Amherst Town Board

Regular Meeting of the Town Board

Minutes

5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Monday, April 19, 2021 | **7:00 PM** | **Amherst Municipal Building**

I. IN MEMORY

II. INVOCATION

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL:

7:00 PM Meeting called to order on April 19, 2021 at Amherst Municipal Building, 5583 Main Street, Williamsville, NY.

Attendee Name	Organization	Title	Status	Arrived
Brian J. Kulpa	Town of Amherst	Supervisor	Remote	
Jacqualine Berger	Town of Amherst	Deputy Supervisor	Remote	
Deborah Bruch Bucki	Town of Amherst	Councilmember	Remote	
Shawn Lavin	Town of Amherst	Councilmember	Remote	
Michael Szukala	Town of Amherst	Councilmember	Remote	
Francina J. Spoth	Town of Amherst	Town Clerk	Remote	
Kathleen Cooper	Town of Amherst	Deputy Town Clerk	Remote	
Timothy Koller	Town of Amherst	Deputy Town Clerk	Remote	
Stanley J. Sliwa	Town of Amherst	Town Attorney	Remote	
Dan Howard	Town of Amherst	Planning Director	Remote	
Jeffrey S. Burroughs	Town of Amherst	Town Engineer	Remote	
Laurie Stillwell	Town of Amherst	Director of Community Development	Remote	
Christopher P. Schregel	Town of Amherst	Traffic-Safety Coordinator	Remote	
Daryl Bramer	Town of Amherst	Comptroller	Remote	
Lynda Juul	Town of Amherst	Director of Finance	Remote	
Patrick G. Lucey	Town of Amherst	Highway Superintendent	Remote	

Brian Bray	Town of Amherst	Director of Senior Services	Remote	
Nicole M. Burroughs	Town of Amherst	Senior Paralegal	Remote	
Joseph McMahon	Town of Amherst	Chief of Staff	Remote	
Emily Melski	Town of Amherst	Coordinator of Federal & State Aid Programs	Remote	

V. MINUTES APPROVAL

1. Monday, April 05, 2021

RESULT:	**ACCEPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Jacqualine Berger, Deputy Supervisor
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

VI. PROCLAMATIONS AND ANNOUNCEMENTS

Arbor Day proclamation to sustain the Tree City USA status.

Recognition of 40 years of employment with the Town of Amherst, NY, Jeff Klein currently with the Planning Department.

The April 19th Town Board meeting may be accessed via Zoom at the following link:
https://us02web.zoom.us/j/88681774734?pwd=M0h4RWNpcUp0Q1pZZTNtellkdE1BZz09

Meeting ID: 886 8177 4734
Passcode: 992221

Or via phone by dialing 1-929-205-6099 and utilizing the same Meeting ID and Passcode.

Audio/Call-In Instructions: Note to callers your phone number will display to the public, to conceal your number enter *67 before you enter the phone number below. To comment during the public hearing call-in participants must dial *9 to "raise your hand" to be recognized for speaking.

VII. PUBLIC HEARINGS

Speakers will be limited to 3 minutes.

1. Resolution 2021-78

Local Law Amending Chapter 19, Ethics

A public hearing for "A Local Law Amending Chapter 19 of The Code Of The Town of Amherst With Respect To The Code of Ethics".

The purpose of this Local Law shall be to amend various section of Chapter 19 of the Code of the Town of Amherst with respect to the list of officials, notice and verification of filing.

1/19/2021
A motion to adjourn to April 19th was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0.

4/19/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:08 PM.

There were no speakers from the public. Supervisor Kulpa moved to Table the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was Tabled at 7:09 PM.

RESULT:	**TABLED [UNANIMOUS]**	**Next: 5/3/2021 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Jacqualine Berger, Deputy Supervisor	
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala	

2. Resolution 2021-153

Amend the Audubon Development Plan and the Zoning Map to Reclassify 2160 & 2170 North Forest Road from NCD-SA to NCD-ND

DRAFT RESOLUTION
(2/22/21)

Amend the Audubon Development Plan and the Zoning Map
[2160 & 2170 North Forest Road (NCD); Z-2020-06]

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of January 21, 2021 that the proposed New Community District - Neighborhood District (NCD-ND) classification at 2160 & 2170 North Forest Road is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that to the extent the proposed classification is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed classification at this location, and be it further

RESOLVED, that in accordance with Section 203-8-3 of the Town Code (Zoning), the Town Board adopts Local Law (#) to amend the Town Zoning map subject to the following condition as recommended by the Planning Board:

1. That the petitioner include additional parking spaces beyond the 17 spaces shown on the concept plan at the site plan stage.

2/22/2021

A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was opened at 7:32 PM.

Sean Hopkins, Esq. presented.

The following speakers addressed the Town Board:
Joseph Hausbeck, 2180 N. Forest Rd. - Spoke in opposition; does not fit the concept of the neighborhood; submitted a letter listing various concerns
Fran Cummings, 2200 N. Forest Rd. - Voiced her concerns; property floods; traffic
Karen Macris, 2230 N. Forest Rd. - Asked questions; concern of dorm-like apartments; dumpster location and noise

There were no further speakers from the public, therefore Supervisor Kulpa moved to adjourn the public hearing to March 8th. The motion was seconded by Councilmember Szukala and unanimously approved 5-0. The public hearing was adjourned at 8:17 PM.

3/8/2021

A motion to adjourn to April 5th was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0.

4/5/2021

A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:05 PM.

Sean Hopkins, Esq. presented updated plans.

The following speakers addressed the Town Board:
Fran Cummings, 2200 N. Forest Rd. - Concerned about it being student housing, lighting spillover, flooding and traffic
Joseph Hausbeck, 2180 N. Forest Rd. - Concerned about excavation of the site and the project being too large

There were no further speakers from the public, therefore Supervisor Kulpa moved to adjourn the public hearing to April 19th. The motion was seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was adjourned at 7:34 PM.

4/19/2021

Per Supervisor Kulpa, the Petitioner has requested an adjournment. Supervisor Kulpa then moved to Adjourn to May 3rd, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The hearing was adjourned at 7:09 PM.

5/03/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was opened at 7:09 PM.

Sean Hopkins, Esq. presented updated plans.

The following speakers addressed the Town Board:
Fran Cummings, 2200 N. Forest Rd. - Voiced her continued concerns regarding flooding, student housing in their senior citizen community

There were no further speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was closed at 7:29 PM.

RESULT:	**ADJOURNED [UNANIMOUS]**	**Next: 5/3/2021 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Jacqualine Berger, Deputy Supervisor	
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala	

3. Resolution 2021-243

39 Getzville Road Rezoning

Adoption of Local Law to Amend the Zoning Map
(39 Getzville Road, Z-2020-10)

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of January 21, 2021 that the proposed Community Facilities (CF) zoning at 39 Getzville Road is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that to the extent the proposed zoning is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed zoning at this location, and be it further

RESOLVED, that in accordance with Section 203-8-3 of the Town Code (Zoning), the Town Board adopts Local Law (#) to amend the Town Zoning map.

3/22/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:25 PM.

Don Hoefler of LaBella Associates presented. Don Philips of Daemen College also spoke.

There were no speakers from the public, therefore Supervisor Kulpa moved to adjourn the public hearing and set a decision date for April 5th. The motion was seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was adjourned at 7:34 PM.

4/5/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was opened at 7:39 PM.

There were no speakers from the public, therefore Supervisor Kulpa moved to adjourn the public hearing to April 19th. The motion was seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was adjourned at 7:42 PM.

4/19/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:10 PM.

Daemen College President, Gary Olson, answered questions from the Board. He stated their intention is not to demolish the house at 39 Getzville Road.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was closed at 7:18 PM.

A motion to approve was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. Councilmember Bucki voted for approval based on Dr. Olson's comment that there is no intention to demolish the house at 39 Getzville Road.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Jacqualine Berger, Deputy Supervisor
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

4. Resolution 2021-344

Briar Hollow Subdivision, Phase 2 - Stop Signs

A public hearing to install stop signs at the Phase II roadways of Briar Hollow Subdivision.

"The tee intersection of Winterbrook Drive and Florence Lane is hereby designated as a stop intersection and a stop sign shall be installed at the southeast corner."

and,

"The easterly tee intersection of Corsica Way and Winterbrook Drive is hereby designated as a stop intersection and a stop sign shall be installed at the northwest corner."

and,

"The westerly tee intersection of Corsica Way and Winterbrook Drive is hereby designated as a stop intersection and a stop sign shall be installed at the northeast corner."

and,

"The tee intersection of Corsica Way and Daisy Lane is hereby designated as a stop intersection and a stop sign shall be installed at the northwest corner."

4/19/2021

A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was opened at 7:19 PM.

Christopher Schregel, Traffic Safety Liaison, presented.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was closed at 7:23 PM.

A motion to approve was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

VIII. PERSONAL APPOINTMENTS TO BOARDS & COMMITTEES

Board Appointments - Amherst Conservation Advisory Council, Board of Ethics, Historic Preservation, IDA, Planning, Recreation, Recycling & Waste, Traffic Safety and the Zoning Board of Appeals.

NOTE - The number of vacancies is listed after the Committee name.

1. 9/11 Commemoration Committee

Membership is unlimited.

2. Amherst Committee on Disabilities (1)

3. Amherst Community Diversity Commission (5)

Councilmember Szukala appoints Dr. Mohammed Asghar Khan to the Amherst Community Diversity Commission for his first term to end December 31, 2024.

4. Amherst Conservation Advisory Council (4)

5. Amherst Industrial Development Agency

Membership is full.

6. Amherst Veterans Committee (5)

7. Arts & Culture in Public Places Board (2)

Deputy Supervisor Berger appoints Carrie Kahn to the Arts & Culture in Public Places in Amherst Committee for her first term to conclude December 31, 2022.

Councilmember Lavin reappoints Penny Wolfgang to the Arts & Culture in Public Places in Amherst Committee for her second term to conclude December 31, 2022.

Councilmember Szukala reappoints Sharon Seamans to the Arts & Culture in Public Places in Amherst Committee for her second term to conclude December 31, 2022.

8. Board of Assessment Review

Membership is full.

9. Board of Electrician Examiners

Membership is full.

10. Board of Ethics

Membership is full.

11. Board of Plumbing and Drainage Examiners

Membership is full.

12. Citizens Financial Advisory Committee (2)

13. Design Advisory Board

14. Employee Suggestion Program Merit Award Board

Membership is full.

15. Employee Suggestion Review Committee

Membership is full.

16. Energy Conservation Citizens Advisory Committee (3)

17. Freedom of Information Law (FOIL) Board

18. Glen Park Joint Board

Membership is full.

19. Government Study Committee (2)

20. Historic Preservation Commission (1)

21. Information Technology Advisory Committee (2)

22. Library Board of Trustees

Membership is full.

23. Minority / Woman Owned Business (4)

24. Open Government Advisory Board (4)

25. Planning Board

Membership is full.

26. Recreation Commission (1)

27. Recycling and Waste Committee (3)

28. Senior Services Advisory Board (2)

29. Traffic Safety Board

Membership is full.

30. Youth Board (7)

Adult vacancies (7), Youth vacancies (0)

31. Zoning Board of Appeals

Membership is full.

IX. PUBLIC EXPRESSION

This is an opportunity for residents to comment on matters involving Amherst other than those pertinent to Public Hearings that day. Speakers will be limited to 3 minutes.

A motion to open Public Expression was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. Public Expression was opened at 7:26 PM.

The following speakers addressed the Town Board:
Tracey Peterson, 80 Stonebridge Drive - Questioned the possibility of a Youngs Road Extension, stated that she and 25 neighbors are opposed to any extension
John Szalasny, 344 Teakwood Ter., member of the Recycling & Waste Committee - Addressed take-out containers and plastic utensils; requested the Town would offer

legislation
Bob Gilmour, Chairman of the Planning Board - Spoke of a Youngs Road Extension; there is a need for a north-south connector road
Eskinder Tefera, 30 Stonebridge Drive - Opposed to a Youngs Road Extension
Jason Gant, 55 Stonebridge Drive - Flashing red light and Stop sign - both don't make sense; sidewalks; voiced his concerns
Earl Good, 2056 Youngs Road - Asked questions about a Youngs Road Extension
Kevin Brzezinski, 73 Stonebridge Drive - Youngs Road Extension
Erikcon Neilans, 87 Stonebridge Drive - Youngs Road Extension
Don Smith, N. Long St. - The "raise hand" feature on Zoom has been changed, it is now under "Reactions" on the bottom of the screen
Chris Ritter, 300 Casey Road - Owner of the wetlands behind the neighborhoods; can't imagine the cost involved to address a Youngs Road Extension and to create new wetlands
Jim May, 106 Ivyhurst Road - Requested update to his backyard drainage problem
Biju Mannazhath, 11 Stonebridge Drive - Questioned plans for Youngs Road Extension

Supervisor Kulpa referred the Youngs Road matter to Traffic Safety.

There were no further speakers from the public, therefore Supervisor Kulpa moved to close Public Expression, seconded by Councilmember Lavin and unanimously approved 5-0. Public Expression was closed at 8:13 PM.

X. CONSENT AGENDA

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

XI. COUNCILMEMBER RESOLUTIONS

A. SUPERVISOR KULPA:

B. DEPUTY SUPERVISOR BERGER:

1. Resolution 2021-345

Reappointment to the Arts & Culture in Public Places in Amherst Board

WHEREAS, Town of Amherst created the Arts & Culture in Public Places Board to promote public art and culture within the town and to collaborate and cooperate with various and appropriate individuals, groups, associations, organizations and institutions concerned with art and culture; and

WHEREAS, to promote, ensure and enhance the function, object and mission of the visual and performing arts; and

WHEREAS, the Arts & Culture in Public Places Board, also known as Arts & Culture, consists of nine (9) members, each serving a term of two (2) years; and

WHEREAS, Michael E. Russo has served on the Arts & Culture Board and has expressed interest in continuing to serve.

NOW, THEREFORE, BE IT RESOLVED that the Amherst Town Board re-appoint Michael E. Russo for a term to conclude December 31, 2022.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Jacqualine Berger, Deputy Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

2. Resolution 2021-346

KNOX Key Security Upgrade

WHEREAS, the Amherst Fire Inspectors coordinate and administer the KNOX Box program for the Town of Amherst; and

WHEREAS, KNOX is a sole source provider of the E key and master key retention devices used by Town of Amherst Fire Companies; and

WHEREAS, the proposed decoders and upgraded key cores are needed to maintain the KNOX Box program within the Town of Amherst and are replacing the older SentraLock boxes we currently utilize that are no longer produced; and

WHEREAS, in an effort to maintain the highest level of security an upgrade to our aging system is required and the utilization of the new E Key increases that security.

NOW, THEREFORE, BE IT RESOLVED that the Amherst Town Board approves the temporary transfer of funds from Avoidable Alarm Fund T-2999-4002 to KP2116 for the purchase of decoders and key cores from KNOX.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Jacqualine Berger, Deputy Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

C. COUNCILMEMBER BUCKI:

D. COUNCILMEMBER LAVIN:

E. COUNCILMEMBER SZUKALA:

XII. DEPARTMENT HEAD RESOLUTIONS AND REPORTS

A. TOWN ATTORNEY:

1. Resolution 2021-347

Request to Schedule Public Hearing - Local Law Amending Chapter 148

AGENDA ITEM : APRIL 19TH, 2021

TO: **Town Board**

FROM: **Stanley J. Sliwa, Esq., Town Attorney**

DATE: **April 14, 2021**

RE: **Request For Public Hearing**
A Local Law Amending Chapter 148
Peddling, Soliciting, Transient Business and Mobile Food Vending

Kindly adopt a resolution to set a Public Hearing for May 17, 2021 at 7:00 p.m. to adopt the above entitled Local Law. A copy of the proposed law is attached hereto.

The final version of this Local Law will be distributed to the Town Board at least ten (10) days before the public hearing as required by law.

Thank you.

SJS:nmb
Attachment
c: Kathy Cooper, Deputy Town Clerk
(*w/attachment*, **Agenda Item : April 19th, 2021**)
Mark S. Berke, PE, Commissioner of Building (*w/attachment*)

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

2. Resolution 2021-348

Golf Course Maintenance Equipment (Bond Resolution - $400,000)

AGENDA ITEM - APRIL 19th, 2021

TO: **Town Board**

FROM: **Stanley J. Sliwa, Esq., Town Attorney**

DATE: **April 12, 2021**

RE: **Golf Course Maintenance Equipment**
2021-2026 C.I.P. - Project YR-10
Bond Resolution - $400,000.00

Kindly take the following action with respect to the above bond request:

(1) Adopt the attached bond resolution authorizing the issuance of $400,000.00 in serial bonds for the above-referenced Town improvement.

The adoption of the bond resolution does ***not*** require a public hearing to be held because the improvement is a Town improvement not involving a special district.

Also attached is the Map Plan and Report which provides further detail on the scope of the project.

Thank you.

SJS:nmb
Attachment
c: Kathy Cooper, Deputy Town Clerk
(w/attachment, **Agenda Item - April 19th, 2021**)
Daryl C. Bramer, Comptroller *(w/attachment)*
Lynda Juul, Director of Finance *(w/attachment)*
Dan Howard, Director of Planning *(w/attachment)*
Ellen M. Kost, Assistant Director of Planning *(w/attachment)*
Mary-Diana Pouli, Executive Director

Town of Amherst Youth and Recreation Department (*w/attachment*)
Eric W. Guzdek, Recreation Specialist
Town of Amherst Youth and Recreation Department *(w/attachment)*

4/19/2021
A motion to adopt the Bond resolution was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved via Roll Call vote 5-0.

RESULT:	**ROLL CALL VOTE (ADOPTED) [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Jacqualine Berger, Deputy Supervisor
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

3. Resolution 2021-349

2020 Service Award Program TOA/VOW Fire Protection Districts - 30-Day Mandatory Posting Period

AGENDA ITEM : APRIL 19TH, 2021

TO: **Town Board**

FROM: **Stanley J. Sliwa, Esq., Town Attorney**

DATE: **April 14, 2021**

RE: **2020 Service Award Program**
***East Amherst Fire Department**
***Ellicott Creek Fire Protection District**
***Getzville Fire Protection District**
***Main Transit Fire Protection District**
***North Amherst Fire Protection District**
***North Bailey Fire Protection District**
***Swormville Fire Company, Inc.**

Kindly adopt the following resolution with respect to the above matter:

RESOLVED, the Town Board approves the posting of the following fire company lists in their respective fire halls for the mandatory period of thirty (30) days:

East Amherst Fire Department
Ellicott Creek Fire Protection District
Getzville Fire Protection District
Main Transit Fire Protection District
North Amherst Fire Protection District
North Bailey Fire Protection District

Swormville Fire Company, Inc.

Thank you.

SJS:nmb
c: Kathy Cooper, Deputy Town Clerk (**Agenda Item : April 19th, 2021**)

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

B. TOWN CLERK:

1. Resolution 2021-350

New Firefighters for the Getzville Fire Company

The two new firefighters for the Getzville Fire Company both live in the Town of Amherst and reside within the Getzville Fire District.

Robert J. Zacher (past member who is moving back to active status)
154 Paul Drive
Amherst, NY 14228

Colin Nelson
301 Robin Road
Amherst, NY 14228

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

C. ASSESSOR:

D. BUILDING/BUILDING MAINTENANCE:

E. CENTRAL ALARM:

F. COMPTROLLER:

1. Resolution 2021-351

Budget Transfers and Amendments

For April 19, 2021 Town Board Agenda

To: Town Board
From: Office of Town Comptroller
Date: 4/14/2021
Re: Various Department Budget Transfers / Amendments

I have received the following request(s) requiring budget transfers and / or amendments. Based on my review, I ask that the Town Board approve the following list;

BUDGET TRANSFERS - 2021

FROM:	***TO:***
N2052.4003 Amherst HOME Admin $3,572.10	N2042.4000 Contractual $3,572.10
Transfer to cover administrative costs due to program year closing.	
G9916-4800 Plant 16 -Chemicals $61,867.93	G9916.2600 Other Equip. $61,867.93
Transfer to cover PO 22110139 for emergency purchase for O2 plant.	

