

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Agenda – 549th Meeting
Friday, July 19, 2024-8:30 am

James J. Allen Boardroom
Agency Offices – 4287 Main Street, Amherst, NY 14226

1. Roll Call of Members
2. Reading and Approval of Minutes
3. Bills & Communications
4. Treasurer's Report
5. Public Comment
 - I. Speakers Limited to Three (3) Minutes
6. Executive Director's Report
7. Committee Reports
8. Unfinished Business
9. New Business
 - I. Authorization Resolutions
 1. Iskalo Spring Street, LLC
 2. Sawyers Landing, LLC
10. Adjournment

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Minutes of the 548th Meeting
Friday, June 28, 2024 – 8:30 am
James J. Allen Boardroom
Agency Offices, 4287 Main Street

PRESENT: Carlton N. Brock, Jr.
William Tuyn
Anthony Agostino
Hadar Borden
Hon. Timothy Drury
Frank LoTempio, III
Nicole Gavigan
David S. Mingoia, Executive Director
Kevin J. Zanner, Hurwitz & Fine PC

GUESTS : AIDA Staff
David Tytko, Uniland Development
Sean Hopkins

Chairman Carlton Brock called the meeting to order and reminded everyone the meeting was being video recorded and live-streamed.

MINUTES

Upon a motion by Frank LoTempio, seconded by Hadar Borden and unanimously carried, the minutes of the May 2024 meeting were approved as presented.

BILLS & COMMUNICATIONS

There were no Bills & Communications presented at this meeting.

TREASURER'S REPORT

Treasurer Agostino reviewed the highlights of the Treasurer's Report for May 2024.

Upon a motion by Hadar Borden, seconded by Anthony Agostino and unanimously carried, the Treasurer's Report for May 2024 was approved as presented.

PUBLIC COMMENT

There was no Public Comment at this meeting.

EXECUTIVE DIRECTOR'S REPORT

David Mingoia presented the Executive Director's Report.

COMMITTEE REPORTS

There were no Committee Reports for this meeting.

UNFINISHED BUSINESS

There was no Unfinished Business presented at this meeting.

NEW BUSINESS

I. Authorization Resolution – 5226 Main, LLC

The applicant proposes to construct a 4-story mixed-use building totaling approximately 45,373 square feet, featuring 9,870 square feet of commercial space and 30 market rate apartments on the upper floors. The project includes a workforce housing component consisting of 20% of the units that will be leased at 80% of area median income (AMI). The site is currently not being used and generates \$15,161 in annual town, county & school taxes. AIDA benefits are limited to the construction of the project and will not include equipping and build out of the commercial space. The project resides in a Town of Amherst Enhancement Area designated for redevelopment of obsolete and underutilized parcels.

The site was purchased in 2017 prior to the COVID-19 and the enactment of zoning changes to the new retrofit districts from general business which now requires enhanced building materials and design standards and limits height. The applicant states that Agency assistance is necessary to complete the project due to adherence to the new standards, site development and demolition, material and labor increases, and higher cost lending requirements. The Reasonableness Assessment prepared by Camoin Associates notes the low return on investment even with the project incentives. Additionally, the requested assistance will enable the applicant to include the requested workforce housing units.

Executive Director Mingoia presented the board with a detailed Project Profile and Cost Benefit Analysis associated with this project.

William Tuyn made a motion to approve the project. Anthony Agostino seconded the motion to approve. After discussion, votes of aye to approve the project were cast by Brock, Tuyn, Agostino, Borden, Drury and Gavigan with Frank LoTempio abstaining from the vote. Mr. LoTempio indicated that he and his firm represent Ellicott Development on various legal matters. The motion to approve passed 6-0-1.

8:45 am – Frank LoTempio made a motion to adjourn the meeting. Hadar Borden second the motion. The motion to adjourn was passed unanimously.

PROJECT PROFILE:
26 WEST SPRING STREET ADAPTIVE REUSE
\$2,481,868
July 19, 2024



ELIGIBILITY

- Commercial Project under NYS Law
- Eligible Project Under Countywide Eligibility Policy

COMPANY INCENTIVES (EST.)

- Property Tax = \$347,286
- Sales Tax = \$33,978
- Mortgage Tax = \$15,000

PROJECT BENEFITS (EST.)

- Property Taxes = \$103,488
- Income Taxes = \$66,413
- Sales Taxes = \$34,341

EMPLOYMENT

- 8 Construction and Supply Related Jobs Created
- 1 Full-Time Indirect Positions Created from Household Spending

PROJECT SCHEDULE (EST.)

- Work begins August 2024
- Completion April 2025

Project Address:

26 West Spring Street
 Williamsville, New York 14221
 (Williamsville School District)

Investment:

Acquisition: \$898,684
 Construction: \$1,250,000
 Soft/Other Costs: \$333,184



Company Description:

The applicant is an affiliate of Iskalo Development Corporation (Iskalo), a Williamsville based commercial real estate development company that celebrated its 35th year in business in 2023. Iskalo, which is solely owned by Paul B. Iskalo, is a fully integrated real estate venture investing in hospitality, light industrial, corporate and medical office, retail and multi-family. The company has substantial investments in Amherst and Williamsville.

Project Description:

The applicant proposes to adaptively reuse an existing vacant 11,200 square foot office building into eight apartments and begin improving that section of the West Spring Street neighborhood. A portion of the building was constructed in 1976 with an addition added in 1980 by Scipar, a company focused on hydroelectric control systems. The business shrunk over the years and sold the property to Iskalo in 2019 where it only occupied a small portion of the building. The project resides in a Village of Williamsville Enhancement Area designated for redevelopment of obsolete and underutilized parcels.

The layout, outdated condition and overall obsolescence along with current market conditions eliminate the ability of the property to be backfilled by an office tenant. Iskalo is seeking incentives to offset the considerable cost of conversion to multifamily use and expects this project to catalyze redevelopment of the historic property located at 34 West Spring Street. The applicant provided a detailed presentation indicating the gap in what can be generated in revenues on the project over the high cost of development. Renovation costs approximate \$316,000 per unit while the overall economics of the project support roughly \$271,000.

AIDA Project Evaluation Criteria - Neighborhood Redevelopment

**PROJECT PROFILE:
26 WEST SPRING STREET ADAPTIVE
REUSE
\$2,481,868**

AIDA COMPANY HISTORY:

Numerous

MATERIAL TERMS:

1. Investment of not less than \$2,109,587 at the project location as noted in the application.
2. Compliance with the Agency’s Local Labor Policy in connection with the construction of the Project.
3. The Company obtaining the necessary building permits for the redevelopment of the commercial building located at 34 W. Spring Street and the vacant property at 42 W. Spring Street no later than prior to the beginning of the sixth (6th) year of the PILOT schedule.

| | |
|--|--|
| Distressed Census Tracts | No |
| Designated Enhancement Area | Yes |
| Age of Structure | 1973 with an addition in 1980 |
| Building Vacancy | 2023 but the building has been mostly vacant for nearly 4-years |
| Redevelopment Supports Local Community Development Plan | The project location is a Village of Williamsville designated Enhancement Area and received Site Plan approval and a Certificate of Appropriateness from the Village Historic Preservation Committee |
| Environmental or Safety Issues | The project seeks to improve pedestrian safety by installing sidewalks, site lighting, landscaping and drainage. |
| LEED/Renewal Resources | None |
| Building has Historic Designation | The adjacent property is historically designated and this project seeks to catalyze its development. |
| Site or Structure has Delinquent Property or Other Local Taxes | No |
| Impediments to Conventionally Finance Project | Lending Requirements are more stringent, such as increased equity, along with interest rates not seen in decades |
| Transit Oriented Development | The project location is a block from Main Street which has several transit stops. |
| Increased Property Value | The project preserves the existing taxes on the building and provides additional revenue over the 10-year PILOT |
| Provides Workforce and/or Affordable Housing | None included due to the size of the project (8 total units) and financial feasibility to adaptively reuse the existing structure. |

Town of Amherst Industrial Development Agency

MRB Cost Benefit Calculator



Date: July 3, 2024
 Project Title: 26 West Spring Street Adaptive Reuse
 Project Location: 26 West Spring Street, 14221

Economic Impacts

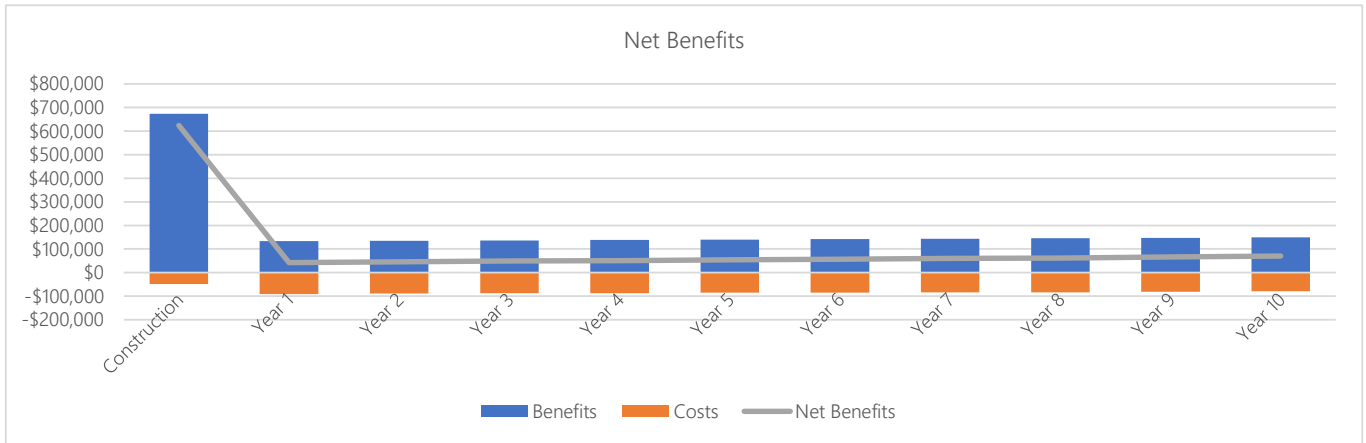
Summary of Economic Impacts over the Life of the PILOT

Project Total Investment
 \$2,481,868

| | Temporary (Construction) | | |
|-------------|--------------------------|-----------|-------------|
| | Direct | Indirect | Total |
| Jobs | 6 | 2 | 8 |
| Earnings | \$520,157 | \$114,483 | \$634,641 |
| Local Spend | \$1,350,000 | \$309,473 | \$1,659,473 |

| | Ongoing (Operations) | | |
|----------|----------------------|-----------|-----------|
| | Direct | Indirect | Total |
| Jobs | 1 | 0 | 2 |
| Earnings | \$608,557 | \$232,635 | \$841,192 |

Figure 1



Net Benefits chart will always display construction through year 10, irrespective of the length of the PILOT.

Figure 2

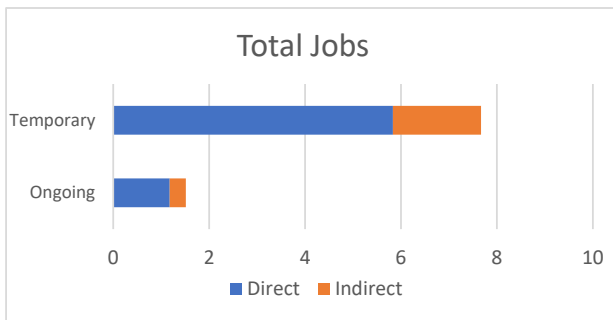
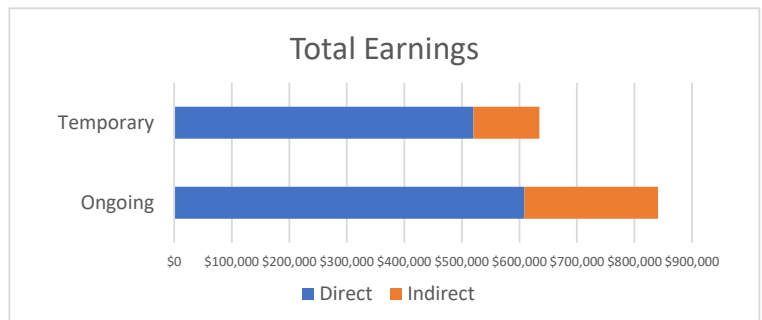


Figure 3



Fiscal Impacts



Cost-Benefit Analysis Tool powered by MRB Group

Estimated Costs of Exemptions

| | Nominal Value | Discounted Value* |
|--|------------------|-------------------|
| Property Tax Exemption | \$852,486 | \$767,389 |
| Sales Tax Exemption | \$33,978 | \$33,978 |
| Local Sales Tax Exemption | \$18,445 | \$18,445 |
| State Sales Tax Exemption | \$15,533 | \$15,533 |
| Mortgage Recording Tax Exemption | \$15,000 | \$15,000 |
| Local Mortgage Recording Tax Exemption | \$5,000 | \$5,000 |
| State Mortgage Recording Tax Exemption | \$10,000 | \$10,000 |
| Total Costs | \$901,464 | \$816,367 |

State and Local Benefits

| | Nominal Value | Discounted Value* |
|---|--------------------|--------------------|
| Local Benefits | \$2,103,163 | \$1,950,179 |
| To Private Individuals | \$1,475,832 | \$1,387,813 |
| Temporary Payroll | \$634,641 | \$634,641 |
| Ongoing Payroll | \$841,192 | \$753,172 |
| Other Payments to Private Individuals | \$0 | \$0 |
| To the Public | \$627,331 | \$562,366 |
| Increase in Property Tax Revenue | \$103,488 | \$91,322 |
| Temporary Jobs - Sales Tax Revenue | \$5,275 | \$5,275 |
| Ongoing Jobs - Sales Tax Revenue | \$13,367 | \$11,968 |
| Other Local Municipal Revenue | \$505,200 | \$453,800 |
| State Benefits | \$82,111 | \$76,973 |
| To the Public | \$82,111 | \$76,973 |
| Temporary Income Tax Revenue | \$28,559 | \$28,559 |
| Ongoing Income Tax Revenue | \$37,854 | \$33,893 |
| Temporary Jobs - Sales Tax Revenue | \$4,442 | \$4,442 |
| Ongoing Jobs - Sales Tax Revenue | \$11,257 | \$10,079 |
| Total Benefits to State & Region | \$2,185,274 | \$2,027,152 |

Benefit to Cost Ratio

| | Benefit* | Cost* | Ratio |
|--------------------|--------------------|------------------|------------|
| Local | \$1,950,179 | \$790,835 | 2:1 |
| State | \$76,973 | \$25,533 | 3:1 |
| Grand Total | \$2,027,152 | \$816,367 | 2:1 |

*Discounted at 2%

Additional Comments from IDA

Prepared by DM

Does the IDA believe that the project can be accomplished in a timely fashion? Yes

RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING A PROJECT CONSISTING OF THE RENOVATION AND ADAPTIVE REUSE OF AN EXISTING OFFICE BUILDING FOR MULTI-FAMILY USE BY ISKALO SPRING STREET LLC, TO BE LOCATED AT 26 AND 34 W. SPRING STREET IN WILLIAMSVILLE, NEW YORK, FOR LEASE OR SALE TO THE AGENCY AND SUBSEQUENT LEASE OR RECONVEYANCE PURSUANT TO AN INSTALLMENT SALE CONTRACT TO ISKALO SPRING STREET LLC, THE EXECUTION OF A MORTGAGE AGREEMENT, LEASE AGREEMENTS AND/OR INSTALLMENT SALE CONTRACT, A PILOT AGREEMENT AND THE TAKING OF OTHER ACTIONS.

WHEREAS, the Town of Amherst Industrial Development Agency (the “Agency”) is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Section 914-a of the General Municipal Law, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, Iskalo Spring Street LLC, for itself or for related individuals or entities (the “Company”), has submitted an application to the Agency requesting the Agency to undertake a certain project (the “Project”) consisting of: (i) the acquisition of a leasehold interest in certain property located at 26 W. Spring Street and a portion of 34 W. Spring Street in the Village of Williamsville, New York (SBL Nos. 80.08-1-8.1 and a portion of 80.08-1-8.2) (the “Premises”); (ii) the adaptive reuse of an approximately 11,200 square foot vacant, outdated office building for conversion to multi-family use totaling 8 units and related site improvements (collectively, the “Improvements”); and (iii) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the “Equipment”); and

WHEREAS, the Company submitted an application and other materials and information (collectively, the “Application”) to the Agency to initiate the accomplishment of the above; and

WHEREAS, the Application sets forth certain information with respect to the Company and the Project, including the following: that the Company desires Agency financing for the adaptive reuse of a vacant, outdated office building for conversion to multi-family use consisting of 6 townhouse style apartments and 2 single-level apartments for a project totaling approximately 11,200 square feet, along with improvements to the common parking lot presently servicing 26 and 34 W. Spring Street in the Village of Williamsville, New York for commercial purposes, all at a cost of \$2,482,000.00; that the Project will result in substantial capital investment; that if Agency financing is disapproved, the Company would likely not proceed with the Project; and that, therefore, Agency financing is necessary to encourage the Company to proceed with the Project; and

WHEREAS, based upon the Application, the Agency has determined that the Project

constitutes an Adaptive Reuse Project under Section I(C)(1) of the Countywide Uniform Tax Exemption Policy, as amended and restated as of April 1, 2022 (the “UTEP”) and that the Agency may provide financial assistance with respect to the Project because the Project will adapt a vacant, commercial building for market-rate, multi-family housing purposes; and

WHEREAS, under Section V of the UTEP, the Agency may deviate from its standard payment in lieu of taxes agreement schedule in accordance with the requirements set forth in the UTEP and applicable provisions of the General Municipal Law; and

WHEREAS, pursuant to Section 874(4)(b) of the General Municipal Law and the UTEP, the Agency duly delivered a notice of deviation on June 25, 2024 to the chief executive officers of the Town of Amherst, Village of Williamsville and County of Erie and to the district clerk and district superintendent of the Williamsville Central School District regarding the proposed deviation from the UTEP; and

WHEREAS, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on July 11, 2024, and has considered all oral and written presentations made at or in connection with said public hearing; and

WHEREAS, the Agency has reviewed the Application, prepared a cost-benefit analysis with respect to the Project and has evaluated the extent to which the Project will create and retain permanent, private-sector jobs, the value of tax exemptions to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the proposed Project in a timely fashion, the extent to which the proposed Project will provide additional sources of revenue for the municipalities and school district and other public benefits that might occur as a result of the Project; and

WHEREAS, the Agency desires to encourage the Company with respect to the consummation of the Project, if by doing so it is able to induce the Company to proceed with the Project in the Town of Amherst; and

WHEREAS, the Company is expected to undertake and complete the Project by obtaining a conventional loan from a third party, and the Company has requested that the Agency execute any and all documents required by the parties, including any collateral mortgages on the Project given to secure a loan(s) obtained by the Company to finance the cost of the Project; and

WHEREAS, the Company has completed and submitted to the Agency Part 1 of an Environmental Assessment Form (“EAF”) in accordance with the provisions of the State Environmental Quality Review Act and regulations adopted pursuant thereto (collectively, “SEQRA”); and

WHEREAS, the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to undertake the Project; and

WHEREAS, based on the Agency’s review of the Application and the EAF, the Project qualifies as a Type II action under SEQRA and therefore no further environmental review is required.

