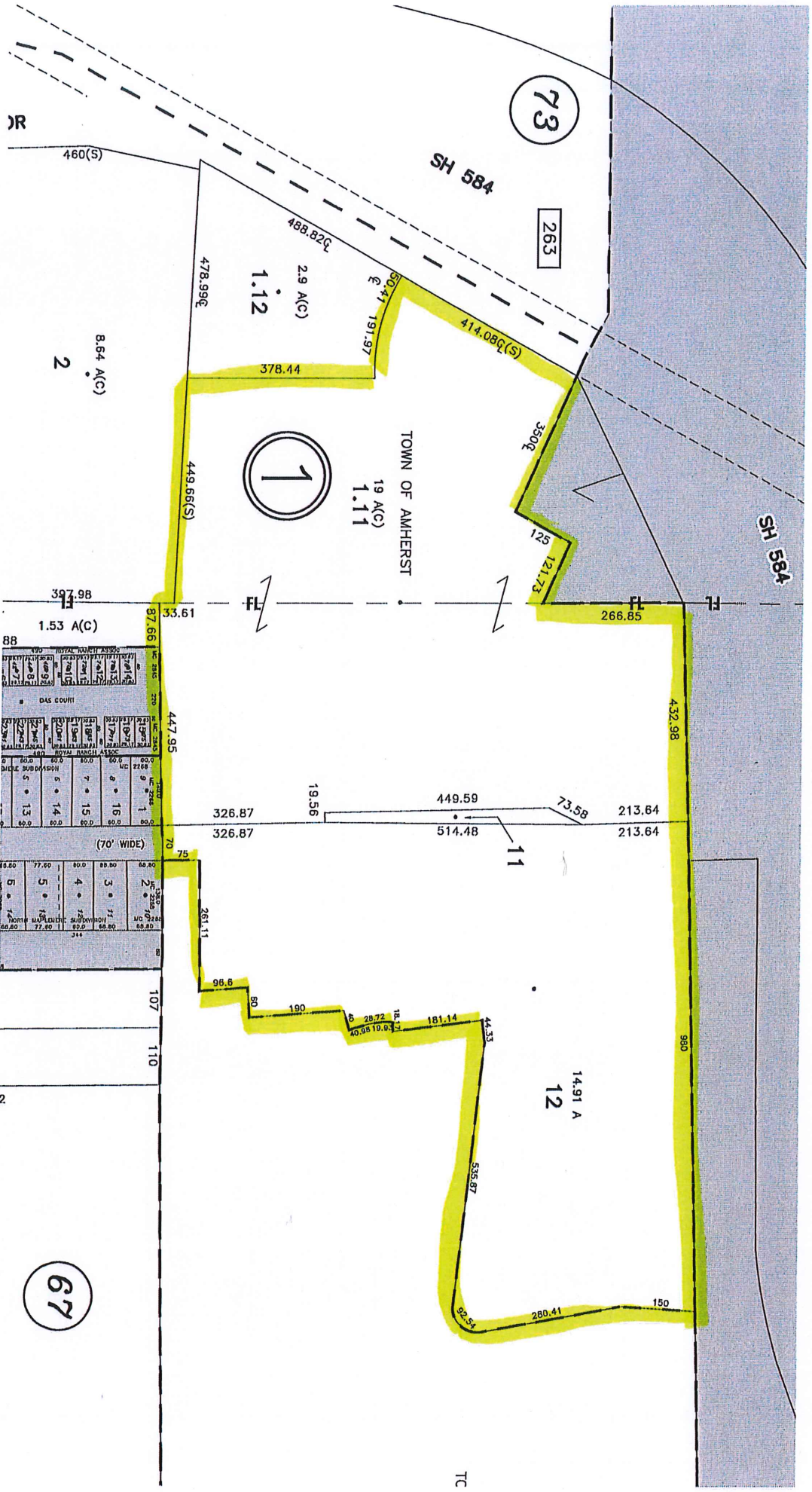
The Town, the County and the School District would receive a PILOT payment attributable to the land component (pre-Project assessment) based on the full amount of the land value (\$500,000), allocated in proportion to the amount of real property tax and other taxes which would have been received by the Town, County and the School District as if AIDA did not have an interest in the project. With respect to the improvements, the PILOT schedule above would result in a total PILOT bill calculated with reference to \$1,600,000 (80% x \$2,000,000). That portion of the total PILOT payment that would (absent this Agreement) otherwise be payable to the Town and to the School District will be deposited into the Fund. The County, as a non-participating taxing jurisdiction, would receive its proportionate share without any contribution to the Fund. (Note that this exemplification does not reflect actual assessed valuation or applicable tax rates).

SCHEDULE C

Description of PIF District

See attached map.

Doc #901747.3



Lot	Area	Width	Depth	Notes
1	19 A(C)	1.11	449.86(S)	
2	2.9 A(C)	1.12	478.99(S)	
11	1.1	1.1	449.86(S)	
12	14.91 A	1.1	449.86(S)	

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TC