BUDGET AMENDMENTS - 2021

INCREASE:	***INCREASE:***
N2042.02785 Amherst Acq. Rehab $3,750.00	N2042.4000 Contractual $3,750.00
N2054.02785 Amherst Home Admin - PI $1,250.00	N2054.4003 Admin Fee $1,250.00
To recognize Community Development program income from 115 Meadow Lea Dr, Amherst.	
N2044.02785 Cheektowaga Home Rehab - PI $13,087.80	N2044.4000 Contractual $13,087.80
N2049.02785 Cheektowaga Home Admin- PI $1,454.20	N2049.4003 Admin Fee $1,454.20
To recognize Community Development program income from 73 Hillside Drive, Cheektowaga.	
N2023.02785 CDBG & VG - PI $170.00	N2023.4000 Contractual $170.00
To recognize Community Development program income from 179 Hillcrest Drive, Amherst.	
N1042.05002 Em'ee Health Ins. Contribution $1,902.96	N1042.8050 Health Ins. $1,902.96
To recognize Community Development 1st quarter employee health insurance contributions.	

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

G. CONTRACT COMPLIANCE:

H. COURT:

I. ECONOMIC DEVELOPMENT:

J. EMERGENCY SERVICES:

K. ENGINEERING:

1. Resolution 2021-352

Stormwater Inspection Services Amendment - Marquis Engineering CRS No. 2547

The Engineering Department is requesting that the Town Board authorize the Town Supervisor to sign the attached time extension amendment between the Town of Amherst and Marquis Engineering, P.C. to perform stormwater inspection services, on an "as-needed" basis, on behalf of the Town. The extension of this agreement will be valid from May 1, 2021 through April 30, 2022.

Funds for these consultant services will be collected from developers by the Engineering Department as Stormwater Inspection Permit fees. The fees will be placed in an escrow account (AG4010-0699) and will be paid to consultants following project completion. The entire cost of inspection services will be funded through the fee collection, with no financial impact to the Town.

This request is pending successful completion of the contract review process.

Thank you for consideration of this request.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

2. Resolution 2021-353

Stormwater Inspection Services Amendment - JM Davidson CRS No. 2549

The Engineering Department is requesting that the Town Board authorize the Town Supervisor to sign the attached time extension amendment between the Town of Amherst and JM Davidson Engineering, D.P.C. to perform stormwater inspection services, on an "as-needed" basis, on behalf of the Town. The extension of this agreement will be valid from May 1, 2021 through April 30, 2022.

Funds for these consultant services will be collected from developers by the Engineering Department as Stormwater Inspection Permit fees. The fees will be placed in an escrow account (AG4010-0699) and will be paid to consultants following project completion. The entire cost of inspection services will be funded through the fee collection, with no financial impact to the Town.

This request is pending successful completion of the contract review process.

Thank you for consideration of this request.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

3. Resolution 2021-354

Stormwater Inspection Services Amendment - Watts Architecture & Engineering Time Extension CRS No. 2552

The Engineering Department is requesting the Town Board authorize the Town Supervisor to sign the attached time extension amendment between the Town of Amherst and Watts Architecture & Engineering to perform stormwater inspection services for on-going projects. Three projects (Penny Lane, 1265 Sweet Home Rd. and 2213 Sweet Home) required additional time for completion so we are requesting approval for a retroactive time extension from January 1, 2020 to October 31, 2020.

Funds for these consultant services are collected from developers by the Engineering Department as Stormwater Inspection Permit Fees. The entire cost of inspection services is funded through the fee collection, with no financial impact to the Town.

May we please have approval of this amendment and approval to process payment of these inspection services under PO# 22114228? The total amount due is $1,590.00 and funding is available from account AG 4010 - 0699. This request is pending the successful completion of the contract review procedure. Thank you for considering this request.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

4. Resolution 2021-355

WPCF Disinfection and Metering System Improvements - Change Order No. 1 Frey Electric Construction Co., Inc. CRS No. 2550

We are requesting the Town Board approve the above referenced Change Order, which calls for a $4,755.21 increase in the contract price. The project's revised contract price will be $391,106.21. This Change Order will cover the costs associated with the Contractor providing electrical power to the pressure relief valves for the three (3) ferric chloride feed pumps being installed in Building 4. This item was not included in the original bid scope, but is necessary for a fully operational ferric chloride feed pumps.

Funding for this request is available from bond account KP1621-4972.

Pending successful completion of the contract approval procedure, may we have your approval to award Frey Electric Construction Co., Inc. the above referenced Change Order? Thank you for considering this request.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

L. FINANCE:

M. HIGHWAY

1. Resolution 2021-356

Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller CRS #2557

NOW THEREFORE BE IT RESOLVED, the Town Board authorizes the purchase of one (1) Caterpillar CB1.7 03 A UT Compact Roller.

The purchase is from Southworth Milton CAT, 4610 E. Saile Drive, Batavia, NY 14020 for a net cost of $26,774.42.

The pricing is based on NYS-OGS, Group # 40625, Award # PGB22792, Contract # PC66988. Funding is available to pay under CHIPS Account D5112 - 2800.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

N. HUMAN RESOURCES:

1. Resolution 2021-357

Working Automotive Crew Chief/Police

Please appoint a Working Automotive Crew Chief to the Police Department, Permanent, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective April 20, 2021, at an hourly rate of $27.83 for Patrick Boyle.

This is a promotion for an employee currently serving as an Automotive Mechanic.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

2. Resolution 2021-358

Senior Electrical Inspector/Building Department

Please appoint a Senior Electrical Inspector to the Building Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective April 20, 2021 at an annual salary of $72,514, Grade 17, Step F for Joseph Hoehman, Jr.

This is a promotion for an employee who is currently serving as an Electrical Inspector and is replacing an employee who recently retired.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

3. Resolution 2021-359

Police Captain/Police Department

Please appoint a Police Captain to the Police Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective April 20, 2021 at an annual salary of $109,093 for Bruce Mann.

This is a promotion for a Police Lieutenant.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

4. Resolution 2021-360

Chief of Police Appointment

WHEREAS, our current Police Chief, John C. Askey, has filed for his retirement effective April 3, 2021, creating the vacancy for a new Police Chief; and

WHEREAS, Captain Scott P. Chamberlin has satisfactorily completed the Erie County Civil Service exam for Police Chief;

NOW THEREFORE, BE IT RESOLVED that Scott Chamberlin be appointed as the Chief of the Amherst Police Department with a salary of $150,987.

4/19/2021
A motion to approve was made by Supervisor Kulpa and seconded by Councilmember Bucki. A motion was then made by Deputy Supervisor Berger to amend, seconded by Councilmember Lavin and unanimously approved 5-0. Amendment adds the salary to the resolution.

A motion to approve as amended was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0.

RESULT:	**ADOPTED AS AMENDED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Jacqualine Berger, Deputy Supervisor
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

5. Resolution 2021-361

Senior Account Clerk/Building Department

Please appoint a Senior Account Clerk to the Building Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective April 20, 2021 at an annual salary of $40,748, Grade 6, Step D for Gina Kimble.

This is a promotion for an employee currently serving as a Clerk Typist.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

6. Resolution 2021-362

Principal Clerk Typist/Court

Please appoint a Principal Clerk Typist to the Court. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective April 20, 2021 at an annual salary of $37,081, Grade 7, Step A for Michele Presutti.

This is a promotion for an employee currently serving as a Senior Clerk Typist.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

O. INFORMATION TECHNOLOGY:

P. PLANNING:

1. Resolution 2021-363

To Authorize the Town Supervisor to Sign an Extension of a Grant from the New York State Affordable Housing Corporation for the Housing Rehabilitation Program CRS #2542

WHEREAS, the New York State Affordable Housing Corporation awarded $300,000 in a matching grant for the housing rehabilitation program in June 2018, and

WHEREAS, said funds can be used in conjunction with Community Development Block Grant and HOME Investment Partnership Grant funds administered by the Town to assist low and moderate income homeowners, and

WHEREAS, the grant funds should have been spent by May 31, 2021; and

WHEREAS, due to the pandemic and the housing rehabilitation program being closed in 2020 for three months, there is still $60,000 left in funds remaining to spend; and

WHEREAS, the Affordable Housing Corporation has agreed to extend the grant agreement until August 31, 2021; now therefore, be it

RESOLVED, that the Town Board of the Town of Amherst authorizes the Supervisor to sign the extended agreement, which will expire on August 31, 2021.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Q. POLICE:

R. SENIOR SERVICES:

1. Resolution 2021-364

Approval of the 2021-2022 CSE-EISEP Contract (CRS ID # 2524)

We request authorization for the Supervisor to sign the Community Services for the Elderly and Expanded In-Home Services for the Elderly Programs (CSE-EISEP) contract between the Town of Amherst and the Erie County Department of Senior Services, dated April 1, 2021 - March 31, 2022.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

S. YOUTH AND RECREATION:

1. Resolution 2021-365

User Agreement Between TOA and Boys on the Right Track CRS #2554

Authorize the Supervisor to sign a contract between the Town of Amherst (Youth & Recreation Department) and Boys on the Right Track for use of Saratoga Park for a weekly running program, pending successful completion of the contract routing process.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

XIII. UNFINISHED BUSINESS

XIV. COMMUNICATIONS

1. Communication 2021-44

Public Access to next Amherst Central Park Task Force Meeting

Email from Don Smith requesting public access to the next Amherst Central Park Task Force meeting.

4/19/2021
Referred to Planning, Town Attorney, Amherst Central Park Task Force, and IT.

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

2. Communication 2021-45

Rezoning of Property at 468 Harding Road / Forbes Capretto Homes

Resident expresses concern of safety and traffic congestion.

4/19/2021
Referred to Planning, Town Attorney and Traffic Safety.

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

3. Communication 2021-46

Youngs Road Extension

Residents concerns about the Youngs Road extension project.

4/19/2021
Referred to Planning, Town Attorney and Traffic Safety.

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

4. Communication 2021-47

Notice of Verified Petition/Complaint: Christopher Grover, Kelly Lecastre, Marlene Dashkoff, Neil Dashkoff and Albert Vexler Vs. Zoning Board of Appeals of the Town Amherst Et Al.

4/19/2021
Referred to Town Attorney and Chairman of ZBA.

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

5. Communication 2021-48

Summons and Complaint: BCMB1 Trust Vs. Town of Amherst Et Al.

4/19/2021
Referred to Town Attorney.

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

XV. PUBLIC IMPROVEMENT PERMITS

1. Resolution 2021-366

PIP 3079 - Geselwoods Subdivision - Sanitary Sewer

Attached please find an application for a Sanitary Sewer Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $9,115.00.00.

Three (3) checks will be sent to the Town Clerk, one (1) for $150.00 to be retained as a Permit Fee and one (1) in the amount of $8,390.00 which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost, and one (1) in the amount of $575.00 to cover the televising cost and to be deposited in the SS District 16 account G9000-02377, also to be forwarded to the Comptrollers Office. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3079.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

2. Resolution 2021-367

PIP 3080 - Geselwoods Subdivision - Waterline

Attached please find an application for a Waterline Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $5,450.00.

Two (2) checks will be sent to the Town Clerk, one (1) for $150.00 to be retained as a Permit Fee, and one (1) in the amount of $5,300.00, which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3080.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

3. Resolution 2021-368

PIP 3081 - Geselwoods Subdivision - Storm Sewer

Attached please find an application for a Storm Sewer Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $9,570.00.

We are sending two (2) checks to the Town Clerk, one for $150.00 to be retained as a Permit Fee and one in the amount of $9,420.00 which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3081.

4/19/2021

Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

4. Resolution 2021-369

PIP 3082 - Geselwoods Subdivision - Paving & Curbing

Attached please find an application for a Pavement and Curbs Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $18,790.00.

We are sending two (2) checks to the Town Clerk, one for $150.00 to be retained as a Permit Fee and one in the amount of $18,640.00 which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3082.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

5. Resolution 2021-370

PIP 3083 - Miller's Crossing Phase 1A - Sanitary Sewer

Attached please find an application for a Sanitary Sewer Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $18,609.40.

Three (3) checks will be sent to the Town Clerk, one for $150.00 to be retained as a Permit Fee and one (1) in the amount of $17,081.40 which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost, and one in the amount of $1,378.00 to cover the televising cost and to be deposited in the SS District 16 account G9000-02377, also to be forwarded to the Comptrollers Office. The

commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3083.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

6. Resolution 2021-371

PIP 3084 - Miller's Crossing Phase 1A - Waterline

Attached please find an application for a Waterline Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $12,146.40.

Two (2) checks will be sent to the Town Clerk, one for $150.00 to be retained as a Permit Fee, and one (1) in the amount of $11,996.40, which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3084.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

7. Resolution 2021-372

PIP 3085 - Miller's Crossing Phase 1A - Storm Sewer

Attached please find an application for a Storm Sewer Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $30,215.60.

We are sending two (2) checks to the Town Clerk, one for $150.00 to be retained as a Permit Fee and one in the amount of $30,065.60 which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3085.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

8. Resolution 2021-373

PIP 3086 - Miller's Crossing Phase 1A - Paving & Curbing

Attached please find an application for a Pavement and Curbs Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $61,707.00.

We are sending two (2) checks to the Town Clerk, one for $150.00 to be retained as a Permit Fee and one in the amount of $61,557.00 which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3086.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

XVI. SUSPENSION OF RULES

A motion was made by Deputy Supervisor Berger to open Suspension of Rules to receive in 2 unlisted items. The motion was seconded by Councilmember Szukala and unanimously approved 5-0. Suspension of Rules was opened at 8:16 PM.

There being no further business requiring Suspension of Rules, Deputy Supervisor Berger moved to close Suspension of Rules. The motion was seconded by Councilmember Bucki and unanimously approved 5-0. Suspension of Rules was closed at 8:22 PM.

1. Resolution 2021-374

To Authorize the Supervisor to Sign the Angela's House HOME Loan Agreement with Angela's House, LLC CRS #2553

Suspension to Town Board Agenda Item April 19, 2021

TO: **Amherst Town Board**

FROM: **Laurie Stillwell, Planning Department, Community Development Director**

DATE: **April 19, 2021**

RE: **Angela's House HOME Loan Agreement**

To authorize the Supervisor to sign the Angela's House HOME Loan Agreement with Angela's House, LLC.

WHEREAS, the Town of Cheektowaga is a recipient of HUD HOME Investment Partnerships Program (HOME) funds as part of the Amherst-Cheektowaga-Tonawanda HOME Consortium; and

WHEREAS, the 5-year Consolidated Plan for the Amherst-Cheektowaga-Tonawanda HOME Consortium includes a program goal to support the creation of new affordable senior/disabled rental housing; and

WHEREAS, the Town of Cheektowaga approved a proposal for HOME funding assistance for Angela's House, a 67-unit affordable senior/disabled rental housing complex to be converted at 600 Doat Street, Cheektowaga NY 14211 (Villa Maria Campus); and

WHEREAS, the Angela's House project has satisfactorily completed final underwriting and the loan agreement meets the required HUD affordability period regulations; and

WHEREAS, a Loan Commitment letter was issued by the Town of Cheektowaga and the HUD Request for Release of Funds was completed on October 9, 2020, following the expiration of the FONSI public comment period; now therefore, be it

RESOLVED, that the Town Board of the Town of Amherst authorizes the Supervisor, subject to the satisfactory completion of the contract routing process, to enter into a HOME Loan Agreement with Angela's House, LLC, as the Lead Agency of the Amherst-Cheektowaga-Tonawanda HOME Consortium, with the loan agreement funded by Cheektowaga's share of

HOME Investment Partnerships Program funds received as program income in 2020.

4/19/2021
A motion to approve was made by Deputy Supervisor Berger, seconded by Councilmember Szukala and unanimously approved 5-0.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Jacqualine Berger, Deputy Supervisor
SECONDER:	Michael Szukala, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

2. Communication 2021-49

Request for Public Hearing to Reclassify 2402 North Forest Road

Suspension to Town Board Agenda Item April 19, 2021

TO: **Amherst Town Board**
FROM: **Sean W. Hopkins, Partner, Hopkins, Sorgi & McCarthy PLLC**
DATE: **April 19, 2021**
RE: **Request to Schedule Public Hearing - Application to Reclassify 2402 North Forest Road**

See the letter attached with the details of the Public Hearing request and the reclassifying related to the property at 2402 North Forest Road.

4/19/2021
A motion to approve was made by Deputy Supervisor Berger, seconded by Councilmember Bucki and unanimously approved 5-0.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Jacqualine Berger, Deputy Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

XVII. PUBLIC EXPRESSION #2

This is an opportunity for residents to comment on matters involving Amherst other than those pertinent to Public Hearings that day. Speakers will be limited to 3 minutes.

A motion to open Public Expression was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. Public Expression was opened at 8:22 PM.

There were no speakers from the public, therefore Supervisor Kulpa moved to close Public Expression, seconded by Deputy Supervisor Berger and unanimously approved 5-0. Public Expression was closed at 8:23 PM.

XVIII. ADJOURNMENT

There being no further business to come before the Town Board, Supervisor Kulpa moved to adjourn, seconded by Councilmember Lavin and unanimously approved 5-0. The Town Board meeting of April 19, 2021 was adjourned at 8:23 PM.

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Engineering
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 23162 **RESOLUTION 2021-373** **ADOPTED**

PIP 3086 - Miller's Crossing Phase 1A - Paving & Curbing

Attached please find an application for a Pavement and Curbs Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $61,707.00.

We are sending two (2) checks to the Town Clerk, one for $150.00 to be retained as a Permit Fee and one in the amount of $61,557.00 which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3086.

4/19/2021
Consent

FINANCIAL IMPACT:

$61,707.00

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

LOCAL LAW NO.___ -2021

TOWN OF AMHERST

COUNTY OF ERIE, STATE OF NEW YORK

A Local Law Amending Chapter 19 of the Code of the Town of Amherst With Respect to the Code of Ethics

Be it enacted by the Town Board of the Town of Amherst as follows:

Section 1. Title.

This Local Law shall be referred to as, "A Local Law Amending Chapter 19 of The Code of The Town of Amherst With Respect To The Code of Ethics."

Section 2. Purpose

The purpose of this Local Law shall be to amend various sections of Chapter 19 of the Code of the Town of Amherst with respect to the list of officials, notice and verification of filing.

Section 3.

Chapter 19 of the Code of the Town of Amherst is amended as follows:

§ 19-1. Title.
This chapter may be cited as the "The Code of Ethics."

§ 19-2. Statutory authority; ~~intent.~~
The Code of Ethics is enacted pursuant to Article 18 of the General Municipal Law and in recognition of the policy of the State of New York and the Town of Amherst to maintain the highest standards of integrity in public service.

§ 19-3. Intent.
A. The Code of Ethics is intended to afford Town officers and employees guidance in conforming to ethical standards; to promote public confidence in the integrity of Town government; to require public disclosure of financial interests that may influence, or be perceived as influencing, actions of Town officers and employees; to minimize unwarranted suspicion; and, to provide for fair and effective administration of this Code. This Code of Ethics shall be in addition to all of the restrictions, standards and provisions pertaining to the conduct of Town officers and employees.

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

B. This Code of Ethics is further enacted to:

1. Establish high standards of ethical conduct for Town officers and employees.

2. Afford Town officers and employees clear guidance in conforming to such standards.

3. Promote public confidence in the integrity of Town government.

4. Require public disclosure of financial interests that may influence, or be perceived as influencing, actions of Town officers and employees.