NOW, THEREFORE, THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency, based upon the representations made by the Company to the Agency in the Application and EAF, hereby finds and determines that the Project qualifies as a Type II action pursuant to Sections 617.5(2) and 617.5(18) of the SEQRA regulations and no further environmental review is required.

Section 2. The Project is described in the recitals to this Resolution. The financial assistance to be provided in connection therewith include: (i) an exemption from sales and use taxes for building materials and machinery, equipment, fixtures and furnishings purchased for incorporation into or use at the Project location having a total cost not to exceed \$338,978.00; (ii) an exemption from mortgage recording taxes for one or more mortgages having a principal amount not to exceed \$2,000,000.00; and (iii) an abatement from real property taxes in accordance with the Agency's ten (10) year payment in lieu of tax schedule (collectively, the "Financial Assistance"). In addition to any other covenants, obligations and agreements which may be contained in the Project Documents (as hereinafter defined), the provision by the Agency of the Financial Assistance is made subject to the agreement by the Company to comply with the following covenants and agreements, each of which shall constitute a "Material Factor":

- (a) Investment of no less than \$2,109,587.80 at the Project location as noted in the Application;
- (b) Compliance with the Agency's Local Labor Policy in connection with the construction of the Project; and
- (c) The Company obtaining the necessary building permits for the redevelopment of the commercial building located at 34 W. Spring Street and the vacant property at 42 W. Spring Street (the "Phase II Project"), no later than prior to the beginning of the sixth (6th) year of the PILOT schedule (the "Phase II Redevelopment Commitment").

Section 3. The Agency hereby determines that the Project and the financing thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further determines that the Project is consistent with the Countywide Industrial Development Agency Uniform Tax Exemption Policy. The Agency makes the following findings and determinations with respect to the Project:

(a) The Project is for a commercial purpose within meaning of the Act and the Project will promote employment opportunities in the municipality in which the Project is to be located. The Project will adaptively reuse an existing vacant, commercial office building for multi-family, market-rate housing. The construction of the Project will promote employment opportunities by attracting and retaining residents to live within the Village of Williamsville, which will promote economic growth and improve the neighborhood. The Project will help prevent economic deterioration through the reuse of a site that presently consists of a vacant, unused commercial structure.

Section 4. The proposed Financial Assistance for the Project deviates from the UTEP

as the proposed ten-year term of the PILOT Agreement exceeds the five-year term for which the Project would ordinarily qualify, based on the Agency's completion of the PILOT Determination Scoring Worksheet described in Article II of the UTEP. The Agency hereby approves of the deviation from the UTEP and authorizes the provision of the Financial Assistance as described herein. In making this determination, the Agency has considered the following factors as required by the Act and the UTEP, no single one of which is determinative:

1. The extent to which the Project will create or retain permanent private sector jobs: The Project is not expected to create any permanent private sector jobs.
2. The estimated value of tax exemptions to be provided: The estimated value of the sales and use tax benefit for the Project is an amount up to \$33,978.00. The estimated value of the mortgage recording tax benefit is an amount up to \$15,000.00. The estimated value of the real property tax benefit is \$347,286.00.
3. Whether affected taxing jurisdictions will be reimbursed by the Project occupant if the Project does not fulfill the purposes for which an exemption was provided: The Applicant will be subject to termination of financial assistance, including potential recapture of benefits previously received in the event the Applicant does not adhere to the Agency's standard material terms and conditions governing the receipt of financial assistance. Specifically, the PILOT Agreement will also include a provision for early termination of the PILOT Agreement if the Applicant does not satisfy the Phase II Redevelopment Commitment.
4. The impact of the proposed Project on existing and proposed businesses and economic development projects in the vicinity: The impact of the Project will be positive. This is an adaptive reuse project that will help prevent economic deterioration through the redevelopment of an underutilized and vacant office building. The multi-family apartments will provide tenants with the opportunity to live close to their places of employment, thereby promoting employment opportunities within the Village of Williamsville and Town of Amherst.
5. The amount of private sector investment generated or likely to be generated by the proposed Project: The total private sector investment in the Project is expected to exceed \$2,481,868.
6. The demonstrated public support for the Project: The Village of Williamsville has expressed its support for the Project. Site Plan approval of the Project was granted on June 3, 2024.
7. The likelihood of accomplishing the proposed Project in a timely fashion: The Project is expected to be completed in a timely manner. Construction is expected to begin in the fall of 2024, with anticipated completion in spring of 2025.
8. The effect of the proposed Project upon the environment. The Village of Williamsville determined that the Project constituted a Type II action pursuant to the State Environmental

Quality Review Act (SEQRA). There will be no changes to the footprint of the building being renovated.

9. The extent to which the Project will utilize, to the fullest extent practicable and economically feasible, resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures: The Applicant will install energy efficient appliances in the units.
10. The extent to which the proposed Project will require the provision of additional services including, but not limited to, additional educational, transportation, emergency medical or police and fire services: The Project is not expected to require the provision of additional services.
11. The extent to which the proposed Project will provide additional sources of revenue for municipalities and school districts: The Project site currently consists of a vacant and obsolete office building. The Project will generate additional sources of revenue from the PILOT payments which would otherwise not be received if the Project does not proceed.

Section 5. The Agency hereby authorizes the Company, as agent for the Agency, to proceed with the Project as herein authorized. The Agency is hereby authorized to acquire an interest in the Project site and the buildings thereon, if any, and to make renovations or additions thereto. The Company is authorized to proceed with the acquisition and construction of the Project as set forth in any Project Agreement, the Agency Lease Agreement or Installment Sale Contract (as hereinafter defined).

Section 6. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary of the Agency, and other appropriate officials of the Agency and its agents and employees, are hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and to complete the Project in cooperation with the Company.

Section 7. The Company is authorized, as agent of the Agency, to initiate the construction of the building and improvements constituting the Project, and the acquisition of machinery and equipment which will be a part thereof or will be used in connection therewith, and to advance such funds as may be necessary to accomplish such purposes. The designation of the Company as agent hereunder is limited to purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$388,320.00 and shall not apply to any other purchase by the Company or any operating expenses of the Company. The Company shall report to the Agency, at such times as the Agency shall require, or as may otherwise be prescribed by the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner"), the value of all sales and use tax exemptions claimed by the Company or agents of the Company or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators under the authority granted pursuant to this Resolution. A failure to report may result in the revocation of the designation of the Company as agent and repayment of any sales and use tax exemptions claimed.

Section 8. The Agency is hereby authorized to enter into a Project Agreement with respect to the provision of the Financial Assistance authorized herein (the “Project Agreement”) and to acquire an interest in the Project site and construct a facility thereon, and the execution and delivery of a lease by the Company to the Agency (the “Company Lease”), an Agency Lease Agreement (the “Agency Lease Agreement”) or Installment Sale Contract (the “Installment Sale Contract”) between the Agency and the Company, a Payment in Lieu of Tax Agreement between the Agency and the Company (the “PILOT Agreement”), and such other documents as may be necessary to fulfill the intent of the parties to the transaction (collectively, the “Project Documents”), in form satisfactory to Agency counsel, are hereby authorized. The PILOT Agreement shall provide for payments in accordance with the Agency’s ten (10) year payment in lieu of tax schedule and shall further include a provision authorizing the Agency to terminate the PILOT benefit for years 6-10 of the PILOT schedule in the event that the Company does not comply with the Material Factor described in Section 2(c) of this Resolution. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, or any Assistant Secretary are each authorized to execute such documents and to make or approve such amendments or modifications to the Project Agreement, Company Lease, the Agency Lease Agreement, Installment Sale Contract, the PILOT Agreement and such other documents executed and delivered in connection therewith as they deem necessary under the circumstances provided, however, that such modifications do not materially alter the risk to the Agency.

Section 9. In the event the Company obtains one or more conventional loans to finance the cost of the Project, the Agency is hereby authorized to execute and deliver to the lender(s) one or more collateral mortgages on the Project given to secure such loans (“Mortgage Agreement”), and such other documents as may be necessary to fulfill the intent of the parties to the transaction in form satisfactory to Agency counsel provided that the aggregate amount of such mortgages subject to the Agency exemption shall not exceed \$2,000,000.00. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary are each authorized to execute such collateral mortgages and to make or approve such amendment(s) or modifications to such collateral mortgages and other documents executed and delivered in connection therewith as they may deem necessary under the circumstances, provided, however, that such modifications do not materially alter the risk to the Agency.

Section 10. Any such action heretofore taken by the Company initiating the acquisition, installation and construction of the Project is hereby ratified, confirmed and approved.

Section 11. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency with respect to the Project and the financing thereof.

Section 12. In the event a lease is not executed between the Company and the Agency by the expiration date of this Resolution (as such date may be extended as provided herein) or the termination of this Resolution, the Company shall then be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all improvements of the real property and the machinery and equipment which constitute the Project, as if the Agency

did not have an interest in the Project from the date the Company commenced its acquisition, construction and installation. In addition, in the event, because of the involvement of the Agency, the Company claims an exemption from state sales or use tax in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder, or which exemption is in excess of the amounts authorized hereunder, or is otherwise not permitted under this Resolution, or if the Company shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company as agent for the Agency as set forth in this Resolution or in any document authorized hereunder, then the Company shall each be required to remit to the Agency an amount equal to the amount of state sales and use taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company by the Commissioner of state sales and use taxes, together with any relevant penalties and interest.

In addition to the foregoing, in the event the Agency determines that the Company is in violation of the Material Factor described in Section 2(a) or 2(b) of this Resolution, or in the event that the Company closes the Project or relocates its operations to a location outside of the Town of Amherst within the time period during which the Company is receiving Financial Assistance from the Agency or in the event the Agency determines, in its judgment, that the Company knowingly and intentionally submitted false or intentionally misleading information in its application to the Agency or in any report or certification submitted to the Agency for the purpose of obtaining or maintaining any Financial Assistance from the Agency (each referred to herein as a “Recapture Event”), the Agency may, in accordance with its policies and procedures then in effect, (i) revoke the designation of the Company and any agents of the Company (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company) as agents for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Company, commencing with the tax fiscal year next following such Recapture Event make payments in lieu of taxes on the Project with respect to all applicable taxing authorities in such amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project or otherwise modify the amount or terms of any Financial Assistance being provided by the Agency in connection with the Project and/or (iii) require that the Company pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of (x) all sales and use tax exemptions claimed by the Company and any agents of the Company, including, but not limited to, consultants, sub-contractors, or any equipment lessors of the Company under the authority granted under this Resolution and the Project Agreement, (y) any exemption from real estate taxes received by reason of the Agency’s leasehold interest in the Project and/or (z) any exemption from mortgage recording tax received by reason of the Agency’s involvement with the Project. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company, the Company shall (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed to by any affected tax jurisdiction.

Section 13. The Agency has made and makes no representation or warranty whatsoever,

either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Company's purposes or needs. The Company is satisfied that the Project is suitable and fit for its purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Company hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 14. Should the appropriate officers of the Agency determine, in their absolute discretion, that there is reason to believe that the activities of any past or present owner or operator of the Premises have resulted in the generation of any "hazardous substance" (as the term has been defined from time to time in any applicable federal or state law, rule or regulation), or that any party has stored, disposed or released any such substance on the Premises or within a one (1) mile radius thereof, the Agency shall be under no obligation to enter into a lease as contemplated by this Resolution.

Section 15. No covenant, stipulation, obligation or agreement herein contained or contained in the Project Agreement, Company Lease, the Mortgage Agreement, the Agency Lease Agreement, Installment Sale Contract, the PILOT Agreement or other documents, nor the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit, nor shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity.

Section 16. Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

Section 17. This Resolution shall take effect immediately and shall continue in full force and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Company pursuant to Sections 11 and 12 of this Resolution which shall survive any expiration or termination) or (b) allow the Company additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Company to complete such transactions. Upon any allowance of additional time to close, the Agency may charge the Company an extension fee in accordance with the Agency's fee schedule.

Section 18. Certain construction work done under contract in connection with financial assistance from the Agency may be subject to the requirements of Section 224-a of the Labor Law of

the State, including without limitation the requirement that such construction be subject to the prevailing wage requirements of Sections 220 and 220-b of the Labor Law. In addition, such construction work may be required by Section 224-a of the Labor Law to comply with the objectives and goals of minority and women-owned business enterprises pursuant to Article 15-A of the Executive Law and service-disabled veteran-owned business pursuant to Article 17-B of the Executive Law. The Company acknowledges receipt of notice pursuant to Section 224-a(8)(d) of the Labor Law that the sales and use tax exemption benefit amount referred to in Section 8.5(d) and real property tax benefit amount referred to herein are “public funds” and not otherwise excluded under Section 224-a(3) of the New York Labor Law. The Company represents and warrants that it understands the requirements of Section 224-a of the Labor Law and the applicability of such requirements to the Project and shall comply therewith.

Section 19. This Resolution is subject to compliance with all local building and zoning requirements.

ADOPTED: July 19, 2024

ACCEPTED AND AGREED TO: _____, 2024

ISKALO SPRING STREET LLC

By: _____

Name:

Title:

**PROJECT PROFILE:
SAWYER'S LANDING MIXED-USE WORKFORCE HOUSING
AND INFRASTRUCTURE PROJECT
\$54,015,270
July 19, 2024**



ELIGIBILITY

- Commercial Project under NYS Law
- Eligible Project under Countywide Eligibility Policy

COMPANY INCENTIVES (EST.)

- Property Tax = \$4,984,703
- Sales Tax = \$3,183,887
- Mortgage Tax = \$344,347

PROJECT BENEFITS (EST.)

- Property Taxes = \$2,186,993
- Income Taxes = \$1,694,214
- Sales Taxes = \$698,760

EMPLOYMENT

- 174 Construction and Supply Related Jobs Created
- 7 Full-Time Direct Positions Created
- \$390,000 Annual Payroll
- 31 Full-Time Indirect Positions Created from Household Spending

PROJECT SCHEDULE (EST.)

- Work begins August 2024
- Project Completion September 2025

Project Address:

50 Dodge Road
Amherst, New York 14228
(Sweet Home School District)

Investment:

Acquisition: \$3,000,000
Construction: \$36,931,100
Infrastructure: \$8,553,000
Soft/Other Costs: \$5,531,170

Company Description:

Sawyers Landing is headed by a Severyn Development, which primarily focuses on residential development throughout Western New York.

Project Description:

The applicant is seeking AIDA assistance for development of approximately 5 acres of a larger 18-acre parcel to construct a mixed use development consisting of 146 residential units and 27,470 square feet of commercial space. Residential units are spread across two proposed 4-story buildings and adjacent 2-story attached units. The project includes a workforce housing component consisting of 20% of the units that will be leased at 80% of area median income (AMI) and consist of a combination of studio, one bedroom and three bedroom units. The entire 18-acre site is currently paying \$20,671 in annual town, county & school taxes. AIDA benefits are limited to the construction of the project and will not include equipping and build out of the commercial space.

The project includes offsite improvements including the extension of the recreational trail that will cross the entire Muir Woods property and a connection to the Town's recreational trails across Dodge Road. This investment, along with topography and soil conditions add an additional \$3.2 million to the project and impact feasibility. The applicant states that Agency assistance is necessary to complete the project due to adherence to the site development, material and labor increases, and higher cost lending requirements. The Reasonableness Assessment prepared by Camoin Associates notes the low return on investment even with the project incentives. Additionally, the requested assistance will enable the applicant to include the requested 33 workforce housing units.