5. Facilitate consideration of potential ethical problems before they arise.

6. Minimize unwarranted suspicion.

7. Enhance accountability of government to the people it serves.

8. Provide for fair and effective administration of this Code.

§ 19-~~3~~4. Definitions.
As used in the Code of Ethics, the following terms shall have the meanings indicated:

AGENCY
Any office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau or committee of the Town of Amherst; and shall include but not be limited to the Town Board, ~~Zoning Board of Appeals, Planning Board, Traffic Safety Board, Recreation Commission, Library Board of Trustees, Board of Ethics, Government Study Committee, Youth Board, Board of Assessment Review, Senior Citizens Advisory Board, Amherst Industrial Development Agency, 9/11 Commemoration Commission, Amherst Committee on Disabilities, Amherst Community Diversity Council, Amherst Veterans Committee, Arts and Culture in Public Places Board, Board of Electrician Examiners, Board of Plumbing and Drainage Examiners, Citizens' Financial Advisory Committee, Employee Suggestion Review Committee, Energy Conservation Committee, FOIL Board, Glen Park Joint Board, Historic Preservation Commission, Information Technology Advisory Committee, Minority/Woman Owned Business in Amherst, Open Government Advisory Board, Recycling and Waste Committee~~ Amherst Committee on Disabilities, Amherst Community Diversity Council, Amherst Industrial Development Agency, Amherst Veterans Committee, Arts and Culture in Public Places Board, Board of Assessment Review, Board of Electrician Examiners, Board of Ethics, Board of Plumbing and Drainage Examiners, Citizens' Financial Advisor Committee, Design Advisory Board, Employee Suggestion Review Committee, Energy Conservation Committee, FOIL Board, Glen Park Joint Board,

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

Government Study Committee, Historic Preservation Commission, Information Technology Advisory Committee, Library Board of Trustees, Minority/Woman Owned Business, 911 Commemoration Commission, Open Government Advisory Board, Planning Board, Recreation Commission, Recycling and Waste Committee, Senior Citizens Advisory Board, Traffic Safety Board, Youth Board and Zoning Board of Appeals in Amherst, or an improvement district as provided by Article 12 of the Town Law.

APPEAR and APPEAR BEFORE
Communicating in whatever form, whether personally or through another person.

BUSINESS DEALING
Having or providing any contract, service or work with a municipality; buying, selling, renting, leasing or otherwise acquiring from or dispensing to a municipality any goods, services or property; or applying for, petitioning, requesting or obtaining any approval, grant, loan, license, permit or other privilege from the municipality.

CONFLICT OF INTEREST
A situation in which a person has a duty to more than one person or entity but could not do justice in the actual performance adverse to the interest of both parties. This also includes the situation in which the concerns or aims of two different parties or organizations are incompatible or a situation in which a person is in a position to derive personal benefits from actions or decisions made in their official capacity.

DISCRETIONARY ACT
Any action involving the exercise of judgment or discretion by a municipal officer or employee, either individually or as a member of any agency, and includes but is not limited to negotiation, approval, advice, recommendation, authorization or audit.

FAMILY MEMBER
A spouse, child, stepchild, brother, sister, parent, half-child, brother/sister-in-law, parent-in-law or dependent of a municipal officer or employee.

GIFT OR FINANCIAL BENEFIT
Money, service, loan, travel, entertainment, hospitality or any financial transaction on terms not available to the general public but shall not include normal hospitality or promotional materials if such hospitality or materials do not exceed One Hundred Dollars ($100.00) in value and are not received in circumstances in which it might reasonably be inferred that they were given with intention to influence or reward them in relation to the performance of their duties.

~~Strikethrough~~ = Deleted language; Underline = Added language

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GOVERNING BODY
The Town Board of the Town of Amherst.

MINISTERIAL ACT
An action performed in a prescribed manner without the exercise of judgment or discretion as to the propriety of the act.

PAID TOWN OFFICER, EMPLOYEE OR OFFICIAL
Any Town officer, employee or official who receives a salary from the Town or who is compensated by the Town on a per-diem or hourly basis, but does not include a Town officer, employee or official who is solely reimbursed by the Town for expenses incurred in the course of his or her duties.

PARTICULAR MATTER
Any business dealing with the Town or any application therefor or any case, proceeding, determination, investigation, charge, accusation or arrest or any other matter involving a discretionary act of a Town officer or employee, but does not include the proposal, consideration or enactment of local laws, ordinances or regulations of general application.

PERSON
An individual, corporation, partnership, unincorporated association, LLC, LLP and all other legal entities.

POLITICAL PARTY
Any political party which appears on the ballot in the last biennial Town election.

RELATED PARTY
A spouse, child, parent, brother or sister of the Town officer or employee and a party with whom the Town officer or employee or his/her spouse, child, parent, brother or sister has or intends to enter into an employment, professional, business or financial relationship.

SPOUSE
A husband or wife from whom the Town officer or employee is not legally separated.

TOWN
The Town of Amherst, and includes all agencies thereof and officers, employees and officials thereof.

~~Strikethrough~~ = Deleted language; Underline = Added language

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TOWN CLERK
The Clerk of the Town of Amherst.

TOWN OFFICER OR EMPLOYEE
Any officer, ~~or~~ employee, or intern of the Town of Amherst, whether paid or unpaid, including public officials and all other members of any agency in the Town of Amherst, but does not include the Town Justices, officers or employees of the Unified Court System. Volunteer firemen and civil defense volunteers shall not be deemed to be Town officers or employees.

TOWN OFFICIAL
Any Town officer, employee who has the authority, either alone or as a member of an agency/committee/board to perform discretionary acts on behalf of the Town with respect to any business dealing. "Town official" shall not include Town Justice and any Town officer or employee who performs only ministerial acts and duties.

§ 19-5. Applicability.

The requirements of this Code shall not replace but shall be in addition to all other legal requirements pertaining to the conduct of Town officers and employees. Every provision of this Code, except as expressly limited herein, shall apply to every officer and employee of the Town, whether paid or unpaid. It shall also apply to members, directors, officers and employees of any not-for-profit corporation if a majority of such corporation's members or directors serve by reason of their Town positions or if a majority of such corporation's officers or directors are appointed by one or more Town officers or bodies, such as the Amherst Industrial Development Agency. Any such not-for-profit corporation shall be deemed to be a Town agency for the purpose of this Code. The members, directors, officers and employees of any such corporation shall be deemed to be Town officers or employees for the purposes of this Code. It shall also apply to any person who is a member of a Town board, agency, commission, council or body, whether paid or unpaid, as well as to personal service/consultant contractors of Town Development Agencies defined above. This Code shall not apply to officers or employees of the Town Court of the Town of Amherst, unless adopted by their respective governing bodies. The Board of Ethics shall have discretion to grant a temporary exception to the provisions of this Chapter for any officer, employee, person, board, commission or agency to which this Chapter applies.

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§ 19-46. General regulations.

A. No Town official or employee shall:

(1) Act as attorney, agent, broker, employee, consultant or representative for any person in connection with any business dealing that person has with the Town.

(2) Directly or indirectly, solicit any gift, or accept or receive any gift or series of gifts, having an annual aggregate value of One Hundred Dollars ($100.00) or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or her or could reasonably be expected to influence him in the performance of his official duties or was intended as a reward for any official action on his or her part. The foregoing limitation shall not apply to campaign contributions not otherwise prohibited by law.

(3) Take or refrain from taking any action or agree to take or refrain from taking any action or induce or attempt to induce any other Town officer or employee to take or refrain from taking any action on any matter before the Town in order to obtain a pecuniary or material benefit for:

(a) Himself or herself;

(b) A family member;

(c) Any partnership, LLP or unincorporated association of which the Town officer or employee or family member, is a member or employee or in which he or she has a proprietary interest;

(d) Any corporation, LLC of which the Town officer or employee, or family member is an officer or director or of which he or she legally or beneficially owns or controls more than five percent (5%) of the outstanding stock;

(e) Any person with whom the Town official, or his or her family member, has an employment, professional, business or financial relationship; or

(f) Any person from whom the Town officer or employee or his or her spouse has received within any twelve-month period during the previous twenty-four (24) months a pecuniary or material benefit having an aggregate value greater than One Thousand Dollars and Zero

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Cents ($1,000.00), unless said individuals make up less than five percent (5%) of a class of individuals benefitted.

(4) Appear before the agency/committee/board served by or which employs such Town officer or employee except on behalf of the Town or on his or her own behalf.

(5) Appear before the Town except on behalf of the Town or on his or her own behalf. This subsection shall only apply to officers and employees who are elected or who are paid by the Town.

(6) Appear as attorney or counsel against the interests of the Town in any matter in which the Town is a party or a complainant.

(7) Solicit any nonelected officer or employee of the Town to participate in an election campaign. This subsection shall not prohibit an elected officer from soliciting such participation from officers and employees who are appointed by and directly subordinate to such elected officer and who serve in positions which are in the exempt classification or the unclassified service under the Civil Service Law.

(8) Directly or through a person, campaign committee or other organization authorized to act on his or her behalf solicit any nonelected officer or employee of the Town to pay or promise to pay any assessment, subscription or contribution to a political party, political party organization or election campaign. This subsection shall not prohibit a general solicitation of a class of persons.

(9) Directly or through a person or campaign committee or other organization authorized to act on his or her behalf, solicit participation in an election campaign or payment or promise of payment of any assessment, subscription or contribution to a political party, political party organization or election campaign from any person who, to the knowledge of the municipal officer or employee, has or, within the previous twelve (12) months, has had any business dealing with the municipality. This subsection shall not prohibit a general solicitation of a class of persons.

(10) Directly or through a person or campaign committee or other organization authorized to act on his or her behalf, utilize Town property, the Town Seal, the Town Logo or stationery where the header or footer states the person's employment as a Town of Amherst employee, to solicit participation in an election campaign or payment or promise of payment of any assessment, subscription or contribution to a political party, political party organization or election campaign.

~~Strikethrough~~ = Deleted language; Underline = Added language

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(11) Except where such disclosure is authorized by law, disclose any confidential information acquired in the course of his or her official duties or use any such information to advance the financial or other private interest of himself or herself or any other person.

(12) After termination of his or her term of office or employment with the Town, appear before the Town or receive compensation for any services rendered on behalf of any person other than the Town in relation to any particular matter upon which he or she took any discretionary act during his or her term of office or employment with the Town.

B. No partnership, LLP, LLC or corporation or unincorporated association of which a Town official is a member or employee or in which he or she has a proprietary interest nor any corporation, LLC of which he or she is an officer or director or legally or beneficially owns or controls more than five percent (5%) of the outstanding stock shall appear before the agency served by such Town official on behalf of any person other than the Town or itself.

C. No partnership, LLP or unincorporated association of which a Town official who is elected or paid by the Town is a member or employee or in which he or she has a proprietary interest nor any corporation, LLC of which he or she is an officer or director or of which he or she legally or beneficially owns or controls more than five percent (5%) of the outstanding stock shall appear before the Town on behalf of any person other than the Town or itself.

D. Nothing in this section shall be construed to prohibit a Town officer or employee or any other person from receiving a municipal service or benefit or using a municipal facility which is generally available to residents or a class of residents in the Town.

E. Nothing in this section shall be construed to prohibit any Town officer or employee listed in §11 of the Domestic Relations Law from accepting any gift or benefit having a value of One Hundred Dollars ($100.00) or less for the solemnization of a marriage by that Town officer or employee at a place other than the Town officer's or employee's normal place of business or at a time other than the officer's or employee's normal hours of business and except as may be otherwise restricted by law.

F. Nothing in this section shall be construed to prohibit a Town officer or employee from performing any ministerial act.

G. A person who knowingly violates any provision of this section may, in addition to any penalty contained in any other provisions of law, be dismissed,

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suspended or removed from office or employment in the manner provided by law.

§ 19-~~5~~7. Transactional disclosure and recusal; definitions.

A. Whenever a Town official is requested or required to take any action on a matter before the Town and, to his or her knowledge, either the performance or nonperformance of that action would provide a pecuniary or material benefit to himself or herself or to any related person different from that which would be derived from the action by reason of its general application to a broad class of persons deriving such benefit, the Town official shall not participate in that matter unless the official's recusal prohibits Town action, then said officer or employee shall participate after full disclosure and reference to the particular legislation otherwise prohibiting Town action. The Town officer or employee also shall file promptly with his or her immediate superior, if any, and with the Town Clerk a signed statement disclosing the nature and extent of that interest.

B. For purposes of this section, the following terms shall have the meanings indicated:

RELATED PERSON

(1) A family member.

(2) Any corporation of which the municipal officer or employee is an officer or director or of which he or she legally or beneficially owns or controls more than five percent (5%) of the outstanding stock.

(3) Any person with whom the municipal officer or employee or his or her family member has an employment, business or financial relationship.

(4) Any person from whom the municipal officer or employee or his or her spouse has received within any twelve (12) month period during the previous twenty-four (24) months a pecuniary or material benefit having an aggregate value greater than One Thousand Dollars and Zero Cents ($1,000.00).

C. Nothing in this section shall be construed to prohibit a Town officer or employee from performing any ministerial act or to require a Town officer or employee to file a disclosure statement pursuant to Subsection A of this section prior to performing any ministerial act. The award of a contract by an officer or employee pursuant to the public bidding requirements of §103 of the General Municipal Law shall be deemed a ministerial act.

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§ 19-~~6~~8. Disclosure statement.

A. Long Form Disclosures: All elected Town officials, all department heads and all Town Officials who are elected, appointed, paid or unpaid, who are members of the ~~Zoning Board of Appeals, Planning Board, Youth Board, Traffic Safety Board, Government Study Committee, Recreation Commission, Board of Assessment Review Amherst Industrial Development Agency, Board of Ethics, Board of Electrician Examiners, Board of Plumbing and Drainage Examiners, Citizens' Financial Advisory Committee, Energy Conservation Committee, FOIL Board, Historic Preservation Commission and the Open Government Advisory Board~~ Amherst Industrial Development Agency, Board of Assessment Review, Board of Plumbing and Drainage Examiners, Board of Electrician Examiners, Board of Ethics, Citizens' Financial Advisory Committee, Design Advisory Board, Energy Conservation Committee, FOIL Board, Government Study Committee, Historic Preservation Commission, Open Government Advisory Board, Planning Board, Recreation Commission, Traffic Safety Board, Youth Board and Zoning Board of Appeals shall file with the Town Clerk, who for the purpose of this section shall also be deemed the Secretary of the Board of Ethics as hereinafter set forth, a signed, annual disclosure statement within thirty (30) days of taking office and no later than April 30 of each year thereafter. Within thirty (30) days of any change in the information contained in his or her most recently filed statement, the ~~public~~ Town official shall file a signed amendment to the statement indicating the change.

B. Information to be disclosed by all those Town officials defined in Section 19-6A shall be in the following form:

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(1) Name:

Address:
Email Address:

If married, spouse's name:

(2) (a) Title of Town position:

(b) Department, agency or other governmental entity:

(3) Do you receive any benefits, compensation or other consideration that are derive directly or indirectly from your employment or association with the Town of Amherst other than your remuneration from the Town?

Yes _____ No _____

If YES, please describe the nature, source of and amount such benefits, compensation o other consideration.

Nature	**Source**	**Amount**

(4) List the address and SBL of all real property in which you, your spouse or other famil member of your household has an ownership or other financial interest.

Name of Owner	**Address**

(5) List the name and address of any partnership, unincorporated association, corporatio business or employer of any sort of which you or your spouse is a member, officer o employee or from which you or your spouse derive income of any nature, giving you position and/or your spouse's position, if any, with such entity.

Self/Spouse	**Position**	**Organization and Address**

(6) List the name and address of any corporation, partnership, unincorporated associatio or business of which you or your spouse legally or beneficially owns or controls mor than 5% of the issued and outstanding stock or other ownership rights.

Self/Spouse	**Organization and Address**

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

(7) State any self-employment, and the general nature thereof, from which you or you spouse has derived gross income in excess of $2,000 during the previous calendar year.

Self/Spouse **General Nature**

(8) If you are unable, after reasonable effort, to obtain any of the information required hereir so state and explain.

(9) List any position you held within the last 5 years as an officer of any political committe or political organization. The term "political organization" includes any independen body or any organization that is affiliated with or a subsidiary of a political party.

(10) List the source of all gifts received in the past year from the same or affiliated source aggregating in excess of $100.00 by you or a close relative, from any person or organization having had a regulatory or financial relationship with the Town within the past 2 years or expected to have such a relationship within the next 2 years, excluding gifts from a relative. The term "gifts" includes gifts of cash, property, personal items services, payments to third parties on your behalf, loans, forgiveness of debt honorariums, travel, entertainment, hospitality, tickets and any financial transaction or terms not available to the general public. The term "gifts" shall not include norma hospitality or promotional materials received within the past year if such hospitality or materials which, when aggregated by source, do not exceed $100.00 in value and are not received in circumstances in which it might reasonably be inferred that they were given with the intention to influence or reward you in relation to the performance of your duties.

Name of Family Member	Relationship to You	Name of Business Entity	Involvemen with Town

(11) List your interest or any close relative in an entity which has had financial or regulatory activity with the Town or Amherst Industrial Development Agency within the last 2 years or is expected to have such activity within the next 2 years, except for a publicly traded business organization of which you own less than 5% of the outstanding stock or ownership interest. It is not necessary to disclose personal savings accounts and retirement accounts.

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(12)

Name of Family Member	Relationship to You	Name of Business Entity	Involvement with Town

Outside employment. Describe any outside occupation, employment, trade, business or profession providing more than $1,000.00 per year for you or a close relative, if any, and indicate whether such activities are regulated by any state or local agency.

Name of Family Member	Position	Name, Address & Description of Organization	State or Local Agency

(13) Future employment. Describe any contract, promise or other agreement between you and anyone else with respect to your employment after leaving your Town office or position.

Past employment. Identify the source and nature of any income in excess of $1,000.00 per year from any employer, including deferred income, contributions to a pension or retirement fund, profit-sharing plan, severance pay or payments under a buy-out agreement for this year and the year prior to this year.

Name and Address of Income Source	Description of Income (i.e. pension, deferred compensation, etc)

(14) Identify and describe the source of any third-party payment or reimbursement for Town of Am st travel-related expenditures in excess of $250.00 for any matter that relates to your official duti The term "reimbursement" includes any travel-related expenses provided by anyone other than the wn for speaking engagements, conferences or fact-finding events that relate to your official duties.

Source	Description

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(15) Describe all loans and debts of you or a close relative in excess of $5,000.00 (excluding retail accommodations such as primary mortgages, home equity loans, charge accounts, lines of credit and credit cards extended in the normal course of business which are ordinarily available to the general public by financial institutions (for example, banks) and/or merchants and which are not extended in circumstances in which it might be reasonably inferred that they were extended with the intention to influence or reward you in relation to the performance of your duties):

_____ _____

~~(month, day, year)~~
(date) Signature of Reporting Individual

C. Short Form Disclosure. All Town officials who are appointed, paid or unpaid, to any board of committee for who a long form disclosure is not required shall file a Short Form Disclosure form containing the following information:

(1) Name, Address, Email Address, Telephone Number (Both Home and Cell) and if married, Spouse's name.

(2) Title of Position (Name of Board or Committee)

(3) I hereby certify that I have read Chapter 19 of the Town of Amherst Town Code (Code of Ethics) and understand its restrictions upon my activities. I further certify that I will follow these provisions and that I do not have any conflict of interest as defined in the Code of Ethics.

Name & Date

§ 19-9. Transactional Disclosure Statement Required

A. Private interests. A Town officer or employee shall, before taking, advising or participating in any official discretionary action affecting his or her known private interest or the private interest of a related party, file a statement disclosing such interest and defining the proposed action.

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B. Professional or business transactions. If a Town officer or employee wishes to enter into an employment, professional, business or financial transaction, other than a normal retail purchase or credit transaction on the same terms as are available to the general public, with another party and such other party has pending or is known by such Town officer or employee to be considering or has had pending within the prior twelve (12) months any financial or regulatory matter with a Town agency and the Town officer or employee or a subordinate officer or employee has participated in or is authorized to participate in any official discretionary action affecting such matter, the Town officer or employee shall file a statement disclosing such transaction and disclosing the nature of his or her participation in such action prior to entering into such transaction. If a Town officer or employee learns that a related party proposed to enter or has entered into such a transaction, then he or she shall promptly file such a statement.

§ 19-~~7~~10. Civil penalty; penalties for offenses.

A. Statement of financial disclosure.

(1) A reporting individual who knowingly ~~and willfully~~ fails to file an annual statement of financial disclosure as ~~provided~~ required herein shall be presumed to have voluntarily withdrawn from membership on the committee/board they were appointed to.

(2) A reporting individual who knowingly and ~~willfully with intent to deceive~~ makes a false statement or gives information which such individual knows or should have known to be false on such statement of financial disclosure filed pursuant to this Chapter shall be assessed a civil penalty in an amount not exceed Ten Thousand Dollars and Zero Cents ($10,000.00). Assessment of a civil penalty hereunder shall be made by the Town of Amherst Board of Ethics following a hearing which follows the procedure set forth in the rules of procedure adopted by the Board of Ethics.

(3) A reporting individual fails to file an amended financial disclosure within thirty (30) days of any change in information contained in his/her most recently filed financial disclosure statement shall be presumed to have withdrawn from membership in the committee or board that they were appointed to.

(4) For a violation of this subsection 2, the Town of Amherst Board of Ethics may, in lieu of a civil penalty, refer said violation to the District Attorney and, upon such conviction~~, but only after such referral, such violation shall be punishable as a misdemeanor~~.

~~Strikethrough~~ = Deleted language; Underline = Added language

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(5) Notwithstanding any other provision of law to the contrary, no other penalty, civil or criminal, may be imposed for failure to file or for false filing of such statement, except that the appointing authority may impose disciplinary actions as otherwise provided by law.

B. For violations of the conflict of interest and transactional disclosure provisions of this chapter, the Town of Amherst Board of Ethics shall assess a civil penalty in an amount not to exceed Ten Thousand Dollars and Zero Cents ($10,000.00) or, in lieu thereof, issue a public censure or private admonition. In addition, the appointing authority may impose disciplinary action as otherwise provided by law.

C. For violations of the Section 19-4(A)(10) the Town of Amherst Board of Ethics shall assess a civil penalty in an amount not to exceed Ten Thousand Dollars and Zero Cents ($10,000.00) or, in lieu thereof, issue a public censure or private admonition. In addition, the appointing authority may impose disciplinary action as otherwise provided by law including removal from office/employment. For a violation of Section 19-4(A)(10), the Town of Amherst Board of Ethics may, in lieu of a civil penalty, refer a violation to the District Attorney and upon such conviction but only after such referral, such violation shall be punishable as a Class A misdemeanor.

D. The Town of Amherst Board of Ethics shall adopt rules governing the conduct of adjudicatory proceedings and appeals relating to the assessment of civil penalties herein authorized. Such rules shall provide for due process procedural mechanisms substantially similar to those set forth in Article 3 of the State Administrative Procedures Act, but such mechanisms may not be identical in terms or scope.

E. No reporting individual shall be subject to the sanction contained in Subsections 1 or 2 for any offense that occurred more than two (2) years before Notice is provided to that individual that he/she has violated the provisions of the Ethics Code.

F. Assessment of a civil penalty shall be final unless modified, suspended or vacated within thirty (30) days of imposition and, upon becoming final, shall be subject to review at the instance of the affected reporting individual in a proceeding commenced against the Town of Amherst Board of Ethics pursuant to Article 78 of the Civil Practice Law and Rules.

§ 19-~~8~~11. Maintenance of disclosure statements.
Transitional disclosure statements and annual disclosure statements shall be a matter of public record and shall be filed and indexed with the Town Clerk.

~~Strikethrough~~ = Deleted language; Underline = Added language

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The Town Clerk shall retain such disclosure statements for a period of not less than seven (7) years from the date of filing.

§ 19-~~9~~12. List of officials; notice and verification of filing.

A. On or before the first day of April of each year the Town Supervisor, together with the Town Clerk, shall:

(1) File with the Town Clerk a list of names and offices or positions of all officials and employees required to file annual disclosures; and

(2) Notify all persons required to file annual disclosure forms and request that the same be filed with the Town Clerk no later than April 30th of ~~each year~~ or the subsequent business day. Said notifications are to be sent to the person's current residence on file with the Town Clerk and also be sent via email, if email is available.

(3) Notify all Department Heads/Town Board liaisons of the names of these persons required of the names and offices or positions of all officers and employees required to file annual disclosures with an indication of whether that individual has filed the required disclosure form.

(4) If the notice is returned, the Town Clerk within three (3) business days will then notify the relevant Department Head/Town Board liaison of the same within three (3) business days. Upon receipt of such notice, the Department Head/Town Board liaison shall immediately notify the person in writing (email shall suffice) that he/she needs to file the annual disclosure statement.

B. On or before the 15th day of May of each and every year, the Board of Ethics shall meet to ascertain and verify that every required individual has filed the required disclosure statement.

C. Failure of the Supervisor and the Town Clerk to notify any or all individuals required to file disclosure statements shall not relieve Town officials~~s~~ or employees of their duty to file the disclosure statements.

§19-13. Disclosure of Interest by Town Board member; abstention from action.

When a member of the Town Board must take official action on a matter in which the board member has a substantial personal economic interest, which interest is distinct from that of the general community, the member's constituents or a substantial class of the general community he or she shall

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divest himself or herself of that interest or shall publicly disclose the nature and extent of such interest in writing to the Town Board. The board member ~~may~~ shall abstain from participating in such action upon consideration of any possible inference of impropriety and the affirmative public need for his or her participation in the action under consideration. ~~The board member's decision not to abstain shall not be deemed unethical.~~

§19-14. Applicant Disclosure

A. Where a person requests the Town or a Town officer, official or employee to take or fail to take any action (other than a ministerial act) that may result in a financial benefit ~~both to the requester and~~ to either any officer, official or employee of the Town, the ~~requester~~ Town officials shall disclose the names of any such persons, to the extent known to the requester at the time of the request.

B. If the request is made in writing, the disclosure shall accompany the request. If the request is oral and made at a meeting of a public body, the disclosure shall be set forth in the public record of the body. If the request is oral and not made at a meeting of a public body, the disclosure shall be set forth in writing filed with the Town Clerk.

§19-15. Registration before Town Agency

No Town officer or employee shall receive or enter into any agreement, whether expressed or implied, for compensation for services to be rendered in relation to any matter before any Town agency; provided, however, that this Section shall not be applicable if the Town officer or employee does not receive compensation by reason of his or her Town position and the matter is not before his or her own agency.

§19-16. Gifts and Financial Benefit.

A. No Town officer or employee shall directly or indirectly solicit, accept or receive any gift or financial benefit from or on behalf of any person or organization that has pending or is known by such Town officer or employee to be considering or has had pending within the prior twelve (12) months any financial or regulatory transaction with any Town agency in which he or she serves or over which he or she has any jurisdiction or appointing power.

B. For purposes of this Code, a Town officer's or employee's acceptance of travel and travel-related expenses from or on behalf of any person or organization that has pending or is known by such Town officer or employee to be considering or has had pending within the prior twelve (12) months can be considered a gift to the Town of Amherst rather than to the Town officer or employee when:

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(1) The travel is for a Town purpose and therefore could properly be paid for with Town funds;

(2) The travel arrangements are appropriate to that purpose; and

(3) The travel is no longer than reasonably necessary to accomplish the business which is its purpose.

C. To avoid an appearance of impropriety, advanced notice of such travel, including itinerary and a proposed travel budget, should be submitted to the Board of Ethics for review, when practicable. Following the conclusion of the trip, the official should report to the Board of Ethics the itinerary and actual travel disbursements and payments or reimbursements of expenses.

§19.17. Future Employment.

No Town officer or employee, without proper disclosure to the Town Board shall solicit, negotiate for or promise to accept employment by any person, firm or corporation with which he or she or his or her agency is engaged on behalf of the Town in the transaction of business or which is or may be affected by his or her official action.

§19.18. Appearance of Compensation After Termination of Service

No Town officer or employee without proper disclosure to the Town Board shall, after the termination of service or employment with such municipality, appear before any agency of the Town or receive compensation for services in relation to any specific case, proceeding, application or matter before a Town agency or against the Town's interest in which he or she personally participated in the course of his or her service or employment.

§19.19. Abuse of Position

No Town officer or employee shall accept any employment, enter into any transaction or acquire any investment under circumstances in which any impression may reasonably be created that he or she will be influenced thereby in the conduct of his or her duties. No Town officer or employee shall use or attempt to use his or her official position to secure unwarranted benefits, privileges or exemptions for himself or herself or for others.

§19.20. Board Removal

Notwithstanding provisions set forth in the Code of the Board of Ethics, Town officials or its officers covered by this Code of Ethics who violate its provisions set forth herein may be removed by the Supervisor if appointed by him/her,

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

by the Town Board through a majority vote for appointments made by the Town Board, and by the Town Board through a majority vote for individuals appointed or designated by third parties.

§19.21.

~~B.~~ Any member serving on a Town board or committee who affirmatively commences a lawsuit against the Town, or is a named party to a lawsuit against the Town and/or any board while serving as a member of that board, must disclose to that board his or her involvement in the lawsuit and must refrain from participating in all board decisions that entail or are likely to entail issues that form the basis of the litigation and may be removed; and

§19.22

~~C.~~ Any member who receives financial and/or noneconomic gains from representing groups, corporations, or individuals in legal actions brought against the Town and/or any board shall not simultaneously serve as a board member on any board of the Town of Amherst and may be removed; and

§19-23

~~D.~~ Whenever necessary, the Supervisor shall require each member to disclose all conflicts on matters before the Board, and Board members shall recuse him/herself, if necessary, from any decision or underlying considerations regarding such matters.

(1) Nothing herein shall be deemed to impose civil penalties on Board members.

(2) Nothing herein shall be deemed to bar a Board member from bringing a timely suit against the Town or its agencies for personal injuries or damages as allowed by law.

§19-2~~1~~4. Reservation of Right.

Nothing in this Code shall be deemed to bar or prevent the timely filing by a present or former Town officer or employee of any claim, account, demand or suit against the Town or any agency thereof on behalf of himself or any member of his family arising out of personal injury or property damage or for any lawful benefit authorized or permitted by law.

§19.2~~2~~5 Distribution of Provisions.

The Supervisor shall cause a copy of this Code to be compiled with Article 18 of the New York General Municipal Law and such other material he or she shall deem relevant. He or she shall cause a copy of such compilation to be

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

distributed to every officer and employee of the Town within thirty (30) days of the adoption of this code or as soon thereafter as may be practicable. Every officer and employee elected or appointed thereafter shall be furnished a copy of such compilation within ten (10) days after entering upon the duties of his or her position.

§ 19-~~112326~~. Duty to report.
Every Town officer or employee shall report to the Erie County District Attorney or the Town Attorney any action which may reasonably be interpreted as an improper attempt to influence him in the conduct of his office.

§19-~~102427~~. Board of Ethics.
A. A Board of Ethics is established and shall be known as the "Town of Amherst Board of Ethics."

B. The Board of Ethics shall consist of five (5) members who shall serve five (5) year terms of office, one such term expiring each year. Members shall be appointed by the Supervisor, subject to confirmation by the Town Board. If the Supervisor shall fail to appoint the members within thirty (30) days after the establishment of the Board of Ethics or within thirty (30) days after a vacancy occurs on the Board of Ethics, the Town Board shall appoint such member or members as the case may be. ~~Only o~~ One (1) member of the Board shall be an officer or employee of the Town of Amherst. In the event that a vacancy occurs prior to the expiration of the five (5) year term, such vacancy shall be filled for the balance of such term in the same manner as members are appointed to full terms. All members shall reside within the Town of Amherst. All members shall serve without compensation except that any member who is a Town of Amherst officer or employee shall be entitled to his usual compensation when attending upon the business of the Board of Ethics during normal working hours.

C. No more than two (2) members of the Board of Ethics may be affiliated with the same political party. No member of the Board of Ethics may hold an officer's position in any political party except such person may be a member of a county committee of a political party. The members shall elect a Chairman from among themselves and such other officers as may be deemed necessary from time to time.

D. A Board of Ethics member may be removed by the Town Supervisor with the approving consent of not fewer than four (4) members of the Town Board after a finding of substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of the office or violation of this chapter after written notice of the charges and an opportunity for reply.

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

E. The Town Clerk shall be the Clerk of the Board of Ethics. All documents filed with the Town Clerk shall be deemed for the purposes of this chapter to be filings with the Board of Ethics.

F. The Board of Ethics established hereunder shall render advisory opinions to Town residents or employees on written request and, upon request of the Town Board, make recommendations to such Town Board as to any amendments of this chapter. The opinions of the Board of Ethics shall be advisory and confidential and in no event shall the identity of the town employee be disclosed except to authorized persons and agencies. Such opinions shall be on the advice of counsel employed by the Board of Ethics or, if none, of the Town Attorney.

G.~~F~~. The Board of Ethics shall have all the powers and duties as prescribed by Article 18 of the General Municipal Law. The Board of Ethics may adopt and amend such rules or procedures as are appropriate.

H. Such Board of Ethics upon its formation shall promulgate its own rules and regulations as to its form and procedures and shall maintain appropriate records of its opinions and proceedings.

Section 4. Effective Date

This Local Law shall take effect immediately and be filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law and published pursuant to Sections 130 and 133 of the Town Law and Chapter 28 of the Code of the Town of Amherst.

Francina J. Spoth
Town Clerk
Town of Amherst
County of Erie, New York

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Town Clerk
Initiated by: **Kathleen Cooper**
Co-Sponsored by:

DOC ID: 22672 **RESOLUTION 2021-78** **TABLED**

Local Law Amending Chapter 19, Ethics

A public hearing for "A Local Law Amending Chapter 19 of The Code Of The Town of Amherst With Respect To The Code of Ethics".

The purpose of this Local Law shall be to amend various section of Chapter 19 of the Code of the Town of Amherst with respect to the list of officials, notice and verification of filing.

1/19/2021
A motion to adjourn to April 19th was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0.

4/19/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:08 PM.

There were no speakers from the public. Supervisor Kulpa moved to Table the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was Tabled at 7:09 PM.

FINANCIAL IMPACT:

None for the purposes of this resolution.

RESULT:	**TABLED [UNANIMOUS]**	**Next: 5/3/2021 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Jacqualine Berger, Deputy Supervisor	
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala	

TOWN OF AMHERST

TOWN CLERK'S OFFICE

5583 MAIN STREET
WILLIAMSVILLE, NEW YORK 14221
(716) 631-7021
FAX (716) 631-7152
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Kathleen Cooper
Deputy Town Clerk

Timothy Koller
Deputy Town Clerk

March 3, 2021

MEMO TO: David Marrano, Town Assessor

FROM: Francina Spoth, Town Clerk

RE: Petition

The attached petition, in connection with the parcel located at 2160 and 2170 North Forest Road was received in my office. Will you kindly check if the protest has been signed by the owners of 20% or more, either of the area of the land included in such proposed change, or of the immediately adjacent extending 100 ft. therefrom, or of that directly opposite thereto, extending 100 ft. from the street frontage of such opposite land, as provided in Zoning Ordinance, section XXI, Article 2.

Attachment
cc: Town Board
Town Attorney

Attachment: protest petition 2160 n forest-03042021095641 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

To: Members of the Amherst Town Board

c/o: Town of Amherst, Office of the Town Clerk

MAR03'21 PM 1:06 RCVD

Date: March 2, 2021

In Re: Requested Amendment to Rezone Property

Located at 2160 and 2170 North Forest Road

PROTEST PETITION

Pursuant to New York Consolidated Laws, Town Law, Section 265 (1)(b), we, the undersigned, being the owners of 20% or more of the area of land immediately adjacent to the land included in the above referenced proposed change, extending 100 feet therefrom, hereby petition that any such amendment shall require the approval of at least three-fourths of the members of the town board.

NAME:	ADDRESS:
[illegible]	2180 North Forest Rd
Rosemary Blando	2180 North Forest Rd

Attachment: protest petition 2160 n forest-03042021095641 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

Town of Amherst, NY
Office of the Assessor
David C. Marrano SCA Assessor

5583 Main Street
Williamsville, New York 14221
Phone: (716) 631-7038
www.amherst.ny.us
dmarrano@amherst.ny.us

Memorandum

March 4, 2021

To: Francina Spoth, Town Clerk
Re: Petition – 2160 & 2170 North Forest Road

The protest petition for 2170 North Forest Road has been signed by the required property owners of one of Zoning Ordinance section XXI, Article 2. The signature(s) satisfied test 2. The Super Majority calculations are based on three tests:

1. 20% or more of the owners signed a petition
2. **20% of the AREA surround said rezoning within 100 feet has signed a petition**
3. 20% of the AREA within 100 feet directly across the street from said rezoning has signed a petition

Therefore a super majority vote will be required to enact the change in zoning, as it relates to 2170 North Forest Road.

2160 North Forest Road has not been signed by the required property owners to satisfy the Zoning Ordinance referenced above, as it relates to the 3 aforementioned tests.

Should you have questions, please feel free to contact me.

Cheryl E. Walfrand
Senior Real Property Appraiser

cc: David C. Marrano
Assessor

Attachment: protest petition 2160 n forest-03042021095641 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

D R A F T (2/22/21)

SEQR

NEGATIVE DECLARATION

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency:	Town of Amherst Town Board	**Project**: Z-2020-06
Address:	5583 Main Street Williamsville, NY 14221 (716) 631-7051	**Date**:

This notice is issued pursuant to Part 617 and Local Law #3-82, as amended, of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law.

The Lead Agency has determined that the proposed action described below will not have a significant adverse effect on the environment.

Title of Action:	Rezoning Request.
SEQR Status:	Type I
Description of Action:	Rezoning of 2.35± acres of land from NCD-SA to NCD-ND to allow a proposed 2-story, 8-unit apartment building.
Location:	2160 & 2170 North Forest Road (NCD), Town of Amherst, Erie County, New York
Petitioner:	Coromandel Estates Amherst, LLC

Attachment: Z-2020-06_draft TB Neg Dec_2160 & 2170_2.22.21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

Reasons Supporting This Determination

Based on information submitted by the applicant, including a Full Environmental Assessment Form (EAF) - Part 1, a complete rezoning application, and concept plan, a preliminary staff analysis was undertaken. Compared to the criteria listed in Section 617.7, all indications are that the proposed rezoning of 2.35± acres of land from NCD-SA to NCD-ND for a proposed 2-story, 8-unit apartment building will not have a significant impact on the environment, as follows:

1. The action is not expected to cause a substantial adverse change in existing air quality, ground or surface water quality or quantity, or noise levels; a substantial increase in solid waste production; or a substantial increase in the potential for erosion, flooding, leaching or drainage problems. The Town Engineering Department on December 24, 2020 reviewed the application and EAF submitted on December 18, 2020, and had no objection or comments on the proposed rezoning. The Building Department requires that a floodplain development permit be obtained prior to final site plan approval.

2. The action will not result in the removal or destruction of large quantities of vegetation or fauna; or in significant adverse impacts to fish or wildlife species, habitats or other natural resources. A Landscape/Tree preservation Plan shall be required of the applicant upon submittal of a site plan application for development of the site at which stage all landscape requirements of the Zoning Ordinance will be met.