AIDA Project Evaluation Criteria - Neighborhood Redevelopment

**PROJECT PROFILE:
SAWYER'S LANDING MIXED-USE WORKFORCE
HOUSING AND INFRASTRUCTURE PROJECT
\$54,015,270**

AIDA COMPANY HISTORY:

None

MATERIAL TERMS:

1. Investment of not less than \$45,912,979 at the project location as noted in the application.
2. Creation of 6 direct full-time equivalent jobs and maintenance of employment throughout the PILOT term.
3. Compliance with the Agency's Local Labor Policy in connection with the construction of the Project.
4. Maintenance of 20% of total units as Workforce Housing for 15-years.

| | |
|--|--|
| Distressed Census Tracts | No |
| Designated Enhancement Area | No |
| Age of Structure | N/A |
| Building Vacancy | N/A |
| Redevelopment Supports Local Community Development Plan | This site is part of the Audubon New Community and slated for development for decades. This project is one of the remaining parcels to be developed. The site is directly adjacent to Audubon Industrial Park and vacant and near vacant |
| Environmental or Safety Issues | The project seeks to improve pedestrian safety by providing off road sidewalks and pathways connecting the Town's recreational trails. |
| LEED/Renewal Resources | None |
| Building has Historic Designation | None |
| Site or Structure has Delinquent Property or Other Local Taxes | No |
| Impediments to Conventionally Finance Project | Lending Requirements are more stringent, such as increased equity, along with interest rates not seen in decades. Camoin report lists low return on investment. |
| Transit Oriented Development | The project supports density on the site and includes workforce housing and a bus route nearby on Sweet Home Road. |
| Increased Property Value | The entire 18 acre property generates \$20,671 a year in Town, County and School Taxes. Even with a PILOT, the 5 acre AIDA project will pay an additional \$105,000 in combined taxes in Year 1 of the 10-Year PILOT. |
| Provides Workforce and/or Affordable Housing | Workforce Housing is defined as pricing for 80-120% of Area Median Income. This project provides 23% of the units at approximately 80%. |

Town of Amherst Industrial Development Agency

MRB Cost Benefit Calculator



Date: March 27, 2024
 Project Title: Sawyer's Landing Mixed Use and Workforce Housing Project
 Project Location: 50 Dodge Road 14228

Economic Impacts

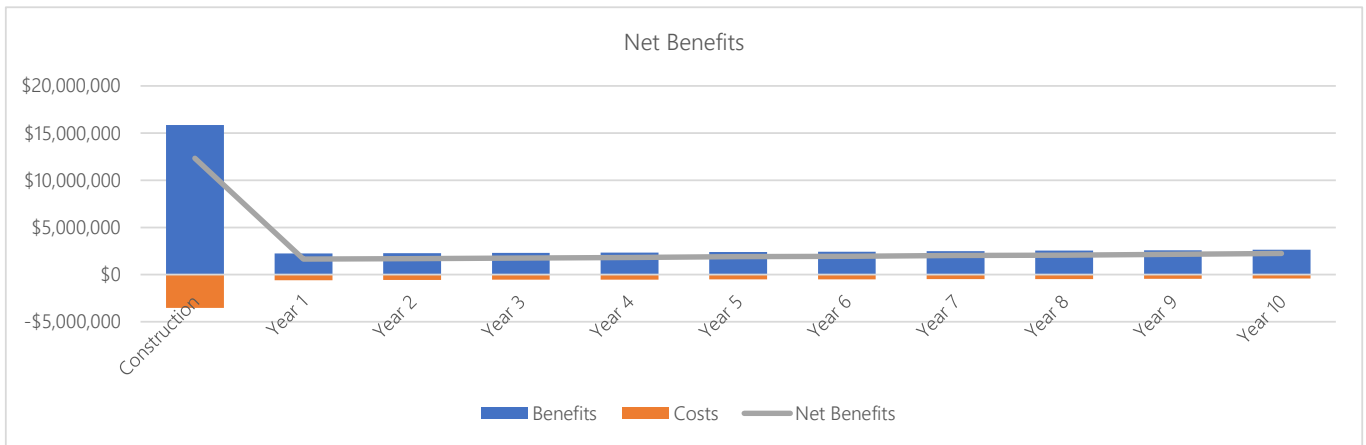
Summary of Economic Impacts over the Life of the PILOT

Project Total Investment
 \$54,015,270

| Temporary (Construction) | | | |
|--------------------------|--------------|-------------|--------------|
| | Direct | Indirect | Total |
| Jobs | 131 | 43 | 174 |
| Earnings | \$12,256,040 | \$2,701,584 | \$14,957,623 |
| Local Spend | \$31,796,870 | \$7,305,161 | \$39,102,031 |

| Ongoing (Operations) | | | |
|----------------------------------|--------------|-------------|--------------|
| Aggregate over life of the PILOT | | | |
| | Direct | Indirect | Total |
| Jobs | 28 | 10 | 37 |
| Earnings | \$15,481,315 | \$7,210,266 | \$22,691,582 |

Figure 1



Net Benefits chart will always display construction through year 10, irrespective of the length of the PILOT.

Figure 2

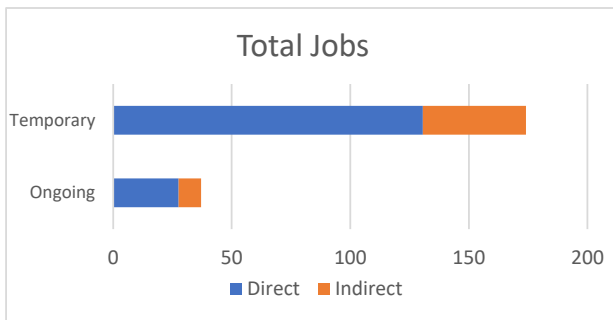
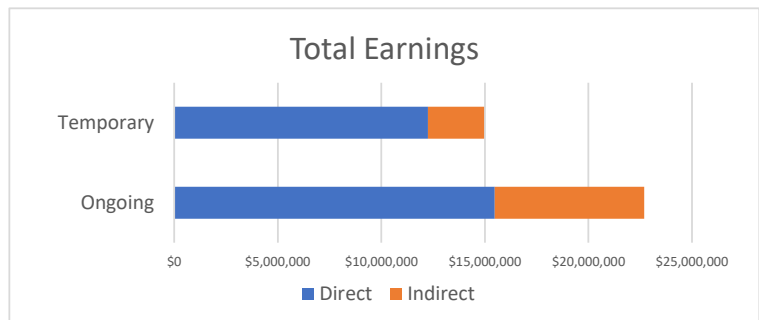


Figure 3



Fiscal Impacts



Cost-Benefit Analysis Tool powered by MRB Group

Estimated Costs of Exemptions

| | Nominal Value | Discounted Value* |
|--|--------------------|--------------------|
| Property Tax Exemption | \$4,984,702 | \$4,504,652 |
| Sales Tax Exemption | \$3,183,887 | \$3,183,887 |
| Local Sales Tax Exemption | \$1,728,396 | \$1,728,396 |
| State Sales Tax Exemption | \$1,455,491 | \$1,455,491 |
| Mortgage Recording Tax Exemption | \$344,347 | \$344,347 |
| Local Mortgage Recording Tax Exemption | \$114,782 | \$114,782 |
| State Mortgage Recording Tax Exemption | \$229,565 | \$229,565 |
| Total Costs | \$8,512,936 | \$8,032,886 |

State and Local Benefits

| | Nominal Value | Discounted Value* |
|---|---------------------|---------------------|
| Local Benefits | \$40,215,525 | \$37,568,305 |
| To Private Individuals | \$37,649,205 | \$35,278,248 |
| Temporary Payroll | \$14,957,623 | \$14,957,623 |
| Ongoing Payroll | \$22,691,582 | \$20,320,625 |
| Other Payments to Private Individuals | \$0 | \$0 |
| To the Public | \$2,566,320 | \$2,290,057 |
| Increase in Property Tax Revenue | \$2,186,993 | \$1,937,384 |
| Temporary Jobs - Sales Tax Revenue | \$124,335 | \$124,335 |
| Ongoing Jobs - Sales Tax Revenue | \$254,992 | \$228,338 |
| Other Local Municipal Revenue | \$0 | \$0 |
| State Benefits | \$2,013,647 | \$1,884,509 |
| To the Public | \$2,013,647 | \$1,884,509 |
| Temporary Income Tax Revenue | \$673,093 | \$673,093 |
| Ongoing Income Tax Revenue | \$1,021,121 | \$914,428 |
| Temporary Jobs - Sales Tax Revenue | \$104,703 | \$104,703 |
| Ongoing Jobs - Sales Tax Revenue | \$214,730 | \$192,284 |
| Total Benefits to State & Region | \$42,229,172 | \$39,452,814 |

Benefit to Cost Ratio

| | Benefit* | Cost* | Ratio |
|--------------------|---------------------|--------------------|------------|
| Local | \$37,568,305 | \$6,347,830 | 6:1 |
| State | \$1,884,509 | \$1,685,056 | 1:1 |
| Grand Total | \$39,452,814 | \$8,032,886 | 5:1 |

*Discounted at 2%

Additional Comments from IDA

This is a good project.

Does the IDA believe that the project can be accomplished in a timely fashion? Yes

PREPARED FOR:

Town of Amherst Industrial Development Agency
4287 Main Street
Amherst, New York 14226

Reasonableness Assessment for Financial Assistance

50 DODGE ROAD
SAWYERS LANDING LLC

JUNE 2024

PREPARED BY:



CONTENTS

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EXECUTIVE SUMMARY

Project Description

The Town of Amherst Industrial Development Agency (Agency) received an application from Sawyers Landing LLC (Applicant) for financial assistance to construct two mixed-use buildings (Project) in Amherst, NY, featuring 146 apartments and 27,470 square feet of commercial space. The Project represents a \$45.9 million investment. To support this project, the Applicant requests financial assistance in the form of a Payment In Lieu of Taxes (PILOT) agreement, sales tax exemption, and mortgage recording tax exemption.

Purpose of this Analysis

An objective, third-party review of a project's assumptions and estimated operating and financial performance helps Industrial Development Agencies perform a complete evaluation of a proposed project. Camoin Associates was engaged to analyze the Project and deliver an analysis and opinion to answer three questions:

- ◆ Are the operating assumptions such as rent, vacancy, and expenses within norms for the region?
- ◆ Is the assistance necessary for the Project to be financially feasible, and therefore undertaken by the Applicant?
- ◆ If assistance is awarded, will the Applicant's rate of return on investment be similar to market expectations for similar projects in the region, and therefore reasonable?

Findings: This analysis concludes that the answer to each of these questions is as follows:

- ***The Applicant's assumptions are generally in line with the regional and industry benchmarks, except the higher than typical annual revenue increase (8% increase per year) and lower than typical operating expenses.***
- ***Over the life of the proposed PILOT, the Project is cash flow positive and meets the industry benchmarks.***
- ***The rate of return to the Applicant over the life of the PILOT is in line with market expectations. A PILOT is required to achieve the necessary equity dividend rate, and without it, the Applicant's expected return is likely not enough to warrant moving forward with the investment.***

1. REVENUE ASSUMPTIONS

The Applicant's operating revenue assumptions are compared to CoStar estimates for rent in 2024 in the Town of Amherst. Overall, the rent assumed for the market rate units is within range of the current median rent in Amherst and the workforce units align with current Amherst IDA requirements (with the exception of the 3-bedroom units). Section 2 of this report, Operating Performance, assesses other assumptions made by the Applicant, including expenses, vacancy rates, and income and expense escalation.

| Apartment Unit Type, Rent, and Household Income | | | | | | | |
|---|-------------------------------|----------------------------|---------------|-------------------------------|-----------------------------|---|---|
| Type of Apartment (1) | Number of Units in Project(1) | Average Rent per Month (1) | Rent per Year | Household Income Required (2) | Median Rent for Amherst (3) | Benchmarks | |
| Studio | 9 | \$1,500 | \$18,000 | \$60,000 | \$1,973 | Rent is 0.76 times the benchmark for a studio apartment in Amherst. | |
| Market | 1BR | 82 | \$1,900 | \$22,800 | \$76,000 | \$1,602 | Rent is 1.19 times higher than the benchmark for a one bedroom in Amherst. |
| | 2BR | 4 | \$2,200 | \$26,400 | \$88,000 | \$1,914 | Rent is 1.15 times higher than the benchmark for a two bedroom in Amherst. |
| | 3BR | 22 | \$3,100 | \$37,200 | \$124,000 | \$2,403 | Rent is 1.29 times higher than the benchmark for a three bedroom in Amherst. |
| Workforce | Studio | 3 | \$1,300 | \$15,600 | \$52,000 | \$1,973 | Rent will aligns with the requirements of the Amherst Industrial Development Agency and will adjust annually. |
| | 1BR | 21 | \$1,500 | \$18,000 | \$60,000 | \$1,602 | Rent will aligns with the requirements of the Amherst Industrial Development Agency and will adjust annually. |
| | 3BR | 5 | \$1,800 | \$21,600 | \$72,000 | \$2,403 | Rent is \$100 more per month than the Amherst Industrial Development Agency requirements. |

(1) Source: Applicant
 (2) Income needed to pay no more than 30% on rent
 (3) Median monthly rent for properties built in 2000 or later in the Town of Amherst, NY; Source: CoStar

2. OPERATING PERFORMANCE

The operating performance of the Project is measured using Year 5 of the Applicant’s Pro Forma (five years of full operation). The Applicant assumes that gross revenue for the residential portion will escalate at 8% per year and expenses will grow by 5% per year. The projected annual income growth factor is higher than typically assumed. Applicant assumes there will be a 5% vacancy for residential once stabilized; this vacancy rate is higher than the market but in range for the industry benchmark¹. Operating expenses are lower than the benchmark. Both scenarios deliver net operating income as a percentage of gross income that is more efficient (higher) than the benchmark range.

Operations Snapshot, Year 5 of Full Operation

| | 10 Year PILOT | | | | 10 Year No PILOT | | | |
|---|----------------------------|---------------------|------------------------------|----------------|----------------------------|---------------------|------------------------------|----------------|
| | Share of Gross | | | | Share of Gross | | | |
| | Project Performance (1) | Operating Income | Benchmark Performance (2) | Evaluation | Project Performance (1) | Operating Income | Benchmark Performance (2) | Evaluation |
| <u>Calculation of Net Operating Income Residential</u> | | | | | | | | |
| Gross Operating Income | \$4,745,930 | 85% | n/a | n/a | \$4,745,930 | 85% | n/a | n/a |
| Vacancy Rate and Concessions | 5% | n/a | 4% | Within range | 5% | n/a | 4% | Within range |
| <u>Calculation of Net Operating Income, Non-Residential</u> | | | | | | | | |
| Gross Operating Income | \$857,850 | 15% | n/a | n/a | \$857,850 | 15% | n/a | n/a |
| Vacancy Rate | 10% | n/a | 8% | Within range | 10% | n/a | 8% | Within range |
| Effective Gross Income (EGI), All Uses (3) | \$5,305,986 | 95% | 96% | Within range | \$5,305,986 | 95% | 96% | Within range |
| Less: Operating Expenses and Reserve | (\$1,293,692) | 23% | 50% | More efficient | (\$1,293,692) | 23% | 50% | More efficient |
| Less: Real Property Taxes | <u>(\$239,370)</u> | <u>4%</u> | <u>n/a</u> | <u>n/a</u> | <u>(\$737,840)</u> | <u>13%</u> | <u>n/a</u> | <u>n/a</u> |
| Net Operating Income | \$3,772,924 | 67% | 48% | More efficient | \$3,274,454 | 58% | 48% | More efficient |
| Less: Debt Service | <u>(\$2,842,262)</u> | 51% | n/a | n/a | <u>(\$2,842,262)</u> | 51% | n/a | n/a |
| Cashflow after Operating Costs, Taxes, Debt | \$930,661 | 17% | n/a | n/a | \$432,191 | 8% | n/a | n/a |

(1) Source: Applicant

(2) Source: RealtyRates Q2 2024 for Northeast Region

(3) Net of vacancy and concessions

Note: National Apartment Association 2020 Survey of Operating Income and Expenses in Rental Apartment Communities was also reviewed and similar results were observed.

Note: Real property taxes adjusted for No PILOT from Applicant’s pro forma based on information from the Agency.

¹ Note: Current vacancy rates in Amherst for properties built since 2000 are 2.4% for multifamily. Source: CoStar.

3. FINANCING PLAN

- ◆ The Sources and Uses of Funds show the total project costs and capital structure of debt and equity.
- ◆ The Terms of the Senior (Long Term) Debt are within the range of the benchmarks.

Sources and Uses of Funds

| <u>Sources of Funds</u> | <u>Amount (1)</u> | <u>Share</u> |
|-----------------------------------|---------------------|--------------|
| Bank Financing | \$40,791,270 | 75% |
| Equity and Working Capital | \$13,597,090 | 25% |
| Total Sources | \$54,388,360 | 100% |
| <u>Uses of Funds</u> | | |
| Acquisition and Transaction Costs | \$6,549,498 | 12% |
| Construction Costs | \$47,838,862 | 88% |
| Total Uses | \$54,388,360 | 100% |

(1) Source: Applicant

Terms of the Senior (Long Term) Debt

| | <u>Terms (1)</u> | <u>Benchmark (2)</u> | <u>Evaluation</u> |
|----------------------------|------------------|----------------------|-------------------|
| Amount Borrowed | \$40,791,270 | n/a | n/a |
| Loan to Total Project Cost | 75% | 55% - 90% | Within Range |
| Annual Interest Rate | 7.00% | 4.81% - 9.11% | Within Range |
| Maturity in Years | 30 | 15 - 40 | Within Range |

(1) Source: Applicant

(2) Source: RealtyRates Q2 2024

4. RATE OF RETURN

An estimated return on investment is calculated using the Applicant's operating pro forma and capital structure. This analysis measures whether the financial assistance is necessary and reasonable. Financial performance is estimated over the full PILOT period (10 years) and compared to no PILOT and starts in the first year of full operation. Three metrics are used to evaluate outcomes:

- ◆ **The Equity Dividend Rate** is net cashflow for each year, divided by the initial equity investment. Equity Dividend Rates are benchmarked using current market information from RealtyRates.com for similar projects in the region. Equity Dividend Rates that are close to the benchmarks indicate a Project outcome in line with the current market, which means the Applicant is earning a reasonable return. Very low or negative rates indicate the Project is unlikely to be undertaken if compared to other possible investments. Equity Dividend Rates are based on an initial equity investment of \$13,597,090 and are included over the life of the PILOT. **Under the PILOT, the Project's average equity dividend rate meets the industry benchmark.**
 - Note that with the Applicant's 8% increased revenue assumption the benchmark for equity dividend rate is eventually met under both scenarios. However, without a PILOT it does not occur within the first five years.
- ◆ **Cash Flow** shows net cashflow to the Applicant over time. There are currently no benchmarks for cash flow available. **Cumulative Cash Flow and average cash flow are positive under both scenarios** with equity investment not being recouped within the 10 year schedule.
- ◆ **Debt Service Coverage** estimates how well the Project's net income, after taxes, supports the repayment of debt. **Debt Service Coverage exceeds the benchmark starting in year 2 with the PILOT assistance.** Debt comprises 75% of the capital structure.