3. The action is not expected to create any material conflict with the Town Comprehensive Plan. The project will comply with all regulations of the Town Zoning Ordinance before final site plan approval is granted. The Town Building Department on January 13, 2021 reviewed the application and EAF submitted on December 18, 2020, and has no objection or comments on the proposed rezoning.

4. The property is within an area identified by the State as potentially containing significant cultural or archeological resources. A Phase I Archaeological Reconnaissance Survey was conducted in October 2020 by the University at Buffalo's Department of Anthropology. The report concluded that no prehistoric or historic sites were identified and recommended no further work. The NYS Office of Parks, Recreation and Historic Preservation's letter of October 30, 2020 concurred that the action will not impair the character or quality of important historical resources.

5. The action will not impair the character or quality of important aesthetic resources or of existing community or neighborhood character. The subject request is for reclassification from NCD-SA to NCD-ND. This property is in an area of Town with a variety of residential uses. The majority of this area is occupied by single-family homes, however, directly across North Forest Road from this site is the Beechwood Senior Residence/Asbury Pointe development. Within the past few years, apartment developments have been constructed further west along North Forest Road, most notably the "Muir Lake" apartments between Millersport Highway and John James Audubon Parkway. Therefore, the project is considered consistent with surrounding land use.

Attachment: Z-2020-06_draft TB Neg Dec_2160 & 2170_2.22.21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

6. The proposed reclassification to NCD-ND for the proposed 2-story, 8-unit apartment building will not cause a major change in the use of either the quantity or type of energy.

7. The reclassification to NCD-ND for the proposed 2-story, 8-unit apartment building will not create any hazard to human health.

8. The reclassification to NCD-ND will not cause a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses. The proposed 2-story, 8-unit apartment building will be consistent with the scale of surrounding land uses.

9. The reclassification to NCD-ND for the proposed 2-story, 8-unit apartment building will not significantly increase the number of people using the site over its previous level of use.

10. Review by the Town Traffic/Safety Board on December 30, 2020 and the NYS Department of Transportation on November 28, 2020 indicate that significant negative traffic impacts are not expected to result from the proposed project.

11. Coordinated reviews of the project have been undertaken by Town Departments including Building on January 13, 2021, Engineering on December 24, 2020, Attorney on January 4, 2021, Traffic/Safety Board on December 30, 2020, Assessor on December 23, 2020, and Right-of-Way Agent on December 29, 2020, along with outside agencies including the NYS Department of Environmental Conservation on January 22, 2021 and the Williamsville School District on December 28, 2020. These reviews have not identified any significant environmental issues and indicate that the proposal will not have a significant damaging impact on the environment.

12. Issues not specifically mentioned above and/or those not specifically reviewed were not raised by Town departments, outside agencies or the public and are not determined to be causing significant negative environmental impacts.

_____ _____
Signature & title of preparer date

_____ _____
Brian J. Kulpa, Supervisor date

EK/ac
X:\Current_Planning\Files\Rezonings\2020\Z-2020-06_(2160 &_2170_North_Forest_Rd_NCD)_2020\Z-2020-06_draft TB Neg Dec_2.22.21.docx
cc: Amherst Town Clerk
Amherst Building Department
ECDEP
NYSDEC

Attachment: Z-2020-06_draft TB Neg Dec_2160 & 2170_2.22.21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

Attachment: Draft Local Law-Reclassification of 2160 2170 North Forest Road-08-24-20 (RES-2021-153 : 2160 & 2170 Request to Rezone and

LOCAL LAW NO. _____-201_

TOWN OF AMHERST
COUNTY OF ERIE, STATE OF NEW YORK

A LOCAL LAW AMENDING CHAPTER 203 OF THE TOWN OF AMHERST CODE, KNOWN AS THE ZONING ORDINANCE, TO REZONE/RECLASSIFY 2160 AND 2170 NORTH FOREST ROAD FROM NCD-SA TO NCD-ND AND TO AMEND THE AUDUBON DEVELOPMENT PLAN AND TO AMEND THE ZONING MAP ACCORDINGLY.

Be it enacted by the Town Board of the Town of Amherst as follows:

Section 1. Title.

This Local Law shall be referred to as, "A Local Law Amending Chapter 203 of Town of Amherst Code, Known As The Zoning Ordinance, to Rezone/Reclassify 2160 and 2170 North Forest Road from NCD-SA to NCD-ND and to Amend The Audubon Development Plan and to Amend The Zoning Map Accordingly".

Section 2. Legislative Findings and Intent.

The Town Board of the Town of Amherst finds that an application to rezone/reclassify 2160 and 2170 North Forest Road from NCD-SA to NCD-ND and Amend the Audubon Development Plan and to Amend the Zoning Map Accordingly has been filed and is in proper order. The Town Board further finds that the request including the rezoning/reclassification and the amendment of the Audubon Development Plan is consistent with the Comprehensive Plan.

Section 3. Amherst Zoning Map.

The Town Board hereby: 1.) amends its Zoning Map which is incorporated by reference in the Town Zoning Code by amending/reclassifying from NCD-SA to NCD-ND the parcels at 2160 and 2170 North Forest Road; and 2.) amending the Audubon Development Plan, both being **subject to any conditions imposed by the authorizing resolution**; legally described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, State of New York, being part of Lot 68, Township 12, Range 7 of the Holland Land Survey so-called and further bounded and described as follows.

BEGINNING at the intersection of the centerline of Stahl Road (66.0 feet wide) with the centerline of North Forest Road (66.0 feet wide):

THENCE: Southerly, along the centerline of Stahl Road extended southerly, a

distance of 108 feet more or less to the north bank of Ellicott Creek;

THENCE: Westerly along said north bank of Ellicott Creek, a distance of 583 feet more or less to the west line of lands conveyed to Peter D. Durham by deed recorded in the Erie County Clerk's Office in Liber 9264 of Deeds at page 188;

THENCE: Northerly along said west line of Peter D. Durham lands, a distance of 10 feet more or less to the north bank of Ellicott Creek;

THENCE: Westerly and southerly along said north bank of Ellicott Creek, a distance of 227 feet more or less to a point distant 100 feet westerly from the said west line of Peter D. Durham lands as measured at right angles;

THENCE: Northerly along a line parallel with the west line of said Peter D. Durham lands distant 100.00 feet westerly therefrom measured at right angles, a distance of 491 feet more or less to the centerline of North Forest Road;

THENCE: Easterly, along said centerline of North Forest Road, a distance of 564.74 feet to the POINT OR PLACE OF BEGINNING.

Section 4. Validity.

This Local Law is adopted under the authority granted to the Town Board of the Town of Amherst pursuant to §§10(1)(ii)(a)(12), 20 and 27 of the Municipal Home Rule Law and §265 of the Town Law of the State of New York.

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 5. Effective Date.

This Local Law shall take effect immediately when it is filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law and published pursuant to Sections 130 & 133 of the Town Law and Chapter 28 of the Code of the Town of Amherst.

Francina J. Spoth
Town Clerk
Town of Amherst
County of Erie, State of New York

Attachment: Draft Local Law-Reclassification of 2160 2170 North Forest Road-08-24-20 (RES-2021-153 : 2160 & 2170 Request to Rezone and

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor

Daniel C. Howard, A
Planning Directo

Ellen M. Kost, AICP
Assistant Planning Dir

Town Board Agenda of February 22, 2021

February 9, 2021

The Honorable Town Board
Town of Amherst
5583 Main Street
Williamsville, NY 14221

Subject: Amendment #73 to the Audubon New Community District Development Plan to reclassify 2.35± acres of land from NCD-SA to NCD-ND; property located at 2160 & 2170 North Forest Road (NCD). Z-2020-06.

Honorable Members:

The subject property consists of two lots and forms a 2.35± acre irregularly shaped area located on the south side of North Forest Road, just west of the Stahl Road intersection. The site has 278.60± ft. of frontage and a depth of 497.16± ft. The site is vacant and partially wooded.

The south boundaries of the two lots are directly adjacent to Ellicott Creek, and the Ellicott Creek floodway extends onto both properties. A preliminary wetland investigation by Earth Dimensions, Inc. in July 2020 did not identify any federal jurisdictional wetlands or NYS wetlands on the subject properties. North Forest Road is a County collector.

For information on the surrounding zoning and land use, please refer to the attached sketch.

The purpose of this request is to reclassify the land to allow a 2-story, 8-unit apartment building. The concept plan shows the building in the central portion of the site, with 17 parking spaces in front of the building, eight (8) of which are proposed to be in a free-standing garage. Parking would be accessed by one driveway to North Forest Road approximately in the center of the site. Space for emergency vehicle turnaround is shown between the building and the road. The plan also shows a covered patio with fire pit on the west side of the building and a dumpster location west of the building. Two stormwater basins are proposed near the north and south ends of the west property line. All development is shown outside the Ellicott Creek floodway.

The property was zoned New Community District – Suburban Agriculture (NCD-SA) with adoption of the Town-wide zoning ordinance and maps in 1976. No other requests are on file.

The Planning Board offers the following findings consistent with Section 8-3 of the Zoning Ordinance.

continued . .

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

A) **EXTENT TO WHICH THE PROPOSED AMENDMENT MEETS THE INTENT AND OBJECTIVES OF A NEW COMMUNITY DISTRICT AS EXPRESSED IN SECTION 5-2-2 OF THE ZONING ORDINANCE.**

The proposed revision to the development plan addresses the following objectives of the Zoning Ordinance.

Objectives

2-2A *A varied choice in the types of environment, occupancy, tenure, types and cost of housing, lot sizes, and community facilities available to existing and potential Town residents.*

The proposed project consists of a 2-story, 8-unit apartment building with 17 parking spaces in front of the building, eight (8) of which will be in a free-standing garage. One driveway to North Forest Road is shown in the central portion of the site. Two stormwater basins are proposed near the west property line. All development is shown outside the Ellicott Creek floodway.

The Assessor's office agrees with all statements made in the application and has no issue with the rezoning since units will be leased and not sold with condominium tax status.

The Building Department has approved the rezoning as submitted.

2-2B *Extensive usable open space and recreation areas, appropriate in terms of location, size and suitability of intended function.*

No usable open space or recreation areas are proposed with this project. The Ellicott Creek floodway, which extends onto these properties, will remain as open space and is prohibited by FEMA regulations from containing any structures.

2-2C *The provision of commercial, office or industrial uses of substantial real property tax productivity intended to support the financing of additional educational, municipal, and other public services required as a result of the development.*

No commercial, office or industrial uses are proposed with this project.

2-2D *Convenience in location of Commercial and Service Areas*

The closest commercial/service areas to the subject property are located on Millersport Highway (0.5 miles) and on Maple Road (1.5 miles). These include gas stations and a variety of restaurants. The UB North campus, on the opposite side of Ellicott Creek, also offers commercial services.

2-2E *The preservation of such features as trees, outstanding natural topography and geological features; the prevention of soil erosion; and the comprehensive design of storm water retention and proper drainage systems.*

As most of the wooded areas in the southern and eastern portions of these properties are within the Ellicott Creek floodway, they are proposed to remain undisturbed.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

The NYS Department of Environmental Conservation concurs that the Town of Amherst should act as SEQR Lead Agency and has the following comments:

1. Note that Ellicott Creek has a water classification and standard of B. Therefore, any physical alteration (ie, land clearing, filling, drainage pipe/ditch installation, etc.) to the bed or banks (within 50 feet of the stream) will require an Article 15, Title 5, Protection of Waters Permit from the NYSDEC.

2. The project site is located near a NYS Flood Control Easement, specifically Amherst Ellicott Creek Flood Control Project. Use of this easement requires an Article 16 Flood Control Land Use Permit from the NYSDEC.

3. The site is located within the designated 100-year floodplain per the Federal Emergency Management Agency's (FEMA) Firm Map No. 36029C0069H. The proposed project should be designed in accordance with all applicable local municipal laws for flood damage reduction. In addition, Ellicott Creek has a regulatory floodway, and any encroachment into floodway, including fill, requires an engineering analysis that demonstrates a 0.0' rise in the base flood elevation before a permit can be issued. Based on submitted plans, it also appears that the proposed patio/fire pit area is within the floodway and may require a separate floodplain development permit.

4. If any project activities will involve land disturbance of 1 acre or more, the project sponsor is required to obtain a State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity.

5. This proposed project requires a sanitary sewer connection that is designed to convey 2,500 gallons/day or more of municipal sewage and is therefore considered a sanitary sewer extension. The Erie County Health Department will be the approving agency. A detailed Downstream Sewer Capacity Analysis must be performed and submitted for the proposed project as part of the Project's Engineering Report.

6. Portions of this project area are located on hydric soils. The project sponsor should contact the United States Department of the Army, Corps of Engineers (COE) to ensure that the project will not involve federally regulated wetlands or any other approval from that agency. If Federal Wetlands are involved, the COE may require Water Quality Certification from DEC.

7. The project site appears to be within an archaeologically sensitive area based on information obtained through the Cultural Resources Information System (CRIS) on the NYS Office of Park, Recreation and Historic Preservation's (OPRHP) website. As part of the SEQR process, this concern should be evaluated, unless it can be verified by appropriate documentation that the sites have been significantly disturbed in a way that would destroy potential artifacts. Note: If any of the described Department approvals are required, an appropriate archaeological investigation must be conducted in order to satisfy the NYS Historic Preservation Act.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

2-2F *The creative use of land and related physical development which allows an orderly transition of land from rural to urban uses.*

The subject properties are located within an area of Town with a variety of residential uses. The majority of this area is occupied by single-family homes, however, directly across North Forest Road from this site is the Beechwood Senior Residence/Asbury Pointe development. Within the past few years, apartment developments have been constructed further west along North Forest Road, most notably the "Muir Lake" apartments between Millersport Highway and John James Audubon Parkway.

The ROW Agent agrees with all statements made in the application and notes that an easement to the Town of Amherst on this property (liber 7105, page 369) should continue to be in effect and be reduced to an agreement.

2-2G *An efficient use of land resulting in smaller networks of utilities and streets and lessened burden of traffic on streets and highways thereby lowering utility and maintenance costs borne by new development.*

As the floodway is located on nearly half of the subject site, the concept plan submitted with this application shows the development limited to the central portion of the site. One driveway to North Forest Road is shown in the center of the site.

The Engineering Department, Traffic-Safety Board and Fire Chiefs' Association agree with all statements made in the application. The Highway Department review is pending.

NYSDOT reviewed the project, concurred with the Town acting as Lead Agency, and stated that the proposed project will not have a significant impact to traffic on the State Highway System.

The Erie County DPW – Highways Division concurs with the Town of Amherst being the Lead Agency for this project and has the following comments:

Permit Requirements:

1. The Developer will be required to apply for and obtain an Erie County Highway Work Permit for Utility Work Perm-2 for construction within the North Forest Road highway right-of-way.

2. The Developer will be required to apply for and obtain an Erie County Highway Work Permit for Non-Utility Work, Perm 3 for construction of a new entrance drive within the North Forest Road highway right-of-way.

Traffic Concerns:

1. A Traffic Impact Study may be needed due to the close proximity of the project to the intersection of North Forest and Stahl Road.

2-2H *Creation and preservation of natural and man-made features which will give increased environmental quality, encourage uses which will maintain high environmental quality and provide an attractive community design.*

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

The most important natural feature on this development site is the Ellicott Creek floodway, which according to FEMA regulations cannot hold structures of any kind. The wooded areas in the southern and eastern portions of the site within the floodway are therefore proposed to remain undisturbed.

This project is in an archaeologically sensitive location based on NYS mapping. A Phase I Archaeological Reconnaissance Survey was conducted in October 2020 by the Department of Anthropology at the University at Buffalo. The survey found that no historic or prehistoric sites were identified and recommended no further work. The NYS Office of Parks, Recreation and Historic Preservation concurs with the report's conclusion that no further archaeological investigations are warranted, and their opinion is that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project.

2-2I *Guidance and control of development in Flood Hazard Areas so that life and property both within and without such areas are protected.*

The Building Department is responsible for administering all flood code provisions; that department has no issue with the proposed rezoning but notes that a floodplain permit will be required. Town mapping from 2019 shows this property within the existing flood hazard area.

2-2J *Increased safety for all modes of travel, including pedestrian and bicycle.*

There are no sidewalks on North Forest Road in the vicinity of this project, and the petitioner does not propose to install any. An internal sidewalk is shown around the proposed building and parking lot but does not extend to the road.

The Williamsville Central School District notes that the District has received information on this project and placed it on file, and that a future bus stop will be located at a driveway entrance at North Forest Road in accordance with District policy.

2-2K *An appropriate balancing or accommodation of the effect of major public or private development elsewhere in the Town or its vicinity.*

While the proposed 8-unit apartment building presents a denser development than the nearby single-family lots, it is consistent with the adjacent Beechwood Senior Residence/Asbury Pointe development across North Forest Road. The property is close to the UB North Campus on the opposite side of Ellicott Creek. The development can also be expected to supplement the off-campus housing stock for faculty, staff and students. The developer has stated that these units are intended to be marketed to professionals who often work remotely.

2-2L *Sufficient civic and community facilities, carefully integrated with adjoining areas.*

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

There are no civic or community facilities proposed with this project; adequate civic and community facilities are located in the area.

2-2M *Provision for the orderly updating of long-term, large-scale development plans to reflect changing circumstances within an overall, Town-approved planning framework.*

The Comprehensive Plan's Conceptual Land Use Plan (Figure 6) indicates Mixed Residential use for the section of North Forest Road between Stahl Road and Millersport Highway. The Mixed Residential designation is aimed at projects with densities of 4 – 12 units/acre. The subject project will result in a density of 3.4 units/acre.

The requested change is generally compatible with the character of development in the area, although the other comparable developments are not located on the 'creek side' of North Forest Road. The 3-story, 90-unit "Muir Lake" apartments between Millersport Highway and J. J. Audubon Parkway, as well as the Beechwood/Asbury senior residence, do not back up to Ellicott Creek. It should be noted that the subject site is within the boundary of the Town's Local Waterfront Revitalization Program (LWRP) currently in progress. This project would require another level of review for consistency with waterfront policies if the LWRP was adopted by the Town (adoption is not expected within the next year).

2-2N *A more desirable environment than would be possible through the strict application of other sections of this Zoning Ordinance.*

The current zoning of New Community District – Suburban Agriculture (NCD-SA) allows single family dwellings only. The proposed development of the site includes 8 apartment units that would not be allowed under the current zoning classification. The demand for student housing in the area surrounding the UB campus makes this a desirable location for apartment use.

B) EXTENT TO WHICH THE PROPOSED DEVELOPMENT PLAN MEETS ALL THE REQUIREMENTS OF SUBSECTIONS 5-2-4, 5-2-5, and 5-2-6 OF THE ZONING ORDINANCE.

5-2-4 Location of NCD Not applicable (pertains to entire existing NCD within the Town).

5-2-5 Permitted Uses

5-2-5A(2) Neighborhood District. This classification includes primarily residential areas designed to provide living space for families and individuals. Ancillary uses designed to conveniently serve residents may be located within them. The classification includes:

a. Residences and dwelling units of every type, except as otherwise specified in this subsection.
b. Fraternity and sorority houses, dormitories, hostels and boardinghouses.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

c. Small convenience retail and service facilities, except for automobile drive-in restaurants, and ancillary office facilities designed to serve the needs of residents of the neighborhood.
d. Public or quasi-public facilities, including schools and day-care centers, religious buildings and other community facilities.
e. Recreation facilities, open space areas, and personal training facilities.
f. Special limited commercial services and facilities not already included in the above uses, storage yards, and open equipment structures.

5-2-5B Use Mixture: Not applicable.

5-2-6 Dimensional Standards

5-2-6A The overall residential density of an NCD shall not exceed five (5) dwelling units per gross acre. This density regulation applies to the entire New Community District (4,121± acres) within the Town. Although the density of the proposed development is 3.4 units/acre, it would not bring the overall NCD density beyond the threshold of 5 units/acre.

5-2-6B Dwelling Unit Area. Information not provided. All dwelling units and rooms included in a dwelling are required to have sufficient floor area to satisfy the applicable minimum floor area requirements of the State Building Construction Code or the Town Building Code, whichever is applicable. This requirement will need to be met.

5-2-6C Minimum Area. Not applicable

5-2-6D Building Arrangements. The proposed development will result in a 2-story, 8-unit apartment building in the central portion of the site. The proposed 17 parking spaces will result in 2 spaces/unit, the minimum required by code elsewhere in the Town.

C) THE PROPOSED DEVELOPMENT PLAN IS CONCEPTUALLY SOUND IN THAT IT MEETS PRESENT AND FUTURE COMMUNITY NEEDS

The requested NCD-ND classification and proposed project concept will generally result in a sound development plan for the subject area; however, the concept should include space for overflow parking beyond that required for residents of the development. Section 5-2-7A(8) in the Zoning Ordinance states that "Off-street parking, loading, and stacking spaces shall be provided so as to prevent overflow of parked or standing vehicles onto public or common vehicular or pedestrian rights-of-way."

D) THERE ARE ADEQUATE SERVICES AND UTILITIES AVAILABLE OR PROPOSED TO BE MADE AVAILABLE IN THE CONSTRUCTION OF THE DEVELOPMENT.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

All services and utilities are or will be made available with this development.

E) THE PROPOSED DEVELOPMENT PLAN IS CONSISTENT WITH THE TOWN COMPREHENSIVE PLAN

The proposed project generally complies with the locational and use criteria in the Comprehensive Plan for land near a university campus.

SEQR

This is a Type I action, and an environmental assessment consistent with SEQR has been prepared for the subject proposal. Pursuant to Local Law #3-82, as amended, the requirements of SEQR are complete and the proposal is not expected to have a significant adverse effect on the environment.

RECOMMENDATION

The Planning Board recommends that your Honorable Body concur with the Planning Board's findings relative to SEQR and issue the attached Negative Declaration, and that the subject request be **approved** based on the attached resolution.

Very truly yours,

DANIEL C. HOWARD, AICP
Planning Director

DH/EK/ac
Att.
X:\Current_Planning\Files\Rezonings\2020\Z-2020-06_(2160 &_2170_North_Forest_Rd_NCD)_2020\Z-2020-06_TB Letter_2.22.21.docx
cc: Stanley Sliwa, Town Attorney

Planning Board Approval – January 21, 2021
Ayes 7; Noes 0

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

TOWN OF AMHERST
PLANNING BOARD RESOLUTION
AMENDMENT #73 TO THE AUDUBON DEVELOPMENT PLAN
Z-2020-06

PETITIONER
Coromandel Estates Amherst LLC
c/o Sean Hopkins, Esq.
Hopkins Sorgi & McCarthy PLLC
5500 Main St., Suite 343
Williamsville, NY 14221

PROPERTY LOCATION
2160 & 2170 North Forest Road (NCD)

JAN29'21 AM 8:32 RCVD

WHEREAS the Town of Amherst Planning Board on Thursday, January 21, 2021 held a public hearing on Amendment #73 to the Audubon New Community District Development Plan to classify the subject property as suitable for use as an apartment development, and

WHEREAS the Planning Board has reviewed the Amendment plans and supporting documentation, and

WHEREAS the Amendment has been referred to the various Town review agencies, and

WHEREAS the Planning Board finds that:

A. The proposed Revision to the Development Plan meets the intent and objectives of a New Community District as expressed in Subsection 1-1.1.

B. The proposed Revision to the Development Plan meets all the requirements of Section 5-2-3 through 5-2-6.

C. The proposed Revision to the Development Plan is conceptually sound in that it meets present and future community needs.

D. There are or will be adequate services and utilities available or proposed to be made available in the construction of the development.

E. The proposed Amendment to the Development Plan is consistent with the Town Comprehensive Plan.

Pursuant to Local Law #3-82, as amended, the Planning Board recommends that the Town Board determine that the requirements of SEQR are complete and that the subject proposal is not expected to have a significant adverse effect on the environment.

NOW THEREFORE BE IT RESOLVED that the Planning Board, in accordance with Section 8-15-2 of the Zoning Ordinance offers a positive report and recommends Town Board approval of Amendment #73 to the Audubon Development Plan with the following condition:

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

TOWN OF AMHERST
PLANNING BOARD RESOLUTION
AMENDMENT #73 TO THE AUDUBON DEVELOPMENT PLAN
Z-2020-06

PETITIONER
Coromandel Estates Amherst LLC

PROPERTY LOCATION
2160 & 2170 North Forest Road (NCD)

JAN29'21 AM 8:33 RCVD

1. That the petitioner include additional parking spaces beyond the 17 spaces shown on the concept plan at the site plan stage.

The foregoing resolution was adopted by the Town of Amherst Planning Board, January 21, 2021; moved by Chmiel; seconded by Giuliani; ayes 7, noes 0.

Robert J. Gilmour, Chair — Date 1/28/21

EK/ac
X:\Current_Planning\Files\Rezonings\2020\Z-2020-06_(2160 &_2170_North_Forest_Rd_NCD)_2020\Z-2020-06_resolution_012121.doc
cc: Commissioner of Building
Town Engineer
Highway Superintendent
Traffic/Safety Coordinator
Coromandel Estates Amherst LLC, c/o Sean Hopkins, 5500 Main St., Suite 343, Williamsville, NY 14221
Thiru Vikram, c/o Coromandel Estates LLC, 4515 Chestnut Ridge Road, Unit 106, Amherst NY 14228
Chris Wood, Carmina Wood Morris, 487 Main St., Suite 500, Buffalo NY 14203
Christina Barmosz, Silvestri Architects, 1321 Millersport Hwy., Amherst, NY 14221
David Pawlik, Creative Structures Services, 550 Seneca St., Suite 100, Buffalo NY 14204

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amended Application - Reclassification 2160 and 2170 North Forest Road and to Amend the Audubon Development Plan
Date: December 17, 2020

Applicant: Commandel Estates
Amherst LLC c/o Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, NY 14221
Tel: 716.510-4338
E-mail: shopkins@hsr-legal.com

Original

TOWN OF AMHERST PLANNING DEPARTMENT

Application for Rezoning Review and, if required Comprehensive Plan Amendment

For Official Use

File #: Z-2020-06 **Acreage** — **Fee $** -0-

Address Verified by Assessor's Office _____ VERIFIED BY DATE

Materials Accepted by Town Clerk & Fee Paid _____ ACCEPTED BY DATE

Materials Checked by Building Dept. _____ RECEIVED BY DATE

Materials Received by Planning Dept. _____ RECEIVED BY DATE

		Fill In Applicable Fees
2 ACRES OR LESS	**$1,250**	$1,250.00
2 – 20 ACRES **$1,250 + $250/acres or fraction thereof over 2 acres**		$250.00
20 – 30 ACRES **$5,700 + $150/acre or fraction thereof over 20 acres**		____
OVER 30 ACRES **$6,900 +$75/acre or fraction thereof over 30 acres**		____
Request for Relief of/Change to Conditions of Zoning Approval	**$ 1,200**	____
AFFIDAVIT FEE FOR PUBLIC HEARING	**$ 15.00**	$15.00
	TOTAL FEE:	$ 1,515.00

REVISED
DEC 18 2020
TOWN OF AMHERST
PLANNING DEPT.

Z-2020-06,
2160 & 2170 N. Forest Rd. (RCD)

[Note: A completed Amended Part 1 of the Full Environmental Assessment Form prepared pursuant to the State Environmental Quality Review Act ("SEQRA") is attached as Exhibit "2" of this Application.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

TO BE COMPLETED BY APPLICANT

1. **Petitioner:** Name: Coromandel Estates Amherst LLC

Address: c/o Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, New York 14221
City State Zip Code

Phone: 510-4338 Fax:

E Mail shopkins@hsr-legal.com

2. **The undersigned hereby petitions the Honorable Town Board to rezone the following described property**

From: NCD-SA District

To: NCD-ND District

3. **Street address of land to be rezoned:** (must be verified by Town Assessor's Office)

2160 and 2170 North Forest Road

SBL #: 55.02-1-2 and 55.01-1-19.2

4. **Area of land to be rezoned** (in acres): 2.35

5. **Owner of Land:**

Name: Allen and Kristen Guerin

Address: 270 Rosedale Boulevard, Amherst, NY 14226

Telephone:

6. **Representative** (Architect, Engineer, Landscape Architect, Surveyor or Attorney):

Name: Sean W. Hopkins, Esq.

Address: 5500 Main Street, Suite 343
Williamsville, New York 14221
Tel: 716.510-4338 - E-mail: shopkins@hsr-legal.com
City State Zip Code

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

7. **Petitioner's interest in property**

_____Option to purchase

_____Owner

__X__Other (explain) Petitioner has entered into a contract to purchase the Project Site. A signed Authorization Form is attached as Exhibit 1 of this Amended Application.

8. **The following are all others having an interest in this application and join herein with the petitioner named above:** (describe extent of interest; attach sheets as needed)

Not Applicable.

9. **Attach Survey and Legal description of land to be rezoned. The Survey must be prepared by a New York State Licensed Land Surveyor.** The legal description of property to be reclassified is attached as Exhibit "3" and a full size copy of the Survey prepared by GPI dated dated July 13, 2020 is attached. A reduced size copy of the Survey is also attached as Exhibit "4".

10. **Said property has the following deed restrictions or Covenants:** (attach copy) Not Applicable.

Liber _____ Page _____

11. **Information on proposed project:**

A. Description of the character of the proposed development:

See Exhibit 5.

B. Rationale for rezoning request:

1. Why was this site chosen?

See Exhibit 5.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

2. Why cannot land be used with the existing zoning?

See Exhibit 5.

3. How will this rezoning impact surrounding properties?

See Exhibit 5.

4. How will this rezoning impact the school system?

See Exhibit 5.

12. Quantitative Data:

A. Total # of dwelling units 8
[The density of the proposed project has been reduced from 18 units to 8 units.]

B. Distribution of dwelling units by type Attached residential units for lease

C. Gross Residential Density per acre 3.40 units per acre

D. Total amount of Open Space Approximately 1 acre of greenspace and landscaping

E. Proposed Non-Residential Floor Area Not Applicable

13. Development Schedule:

Start Spring/Summer 2021

Finish 2022

Stages (# of) 1

14. If any portion of the proposed development is planned to be sold or leased, please describe:

The attached residential units will be leased to residential tenants.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

15. Open Space ownership and maintenance provisions (if applicable):

Greenspace and landscaping will be privately owned and maintained.

16. Basis for Findings (Sec. 8-3-5 of the Town Zoning Code) (Attach sheets and supplemental materials as necessary.)

A. <u>The proposed zoning and development plan must be generally consistent with the policies of the Comprehensive Plan and the Town Zoning Ordinance.</u>

1. State in detail why the proposed zoning is consistent with the adopted Town of Amherst Bicentennial Comprehensive Plan. Cite specific sections, maps, and/or figures in the plan that support the proposed zoning at this location (The Comprehensive Plan document is available at the Planning Department, Town Clerk's Office, Amherst libraries, or at www.amherst.ny.us). Add sheets as needed.

See Exhibit 6.

2. Pursuant to NYS Town Law Section 272a(11), "all Town land use regulations must be in accordance with a comprehensive plan adopted pursuant to this Section." The Town Board adopted the Comprehensive Plan pursuant to NYS Town Law 272 on January 2, 2007. If the rezoning is approved, the Town Board may require the Plan to be amended, as applicable.

Cite all text, map, and / or figures that must be amended to support the proposed zoning at this location (attach pages as necessary) and provide detailed suggested amendments.

See Exhibit 6.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

3. State why the proposed zoning is consistent with intent and objectives (Sec. 1-2-2) of the Zoning Ordinance:

See Exhibit 6.

B. Adequate Services and Utilities are available or are proposed to be made available with the construction of the development:

1. Sanitary Sewer

Yes.

2. Storm Sewer/Drainage

Yes.

3. Water

Yes.

4. Other Yes.

C. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:

See Exhibit 6.

D. Suitability of the subject property for uses permitted by the current versus the proposed district:

See Exhibit 6.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

E. Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town:

See Exhibit 6.

17. The petitioner encloses herewith the sum of $ 1,515.00 to pay the fee, and consents to the placement of a sign(s) at the described location identifying this request for a period of time to be determined by the Town Clerk.
[The filing fee was previously paid .]

18. The undersigned certifies that all information required to be disclosed pursuant to Section 809 of the General Municipal Law (see below) is as follows:

The undersigned swears or affirms that all statements made herein are true, that all drawings submitted correctly show the situation involved in this petition.

[Note: Authorization letter of property owners dated August 18, 2020 is attached to this Application.]

Counsel for Petitioner
Signature of Petitioner

Subscribed and sworn to before me this 17th day of December, 20 20

Notary Public, Erie County, New York

MARIANNE BRAUTLACHT
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 01/14/20

N.Y.S. General Municipal Law - Section 809 Disclosure in certain applications:

1. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provision of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state the name, residence and the nature and extent of the interest of any state office or any office or employee of such municipality or of a municipality of which such municipality is a part, in the person, partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

2. For the purpose of this section an officer or employee shall be deemed to have an interest in the applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them

   (a) is the applicant, or
   (b) is an officer, director, partner or employee of the applicant, or
   (c) legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or
   (d) is a party to an agreement with such an applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such applicant, petition or request.

3. In the county of Nassau the provisions of subdivisions one and two of this section shall also apply to a party officer. "Party Officer" shall mean any person holding any position or office, whether by election, appointment or otherwise, in any party as defined by subdivision four or section two of the election law.

4. Ownership of less than five per cent of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section.

5. A person who knowingly and intentionally violates this section shall be guilty of a misdemeanor.

P/CurrPlan/Applications2007/Rezoning & Comp Plan Amend App.
10/08

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 1 – Authorization Form of Property Owners dated August 18, 2020

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Authentisign ID: 5F5EDAC5-6B0F-4377-B19F-0884A050FD33

AUTHORIZATION

Allen Guerin and Kristen Guerin, as the record owners of the parcels of land located at 2160 North Forest Road [SBL No. 55.02-1-1] and 2170 North Forest Road [SBL No. 55.01-1-19.2] in the Town of Amherst (collectively the "Project Site") hereby authorizes Postwork Capital LLC and its consultants to seek a rezoning and all other required governmental approvals from the municipal boards of the Town of Amherst in connection with a proposed multifamily project to be located on the Project Site.

Date: August 18, 2020 Signature: Authentisign Allen Guerin 08/19/2020
8/19/2020 9:14:43 AM EDT
Print Name: Allen Guerin

Date: August 18, 2020 Signature: Authentisign Kristen Guerin 08/19/2020
Print Name: Kristen Guerin

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 2 – Amended Part 1 of Full Environmental Assessment Form Prepared Pursuant to the State Environmental Quality Review Act ("SEQRA") with Attachments "A" and "B"

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amended Part 1 of Full Environmental Assessment Form with Attachments
Date: December 17, 2020

Full Environmental Assessment Form Part 1 - Project and Setting

Prepared By: Sean Hopkins, Esq.
Hopkins Sorgi & McCarthy PLLC
5500 Main Street, Suite 343
Williamsville, NY 14221
Tel: 510-4338
E-mail: shopkins@hsr-legal.com

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1is accurate and complete.

A. Project and Applicant/Sponsor Information.

Name of Action or Project: Proposed Multifamily Project		
Project Location (describe, and attach a general location map): 2160 and 2170 North Forest Road - Town of Amherst - Erie County		
Brief Description of Proposed Action (include purpose or need): The proposed action involves an amendment of the land use classification of 2160 and 2170 North Forest Road from NCD-SA to NCD-ND and an amendment of the Audubon Development Plan to accommodate the development of the Project Site as a three-story multifamily building consisting of 8 attached residential units for lease and all related site improvements as depicted on the Concept Site Plan prepared by Silvestri Architects, P.C. The proposed action has been defined broadly to include the construction of the proposed two-story multifamily building as well as all necessary site improvements including: parking spaces, a curb cut onto North Forest Road, access aisles, water and sanitary sewer lines as well as utility connections. Although the proposed project ("action") will not cross of any of the thresholds for a Type I action contained in 6 NYCRR Part 617.4. of SEQRA Regulations, it is a Type I action due the proximity of the Project Site to Ellicott Creek, which is a flowing watercourse, pursuant to a local law adopted by the Town of Amherst in 1982. The local law requires projects within 100 ft. of a flowing watercourse to be classified as Type I action. Given that the proposed project will not result in any potentially significant adverse environmental impacts, the issuance of a negative declaration pursuant to SEQRA is appropriate.		
Name of Applicant/Sponsor: Coromandel Estates Amherst LLC c/o Sean Hopkins, Esq.	Telephone: 716.510-4338 E-Mail: shopkins@hsr-legal.com	
Address: 5500 Main Street, Suite 343		
City/PO: Williamsville	State: NY	Zip Code: 14221
Project Contact (if not same as sponsor; give name and title/role): Same as Above.	Telephone: E-Mail:	
Address:		
City/PO:	State:	Zip Code:
Property Owner (if not same as sponsor): Allen and Kristen Guerin	Telephone: E-Mail:	
Address: 270 Rosedale Boulevard		
City/PO: Amherst	State: NY	Zip Code: 14226

REVISED
DEC 18 2020
TOWN OF AMH
PLANNING DEPT.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

B. Government Approvals

B. Government Approvals, Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Counsel, Town Board, or Village Board of Trustees ☑Yes ☐No	Town of Amherst Town Board - Reclassification NCD Property and Amend. of Audubon Dev. Plan	August 24, 2020
b. City, Town or Village Planning Board or Commission ☑Yes ☐No	Planning Board - Site Plan Approval	To be Determined
c. City, Town or Village Zoning Board of Appeals ☐Yes ☑No		
d. Other local agencies ☑Yes ☐No	Building Dept. - Building and Floodplain Permits; Stormwater Permit - Eng. Dept.	To be Determined
e. County agencies ☑Yes ☐No	ECDPW - Curb cut onto North Forest Road; ECWA - Water	To be Determined
f. Regional agencies ☐Yes ☑No		
g. State agencies ☑Yes ☐No	NYSDEC - DSCA and SPDES Permit and NYSOPRHP - Cultural resource review	To be Determined
h. Federal agencies ☐Yes ☑No		

i. Coastal Resources.
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? ☐Yes ☑No
ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program? ☐Yes ☑No
iii. Is the project site within a Coastal Erosion Hazard Area? ☐Yes ☑No

C. Planning and Zoning

C.1. Planning and zoning actions.

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? ☐Yes ☑No

- **If Yes,** complete sections C, F and G.
- **If No,** proceed to question C.2 and complete all remaining sections and questions in Part 1

C.2. Adopted land use plans.

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? ☑Yes ☐No
If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? ☑Yes ☐No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) ☑Yes ☐No
If Yes, identify the plan(s):
NYS Heritage Areas:West Erie Canal Corridor

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? ☐Yes ☑No
If Yes, identify the plan(s):

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. ☑ Yes ☐ No
If Yes, what is the zoning classification(s) including any applicable overlay district?
The zoning classification of the Project Site is NCD-SA.

b. Is the use permitted or allowed by a special or conditional use permit? ☐ Yes ☑ No

c. Is a zoning change requested as part of the proposed action? ☑ Yes ☐ No
If Yes,
i. What is the proposed new zoning for the site? NCD-ND

C.4. Existing community services.

a. In what school district is the project site located? Williamsville Central School District

b. What police or other public protection forces serve the project site?
Town of Amherst Police Department

c. Which fire protection and emergency medical services serve the project site?
Getzville Volunteer Fire Department

d. What parks serve the project site?
There are various Town parks that will be accessible to future residents of the project.