Comparison of Return on Investment

| | <u>10 Year PILOT</u> | <u>10 Year No PILOT</u> | <u>Benchmarks (2)</u> |
|------------------------------|--------------------------|-----------------------------|---------------------------|
| <u>Equity Dividend Rates</u> | | | |
| Average | 7.57% | 3.90% | 4.73% to 13.59% |
| Minimum | -1.26% | -5.61% | |
| Maximum | 19.10% | 16.12% | |
| Year Benchmarks Met | | | |
| <u>Cash Flow</u> | | | |
| Average | \$1,028,699 | \$530,230 | n/a |
| Minimum | (\$171,149) | (\$762,955) | |
| Maximum | \$2,596,715 | \$2,191,582 | |
| Cumulative | \$10,286,993 | \$5,302,296 | |
| Year Investment Recouped | NA | NA | |
| <u>Debt Service Coverage</u> | | | |
| Average | 1.32 | 1.16 | 1.00 to 1.86 |
| Minimum | 0.94 | 0.73 | |
| Maximum | 1.80 | 1.67 | |
| Years Benchmarks Met | 2 | 4 | |

(1) See Attachment 1

ATTACHMENT 1: PRO FORMAS

| Sawyer's Landing / Mixed Use & Townhomes | | Date | 6/6/2024 | | | | | | | | | |
|---|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--|
| Annual Cashflows (Pro Forma) - No PILOT | | | | | | | | | | | | |
| | Construction | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Year 8 | Year 9 | Year 10 | |
| Operating Cash Flow | | | | | | | | | | | | |
| <u>Residential Income</u> | | | | | | | | | | | | |
| Gross Operating Income | \$ - | \$ 3,488,400 | \$ 3,767,472 | \$ 4,068,870 | \$ 4,394,379 | \$ 4,745,930 | \$ 5,125,604 | \$ 5,535,652 | \$ 5,978,505 | \$ 6,456,785 | \$ 6,973,328 | |
| Less: Vacancy Allowance (enter as a negative number) | \$ - | \$ (174,420) | \$ (183,141) | \$ (192,298) | \$ (201,913) | \$ (212,009) | \$ (222,609) | \$ (233,739) | \$ (245,426) | \$ (257,698) | \$ (270,583) | |
| Net Rental Income, Residential | \$ - | \$ 3,313,980 | \$ 3,584,331 | \$ 3,876,572 | \$ 4,192,466 | \$ 4,533,921 | \$ 4,902,995 | \$ 5,301,913 | \$ 5,733,078 | \$ 6,199,087 | \$ 6,702,745 | |
| <u>Commercial/Industrial Income</u> | | | | | | | | | | | | |
| Gross Operating Income | \$ - | \$ 630,545 | \$ 680,989 | \$ 735,468 | \$ 794,305 | \$ 857,850 | \$ 926,477 | \$ 1,000,596 | \$ 1,080,643 | \$ 1,167,095 | \$ 1,260,462 | |
| Less: Vacancy Allowance (enter as a negative number) | \$ - | \$ (63,055) | \$ (68,099) | \$ (73,547) | \$ (79,431) | \$ (85,785) | \$ (92,648) | \$ (100,060) | \$ (108,064) | \$ (116,709) | \$ (126,046) | |
| Net Rental Income, Commercial/Industrial | \$ - | \$ 567,491 | \$ 612,890 | \$ 661,921 | \$ 714,875 | \$ 772,065 | \$ 833,830 | \$ 900,536 | \$ 972,579 | \$ 1,050,385 | \$ 1,134,416 | |
| <u>Other Income</u> | | | | | | | | | | | | |
| Parking Income | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Other Income / Late Fees / Pet Rent | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Other Income | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Net Income, Other | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Effective Gross Income (EGI) | \$ - | \$ 3,881,471 | \$ 4,197,221 | \$ 4,538,493 | \$ 4,907,341 | \$ 5,305,986 | \$ 5,736,825 | \$ 6,202,449 | \$ 6,705,657 | \$ 7,249,472 | \$ 7,837,161 | |
| <u>Operating Expenses (enter positive numbers)</u> | | | | | | | | | | | | |
| Salaries and Wages | \$ - | \$ 285,000 | \$ 299,250 | \$ 314,213 | \$ 329,923 | \$ 346,419 | \$ 363,740 | \$ 381,927 | \$ 401,024 | \$ 421,075 | \$ 442,129 | |
| Maintenance / Contracts / Asset Fee | \$ - | \$ 176,000 | \$ 184,800 | \$ 194,040 | \$ 203,742 | \$ 213,929 | \$ 224,626 | \$ 235,857 | \$ 247,650 | \$ 260,032 | \$ 273,034 | |
| Deposit to replacement reserve | \$ - | \$ 194,074 | \$ 203,777 | \$ 213,966 | \$ 224,664 | \$ 235,898 | \$ 247,692 | \$ 260,077 | \$ 273,081 | \$ 286,735 | \$ 301,072 | |
| Insurance | \$ - | \$ 215,000 | \$ 225,750 | \$ 237,038 | \$ 248,889 | \$ 261,334 | \$ 274,401 | \$ 288,121 | \$ 302,527 | \$ 317,653 | \$ 333,536 | |
| Other / Marketing / Utilities | \$ - | \$ 194,250 | \$ 203,963 | \$ 214,161 | \$ 224,869 | \$ 236,112 | \$ 247,918 | \$ 260,314 | \$ 273,329 | \$ 286,996 | \$ 301,346 | |
| Operating Expenses | 27% | \$ 1,064,324 | \$ 1,117,540 | \$ 1,173,417 | \$ 1,232,088 | \$ 1,293,692 | \$ 1,358,376 | \$ 1,426,295 | \$ 1,497,610 | \$ 1,572,491 | \$ 1,651,115 | |
| Pre-Tax Operating Income (Revenue less Operating Expenses) | \$ - | \$ 2,817,147 | \$ 3,079,681 | \$ 3,365,076 | \$ 3,675,253 | \$ 4,012,294 | \$ 4,378,448 | \$ 4,776,154 | \$ 5,208,047 | \$ 5,676,982 | \$ 6,186,046 | |
| Real Property Taxes (assuming no PILOT)* | \$ - | \$ 737,840 | \$ 737,840 | \$ 737,840 | \$ 737,840 | \$ 737,840 | \$ 737,840 | \$ 737,840 | \$ 737,840 | \$ 737,840 | \$ 737,840 | |
| Net Operating Income (NOI) after Taxes | \$ - | \$ 2,079,307 | \$ 2,341,841 | \$ 2,627,236 | \$ 2,937,413 | \$ 3,274,454 | \$ 3,640,608 | \$ 4,038,314 | \$ 4,470,207 | \$ 4,939,142 | \$ 5,448,206 | |
| Loan or Mortgage (Debt Service) | | | | | | | | | | | | |
| Interest Payment | \$ - | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | |
| Principal Payment | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 414,362 | \$ 414,362 | \$ 414,362 | \$ 414,362 | \$ 414,362 | |
| Refinance - Continue mortgage | | | | | | | | | | | | |
| Debt Service | \$ - | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 3,256,624 | \$ 3,256,624 | \$ 3,256,624 | \$ 3,256,624 | \$ 3,256,624 | |
| Cash Flow After Financing and Reserve | \$ - | \$ (762,955) | \$ (500,421) | \$ (215,026) | \$ 95,151 | \$ 432,191 | \$ 383,984 | \$ 781,690 | \$ 1,213,583 | \$ 1,682,518 | \$ 2,191,582 | |
| Cash on Cash / Average | 25% | | -3.68% | -1.58% | 0.70% | 3.18% | 2.82% | 5.75% | 8.93% | 12.37% | 16.12% | |
| Debt Service Coverage Ratio (DSCR) | | 0.73 | 0.82 | 0.92 | 1.03 | 1.15 | 1.12 | 1.24 | 1.37 | 1.52 | 1.67 | |
| Equity Dividend Rate | | -5.61% | -3.68% | -1.58% | 0.70% | 3.18% | 2.82% | 5.75% | 8.93% | 12.37% | 16.12% | |

* Assumes property taxes on current plus improvement and no percent annual increase. Source: Camoin Associates, Agency, Applicant

Reasonableness Assessment for Sawyers Landing LLC – Town of Amerherst Industrial Development Agency

| Sawyer's Landing / Mixed Use & Townhomes | Date | 6/6/2024 | | | | | | | | | | |
|---|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|------|
| Annual Cashflows (Pro Forma) - PILOT | | | | | | | | | | | | |
| | Construction | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Year 8 | Year 9 | Year 10 | |
| Operating Cash Flow | | | | | | | | | | | | |
| <u>Residential Income</u> | | | | | | | | | | | | |
| Gross Operating Income | \$ - | \$ 3,488,400 | \$ 3,767,472 | \$ 4,068,870 | \$ 4,394,379 | \$ 4,745,930 | \$ 5,125,604 | \$ 5,535,652 | \$ 5,978,505 | \$ 6,456,785 | \$ 6,973,328 | |
| Less: Vacancy Allowance (enter as a negative number) | \$ - | \$ (174,420) | \$ (183,141) | \$ (192,298) | \$ (201,913) | \$ (212,009) | \$ (222,609) | \$ (233,739) | \$ (245,426) | \$ (257,698) | \$ (270,583) | |
| Net Rental Income, Residential | \$ - | \$ 3,313,980 | \$ 3,584,331 | \$ 3,876,572 | \$ 4,192,466 | \$ 4,533,921 | \$ 4,902,995 | \$ 5,301,913 | \$ 5,733,078 | \$ 6,199,087 | \$ 6,702,745 | |
| <u>Commercial/Industrial Income</u> | | | | | | | | | | | | |
| Gross Operating Income | \$ - | \$ 630,545 | \$ 680,989 | \$ 735,468 | \$ 794,305 | \$ 857,850 | \$ 926,477 | \$ 1,000,596 | \$ 1,080,643 | \$ 1,167,095 | \$ 1,260,462 | |
| Less: Vacancy Allowance (enter as a negative number) | \$ - | \$ (63,055) | \$ (68,099) | \$ (73,547) | \$ (79,431) | \$ (85,785) | \$ (92,648) | \$ (100,060) | \$ (108,064) | \$ (116,709) | \$ (126,046) | |
| Net Rental Income, Commercial/Industrial | \$ - | \$ 567,491 | \$ 612,890 | \$ 661,921 | \$ 714,875 | \$ 772,065 | \$ 833,830 | \$ 900,536 | \$ 972,579 | \$ 1,050,385 | \$ 1,134,416 | |
| <u>Other Income</u> | | | | | | | | | | | | |
| Parking Income | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Other Income / Late Fees / Pet Rent | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Other Income | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Net Income, Other | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Effective Gross Income (EGI) | \$ - | \$ 3,881,471 | \$ 4,197,221 | \$ 4,538,493 | \$ 4,907,341 | \$ 5,305,986 | \$ 5,736,825 | \$ 6,202,449 | \$ 6,705,657 | \$ 7,249,472 | \$ 7,837,161 | |
| <u>Operating Expenses (enter positive numbers)</u> | | | | | | | | | | | | |
| Salaries and Wages | \$ - | \$ 285,000 | \$ 299,250 | \$ 314,213 | \$ 329,923 | \$ 346,419 | \$ 363,740 | \$ 381,927 | \$ 401,024 | \$ 421,075 | \$ 442,129 | |
| Maintenance / Contracts / Asset Fee | \$ - | \$ 176,000 | \$ 184,800 | \$ 194,040 | \$ 203,742 | \$ 213,929 | \$ 224,626 | \$ 235,857 | \$ 247,650 | \$ 260,032 | \$ 273,034 | |
| Deposit to replacement reserve | \$ - | \$ 194,074 | \$ 203,777 | \$ 213,966 | \$ 224,664 | \$ 235,898 | \$ 247,692 | \$ 260,077 | \$ 273,081 | \$ 286,735 | \$ 301,072 | |
| Insurance | \$ - | \$ 215,000 | \$ 225,750 | \$ 237,038 | \$ 248,889 | \$ 261,334 | \$ 274,401 | \$ 288,121 | \$ 302,527 | \$ 317,653 | \$ 333,536 | |
| Other / Marketing / Utilities | \$ - | \$ 194,250 | \$ 203,963 | \$ 214,161 | \$ 224,869 | \$ 236,112 | \$ 247,918 | \$ 260,314 | \$ 273,329 | \$ 286,996 | \$ 301,346 | |
| Operating Expenses | 27% | \$ 1,064,324 | \$ 1,117,540 | \$ 1,173,417 | \$ 1,232,088 | \$ 1,293,692 | \$ 1,358,376 | \$ 1,426,295 | \$ 1,497,610 | \$ 1,572,491 | \$ 1,651,115 | |
| Pre-Tax Operating Income (Revenue less Operating Expenses) | \$ - | \$ 2,817,147 | \$ 3,079,681 | \$ 3,365,076 | \$ 3,675,253 | \$ 4,012,294 | \$ 4,378,448 | \$ 4,776,154 | \$ 5,208,047 | \$ 5,676,982 | \$ 6,186,046 | |
| Real Property Taxes (assuming PILOT)* | \$ - | \$ 146,034 | \$ 177,145 | \$ 208,258 | \$ 208,258 | \$ 239,370 | \$ 239,370 | \$ 270,483 | \$ 270,483 | \$ 301,595 | \$ 332,707 | |
| Net Operating Income (NOI) after Taxes | \$ - | \$ 2,671,113 | \$ 2,902,536 | \$ 3,156,818 | \$ 3,466,995 | \$ 3,772,924 | \$ 4,139,078 | \$ 4,505,671 | \$ 4,937,564 | \$ 5,375,387 | \$ 5,853,339 | |
| <u>Loan or Mortgage (Debt Service)</u> | | | | | | | | | | | | |
| Interest Payment | \$ - | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | |
| Principal Payment | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 414,362 | \$ 414,362 | \$ 414,362 | \$ 414,362 | \$ 414,362 | |
| Refinance - Continue mortgage | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Debt Service | \$ - | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 2,842,262 | \$ 3,256,624 | \$ 3,256,624 | \$ 3,256,624 | \$ 3,256,624 | \$ 3,256,624 | |
| Cash Flow After Financing and Reserve | \$ - | \$ (171,149) | \$ 60,274 | \$ 314,556 | \$ 624,733 | \$ 930,661 | \$ 882,454 | \$ 1,249,047 | \$ 1,680,940 | \$ 2,118,763 | \$ 2,596,715 | |
| Cash on Cash / Average | 29% | | 0.44% | 2.31% | 4.59% | 6.84% | 6.49% | 9.19% | 12.36% | 15.58% | 19.10% | |
| Debt Service Coverage Ratio (DSCR) | | 0.94 | 1.02 | 1.11 | 1.22 | 1.33 | 1.27 | 1.38 | 1.52 | 1.65 | 1.80 | |
| Equity Dividend Rate | | -1.26% | 0.44% | 2.31% | 4.59% | 6.84% | 6.49% | 9.19% | 12.36% | 15.58% | 19.10% | |

* Assumes property taxes on current plus PILOT and no percent annual increase. Source: Camoin Associates, Agency, Applicant

Appendix A: Scope of Services

To assist with its evaluation of the Applicant’s request for financial assistance, Camoin was commissioned by the Town of Amherst Industrial Development Agency to conduct the above analyses. The analyses are comprised of four tasks:

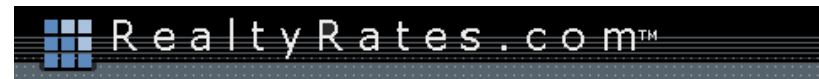
- ◆ *Test Assumptions* by comparing rents, operating costs, and vacancy rates to real estate benchmarks for similar projects and noting any significant differences. Operating performance and net income are also evaluated.
- ◆ *Review the Financing Plan* and perform an objective third-party evaluation of the estimated return on investment (ROI) to the Applicant with and without a PILOT agreement. We also analyze whether the capital structure and terms of the long-term debt are within market benchmarks for obtaining bank financing.
- ◆ *Evaluate the effects of one or more PILOTs* recommended by the Agency and determine whether the PILOT would result in a return that is within what would normally be anticipated in the current market for a similar project.
- ◆ *Provide an objective, third-party opinion* about the need for and reasonableness of the financial assistance.

Sources Consulted

- ◆ Project financing and annual cashflow workbook submitted by the Applicant in May 2024.
- ◆ Real estate tax information and estimates received from the Agency, including anticipated future assessed value of the Project.
- ◆ CoStar
- ◆ RealtyRates.com
- ◆ National Apartment Association 2020 Survey of Operating Income and Expenses in Rental Apartment Communities



CoStar is the leading source of commercial real estate intelligence in the U.S. It provides a full market inventory of properties and spaces—available as well as fully leased—by market and submarket. Details on vacancy, absorption, lease rates, inventory, and other real estate market data are provided, as well as property-specific information including photos and floor plans. More at www.costar.com.



RealtyRates.com™ is a comprehensive resource for real estate investment and development news, trends, analytics, and market research that supports real estate professionals involved with more than 50 income producing and sell-out property types throughout the US. RealtyRates.com™ is the publisher of the award-winning Investor, Developer and Market Surveys, providing data essential to the appraisal, evaluation, disposition and marketing of investment and development real estate nationwide.

APPENDIX B: DEFINITIONS

Equity Dividend Rate: This is calculated as the rate of return on the equity component of a project. It is calculated as follows: (Source: RealtyRates.com)

$$\text{Equity Dividend} / \text{Equity Investment} = \text{Equity Dividend Rate, where Equity Dividend} = \text{Net Operating Income} - \text{Debt Service.}$$

Debt Service Coverage Ratio (DSCR): The ratio of annual debt repayment, including principal and interest, to total Net Operating Income (NOI). (Source: RealtyRates.com)

Net Operating Income (NOI): Income net of all operating costs including vacancy and collection loss but not including debt service. Appraisers also typically expense reserves for repairs and replacements. However, because reserves are not usually reported along with other transaction data, RealtyRates.com tracks lender requirements but does not include them in calculations. (Source: RealtyRates.com)

ABOUT CAMOIN ASSOCIATES

Camoin Associates has provided economic development consulting services to municipalities, economic development agencies, and private enterprises since 1999. Through the services offered, Camoin Associates has had the opportunity to serve EDOs and local and state governments from Maine to California; corporations and organizations that include Lowes Home Improvement, FedEx, Amazon, Volvo (Nova Bus) and the New York Islanders; as well as private developers proposing projects over \$6 billion. Our reputation for detailed, place-specific, and accurate analysis has led to projects in 32 states and garnered attention from national media outlets including Marketplace (NPR), Crain's New York Business, Forbes magazine, The New York Times, and The Wall Street Journal. Additionally, our marketing strategies have helped our clients gain both national and local media coverage for their projects to build public support and leverage additional funding. We are based in Saratoga Springs, NY, with regional offices in Portland, ME; Boston, MA; Richmond, VA and Brattleboro, VT. To learn more about our experience and projects in all of our service lines, please visit our website at www.camoinassociates.com. You can also find us on Twitter [@camoinassoc](https://twitter.com/camoinassoc) and [Facebook](#) and [LinkedIn](#).

THE PROJECT TEAM

Rachel Selsky
Vice President, Project Principal

RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE CONSTRUCTION AND EQUIPPING OF TWO, FOUR-STORY MIXED USE BUILDINGS TOTALING APPROXIMATELY 152,700 SQUARE FEET BY SAWYER'S LANDING LLC TO BE LOCATED AT 50 DODGE ROAD, AMHERST, NEW YORK FOR SALE OR LEASE TO THE AGENCY AND SUBSEQUENT LEASE OR RECONVEYANCE PURSUANT TO AN INSTALLMENT SALE CONTRACT TO SAWYER'S LANDING LLC, THE EXECUTION OF A MORTGAGE AGREEMENT, LEASE AGREEMENT AND/OR INSTALLMENT SALE CONTRACT AND PILOT AGREEMENT AND THE TAKING OF OTHER ACTIONS.

WHEREAS, the Town of Amherst Industrial Development Agency (the "Agency") is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Section 914-a of the General Municipal Law, as amended (collectively, the "Act"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, Sawyer's Landing LLC, for itself or for related individuals or entities (the "Company"), has submitted an application to the Agency requesting the Agency to undertake a certain project (the "Project") consisting of: (i) the acquisition of a leasehold interest in approximately 5 acres of a larger 18 acre parcel located at or about 50 Dodge Road in Amherst, New York (Part of SBL No.40.08-3-13.1)(the "Premises"); (ii) the construction of two, four-story, mixed-use buildings consisting of an aggregate of approximately 152,700 square feet that will include 146 apartments, twenty percent (20%) of which will be designated for workforce housing, approximately 27,478 square feet of first floor commercial retail/office space and related on-site improvements (collectively, the "Improvements"); and (iii) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment"); and

WHEREAS, the Company submitted an application and other materials and information (collectively, the "Application") to the Agency to initiate the accomplishment of the above; and

WHEREAS, the Application sets forth certain information with respect to the Company and the Project, including the following: that the Company desires Agency financing for the construction of two, four-story, mixed use buildings containing commercial space and apartments and related site improvements located at 50 Dodge Road, Amherst, New York for commercial, mixed use, and retail purposes, all at a cost of approximately \$54,015,270.00; that the Company anticipates that six (6) new full-time jobs and two (2) part-time jobs will be created as a result of the Project at the end of two (2) years of operation thereof; that (i) there will be no substantial adverse disruption of existing employment of facilities of a similar nature in the Town of Amherst; (ii) the Project will result in

substantial capital investment; and (iii) that if Agency financing is disapproved, the Company would likely not proceed with the Project; and that, therefore, Agency financing is necessary to encourage the Company to proceed with the Project in the Town of Amherst; and

WHEREAS, based upon the information set forth in the Application, the Project includes facilities or property which will be primarily used in making retail sales (as defined in Section 862(2) of the New York General Municipal Law) to customers who personally visit such facilities, and the Company has represented in the Application that the retail elements of the Project will constitute less than one-third (1/3) of the total project cost; and

WHEREAS, the Agency may provide financial assistance to projects that include retail elements if the retail elements do not constitute more than one-third (1/3) of the total project cost; and

WHEREAS, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on April 4, 2024, and has considered all oral and written presentations made at or in connection with said public hearing; and

WHEREAS, the Agency has reviewed the Application and prepared a cost-benefit analysis and has considered the extent to which the Project will create and retain permanent, private-sector jobs, the value of tax exemptions to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the proposed Project in a timely fashion, the extent to which the proposed Project will provide additional sources of revenue for the municipalities and school district and other public benefits that might occur as a result of the Project; and

WHEREAS, the Agency retained Camoin Associates (“Camoin”) to prepare an independent reasonableness assessment to evaluate whether the financial assistance to be provided by the Agency is necessary for the Project to be financially feasible, and Camoin concluded in its written report that without a PILOT, the Company’s expected return is likely not enough to warrant moving forward with the Project; and

WHEREAS, the Agency desires to encourage the Company with respect to the consummation of the Project, if by doing so it is able to induce the Company to proceed with the Project in the Town of Amherst; and

WHEREAS, the Company is expected to undertake and complete the Project by obtaining a conventional loan from a third party, and the Company has requested that the Agency execute any and all documents required by the parties, including any collateral mortgages on the Project given to secure a loan(s) obtained by the Company to finance the cost of the Project; and

WHEREAS, the Project is within the Muir Woods project site, which the Amherst Town Board (“Town Board”) previously issued a findings statement under the State Environmental Quality Review Act (ECL Article 8 and its implementing regulations at 6 NYCRR Part 617) (“SEQRA”) on December 17, 2007 (the “Findings Statement”); and

WHEREAS, the Company submitted a request to amend the Findings Statement to allow

the Company's mixed-use development at "Site A" of the Muir Woods project site (the "Request to Amend"). The Agency was duly identified as an involved agency in Part 1 of a long-form Environmental Assessment Form ("EAF") which was completed for the Project. By letter dated July 9, 2021 the Town Board re-established its lead agency status under SEQRA to review the Company's Request to Amend, and declared the Project a Type I action; and

WHEREAS, on September 27, 2021, the Town Board issued an amended findings statement and determined that the Company's mixed-use development within the Muir Woods project site was not expected to have a significant adverse effect on the environment (the "Amended Findings Statement"). A copy of the Amended Findings Statement is attached hereto as Exhibit A; and

WHEREAS, on September 22, 2022, the Town of Amherst Planning Board ("Planning Board") granted site plan approval for the Project. The Planning Board reaffirmed and ratified the Town Board's findings under SEQRA, and determined that the Planning Board's obligations under SEQRA were complete.

NOW, THEREFORE, THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. Based upon the Agency's review of the Company's Application, the EAF and the Amended Findings Statement issued by the Town Board, the Agency hereby: (a) consents to and affirms the status of the Town Board as lead agency within the meaning of, and for all purposes of complying with, SEQRA; (b) ratify the proceedings undertaken by the Town Board; (c) determines that the proceedings undertaken by the Town Board as lead agency under SEQRA with respect to the acquisition, construction and equipping of the Project, and the proceedings undertaken by the Planning Board with respect to the Project's site plan review and approval satisfy the requirements of SEQRA, and ratifies and confirms such proceedings by the Town Board and Planning Board; and (d) determines that all of the provisions of SEQRA that are required to be complied with as a condition precedent to the approval of the Financial Assistance (as defined herein) contemplated by the Agency with respect to the Project and the participation by the Agency in undertaking the Project have been satisfied.

Section 2. The Project is described in the recitals to this Resolution. The financial assistance to be provided in connection therewith include: (i) an exemption from sales and use taxes for building materials and machinery, equipment, fixtures and furnishings purchased for incorporation into or use at the Project location having a total cost not to exceed \$36,387,280.00 and which shall not include tenant finishings or equipment with respect to the retail elements of the Project; (ii) an exemption from mortgage recording taxes for one or more mortgages having a principal amount not to exceed \$45,912,980.00; and (iii) an abatement from real property taxes in accordance with the Agency's ten (10) year payment in lieu of tax schedule (collectively, the "Financial Assistance"). In addition to any other covenants, obligations and agreements which may be contained in the Project Documents (as hereinafter defined), the provision by the Agency of the Financial Assistance is made subject to the agreement by the Company throughout the period during which the Company is receiving Financial Assistance from the Agency (the "Compliance Period") to comply with the following covenants and agreements, each of which shall constitute a "Material Factor":

- (a) Investment of no less than \$45,912,979.00 at the Project location as noted in the Application;
- (b) Creation of six (6) direct full-time equivalent jobs and maintenance of those jobs throughout the Project's PILOT term;
- (c) Compliance with the Agency's Local Labor Policy; and
- (d) Maintaining twenty percent (20%) of total housing units as workforce housing for fifteen (15) years.

Section 3. The Agency hereby determines that the Project and the financing thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further determines that the Project is consistent with the Countywide Industrial Development Agency Uniform Tax Exemption Policy. The Agency makes the following findings and determinations with respect to the Project:

(a) The Project is for a commercial purpose within meaning of the Act and the Project will promote employment opportunities in the municipality in which the Project is to be located. The Project will be located in a part of the Town of Amherst that has been identified as appropriate for mixed-use development of the kind proposed by the Company. The Project is generally consistent with the policies of the Town of Amherst Bicentennial Comprehensive Plan. The construction of the Project will promote employment opportunities by designating twenty percent (20%) of units for workforce housing to attract and retain residents to live within the Town, which will promote economic growth and improve the neighborhood. The Project will help prevent economic deterioration through the development of a currently vacant and unused site.

(b) A portion of the Project is expected to include facilities or property that are primarily used in making retail sales to customers who personally visit such facilities within the meaning of Section 862(2)(a) of the General Municipal Law. However, based on the representation of the Company in the Application, such facilities or property constitute less than one-third of the total project cost.

Section 4. The Agency hereby authorizes the Company, as agent for the Agency, to proceed with the Project as herein authorized. The Agency is hereby authorized to acquire an interest in the Project site and the buildings thereon, if any, and to make renovations or additions thereto. The Company is authorized to proceed with the acquisition and construction of the Project as set forth in any Project Agreement, the Agency Lease Agreement or Installment Sale Contract (as hereinafter defined).

Section 5. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary of the Agency, and other appropriate officials of the Agency and its agents and employees, are hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and to complete the Project in cooperation with the Company.

Section 6. The Company is authorized, as agent of the Agency, to initiate the construction of a building or building addition constituting the Project, and the acquisition of machinery and

equipment which will be a part thereof or will be used in connection therewith, and to advance such funds as may be necessary to accomplish such purposes. The designation of the Company as agent hereunder is limited to purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$36,387,280.00 and shall not apply to any other purchase by the Company or any operating expenses of the Company, or any tenant finishings or equipment with respect to the retail elements of the Project. The Company shall report to the Agency, at such times as the Agency shall require, or as may otherwise be prescribed by the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner"), the value of all sales and use tax exemptions claimed by the Company or agents of the Company or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators under the authority granted pursuant to this Resolution. A failure to report may result in the revocation of the designation of the Company as agent and repayment of any sales and use tax exemptions claimed.

Section 7. The Agency is hereby authorized to enter into a Project Agreement with respect to the provision of the Financial Assistance authorized herein (the "Project Agreement") and to acquire an interest in the Project site and construct a facility thereon, and the execution and delivery of a lease by the Company to the Agency (the "Company Lease"), an Agency Lease Agreement (the "Agency Lease Agreement") or Installment Sale Contract (the "Installment Sale Contract") between the Agency and the Company, a Payment in Lieu of Tax Agreement between the Agency and the Company (the "PILOT Agreement"), and such other documents as may be necessary to fulfill the intent of the parties to the transaction (collectively, the "Project Documents"), in form satisfactory to Agency counsel, are hereby authorized. The PILOT Agreement shall provide for payments in accordance with the Agency's ten (10) year payment in lieu of tax schedule. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, or any Assistant Secretary are each authorized to execute such documents and to make or approve such amendments or modifications to the Project Agreement, Company Lease, the Agency Lease Agreement, Installment Sale Contract, the PILOT Agreement and such other documents executed and delivered in connection therewith as they deem necessary under the circumstances provided, however, that such modifications do not materially alter the risk to the Agency.

Section 8. In the event the Company obtains one or more conventional loans to finance the cost of the Project, the Agency is hereby authorized to execute and deliver to the lender(s) one or more collateral mortgages on the Project given to secure such loans ("Mortgage Agreement"), and such other documents as may be necessary to fulfill the intent of the parties to the transaction in form satisfactory to Agency counsel provided that the aggregate amount of such mortgages subject to the Agency exemption shall not exceed \$45,912,980.00. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary are each authorized to execute such collateral mortgages and to make or approve such amendment(s) or modifications to such collateral mortgages and other documents executed and delivered in connection therewith as they may deem necessary under the circumstances, provided, however, that such modifications do not materially alter the risk to the Agency.

Section 9. Any such action heretofore taken by the Company initiating the acquisition, installation and construction of the Project is hereby ratified, confirmed and approved.

Section 10. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency with respect to the Project and the financing thereof.

Section 11. In the event a lease is not executed between the Company and the Agency by the expiration date of this Resolution (as such date may be extended as provided herein) or the termination of this Resolution, the Company shall then be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all improvements of the real property and the machinery and equipment which constitute the Project, as if the Agency did not have an interest in the Project from the date the Company commenced its acquisition, construction and installation. In addition, in the event, because of the involvement of the Agency, the Company claims an exemption from state sales or use tax in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder, or which exemption is in excess of the amounts authorized hereunder, or is otherwise not permitted under this Resolution, or if the Company shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company as agent for the Agency as set forth in this Resolution or in any document authorized hereunder, then the Company shall each be required to remit to the Agency an amount equal to the amount of state sales and use taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company by the Commissioner of state sales and use taxes, together with any relevant penalties and interest.

In addition to the foregoing, in the event the Agency determines that the Company is in violation of a Material Factor, or in the event that the Company closes the Project or relocates its operations to a location outside of the Town of Amherst within the time period during which the Company is receiving Financial Assistance from the Agency or in the event the Agency determines, in its judgment, that the Company knowingly and intentionally submitted false or intentionally misleading information in its application to the Agency or in any report or certification submitted to the Agency for the purpose of obtaining or maintaining any Financial Assistance from the Agency (each referred to herein as a “Recapture Event”), the Agency may, in accordance with its policies and procedures then in effect, (i) revoke the designation of the Company and any agents of the Company (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company) as agents for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Company, commencing with the tax fiscal year next following such Recapture Event make payments in lieu of taxes on the Project with respect to all applicable taxing authorities in such amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project or otherwise modify the amount or terms of any Financial Assistance being provided by the Agency in connection with the Project and/or (iii) require that the Company pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of (x) all sales and use tax exemptions claimed by the Company and any agents of the Company, including, but not limited to, consultants, sub-contractors, or any equipment lessors of the Company under the authority granted under this Resolution and the Project Agreement, (y) any exemption from real estate taxes received by reason

of the Agency's leasehold interest in the Project and/or (z) any exemption from mortgage recording tax received by reason of the Agency's involvement with the Project. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company, the Company shall (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed to by any affected tax jurisdiction.

Section 12. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Company's purposes or needs. The Company is satisfied that the Project is suitable and fit for its purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Company hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 13. Should the appropriate officers of the Agency determine, in their absolute discretion, that there is reason to believe that the activities of any past or present owner or operator of the Premises have resulted in the generation of any "hazardous substance" (as the term has been defined from time to time in any applicable federal or state law, rule or regulation), or that any party has stored, disposed or released any such substance on the Premises or within a one (1) mile radius thereof, the Agency shall be under no obligation to enter into a lease as contemplated by this Resolution.

Section 14. No covenant, stipulation, obligation or agreement herein contained or contained in the Project Agreement, Company Lease, the Mortgage Agreement, the Agency Lease Agreement, Installment Sale Contract, the PILOT Agreement or other documents, nor the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit, nor shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity.

Section 15. Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

Section 16. This Resolution shall take effect immediately and shall continue in full force

and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Company pursuant to Sections 10 and 11 of this Resolution which shall survive any expiration or termination) or (b) allow the Company additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Company to complete such transactions. Upon any allowance of additional time to close, the Agency may charge the Company an extension fee in accordance with the Agency's fee schedule.

Section 17. Certain construction work done under contract in connection with financial assistance from the Agency may be subject to the requirements of Section 224-a of the Labor Law of the State, including without limitation the requirement that such construction be subject to the prevailing wage requirements of Sections 220 and 220-b of the Labor Law. In addition, such construction work may be required by Section 224-a of the Labor Law to comply with the objectives and goals of minority and women-owned business enterprises pursuant to Article 15-A of the Executive Law and service-disabled veteran-owned business pursuant to Article 17-B of the Executive Law. The Company acknowledges receipt of notice pursuant to Section 224-a(8)(d) of the Labor Law that the sales and use tax exemption benefit amount referred to in Section 8.5(d) and real property tax benefit amount referred to herein are "public funds" and not otherwise excluded under Section 224-a(3) of the New York Labor Law. The Company represents and warrants that it understands the requirements of Section 224-a of the Labor Law and the applicability of such requirements to the Project and shall comply therewith.

Section 18. This Resolution is subject to compliance with all local building and zoning requirements.