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Multifamily residential consisting of attached residential units for lease.

b. a. Total acreage of the site of the proposed action? 2.35 acres
b. Total acreage to be physically disturbed? 1.3 +/- acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 2.35 acres

c. Is the proposed action an expansion of an existing project or use? ☐ Yes ☑ No
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % _____ Units: _____

d. Is the proposed action a subdivision, or does it include a subdivision? ☐ Yes ☑ No
If Yes,
i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)

ii. Is a cluster/conservation layout proposed? ☐ Yes ☐ No
iii. Number of lots proposed? _____
iv. Minimum and maximum proposed lot sizes? Minimum _____ Maximum _____

e. Will the proposed action be constructed in multiple phases? ☐ Yes ☑ No
i. If No, anticipated period of construction: _____ months
ii. If Yes:
- Total number of phases anticipated _____
- Anticipated commencement date of phase 1 (including demolition) _____ month _____ year
- Anticipated completion date of final phase _____ month _____ year
- Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases:

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

f. Does the project include new residen... uses? ☑ Yes ☐ No
If Yes, show numbers of units proposed.

	One Family	Two Family	Three Family	Multiple Family (four or more)
Initial Phase				8
At completion of all phases				8

g. Does the proposed action include new non-residential construction (including expansions)? ☐ Yes ☑ No
If Yes,
i. Total number of structures _____
ii. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; and _____ length
iii. Approximate extent of building space to be heated or cooled: _____ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? ☑ Yes ☐ No
If Yes,
i. Purpose of the impoundment: Stormwater management.
ii. If a water impoundment, the principal source of the water: ☐ Ground water ☐ Surface water streams ☑ Other specify: Runoff from impervious surfaces to be located on the Project Site.
iii. If other than water, identify the type of impounded/contained liquids and their source.
iv. Approximate size of the proposed impoundment. Volume: TBD million gallons; surface area: 0.3 acres
v. Dimensions of the proposed dam or impounding structure: n/a height; _____ length
vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete):
impoundment is an excavation, a dam is not required

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? ☐ Yes ☑ No
(Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)
If Yes:
i. What is the purpose of the excavation or dredging? _____
ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?
- Volume (specify tons or cubic yards): _____
- Over what duration of time? _____

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them.
iv. Will there be onsite dewatering or processing of excavated materials? ☐ Yes ☐ No
If yes, describe. _____
v. What is the total area to be dredged or excavated? _____ acres
vi. What is the maximum area to be worked at any one time? _____ acres
vii. What would be the maximum depth of excavation or dredging? _____ feet
viii. Will the excavation require blasting? ☐ Yes ☐ No
ix. Summarize site reclamation goals and plan: _____

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? ☐ Yes ☑ No
If Yes:
i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____

Attached as Attachment "A" of this Amended Part 1 of the Full EAF is a wetland investigation letter prepared by Scott Livingstone of Earth Dimensions, Inc. dated July 7, 2020 confirming there are not any wetland subject to the jurisdiction of either of the NYS Dept. of Environmental Conservation of the United States Army Corps of Engineers located on the Project Site.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will the proposed action cause or result in disturbance to bottom sediments? ☐Yes ☐No
If Yes, describe:

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation? ☐Yes ☐No
If Yes:

- acres of aquatic vegetation proposed to be removed:
- expected acreage of aquatic vegetation remaining after project completion:
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access):
- proposed method of plant removal:
- if chemical/herbicide treatment will be used, specify product(s):

v. Describe any proposed reclamation/mitigation following disturbance:

c. Will the proposed action use, or create a new demand for water? ☑Yes ☐No
If Yes:

i. Total anticipated water usage/demand per day: 1,850 gallons/day

ii. Will the proposed action obtain water from an existing public water supply? ☐Yes ☐No
If Yes:

- Name of district or service area: ECWA
- Does the existing public water supply have capacity to serve the proposal? ☑Yes ☐No
- Is the project site in the existing district? ☑Yes ☐No
- Is expansion of the district needed? ☐Yes ☑No
- Do existing lines serve the project site? ☑Yes ☐No

iii. Will line extension within an existing district be necessary to supply the project? ☐Yes ☑No
If Yes:

- Describe extensions or capacity expansions proposed to serve this project:
- Source(s) of supply for the district:

iv. Is a new water supply district or service area proposed to be formed to serve the project site? ☐ Yes ☑No
If, Yes:

- Applicant/sponsor for new district:
- Date application submitted or anticipated:
- Proposed source(s) of supply for new district:

v. If a public water supply will not be used, describe plans to provide water supply for the project:

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: _____ gallons/minute.

d. Will the proposed action generate liquid wastes? ☑Yes ☐No
If Yes:

i. Total anticipated liquid waste generation per day: 1,850 gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each):

iii. Will the proposed action use any existing public wastewater treatment facilities? ☑Yes ☐No
If Yes:

- Name of wastewater treatment plant to be used: Town of Amherst Waste Water Treatment Plan on Tonawanda Creek Road
- Name of district: Town of Amherst Consolidated Sanitary Sewer District
- Does the existing wastewater treatment plant have capacity to serve the project? ☑Yes ☐No
- Is the project site in the existing district? ☑Yes ☐No
- Is expansion of the district needed? ☐Yes ☑No

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- Do existing sewer lines serve the project site? ☑Yes ☐No
- Will a line extension within an existing district be necessary to serve the project? ☐Yes ☑No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? ☐Yes ☑No

If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- What is the receiving water for the wastewater discharge? _____

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):

_____

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? ☑Yes ☐No

If Yes:

i. How much impervious surface will the project create in relation to total size of project parcel?

_____ Square feet or 0.5 acres (impervious surface)

_____ Square feet or 2.35 acres (parcel size)

ii. Describe types of new point sources. roof, parking lot

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

Private on-site storm water management area. Discharge will be to Ellicott Creek.

- If to surface waters, identify receiving water bodies or wetlands: Ellicott Creek.
- Will stormwater runoff flow to adjacent properties? ☐Yes ☑No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? ☐Yes ☑No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? ☐Yes ☑No

If Yes, identify:

i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? ☐Yes ☑No

If Yes:

i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) ☐Yes ☐No

ii. In addition to emissions as calculated in the application, the project will generate:

- _____Tons/year (short tons) of Carbon Dioxide (CO_2)
- _____Tons/year (short tons) of Nitrous Oxide (N_2O)
- _____Tons/year (short tons) of Perfluorocarbons (PFCs)
- _____Tons/year (short tons) of Sulfur Hexafluoride (SF_6)
- _____Tons/year (short tons) of Carbon Dioxide equivalent of Hydroflourocarbons (HFCs)
- _____Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

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h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? ☐Yes ☑No

If Yes:

i. Estimate methane generation in tons/year (metric): _____

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? ☐Yes ☑No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): _____

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? ☐Yes ☑No

If Yes:

i. When is the peak traffic expected (Check all that apply): ☐Morning ☐Evening ☐Weekend ☐Randomly between hours of _____ to _____.

ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): _____

iii. Parking spaces: Existing _____ Proposed _____ Net increase/decrease _____

iv. Does the proposed action include any shared use parking? ☐Yes ☐No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: _____

vi. Are public/private transportation service(s) or facilities available within ½ mile of the proposed site? ☐Yes ☐No

vii Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? ☐Yes ☐No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? ☐Yes ☐No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? ☑Yes ☐No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: Typical energy usage for a project of this type

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): National Grid

iii. Will the proposed action require a new, or an upgrade, to an existing substation? ☐Yes ☑No

l. Hours of operation. Answer all items which apply.

i. During Construction:

- Monday - Friday: 7:00 a.m. to 7:00 p.m.
- Saturday: 8:00 a.m. to 5:00 p.m.
- Sunday: As needed
- Holidays: Not Applicable

ii. During Operations:

- Monday - Friday: Not Applicable
- Saturday: Not Applicable
- Sunday: Not Applicable
- Holidays: Not Applicable

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? ☑ Yes ☐ No

If yes:

i. Provide details including sources, time of day and duration:

There will be short-term unavoidable noise impacts during the construction of the project that will result from construction equipment.

ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen? ☐ Yes ☑ No

Describe:

n. Will the proposed action have outdoor lighting? ☑ Yes ☐ No

If yes:

i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

Parking lot lights, 15' mounting height, dark sky compliant, minimum of 30' from nearest residence.

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? ☐ Yes ☑ No

Describe:

o. Does the proposed action have the potential to produce odors for more than one hour per day? ☐ Yes ☑ No

If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? ☐ Yes ☑ No

If Yes:

i. Product(s) to be stored

ii. Volume(s) _____ per unit time _____ (e.g., month, year)

iii. Generally, describe the proposed storage facilities:

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? ☐ Yes ☑ No

If Yes:

i. Describe proposed treatment(s):

ii. Will the proposed action use Integrated Pest Management Practices? ☐ Yes ☐ No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? ☐ Yes ☑ No

If Yes:

i. Describe any solid waste(s) to be generated during construction or operation of the facility:

- Construction: 3 tons per week (unit of time)
- Operation : 2 tons per month (unit of time)

ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:

- Construction: at the discretion of the contractor
- Operation: Project will follow town of Amherst recycling program

iii. Proposed disposal methods/facilities for solid waste generated on-site:

- Construction: NYSDEC approved landfill
- Operation: NYSDEC approved landfill

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

s. Does the proposed action include construction or modification of a solid waste management facility? ☐ Yes ☑ No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____

ii. Anticipated rate of disposal/processing:

- _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
- _____ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: _____ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? ☐ Yes ☑ No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

iii. Specify amount to be handled or generated _____ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? ☐ Yes ☐ No

If Yes: provide name and location of facility: _____

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: _____

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

☐ Urban ☐ Industrial ☑ Commercial ☑ Residential (suburban) ☐ Rural (non-farm)
☐ Forest ☐ Agriculture ☐ Aquatic ☑ Other (specify): Asbury Pointe Retirement Community

ii. If mix of uses, generally describe:

There are a mixture of land uses in the vicinity of the Project Site including single-family homes, the Asbury Pointe Retirement Community and the Audubon Women's Health Medical Office.

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	0	0.9	+0.9
• Forested	.5	.5	0
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	1.8	.4	-1.4
• Agricultural (includes active orchards, field, greenhouse etc.)	0	0	0
• Surface water features (lakes, ponds, streams, rivers, etc.)			
• Wetlands (freshwater or tidal)	0	0	0
• Non-vegetated (bare rock, earth or fill)	0	0	0
• Other Describe: lawn/landscaping		0.3	+1.4

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c. Is the project site presently used by members of the community for public recreation? ☐Yes ☑No
i. If Yes: explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? ☑Yes ☐No
If Yes,
i. Identify Facilities:
The Asbury Pointe Retirement Community is located at 50 Stahl Road.

e. Does the project site contain an existing dam? ☐Yes ☑No
If Yes:
i. Dimensions of the dam and impoundment:
- Dam height: _____ feet
- Dam length: _____ feet
- Surface area: _____ acres
- Volume impounded: _____ gallons OR acre-feet

ii. Dam's existing hazard classification: _____
iii. Provide date and summarize results of last inspection:

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? ☐Yes ☑No
If Yes:
i. Has the facility been formally closed? ☐Yes ☐No
- If yes, cite sources/documentation: _____

ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:

iii. Describe any development constraints due to the prior solid waste activities: _____

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? ☐Yes ☑No
If Yes:
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? ☐Yes ☑No
If Yes:
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: ☐Yes ☐No
☐ Yes – Spills Incidents database — Provide DEC ID number(s): _____
☐ Yes – Environmental Site Remediation database — Provide DEC ID number(s): _____
☐ Neither database

ii. If site has been subject of RCRA corrective activities, describe control measures: _____

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? ☐Yes ☑No
If yes, provide DEC ID number(s): _____
iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):

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v. Is the project site subject to an institutional control limiting property uses? ☐Yes ☐No

- If yes, DEC site ID number: _____
- Describe the type of institutional control (e.g., deed restriction or easement): _____
- Describe any use limitations: _____
- Describe any engineering controls: _____
- Will the project affect the institutional or engineering controls in place? ☐Yes ☐No
- Explain: _____

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site? >5 feet

b. Are there bedrock outcroppings on the project site? ☐Yes ☑No
If Yes, what proportion of the site is comprised of bedrock outcroppings? _____%

c. Predominant soil type(s) present on project site:
Cosad loamy fine sand 100 %
_____ %
_____ %

d. What is the average depth to the water table on the project site? Average: >5 feet

e. Drainage status of project site soils:
☐ Well Drained: _____% of site
☐ Moderately Well Drained: _____% of site
☑ Poorly Drained 100 % of site

f. Approximate proportion of proposed action site with slopes:
☑ 0-10%: 100 % of site
☐ 10-15%: _____% of site
☐ 15% or greater: _____% of site

g. Are there any unique geologic features on the project site? ☐Yes ☑No
If Yes, describe: _____

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? ☑Yes ☐No

ii. Do any wetlands or other waterbodies adjoin the project site? ☑Yes ☐No
If Yes to either *i* or *ii*, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? ☑Yes ☐No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name 837-25 Classification B
- Lakes or Ponds: Name _____ Classification _____
- Wetlands: Name Federal Waters, Federal Waters, Federal Waters,... Approximate Size _____
- Wetland No. (if regulated by DEC) _____

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? ☑Yes ☐No
If yes, name of impaired water body/bodies and basis for listing as impaired:
Name - Pollutants - Uses:Ellicott Creek, Lower, and tribs – Nutrients;Silt/Sediment – Aquatic Life

i. Is the project site in a designated Floodway? [There will not be any development in the Floodway associated with Ellicott Creek.] ☑Yes ☐No

j. Is the project site in the 100-year Floodplain? ☑Yes ☐No

k. Is the project site in the 500-year Floodplain? ☑Yes ☐No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? ☐Yes ☑No
If Yes:
i. Name of aquifer: _____

[Note: Attached as Attachment "A" of this Amended Part 1 of the Full EAF is a wetland investigation letter prepared by Scott Livingstone of Earth Dimensions, Inc. dated July 7, 2020 confirming there are not any wetland subject to the jurisdiction of either of the NYS Dept. of Environmental Conservation of the United States Army Corps of Engineers located on the Project Site.]

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m. Identify the predominant wildlife species that occupy or use the project site:
Typical suburban species

n. Does the project site contain a designated significant natural community? ☐Yes ☑No
If Yes:
i. Describe the habitat/community (composition, function, and basis for designation):
ii. Source(s) of description or evaluation:
iii. Extent of community/habitat:
- Currently: _____ acres
- Following completion of project as proposed: _____ acres
- Gain or loss (indicate + or -): _____ acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? ☐Yes ☑No
If Yes:
i. Species and listing (endangered or threatened):

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? ☐Yes ☑No
If Yes:
i. Species and listing:

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? ☐Yes ☑No
If yes, give a brief description of how the proposed action may affect that use:

E.3. Designated Public Resources On or Near Project Site

a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐Yes ☑No
If Yes, provide county plus district name/number:

b. Are agricultural lands consisting of highly productive soils present? ☐Yes ☑No
i. If Yes: acreage(s) on project site?
ii. Source(s) of soil rating(s):

c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? ☐Yes ☑No
If Yes:
i. Nature of the natural landmark: ☐ Biological Community ☐ Geological Feature
ii. Provide brief description of landmark, including values behind designation and approximate size/extent:

d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? ☐Yes ☑No
If Yes:
i. CEA name:
ii. Basis for designation:
iii. Designating agency and date:

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e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? ☐ Yes ☑ No

If Yes:

i. Nature of historic/archaeological resource: ☐ Archaeological Site ☐ Historic Building or District

ii. Name: _____

iii. Brief description of attributes on which listing is based:

_____

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? ☑ Yes ☐ No

g. Have additional archaeological or historic site(s) or resources been identified on the project site? ☐ Yes ☑ No

If Yes:

i. Describe possible resource(s): _____

ii. Basis for identification: _____

h. Is the project site within fives miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? ☐ Yes ☑ No

If Yes:

i. Identify resource: _____

ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): _____

iii. Distance between project and resource: _____ miles.

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? ☐ Yes ☑ No

If Yes:

i. Identify the name of the river and its designation: _____

ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? ☐ Yes ☐ No

[Note: A copy of the No Impact determination letter issued by the NYS Office of Parks, Recreation and Historic Preservation dated October 30, 2020 is provided at Attachment "B" of this Amended Part 1 of the Full EAF.]

F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Coromandel Estates Amherst LLC Date December 17, 2020

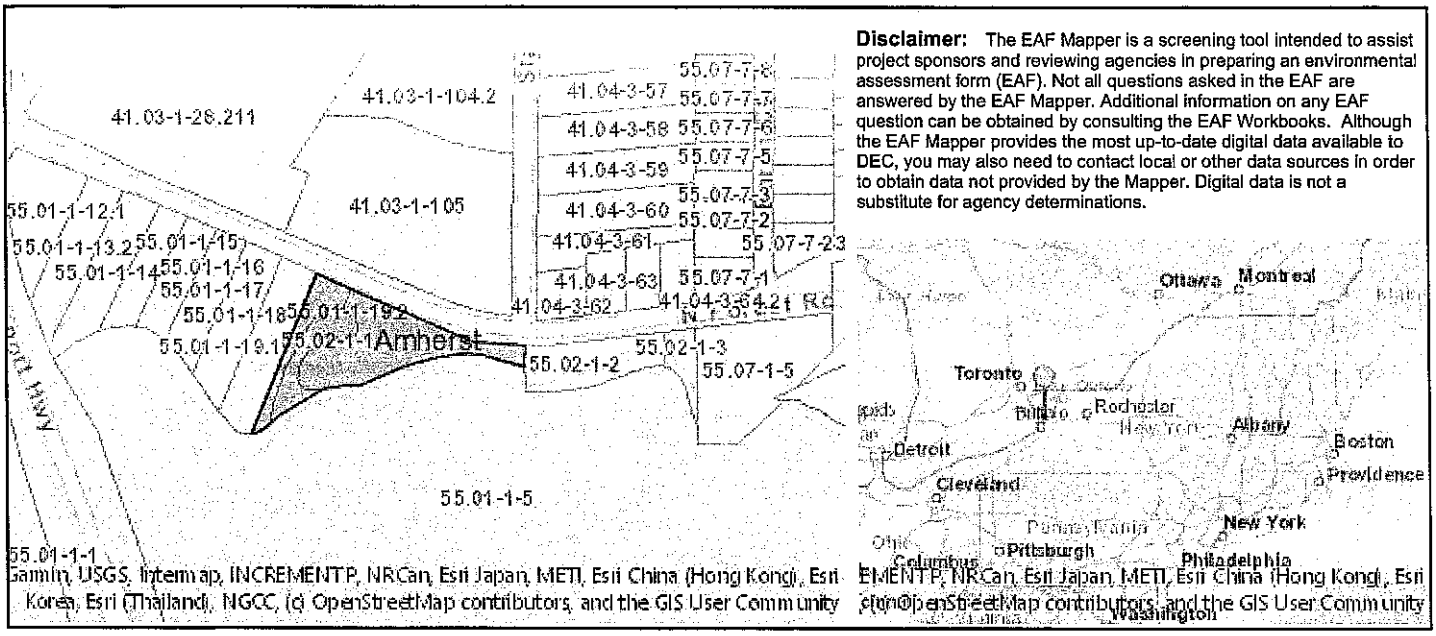
Signature _____ Title Counsel for Project Sponsor

PRINT FORM

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

EAF Mapper Summary Report

Monday, August 17, 2020 7:45 AM



Disclaimer: The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.