ADOPTED: July 19, 2024

ACCEPTED AND AGREED TO: _____, 2024

Sawyer's Landing LLC

By: _____

Name:

Title:

Exhibit A

Amended Findings Statement

See attached.



Town of Amherst

Brian J. Kulpa
Town Supervisor

AMENDMENT #51 TO THE AUDUBON DEVELOPMENT PLAN
TO RECLASSIFY A PORTION OF 326± ACRES OF LAND
FROM NCD-ND & NCD-MOS to NCD-GC, NCD-RI & NCD-MOS
1081 & 1121 North French Road
(Z-9-02)

CERTIFICATION OF AMENDED FINDINGS

Having considered the Draft and Final Generic EIS documents, and having considered the preceding written facts and conclusions relied upon to meet the requirements of 6 NYCRR 617, this Amended Statement of Findings certifies that:

1. The requirements of 6 NYCRR Part 617 have been met;
2. Consistent with the social, economic and other essential considerations from among the reasonable alternatives thereto, the action **approved** is one which minimizes or avoids adverse environmental effects to the maximum extent practicable; including the effects disclosed in the Generic Environmental Impact Statements, and the Application to Amend the Findings Statement, and
3. Consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the Environmental Impact Statement process and the Second Application to Amend the Findings Statement will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable.

TOWN OF AMHERST

Name of Agency

Signature of Responsible Official

BRIAN J. KULPA

Name of Responsible Official

TOWN SUPERVISOR

Title of Responsible Official

September 27, 2021

Date

5583 MAIN STREET, WILLIAMSVILLE, NY 14221

Address of Agency

Certification of Amended Findings
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RESOLUTION

WHEREAS, following the April 16, 2004 submittal of a Draft Generic Environmental Impact Statement (DGEIS) prepared by Ciminelli Development Company, Inc., the DGEIS was accepted by the Town Board on September 7, 2004. The DGEIS was submitted for the proposed rezoning from NCD-ND & NCD-MOS to NCD-GC, NCD-RI & NCD-MOS and development of 326± acres of land located at 1081 & 1121 North French Road. On October 28, 2004, the Planning Board held a public hearing on the DGEIS and rezoning request and recommended approval of the subject petition. Subsequently, a public hearing on the DGEIS and rezoning request was held by the Town Board on March 2, 2005. A Final Generic Environmental Impact Statement (FGEIS) was accepted by the Town Board on November 5, 2007, and a Notice of Completion of the FGEIS was filed on November 14, 2007; and

WHEREAS, the Planning Board and the Town Board have considered the content of the DGEIS, the FGEIS, and all other documents and comments and submissions made during and after the hearings.

WHEREAS, on February 18, 2014, the Project Sponsor submitted an Application to Amend the Findings Statement and Audubon Development Plan along with supporting documentation. The Planning Board held a public hearing on the Application during its meeting on March 14, 2014 and it recommended approval of the Application. On June 16, 2014, the Town Board held a public hearing on the Application but did not issue a decision on the Application.

WHEREAS, on August 17, 2015, the Project Sponsor submitted an Amended Application to Amend the Findings Statement and Audubon Development Plan for the purpose of modifying the Application filed on February 18, 2014.

WHEREAS, the Planning Board held a public hearing on the Amended Application during its meeting on September 17, 2015 and the Planning Board recommended in favor of the Application. On November 16, 2015, the Town Board held a public hearing on the Application. On December 7, 2015, the Town Board voted to issue an Amended Findings Statement based on its determination that the potential modifications to the Muir Woods Project will not result in any potentially significant adverse environmental impacts that were not thoroughly evaluated in connection with the comprehensive environmental review of the Project that concluded with the original issuance of a Findings Statement on December 17, 2007.

WHEREAS, the Planning Board conducted a coordinated environmental review of the development of Sites C and D of the overall Project Site as a 133 lot residential subdivision. On September 14, 2017, the Planning Board issued a negative declaration pursuant to SEQRA for the subdivision based on its determination that the subdivision would not result in any potentially significant adverse environmental impacts.

Certification of Amended Findings
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WHEREAS, on April 15, 2019, the Project Sponsor submitted an Application to Amend the Findings Statement and Audubon Development Plan along with supporting documentation. The requested amendment of the Findings Statement issued by the Town Board on December 17, 2017 was to allow student housing to be developed on Site B of the overall Muir Woods Project Site (“Application to Amend the Findings Statement”). The Planning Board held public hearings on the Application to Amend the Findings Statement during its meeting on May 16, 2019 and June 20, 2019 it adopted a resolution recommended approval of the Application to Amend the Findings Statement during its meeting on June 20, 2019.

WHEREAS, on August 5, 2019, the Town Board held a public hearing on the Application to Amend the Findings Statement. On August 5, 2019, the Town Board voted three to one to amend the Findings Statement based on its determination that the potential modifications to the Muir Woods Project will not result in any potentially significant adverse environmental impacts that were not thoroughly evaluated in connection with the previous comprehensive environmental review of the Project that concluded with the issuance of a Findings Statement on December 7, 2007 and the issuance of an Amended Findings Statement on December 7, 2015.

WHEREAS, on June 24, 2020, the Project Sponsor submitted an Application to Amend the Findings Statement issued by the Town Board on December 17, 2017 and to Amend the Comprehensive Plan for Site A of the Muir Woods Project to allow a mixed-use project to be developed on Site A of the overall Muir Woods Project Site (hereinafter collectively the “Application to Amend the Findings Statement”). The Planning Board held a public hearing on the Application to Amend the Findings Statement during its meeting on August 20, 2020 and at the same meeting adopted a resolution recommending approval of the Application to Amend the Findings Statement by the Town Board.

WHEREAS, on October 6, 2020, the Town Board held a public hearing on the Application to Amend the Findings Statement. On October 19, 2020, the Town Board voted to issue the Amended Findings Statement based on its determination that the potential modifications to the Muir Woods Project will not result in any potentially significant adverse environmental impacts that were not thoroughly evaluated in connection with the previous comprehensive environmental review of the Project that concluded with the issuance of a Findings Statement on December 7, 2007, and the issuance of an Amended Findings Statements on December 7, 2015 and August 5, 2019.

WHEREAS, on July 7, 2021, Sawyers Landing LLC submitted an Application to Amend the Findings Statement issued by the Town Board on October 19, 2020 in order to seek to increase the allowable residential density from 202 units to 258 units. The Planning Board held a public hearing on the Application to Amend the Findings Statement during its meeting on August 19, 2021 and at the same meeting adopted a resolution recommending approval of the Application to Amend the Findings Statement by the Town Board.

Certification of Amended Findings
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WHEREAS, on September 27 2021, the Town Board held a public hearing on the Application to Amend the Findings Statement. On September 27 2021, the Town Board voted to issue the Amended Findings Statement based on its determination that the potential modifications to the Muir Woods Project will not result in any potentially significant adverse environmental impacts that were not thoroughly evaluated in connection with the previous comprehensive environmental review of the Project that concluded with the issuance of a Findings Statement on December 7, 2007, and the issuance of an Amended Findings Statements on December 7, 2015 and August 5, 2019 and October 19, 2020.

NOW THEREFORE THE TOWN BOARD FINDS AND DETERMINES THAT:

1. These Amended Findings set forth specific conditions and criteria consistent with 6 NYCRR Sections 617.7, 617.9, 617.11, and 617.12 under which the site plan process can proceed. This process provides procedures to supplement the FGEIS if necessary and for public notice and opportunity to participate in hearings before the Town Planning Board before it approves a site plan. An Environmental Assessment Form will be required with site plan application for environmental review. If the proposed development does not conform with these Amended Findings, a Supplemental Findings Statement, a supplement to the FGEIS, or a Negative Declaration shall be prepared to comply with 6 NYCRR Section 617.9.
2. The proposed mixed-use, student housing and residential development as presented in the FGEIS and the Application to Amend the Findings Statement submitted to the Planning Department on July 6, 2021 is consistent with the intent and objectives of the Zoning Ordinance.
3. Adequate services and utilities must be available prior to occupancy. Review and approval of services and utilities by the Town agencies will be required for site plan approval.
4. Development will be consistent with all other applicable laws, rules and regulations.
5. As provided in 6NYCRR Part 617.10, the Town Board chose to require the preparation of a draft Generic Environmental Impact Statement (DGEIS) instead of a draft Environmental Impact Statement (DEIS) for this project. This decision was based on the scope and timetable of the development described by the Project Sponsor and depicted in the Conceptual Master Plan, which showed a multi-use development on 330± acres of land, to be built out over a 15-20 year period. The Board's decision is also based on the following reasons:
 - A DGEIS provides a lead agency with the framework for properly evaluating a conceptual master plan while identifying the important elements of the environmental setting associated with the project site. A DGEIS assesses a

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broad scope of a group of actions or a combination of effects from a single action.

- The utilization of a DGEIS provides the Town Board with the authority to establish specific criteria and thresholds by which future actions such as site plan and subdivision applications will be reviewed, including requirements for ensuring subsequent compliance with SEQR.
 - The Town Board's decision to require the Project Sponsor to prepare a DGEIS acknowledges that the specific layout and appearance of the development cannot be determined at this time but rather will be decided over a period of several years and subject to market demands, and the development of the project will occur in stages.
 - The SEQR regulations state that a DGEIS is appropriate for a series or sequence of separate actions and/or projects that have wide application or restrict the range of future alternative policies.
 - The Town Board's utilization of a DGEIS affords it the opportunity to evaluate a broad range of anticipated impacts, and it also ensures that related actions will not be segmented in order to avoid the required analysis of the proposed development of the overall project site.
6. By the time the Findings Statement was issued by the Town Board on December 17, 2007, the proposed Muir Woods development had been significantly revised since its initial submittal in 2002, resulting in a reduction in the commercial/office component of the project from 1.8± million sq. ft. to 700,000± sq. ft. and in the residential component from 200± units to 136± units. These changes were made in response to the NYS Department of Environmental Conservation, the U.S. Army Corps of Engineers and the public to minimize impacts to wetland areas to the greatest extent possible.

Following the issuance of the Findings Statement by the Town Board on December 17, 2007, the Project Sponsor obtained the required wetland permits from the New York State Department of Environmental Conservation and the United State Army Corps of Engineers. In an effort to address current market needs while maintaining the intent of the project site New Community District zoning, the Project Sponsor submitted an Application to Amend the Findings Statement in February of 2014 to expand the range of uses within Site B of the project site to specifically allow for multi-family housing in addition to the previously approved office/retail development.

Based on input received during the review of the Application to Amend the Findings Statement to allow for multi-family housing on Site B, the Project Sponsor submitted an Amended Application to Amend the Findings Statement and Audubon Development Plan on August 17, 2015 for the purpose of modifying the Application filed on February 18, 2014. The Amended Application proposed to modify the permitted use of the eastern portion of Site B, comprised of approximately 26 acres. Pursuant to the updated Application, the western

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portion of Site B comprised of approximately 20 acres would have remained designated for commercial office and retail development per the Finding Statement issued by the Town Board on December 17, 2007.

Subsequent to the issuance of an Amended Findings Statement by the Town Board on December 7, 2015, the Project Sponsor sought the required approvals and permits for the development of Sites C and D of the Project Site as a 133 lot residential subdivision that includes a roadway connection to Campbell Boulevard on 520 Campbell Boulevard. The Planning Board thoroughly considered the potential adverse environmental impacts associated with the subdivision and issued a negative declaration pursuant to SEQR on September 14, 2017 based on its determination that the 133 lot residential subdivision on Sites C and D would not result in any potentially significant adverse environmental impacts. On September 14, 2017, the Planning Board granted Site Plan Approval for the subdivision, and on June 21, 2018 granted Final Plat Approval for the subdivision. A map cover for the approved 133 residential subdivision was filed with the Erie County Clerk's Office on July 24, 2018, and construction activities in furtherance of the construction of the subdivision began in the fall of 2018.

Following the issuance of the Amended Findings Statement by the Town Board on December 7, 2015, the Project Sponsor sought and obtained extensions of the expiration dates of the wetland permits previously issued by the New York State Department of Environmental Conservation and the United States Army Corps of Engineers.

In an effort to allow student housing to be developed on Site B while maintaining the intent of the New Community District zoning, the Project Sponsor submitted an Application to Amend the Findings Statement on April 15, 2019. The Project Sponsor sought an Amendment of the Findings Statement to expand the range of uses within Site B of the project site to specifically allow for student housing in addition to the previously approved multifamily housing on the western 20± acres of Site B and the previously approved office/retail development on the eastern portion of Site B.

In an effort to allow a mixed-use project to be developed on Site A while maintaining the intent of the New Community District zoning, the Project Sponsor submitted an Application to Amend the Findings Statement and the adopted Comprehensive Plan on June 24, 2020. The Project Sponsor sought an Amendment of the Findings Statement to modify the land use category within Site A of the project site to replace the previously proposed 237,000 sq. ft. maximum Flex office/R&D use with a mixed-use development including 2 four-story mixed-use buildings along the Dodge Road frontage of Site A, 45 two-family townhomes and 2 six-unit single-story multifamily buildings. The Project Sponsor sought to amend the Comprehensive Plan to designate Site A as appropriate for Mixed Residential use. In connection with the proposed mixed-

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use development of Site A, the Project Sponsor proposed to reduce previously approved impacts to the federal wetlands subject to the jurisdiction of the United States Army Corps of Engineers (“USACE”) and also to the NYSDEC Freshwater Wetland and its regulated 100 ft. Adjacent Area.

On August 20, 2020, the Planning Board held public hearings in connection with its review of the Application to Amend the Findings Statement and the Comprehensive Plan as filed by the Project Sponsor on June 24, 2020. The Planning Board adopted resolutions during its meeting on August 20, 2020 by unanimous votes recommending that the Town Board issue the Amended Findings Statement and amend the Comprehensive Plan to designate Site A as appropriate for Mixed Residential use.

On October 6, 2020, the Town Board held public hearings in connection with its review of the Application to Amend the Findings Statement and the Comprehensive Plan as filed by the Project Sponsor on June 24, 2020. On October 19, 2020, the Town Board adopted Resolution 2020-791 for the purpose of issuing an Amended Findings Statement to allow Site A of the Muir Woods Property to be developed as a mixed-use residential/commercial project instead of the previously proposed flex office/R&D buildings. Resolution 2020-791 as adopted by the Town Board on October 6, 2020 also authorized the acquisition of approximately 43 acres of Permanent Open Space via a donation by the property owner consisting of property to the west of Site B including the eastern portion of Site A consisting of approximately 9.81 acres of wetlands subject to the jurisdiction of both the NYSDEC and USACE. During its meeting on October 19, 2020, the Town Board also adopted Resolution 2020-792 for the purpose of approving an amendment to the Comprehensive Plan to designate Site A as appropriate for a mixed-use residential/commercial use instead of the previously proposed flex office/R&D buildings

On December 24, 2020, the New York State Department of Environmental Conservation (“NYSDEC”) issued an Amended Wetland Permit [Permit No. 9-1422-00398/0001] authorizing the impacts to NYSDEC Freshwater Wetlands and the associated regulated 100 ft. Adjacent Area in order to accommodate the mixed-use development of Site “A”. The Amended Wetland Permit reduced the impacts to jurisdictional freshwater wetlands associated with the development of Site A from 9.46 acres to 1.2 acres and reduced the impacts with the development of Site A to the regulated 100 ft. wide adjacent area from 4.2 acres to 3.65 acres.

As a result of the Amended Wetland Permit issued by the NYSDEC on December 24, 2020, the development of the Muir Woods Property will result in permanent impacts to approximately 2.39 acres of State regulated wetlands (TE-22, TE-23 and TE-34), and 11.38 acres of State regulated 100 foot wide wetland adjacent area. As mitigation for those impacts the Project Sponsor is required to create 19.58 acres of in-kind and out-of-kind wetlands on the overall Muir Woods

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Property, in six areas, to replace the functions and benefits of the impacted wetlands. Additionally, there will be 4.3 acres of stream channel enhancement on-site as mitigation for State wetland regulated adjacent area impacts.

On February 25, 2021, the United States Army Corps of Engineers (“USACE”) issued an Amended Wetland Permit [LRB-2001-00067] authorizing impacts to 6.09 acres of federal wetlands, which was a reduction of 6.92 acres of previously authorized impact of 13.01 acre to federal wetlands, in order to accommodate the mixed-use project on Site A.

On July 7, 2021, Sawyers Landing LLC filed an Application to Amend the Findings Statement to accommodate an increase of the allowable density of the residential component of the mixed-use project on Site A from 202 units to 258 units.

7. A Supplemental GEIS, an option that the SEQRA regulations leaves to the discretion of the Lead Agency, was not required for this project due to the Town Board’s decision that the reduction in the project described in #6, above did not meet the criteria set forth in 6NYCRR Part 617.9(a)(7). Although the changes proposed by the Project Sponsor reduced the development significantly, it was not determined that the amended project would encroach on any land not initially identified in the scope of the original development proposal. The project changes also did not result in newly discovered information, and would not result in any significant environmental impacts not addressed or inadequately addressed in the DGEIS.

8. Traffic and Transportation (FGEIS Section 2.1)

Site specific requirements shall be established by the Town, County and State, as appropriate, as development applications are reviewed. The developer shall be responsible for any traffic mitigation required for development of the project site.

The potential traffic impacts associated with the original project proposal were clearly analyzed and identified within the Traffic Impact Study prepared by Stantec Consulting Services, Inc. dated March 2003 and updated August of 2005 in association with the acceptance of the FGEIS.

The Amended Findings Statement issued by the Town Board on August 5, 2019 included the consideration of adding student housing to the authorized uses of Site B pursuant to the Amended Findings Statement issued by the Town Board on December 17, 2007. The Project Sponsor submitted a Traffic Impact Study for the purpose of evaluating the potential traffic impacts of the development of Site B as a maximum of 515 student housing units. It was determined that the potential traffic impacts associated with student housing on Site B will be less than the potential traffic impacts of the development of Site B in its entirety as a

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maximum of 464,850 sq. ft. of commercial office and retail development pursuant to the Findings Statement issued by the Town Board on December 17, 2007.

The Town Board, as Lead Agency, requires that the Project Sponsor comply with the following mitigation measures during the development of the project site:

A. Provision for Future Extension of John James Audubon Parkway to North French Road

The extension of John James Audubon Parkway through the project site and connecting to North French Road was proposed in the initial Concept Plan submitted for the Muir Woods project in 2002. This proposal was also incorporated into the DGEIS submitted to the Town in 2004. The connection was removed from the Concept Plan in response to the requirement from the NYS Department of Environmental Conservation to further reduce impacts to State and federal wetlands. The Town of Amherst may in the future be interested in the possibility of a future northerly extension of John James Audubon Parkway to North French Road while acknowledging such possible future extension would require approvals from both the NYS Department of Environmental Conservation and the United States Army Corps of Engineers.

The rationale for the road connection was found in several planning documents, both historical and recent:

- The Amherst Community Development Plan adopted by the Planning Board in 1975 includes the extension of the then-planned Lockport Expressway through the subject site as a future Minor Arterial road.
- A report prepared by NYSDOT in 1976 anticipated the extension of the John James Audubon Parkway and forecast its use by 1,950 vehicles per hour.
- The Amherst Bicentennial Comprehensive Plan, accepted by the Town Board in February 2004 and adopted by the Town Board in January 2007, identifies the “Audubon Parkway Extension” in the map showing the Future Thoroughfare System.

The 30+ years of anticipating this roadway connection point to its significance in meeting the transportation goal of improving circulation within the Town and the role this connection would play in overall Town development. Given its importance, the Town Board is requiring that the future location of this connector be shown on site plans submitted for review, and that sufficient land be reserved by the Project Sponsor for the eventual connection to be constructed. The road construction and alignment will be subject to approval by the NYSDEC and the U.S. Army Corps of Engineers, as applicable.

B. Residential Connection to Lynette Lane

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The residential component of the proposed Muir Woods development to occur on Sites C & D may have a direct road connection to Lynette Lane. There will be no direct roadway connection to Nancy Lane. Non-residential traffic will be discouraged from using Lynette Lane through the implementation of various traffic calming measures to be proposed during the site plan review process for the development of Sites C & D, subject to review of such traffic calming measures by the Town Traffic-Safety Board and Fire Chief's Association. These measures include:

1. The lack of direct sight lines for motorists to discourage non-residential traffic from utilizing Lynette Lane to access North French Road;
2. Curvilinear road design; and
3. Installation of signage posting the road for "resident and emergency traffic only" or other such measure to prohibit non-residential traffic from travelling on Lynette Lane and the proposed public roadways within the existing residential subdivision;

If a problem is determined to exist based on the Phase 2 traffic study, further measures to discourage traffic of prohibit cut-through traffic will be considered.

C. No Internal Roadway Connection to Dodge Road

The internal connector road within the Muir Woods development is not proposed to have a westerly connection to Dodge Road; the only direct vehicular connection to Dodge Road will be from the portion of the project located in the western portion of the project site (Site A). If warranted at some future time by a traffic analysis, a connection to Dodge Road may be made from the internal connector road if required permits for such a roadway connection can be obtained from the NYSDEC and the US Army Corps of Engineers.

D. Updated Traffic Impact Study

The Traffic Impact Study will be updated when any of three established thresholds are met:

1. Completion of Phase I development, defined as full build-out of Site B, or
2. prior to approval of any site plan in Site C or Site D or any direct or indirect connection to any of the Sites with Lynette Lane, or
3. when the number of combined vehicular trips entering and exiting the site during the AM weekday peak travel hour reaches 858 trips, or

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4. when the number of combined vehicular trips entering and exiting the site during the PM weekday peak travel hour reaches 774 trips.

If actual conditions exceed projections, this will be reflected in the updated TIS to be prepared by the Project Sponsor, and the Project Sponsor may be required to implement traffic related mitigation measure sooner than expected.

Any mitigation measures, including off-site mitigation measures that are required as a result of the updated TIS, shall be the sole obligation of the Project Sponsor, if approved. Any off-site improvements, including the acquisition of private property required to make those improvements, shall be conditions of any site plan approval and treated as Public Improvement Permits (PIPs) for the purpose of final permitting. At no time shall the Town be required to make any off-site improvements or acquire private property, either by purchase or through its eminent domain powers, to mitigate the impact of this development project.

E. Alternate Access to Campbell Boulevard

During the original environmental review of the proposed project which concluded with the Town Board's issuance of a Findings Statement on December 17, 2007, the Project Sponsor attempted to seek a vehicular connection from the site to Campbell Boulevard through property located at 520 Campbell Boulevard which is owned by the Williamsville Central School District. The Town also participated in efforts to obtain access to Campbell Boulevard via this property. These attempts were not successful.

The Project Sponsor eventually was successful in acquiring 520 Campbell Boulevard from the Williamsville Central School District on December 5, 2017 and the approved 133 residential subdivision on Sites C and D includes a public roadway connection on 520 Campbell Boulevard to Campbell Boulevard.

F. Construction Vehicles

As part of the public comment period for the project, concerns were raised regarding the use of construction vehicles on existing residential streets in the adjacent Franklin Heights Subdivision to access the project site during project construction. In order to avoid the adverse environmental impacts associated with construction vehicles, existing residential streets shall not be utilized by construction vehicles to access the project site. The infrastructure to be constructed for the project shall be appropriately sequenced so that construction vehicles can access the site via the northerly extension of John James Audubon Parkway and Doge Road only.

Any future builder, owner or developer who purchases lots for development within Site C & D shall be prohibited from using Lynette Lane as a means of

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access for construction vehicles. A deed restriction incorporating this restriction shall be a prerequisite of the sale of any lots within Sites C and D, and the Town shall be provided with a copy of the recorded deed restriction, which shall not be recorded at the Erie County Clerk's Office until the content and form of the deed restriction has been reviewed and approved by the Building Department and Town Attorney's Office.

On June 21, 2018, a Declaration of Restrictions was recorded at the Erie County Clerk's Office (Liber 11330 of Deeds at Page 8243) for the purpose of complying with the relevant portion of the Amended Findings Statement prohibiting construction vehicles from utilizing Lynette Lane for access by construction vehicles.

G. Break in Access for Connection to Lockport Expressway (I-990)

The proposed northerly extension of John James Audubon Parkway as a Town roadway to provide access to the project site requires a break in access to the Lockport Expressway (I-990). The NYSDOT has been aware of this requirement since the initial petition by the Project Sponsor in 2002. Prior to the granting of the break in access, several conditions must be met, including completion of any required environmental compliance. Once completed and inspected, the Project Sponsor will be required to dedicate the northern extension of John James Audubon Parkway to the Town for permanent use as a public roadway to be dedicated to the Town of Amherst.

On May 20, 2019, the Town Board adopted a resolution stating the Town will serve as the applicant for the required Break-in-Access for the proposed northerly extension of John James Audubon Parkway as a public roadway to be dedicated to the Town of Amherst.

The Town filed an Application for Break-in-Access with the New York State Department of Transportation on August 21, 2019. The NYSDOT has not yet issued a decision on the pending request for Break-in-Access approval.

The Break-in-Access for the proposed northerly extension of John James Audubon Parkway as a public roadway to be dedicated to the Town of Amherst will result in numerous public benefits including, but not limited to, accommodating the potential future extension of the NFTA light rail and a terminus for such light rail on Site B, publicly accessible parking for a recreational trail that will cross the overall Muir Woods Project Site and connect to the Town's recreational trail (extending from Niagara Falls Boulevard to the trailhead near the intersection of North Forest Road and Maple Road), and a potential future extension of John James Audubon Parkway as a public roadway connecting to North French Road.

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H. Traffic Mitigation Measures

Dodge Road / Project Site Roadway

Phase I development:

- Installation of a stop sign to the southbound (site driveway) approach
- Construction of one shared left-right turn lane for southbound site driveway approach

Full development:

- No additional improvements

John James Audubon Parkway / I-990 Ramps

Phase I development:

Upon the completion of Phase I development, (Phase I development defined in Section 8, Part D.1. of this Amended Findings Statement) the Project Sponsor shall be required to provide a current trip count Report for both the a.m. and p.m. peak travel hours. Subject to the findings of a warrant analysis prepared in accordance with appropriate traffic engineering standards as determined by the updated trip count Report and based on an analysis of the potential impacts upon existing Levels of Service at this intersection, the Project Sponsor may be required to work with the New York State Department of Transportation to provide the following mitigation measures:

- Installation of traffic signals, each with their own controller, at both the northbound and southbound I-990 to John James Audubon Parkway
- Installation of a wire connection between these two new signals and the existing traffic signal at John James Audubon Parkway and Dodge Road in order to coordinate all three traffic signals
- Widening of both the northbound and southbound I-990 off-ramps to provide one additional turning lane on each ramp approach to John James Audubon Parkway

Full development: If any of the thresholds identified in 'D' above are met, the following improvements will be evaluated and may be required:

- installation of a third lane to the northbound off-ramp in order to provide two left turn lanes and one right turn lane
- add a free-flow southbound right turn lane at the southbound ramp, including a second receiving lane on the ramp to merge to one lane prior to the I-990 mainline

Dodge Road / John James Audubon Parkway

Phase I development:

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- Traffic signal timings will need to be adjusted periodically over time as warranted by changing travel patterns

Full development:

- Construction of a westbound right turn lane. It is anticipated that this improvement will be required when approximately 75% of the development is complete or when the number of westbound right turning vehicles from Dodge Road exceeds 300 vehicles per hour during the morning peak travel period.

North French Road / Sweet Home Road

Phase I development:

- Adjustments to traffic signal timing as travel patterns warrant modification

Full Development:

- Construction of an eastbound right turn lane. Traffic volumes turning right at this location currently exceed guidelines recommended in the Highway Capacity Manual for consideration of installing a separate right turn lane. While construction of this lane is currently warranted to address current existing traffic operations in the area, it will not be needed as a result of traffic to be generated by the proposed development of the project site until approximately 90% of the proposed development has been completed, since new traffic projected to be generated by the project will only add a few additional vehicular trips to this traffic movement.
- Modify signal timings during both the morning and evening peak hours, as necessary. Recent improvements to this intersection to provide protected phasing for the left turns will reduce the number of left turn accidents at this location. Additionally, future planned improvements to be implemented by Erie County will assist in further reductions in the number of accidents at this intersection.

North French Road / Campbell Boulevard

Phase I development

- Adjustments to traffic signal timing as travel patterns warrant modification

Full development:

- Add protected/permitted phasing for eastbound, northbound and southbound left turns when the traffic signal is upgraded in association with the improvement identified above.

North French Road / I-990 Ramps

Dodge Road / Sweet Home Road

Dodge Road / Campbell Boulevard

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be 4.3 acres of stream channel enhancement on-site (totaling approximately 2,630 linear feet).

- The development of the eastern portion of Site B for residential purposes, shall not include any owner occupied housing units within the State regulated wetland or the 100 ft. regulated Adjacent Area that do not involve oversight by either a homeowners or condominium association to ensure there will not be any impacts into the 100 ft. regulated wetland Adjacent Area that is to be preserved on Site B.

Federal Wetlands:

As stated in its letter dated August 27, 2007, the United States Army Corps of Engineers (USACE) has field verified that the federal wetland boundaries located on the Muir Woods project site as shown on the wetland delineation map prepared by Greenman-Pedersen, Inc. dated May 2007 are accurate. The wetland areas were delineated by Earth Dimensions, Inc. and summarized in a final wetland delineation report dated May 16, 2007.

The Project Sponsor provided a complete Joint Application For Permit for wetland impacts associated with the project to the USACE and NYSDEC as of June, 2009. After thoroughly reviewing the complete application and associated wetland impacts, the USACE issued a Validated Department of the Army Permit for wetland impacts associated with the project as of May, 2012. Additionally, having thoroughly reviewed the complete application and associated wetland impacts, the NYSDEC officially issued a Freshwater Wetland Permit and Water Quality Certification for wetland impacts associated with the project as of November, 2009.

On May 14, 2012, the United States Army Corps of Engineers (“USACE”) issued Department of Army Permit No. 2001-00067. The permit issued by the USACE permitted to impact 17.83 acres of Federal wetland, and 1.29 acres (approximately 5227 linear feet) of jurisdictional tributaries for the construction of Muir Woods project. On May 6, 2016, the USACE extended the permit expiration dated from May 14, 2012 to November 30, 2019. The USACE issued a modification of Permit No. 2001-00067 on June 20, 2018 in connection with the development of Sites “C” and “D” as a residential subdivision. On January 16, 2019, the USACE extended the expiration date of Department of Army Permit No. 2001-00067 to November 30, 2024.

On February 25, 2021, the United States Army Corps of Engineers (“USACE”) issued an Amended Wetland Permit [LRB-2001-00067] authorizing impacts to 6.089 acres of federal wetlands, which was a reduction of 6.921 acres of previously authorized impact of 13.01 acre to federal wetlands, in order to accommodate the mixed-use project on Site A.

10. Wildlife / Biological Resources (FGEIS Section 2.3)

The NYSDEC's Natural Heritage Program has reported no record of known occurrences of rare or state-listed animals or plants, significant natural communities, or other significant habitats, on or in the immediate vicinity of the project site. The Project Sponsor will be required to implement the following mitigation measures in order to minimize impacts to wildlife resources to the maximum extent practicable:

- A comprehensive erosion control plan will be developed and implemented to protect vegetation and water quality.
- Off-limit areas, including wetlands, will be delineated prior to construction to avoid or minimize impacts to vegetation. The construction workforce will be educated as to respecting and adhering to physical boundaries of off-limit areas.
- Best Management Practices will be followed during construction.
- The establishment of invasive vegetative species will be deterred through manual extraction and rapid establishment of desirable vegetation. Exposed and disturbed soils will be seeded, planted and mulched to prevent the colonization of invasive species. Volume 8 of the Appendix of the FGEIS at Exhibit F (*SJWPA Appendix M*) contains a discussion of the proposed on-site wetland mitigation including the protection of habitat areas.
- Waterfowl activity will be deterred in the off-site wetland mitigation area located in the Town of Newstead through the use of mylar tape, snow fencing, 4-7 ft. tree plantings and the seeding of upland grassland areas with a cool season grass.
- The proposed on-site wetland mitigation system will be designed to provide seasonal aquatic habitat for fish, waterfowl and amphibians; habitat for multiple covertypes of wetland plant species; and passerine bird nesting, feeding and resting habitat.
- The project site historically has had an elevated number of deer-vehicle accidents on the roads surrounding the parcel. This parcel is a portion of a much larger habitat area which also includes Nature View Park to the north and is not a "closed" habitat area. The Planning Department, in conjunction with the Police Department, will continue to monitor the deer population throughout the Town and implement approved methods of reducing deer/vehicle accidents in accordance with the Deer-Vehicle Accident Management Plan.

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11. Drainage and Flooding (FGEIS Section 2.4)

The following measures shall be implemented by the Project Sponsor to mitigate drainage and flooding impacts to the maximum extent practicable:

- A. The Town Highway Department shall have access to all Town ditches that are on the subject property including Town ditches 4, 4A, 4B and 4C. The Project Sponsor will be required to grant public easements to the Town to these ditches to ensure their proper maintenance. No aspect of the Muir Woods development will inhibit access to Town ditches or create undue burden to the Town for restoration of easement property used to access Town ditches. On June 28, 2018, the Project Sponsor recorded a Permanent Access and Drainage Easement at the Erie County Clerk's Office (Liber 11331 of Deeds at Page 1521) for the purpose of granting the Town an easement to access town ditches and stormwater management facilities on the Project Site including the existing lake.
- B. The project site and the surrounding vicinity are known as locations for high amounts of beaver and mosquito activity. Access to the Town Highway Department for control of this activity in Town ditches or other areas of the development shall be provided.
- C. The Project Sponsor shall be responsible for cleaning and debrushing of all Town ditches located on the project site during the initial construction phases of the project. The Project Sponsor will also be responsible for long-term maintenance of stream/drainage features and detention/stormwater basins; for maintenance of on-site wetland mitigation areas during the monitoring period; and for the construction of all drainage improvements required for development of the project site.
- D. The Project Sponsor shall be required to construct any ponds and sand filters required stormwater quality treatment. All ponds and sand filters to be constructed on the project site will be privately owned and maintained, with public drainage easement to be granted by the Project Sponsor to allow Town to properly maintain the inlet and outlet pipes of any wet ponds.
- E. All stormwater runoff will be treated to standards approved by the Town Engineering Department prior to discharging into the existing lake on the project site or Town ditches. No additional detention is being proposed for the Muir Woods development for stormwater quantity control.

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- F. All buildings in the west portion of the Muir Woods site located within the Ellicott Creek flood plain will be at a minimum elevation of 576.0 feet, or one foot above the base flood elevation as determined by the Town Building Commissioner.

As development is proposed, specific drainage plans will be reviewed and approved by the Town Highway and Engineering Departments and the NYS Department of Environmental Conservation/US Army Corps of Engineers during site plan review, to ensure there is no adverse impact to the Ellicott Creek Flood Control system.

- G. Upon development, the existing 32± acre lake in the southeast portion of the project site will be maintained with a normal lake level of 569.55 feet. The existing 42-inch CMP outlet at the west end of the lake will remain as it is. All stormwater from the east side of the development around the lake will pass through a stormwater quality treatment facility consistent with the NYS Stormwater Management Design Manual and Phase II Stormwater SPDES requirements prior to entering the lake. This system currently designed as sand filters may evolve into wet ponds, bio-retention filters, and/or other acceptable practices under the Design Manual and SPDES requirements.
- H. Backyard runoff from proposed residential units will be separated from wetland mitigation areas and wetlands either by a ditch or rear yard drains to preclude pollution of those areas by lawn chemicals, per NYSDEC letter dated October 26, 2007.
- I. A detailed Stormwater Pollution Prevention Plan (SWPPP), including a Sediment and Erosion Control Plan, for the various phases of the project including any related on-site drainage areas shall be submitted as specific site plans are submitted for review. The Stormwater Pollution Prevention Plan for each phase of the project will need to be reviewed and approved by the Town's Engineering Department.
- J. The Project Sponsor shall be required to comply with the findings and recommendations of the Preliminary Drainage report prepared by Greenman-Pedersen, Inc. in August 2007 and any updated reports during the course of development.
- K. The Project Sponsor will provide backyard drainage for the existing homes that are directly adjacent to the portions of the project site that will be developed for residential use. This requirement pertains to Sites and D. Additional drainage improvements for the areas along the rear yards of the homeowners on Nancy Lane will also be installed by the Project Sponsor. The drainage pipe to be installed in the rear yards of the new residential

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units that will be integrated with the new drainage swale behind the residents of Nancy Lane will be a minimum diameter of 12 inches.

12. Character and Quality of Life Issues (FGEIS Section 2.5)

A. Setbacks

On those portions of the project site where commercial or student housing development will be directly adjacent to existing residential areas (i.e. Bucyrus Heights), setbacks will retain existing vegetation to a depth that provides an adequate buffer. The following minimum setbacks will be required:

- The planting of additional trees and shrubs by the Project Sponsor within the minimum setback area may be required to supplement the existing vegetation in order to provide adequate buffers.
- A combination of earthen berms and new vegetation will be required in those portions of the minimum setback area where there is not sufficient existing vegetation to provide an adequate buffer. The minimum height at the top of berms shall be three feet, and the maximum slope shall be 1 on 3 (33%) to promote the growth and long-term viability of trees and shrubs planted on the berms. Berms should have a natural appearance by varying their width and height.
- Site A (western portion of the project site) – This portion of the project site will be utilized for mixed-use; a portion of Site A is located directly south of the Bucyrus Heights subdivision.
 - 25 ft. minimum building setback from residential lot line for single-story residential buildings.
 - 90 ft. minimum building setback from residential lot line for attached and detached two-family townhome style units.
 - 250 ft. minimum building setback from residential lot line for four-story mixed use buildings.
 - 250 ft. minimum building setback from residential lot line for four-story multifamily building.
 - 60 ft. parking setback from residential lot line
- Site B (center portion of site) – This portion of the project site will be developed around the extended John James Audubon Parkway as a

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public roadway to be dedicated to the Town of Amherst. Site B will be developed as student housing or for the land uses permitted pursuant to the Amended Findings Statement issued by the Town Board on December 17, 2015. The following setback standards apply to the development of Site B:

- 60 ft. building setback from residential lot line. If the height of any proposed buildings exceeds 50 feet, the required minimum building setback shall be equal to the height of the proposed building.
- 90 ft. parking setback to residential lot line

B. Building Height

The following maximum building heights will be observed for the proposed development:

- Site A (western portion of the project site) – This portion of the project site will be the location of mixed-use and residential buildings and a portion of Site A is located directly south of the Bucyrus Heights subdivision.
 - Maximum building height for mixed-use and multifamily buildings shall be four-stories and 55 ft. as measured from the finished grade to the top of any parapet (excluding any rooftop mechanical equipment). All mechanical equipment shall be properly screened in accordance with the standards contained in the Zoning Code adopted by the Town Board in May of 2006.
 - Maximum height of any residential buildings within 90 ft. of a residential lot shall be 25 ft.
- Site B (center portion of the project site) – This site will be developed around the extended John James Audubon Parkway as a public roadway to be dedicated to the Town of Amherst. Site B will be developed as student housing or Site B will be developed as permitted to the Amended Findings Statement issued by the Town Board on December 17, 2015.
 - There will not be a maximum height for buildings to be constructed on Site B. All buildings will be required to comply with a minimum required setback that shall be the greater of 50 feet or the height of the proposed building at the point of its maximum height (including rooftop mechanicals, etc.)

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13. Soil Stability and Foundation Issues (FGEIS Section 2.6)

The Geotechnical Engineering Report prepared by McMahan & Mann Consulting Engineers, P.C. dated June 2005 includes findings and foundation considerations for future construction of the various components of the project. The report is included in Volume 6, Appendix I of the FGEIS.

The Town shall not grant site plan, subdivision or Public Improvement Permit (PIP) approval for construction of any component of the project (buildings, parking areas or infrastructure) unless the identified limitations as discussed in the McMahan & Mann report are adequately accounted for. The applicant shall be required to provide documentation of site-specific soil characteristics and comply with all relevant Town building codes regarding soil conditions.

Additional mitigation measures to be undertaken by the Project Sponsor, subject to determination by the Building Department, may include:

- Perform individual soil borings for each proposed structure to accurately determine the specific geotechnical design perimeters.
- Take measures to control the moisture content of the soils outside the structure. These may include installation of an irrigation system that would maintain near-saturated conditions in the soil around the structure during dry summer months, and/or installation of an exterior vapor barrier that extends out away from the structure around the perimeter.
- Monitoring of soil moisture with supplemental foundation watering during dry months.
- Use of a lower allowable bearing pressure for design of the spread footings.
- Placement of a minimum of two continuous #5 horizontal longitudinal reinforcing bars in each of the following locations: in the footing, at the base of the foundation wall, and at the top of the foundation wall.
- Use of an isolation joint between the basement floor slab and the foundation wall.
- Installation of a quality vapor barrier under the basement floor slab.
- Installation of a foundation drain system designed so that the floor elevation of the sump is above the elevation of the bottom of the footing.

14. Economic Impacts (FGEIS Section 2.7)

All infrastructure required to support the development of the project site will be installed at the Project Sponsor's expense. Town-wide or localized special assessment districts (sewer, water, highway, etc.) are established so operating cost can be spread over many taxpayers who use specific services.

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According to the “Cost of Servicing/Revenues Generated Land Use Study” in December 2006 commissioned by the Amherst Industrial Development Agency, for every \$1.00 attributed to residential use, \$1.11 is expended in providing government services, while just \$0.48 is expended for commercial use and \$0.60 is expended for open land. As a predominantly commercial oriented mixed-use project, the estimated \$3,500,000 in yearly tax revenue (2007 estimated) to the Town at full build out projected to be generated by the project is expected to cover the cost of any additional services including police and fire protection, snow plowing, maintenance of roads, water and sewer infrastructure, ditches, etc.

An economic real estate study for the proposed Muir Woods project was completed by Northeast Appraisers in March, 2002 which analyzed residential demand and property values. A subsequent Economic Analysis was completed by Real Property Services, LLC in July 2006, which is included in Appendix K, Volume 8 of the FGEIS. The conclusions of those reports are:

- There will be no negative impact on the marketability or values of nearby existing housing. The project may potentially have a positive impact on surrounding residential property values due to increased demand on desirability to live in close proximity to the development.
- The proposed project development will add over \$70 million to the Town of Amherst tax base when completed, and generate over \$3.4 million in tax revenue per year at stabilized 2008 levels.
- Over the first 10 years of development, the project is projected to generate over \$21.4 million in tax revenue, as compared to total tax revenue of approximately \$260,000 that would be generated if the project site remains as vacant land over the same period.
- It appears that both the Sweet Home and Williamsville School Districts will be impacted minimally with regards to expenditures on a per student basis. This takes into account that more than 50% of the residential development will consist of patio homes, which primarily cater to “empty nesters” and typically generate less students per household.
- The competitive advantages of the project site which are expected to support strong market absorption include its direct interchange access from the Lockport Expressway (I-990) and the high visibility of the site from expressway traffic.

15. Noise and Light Issues (FGEIS Section 2.9)

Noise – It is anticipated that the project site will be built-out in stages over many years and, as such, there is a need to impose mitigation measure for noise from

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construction activities to minimize this identified adverse environmental impact to the maximum extent practicable. Both temporary and long terms noise impacts may result from the construction activities on the project site as well as from the proposed use of the project site.

Noise from construction-related activities, which will exceed local ambient levels for noise outside of structures, may cause some temporary annoyance to nearby residents. It is expected that this impact, caused by heavy equipment, construction vehicles and power tools, will continue throughout the duration of construction. In order to reduce this noise, the following measures will be undertaken by the Project Sponsor:

- Limit major construction activities to daytime hours
- Use of construction equipment with mufflers
- The preservation of existing vegetation to the greatest extent practicable will provide a noise barrier to existing residential areas.
- If blasting is required, the developer will follow all requirements of the Town Blasting Ordinance

Noise resulting from the occupation and usage of the buildings constructed on the project site can be expected to result in sound levels that are characteristic of suburban office and residential developments and should not be significant.

With the Lockport Expressway (I-990) forming the southern boundary of the project site, and its design as an elevated highway for a portion of this boundary, traffic is considered the largest source of existing noise. Levels from typical noise generators that may be expected to exist in the vicinity of the project site include:

| | |
|--------------------------|------------------|
| Distant traffic (45 mph) | 45 – 50 decibels |
| Passenger car pass-bys | 70 decibels |
| Accelerating trucks | 85 decibels |
| Distant aircraft noise | 60 – 85 decibels |

The Transportation Project Report for the Lockport Expressway evaluated the potential noise impacts of the entire I-990 project, including the interchange that will be improved in connection with the proposed project. A copy of the Noise & Air Pollution Study is found in Volume 6 of the Appendix of the DGEIS at Exhibit 30. In addition, there is not any development directly adjacent to the existing interchange that will be impacted by the proposed interchange improvements. To the south of the northbound off-ramp there are some residential units situated along Dodge Road. However, the planned improvements at the existing off-ramps will not result in a movement of traffic 50% or more closer to source receptors.

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Light – To mitigate the light spillage from exterior lighting on adjacent residential properties, especially the Bucyrus Heights neighborhood, the following measures will be implemented:

- Appropriately located lighting, downward-directed lighting fixtures or hooded lighting will be used to prevent off-site light spillage on adjacent residential areas. The light fixtures and their placement will follow all Town of Amherst code requirements for usage and design. The Town Zoning Code requires a lighting plan to be submitted during the site plan review process, and the standards contained in the relevant section of the Zoning Code regulate lighting spillover from commercial locations onto adjacent residential land uses.
- Screening of proposed commercial buildings and parking lots will be provided through the creation of berms or landscaping elements on the periphery of developed areas (see Section 10A above).

16. Open Space and Recreation (FGEIS Section 2.10)

The proposed internal trail system shall be installed (Sites C & D) of the “The Preserve at Muir Woods” development, provided it does not impact regulated wetlands or is permitted by permits issued by the NYSDEC and/or USACE. Public access to a portion of the existing lake will be provided. The majority of State Wetlands TE-22, TE-33, and TE-34 will remain as Major Open Space (MOS). As a result of the modifications to the project, approximately 224± acres of the project site will be preserved as open space.

The proposed recreational trail connecting sites A, B, C, and D of the Muir Woods Development shall connect to the Town’s existing trail system as shown in Figure 4 (Park, Open Space and Trail map) and Figure 2.1 (University Focal Planning Area Concept Plan) of the adopted Amherst Bicentennial Comprehensive Plan and shall be constructed by the Project Sponsor as part of the Muir Woods project. Each development site of the Muir Woods Development shall complete its portion of the trail system prior to the issuance of any certificate of occupancy by the Town of Amherst Building Department.

The Project Sponsor will work with the Town toward achieving the trail connections. An opportunity for a future multi-use trail connection northerly to Nature View Park shall be maintained in accordance with the Town Comprehensive Plan.

17. Other Issues (FGEIS Section 2.12)

A. Reclassification of Land

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The entire project site is zoned New Community District (NCD), and no changes are proposed to remove the property from the NCD zoning district classification.

The original request by Ciminelli Development Company, Inc. in 2002 was to reclassify 326± acres of land from NCD-ND and NCD-MOS to NCD-GC, NCD-RI and NCD-MOS. This request was reviewed and commented on over a five year period. As a result of discussions with the NYS Department of Environmental Conservation during that time, the petitioner amended the original Muir Woods Concept Plan by reducing the overall development from 144 acres to 110 acres in order to minimize wetland impacts. In addition, the various components of the development were altered so that the proposed size of the commercial office/R&D space was reduced from 1.8 million sq. ft. to 700,000 sq. ft. The proposed “village center” originally envisioned was also eliminated. The result is a different land pattern from that initially proposed and one that is not consistent with the originally-requested reclassification districts.

The following additional steps shall be undertaken as part of the Findings for this project:

- The parcels to be reclassified to NCD-GC shall be deed restricted to prohibit the following uses:
 - Automobile sales and service facilities (except vehicles used primarily on the subject property)
 - veterinary clinics or kennels
 - gasoline service station will be prohibited around the existing lake

On June 21, 2018, a Declaration of Restrictions was recorded at the Erie County Clerk’s Office (Liber 11330 of Deeds at Page 8243) for the purpose of prohibiting the above described uses on the portion of the Project Site reclassified to NCD-GC.

- At the Town Board’s direction, the Town shall initiate a reclassification of the remainder of wetland areas contained in the original project proposal as Major Open Space (MOS).

B. Land Use

The proposed development will follow the program summarized below as depicted in the original Findings Statement concept plan for the project dated September 2007, as depicted in the Concept Plan for Site B dated August 14, 2015, as the Concept Plan for Site B dated April 2,

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2019 showing a student housing project, or as the Concept Plan for Site A dated June 23, 2021 showing a mixed-use project:

| Development Site | Land Use | Maximum Developed Area | Development Program |
|-------------------|------------------------------------|------------------------|---|
| Site A | Mixed-Use | 17.42 acres | Maximum of two mixed-use buildings with a maximum height of 60 ft. and maximum combined footprint of 50,000 sq. ft., one four-story multifamily building with a maximum height of 55 ft. (48 units), 49 two-family attached and detached townhomes (98 units) and 12 standalone apartments with attached garages and maximum height of 25 ft. The overall maximum allowed residential density on Site A is 258 units. |
| Site B (Option 1) | Class A Corporate office buildings | 46 acres | Maximum of 464,850 sq. ft. of office/retail space |
| Site B (Option 2) | Residential/ Commercial | 46 acres | Maximum of 192 residential units on the eastern portion of Site B (approximately 26 acres) and a maximum of 205,000 sq. ft. of office and commercial space on the western portion of Site B (approximately 20 acres) |
| Site B (Option 3) | Residential - Student housing | 46 acres | Maximum of 515 student housing units |
| Sites C and D | Residential | 37 acres | 133 lot residential subdivision consisting of detached single-family homes on individual lots pursuant to the Map Cover filed at the Erie County Clerk's Office on July 24, 2018. |

General components of the proposed development that will minimize adverse environmental impacts include:

- The maintenance of the remaining approximately 224± acres of the development site as permanent open space.
- Implementing a cluster pattern to maximize open space preservation.

C. Utility Infrastructure - In accordance with the October 17, 2007 letter received from the Erie County Department of Environment & Planning, all proposed sanitary sewer lines to be constructed to service both the residential and commercial portions of the project will be subject to review and approval by the Erie County Health Department. All systems installed or improved for the project will be undertaken by the Project Sponsor at its cost and will be required to meet all Town, County and State requirements.

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- D. Archaeological/Cultural Resources – One prehistoric archaeological site was discovered on the project site, with a Stage 2 archaeological study determining that the identified prehistoric archaeological site did not meet the eligibility criteria for listing on the State or National Register of Historic Places. This finding was confirmed by the NYS Office of Parks, Recreation and Historic Preservation in its letter of October 10, 2001. No mitigation measures are needed for the subject development.
- E. Air Quality – Potential impacts to air quality resulting from fugitive dust generated during construction activities will be minimized by the following measures:
- seeding and/or mulching exposed soils as soon as practicable and in accordance with the requirements and applicable regulations promulgated by the NYSDEC
 - grading roadways and covering them with gravel during construction, periodically regarding, compacting and replacing gravel as necessary as determined by the Town
 - wetting down temporary roads to be constructed on the project site during construction of the build-out of the project as needed throughout the duration of construction activities and as determined by the Town.
- F. Condominium Designation - As originally proposed, the residential portion of the project was not to include the development of any units that will be filed as condominiums. The Project Sponsor previously offered to place a deed restriction to this affect as a condition of sale to any future builder, developer or owner of any lot on the subject site. On June 21, 2018, a Declaration of Restrictions was recorded at the Erie County Clerk's Office (Liber 11330 of Deeds at Page 8243) for the purpose of prohibiting the residential uses on the Project Site from utilizing the condominium form of ownership. The Project Sponsor is requesting that the Declaration of Restrictions be modified to allow the condominium form of ownership for the attached residential units to be developed on Site A.

18. Evaluation of Future Actions

In accordance with SEQR regulations, upon application to the Town for development of the project site that requires the submittal of an Environmental Assessment Form, the Town will be required to determine if the potential adverse environmental impacts associated with the development have been adequately identified and evaluated in the DGEIS, FGEIS, and this Amended Findings Statement, and whether the proposed development exceeds any of the thresholds and/or requirements contained in this

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Findings Statement. This determination must be made by the Town prior to the issuance of any discretionary land use approvals by the Town for the proposed development.

The following scenarios are put forth in Section 617.10(c) & (d) of the SEQR regulations:

- A. If the Town determines that the proposed action is in conformance with the conditions and thresholds in the FGEIS or the Amended Findings Statement, then no further environmental review pursuant to SEQR will be required;
- B. If the Town determines that the proposed action is adequately addressed in the FGEIS, but is not addressed or not adequately addressed in the Amended Findings Statement, then an amendment to this Amended Findings Statement must be prepared;
- C. If the Town determines that the proposed action was not addressed, or was not adequately addressed, in the FGEIS, but it will not result in any significant environmental impacts, then a negative declaration must be prepared; or
- D. If the Town determines that the proposed action was not addressed, or was not adequately addressed, in the FGEIS, and the action may have one or more significant adverse environmental impacts, then a supplement to the FGEIS must be prepared.