B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.
C.2.b. [Special Planning District - Name]	NYS Heritage Areas:West Erie Canal Corridor
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	Yes
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.iv [Surface Water Features - Stream Name]	837-25
E.2.h.iv [Surface Water Features - Stream Classification]	B
E.2.h.iv [Surface Water Features - Wetlands Name]	Federal Waters
E.2.h.v [Impaired Water Bodies]	Yes
E.2.h.v [Impaired Water Bodies - Name and Basis for Listing]	Name - Pollutants - Uses:Ellicott Creek, Lower, and tribs – Nutrients;Silt/Sediment – Aquatic Life

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

E.2.i. [Floodway]	Yes
E.2.j. [100 Year Floodplain]	Yes
E.2.k. [500 Year Floodplain]	Yes
E.2.l. [Aquifers]	No
E.2.n. [Natural Communities]	No
E.2.o. [Endangered or Threatened Species]	No
E.2.p. [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	No
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.3.f. [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Attachment "A" of Amended Part 1 of Full Environmental Assessment Form – Wetland Investigation Letter of Scott J. Livingstone of Earth Dimensions, Inc. dated July 7, 2020

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

EARTH DIMENSIONS, INC.
* Soil & Hydrogeologic Investigations * Wetland Delineations
1091 Jamison Road, Elma NY 14059
(716) 655-1717 * Fax (716) 655-2915 www.earthdimensions.com

July 7, 2020 W4E87a

Thiru Vikram
4515 Chestnut Ridge Road
Amherst, New York 14228

Re: Preliminary Wetland Investigation – 1.9± acres
2160-2170 North Forest Road
Town of Amherst
Erie County, New York

Dear Mr. Vikram:

Earth Dimensions, Inc. (EDI) has completed a preliminary wetland investigation at the above referenced site for the purpose of identifying potential regulated wetlands and waterways. The site investigation was conducted on July 7, 2020. The attached map depicts the limits of our investigation. EDI did not identify any federally regulated wetlands as defined by the U.S. Army Corps of Engineers (USACE) Wetland Delineation Manuals within the limits of investigation. However, Ellicott Creek abuts the site on the south boundary and would be regulated by USACE under Section 404 of the Clean Water Act.

The New York State Department of Environmental Conservation (NYSDEC) On-line Resource Mapper does not depict any Freshwater Wetlands within or adjacent to the subject parcel. NYSDEC, thus, has no jurisdiction over any wetlands within the site. However, Ellicott Creek is a Class B stream and is regulated under Article 15 of New York Conservation Law.

Based on this investigation, it is our professional opinion that as long as no disturbance is proposed to the bed and banks of Ellicott Creek, your project may move forward without the need for a Section 404 permit from USACE or Article 15 permit from NYSDEC. Should your project propose impacts to the bed or banks of Ellicott Creek, we recommend that a Joint Application for permit be submitted to USACE and/or NYSDEC with a request for a Section 404 and/or an Article 15 permit, respectively.

If you have any questions, please contact our office at (716) 655-1717 or email slivingstone@earthdimensions.com.

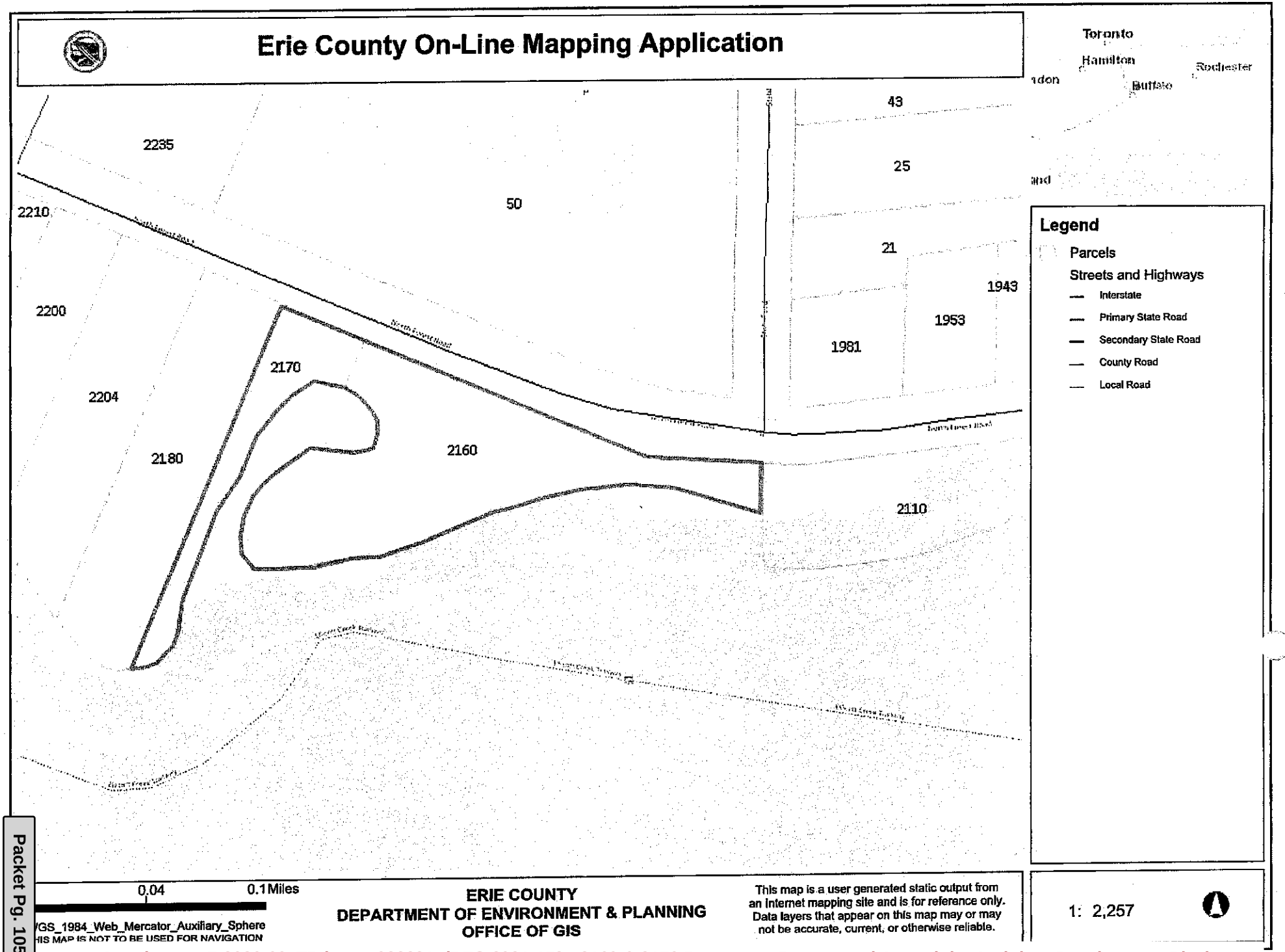
Very truly yours,
Earth Dimensions, Inc.

Scott J. Livingstone
Wetlands Operations Manager

Encl.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Erie County On-Line Mapping Application



Attachment "B" of Amended Part 1 of Full Environmental Assessment Form – No Impact Determination Letter of Josalyn Ferguson of the New York State Office of Parks, Recreation and Historic Preservation dated October 30, 2020

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

NEW YORK STATE OF OPPORTUNITY | Parks, Recreation, and Historic Preservation

ANDREW M. CUOMO
Governor

ERIK KULLESEID
Commissioner

October 30, 2020

Roberta Rappoccio
Associate Planner
Town of Amherst, NY Planning Department
5583 Main Street
Amherst, NY 14221

Re: DEC
Rezoning for 18-Unit 3-story New Construction Project
2160 North Forest Rd, Amherst, Erie County, NY
20PR05460
Z-2020-06

Dear Roberta Rappoccio:

Thank you for requesting the comments of the Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have reviewed the Phase I Archaeological Reconnaissance Survey report prepared by the University at Buffalo's Archaeological Survey (Whalen & Angelini, October 2020; 20SR00539) in accordance with the New York State Historic Preservation Act of 1980 (section 14.09 of the New York Parks, Recreation, and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources.

Based on this review, it is OPRHP's understanding that no archaeological sites were identified during the above-noted investigation, and we concur with the report's conclusion that no further archaeological investigations are warranted. It is, therefore, OPRHP's opinion that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project. Should the project design be changed OPRHP recommends further consultation with this office.

If you have any questions, I can be reached via e-mail at Josalyn.Ferguson@parks.ny.gov.

Sincerely,

Josalyn Ferguson, Ph.D.
Scientist Archaeology

via email only

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 3 – Legal Description of Property to be Reclassified from NCD-SA to NCD-ND

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

EXHIBIT 3 OF AMENDED APPLICATION

LEGAL DESCRIPTION OF PROPERTY TO BE RECLASSFIED FROM NCD-SA TO NCD-ND – 2160 AND 2170 NORTH FOREST ROAD

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, State of New York, being part of Lot 68, Township 12, Range 7 of the Holland Land Survey so-called and further bounded and described as follows.

BEGINNING at the intersection of the centerline of Stahl Road (66.0 feet wide) with the centerline of North Forest Road (66.0 feet wide):

THENCE: Southerly, along the centerline of Stahl Road extended southerly, a distance of 108 feet more or less to the north bank of Ellicott Creek;

THENCE: Westerly along said north bank of Ellicott Creek, a distance of 583 feet more or less to the west line of lands conveyed to Peter D. Durham by deed recorded in the Erie County Clerk's Office in Liber 9264 of Deeds at page 188;

THENCE: Northerly along said west line of Peter D. Durham lands, a distance of 10 feet more or less to the north bank of Ellicott Creek;

THENCE: Westerly and southerly along said north bank of Ellicott Creek, a distance of 227 feet more or less to a point distant 100 feet westerly from the said west line of Peter D. Durham lands as measured at right angles;

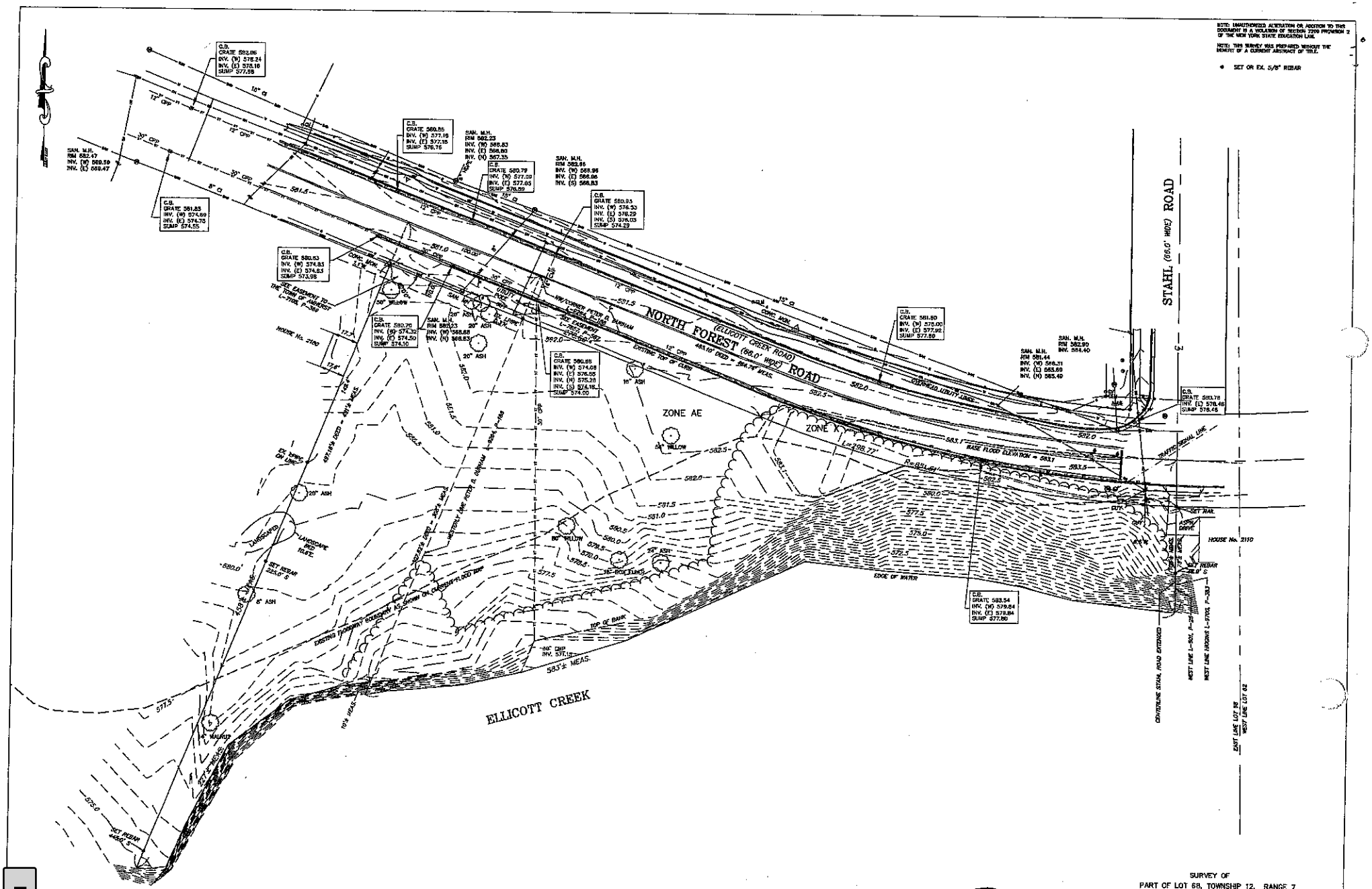
THENCE: Northerly along a line parallel with the west line of said Peter D. Durham lands distant 100.00 feet westerly therefrom measured at right angles, a distance of 491 feet more or less to the centerline of North Forest Road;

THENCE: Easterly, along said centerline of North Forest Road, a distance of 564.74 feet to the POINT OR PLACE OF BEGINNING.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 4 – Reduced Size Copy of Survey of 2160 and 2170 North Forest Road as Prepared by GPI Surveying dated July 13, 2020

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)



	REVISION/TYPE
D	UPDATE SURVEY AND TOPOGRAPHY
E	RE-SURVEY
F	REVISED FLOODWAY BOUNDARY

REFERENCES:

SEE SURVEY PREPARED BY GORDON & BRODERICK ASSOCIATES JOB No. 2-15-219
SEE SURVEY PREPARED BY GORDON & BRODERICK ASSOCIATES JOB No. 2-24-219
LETTER OF MAP REVISION (LOMR) CASE No. 95-02-015P DATED 1/11/96
FLOOD INSURANCE RATE MAP NUMBER 36029C0069H DATED JUNE 7, 2019*
*MAP NUMBER 36029C0069H DATED 6/7/19 SUPERCEDES LOMR CASE No. 95-02-015P DATED 1/11/96

EQUITY TITLE REPORT No. E18-10758T EXCEPTIONS:

EASEMENT TO THE TOWN OF AMHERST L-7105, P-369 – AS SHOWN

EASEMENT TO NEW YORK TELEPHONE COMPANY L-7957, P-307 – AS SHOWN

STATE OF NEW YORK
MARK L. ANDREWS
LICENSED LAND SURVEYOR
050405

SURVEY OF
PART OF LOT 68, TOWNSHIP 12, RANGE 7
HOLLAND LAND COMPANY
TOWN OF AMHERST, ERIE COUNTY, NEW YORK

GPI ENGINEERING, LANDSCAPE ARCHITECTURE & SURVEYING, LLP
ENGINEERING • SURVEYING • LANDSCAPE ARCHITECTURE
4820 CONSHOR STREET, SUITE 100
BUFFALO, NEW YORK 14228
(716) 633-4844 FAX 633-4840

Job No. 5083-BOUNDARY Date: JUNE 24, 2014
Scale 1" = 40' Tax No.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 5 – Responses to Questions 11A & 11B of the Rezoning Application

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

EXHIBIT 5

AMENDED APPLICATION TO RECLASSIFY 2160 AND 2170 NORTH FOREST ROAD FROM NCD-SA TO NCD-ND

Question 11(A): **Description of the character of the proposed development:**

Response to Question 11(A): The modified layout of the proposed residential project is depicted on the updated Concept Site Plan prepared by Silvestri Architects P.C. A full size copy of the updated Concept Site Plan [Drawing AS-101 – Date: 12/16/20] is attached to this Amended Application and a reduced size copy is also provided at Exhibit "7". The updated layout of the proposed residential project consists of a two-story building consisting of eight (8) units for lease with related site improvements as depicted on the updated Concept Site Plan. It is important to mention that the updated Concept Plan reflects a deliberate effort made by the project team to reduce the density of the proposed multifamily project that previously consisted of a three-story building with eighteen (18) units. A copy of the previous Concept Plan for the project as prepared by Carmina Wood Morris DPC is provided at Exhibit "8" of this Amended Application.

It is important to mention that the layout of the proposed project as depicted on the updated Concept Site Plan provided is not meant to represent the final layout of the proposed project since modifications may be necessary based on the project review process and the preparation of fully engineered plans.

Question 11(B)(1): **Rationale for rezoning request: 1. Why was this site chosen?**

Response to Question 11(B)(1): The Project Site is an appropriate location for the proposed project given its location on North Forest Road in an area that consist of a mixture of uses and zoning

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

classifications. The Project Site was listed for sale and the Petitioner has entered into a contract to purchase the Project Site.

Question 11(B)(2): Why cannot land be used with the existing zoning?

Response to Question 11(B)(2): The Project Site is currently zoned NCD-SA. The allowable uses of property zoned NCD-SA are extremely limited given that the NCD-SA classification is intended for agricultural uses in rural areas.

Question 11(B)(3): How will this rezoning impact surrounding properties?

Response to Question 11(B)(3): The requested reclassification of the Project Site from NCD-SA to NCD-ND to accommodate the proposed residential project will not result in any potentially significant adverse impacts on surrounding properties. The density of the proposed residential project has been reduced from eighteen (18) units to eight (8) units as depicted on the updated Concept Plan prepared by Silvestri Architects P.C. [Drawing AS-101 – Date: 12/16/20]. An effort has been to reduce the density of the residential project and also to design the residential project to minimize environmental impacts associated with the proximity of Ellicott Creek. A completed Amended Part 1 of the Full Environmental Assessment Form prepared pursuant to the State Environmental Quality Review Act ("SEQRA") is attached as Exhibit "2".

Question 11(B)(4): How will this rezoning impact the school system?

Response to Question 11(B)(4): The proposed project will have positive impacts on the school district since the project will generate annual property taxes to be received by taxing jurisdictions. The proposed project will not generate a substantial demand for educational services.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 6 – Responses to Questions 16A, 16B, 16D & 16E of the Rezoning Application

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

EXHIBIT 6

AMENDED APPLICATION TO RECLASSIFY 2160 AND 2170 NORTH FOREST ROAD FROM NCD-SA TO NCD-ND

Question 16(A)(1): **State in detail why the proposed zoning is consistent with the adopted Town of Amherst Bicentennial Comprehensive Plan. Cite specific sections, maps and/or figures in the plan that support the proposed zoning at this location.**

Response to Question 16(A)(1): The request to reclassify the Project Site from NCD-SA to NCD-ND to accommodate the proposed residential project consisting of eighteen attached units for lease is consistent with the adopted Bicentennial Comprehensive Plan. The Town of Amherst adopted the Bicentennial Comprehensive Plan in January of 2007 after completing a lengthy planning process that included numerous public meetings and public hearings involving the Comprehensive Plan Advisory Committee, the Planning Board and the Town Board.[1] On September 3, 2019, the Town Board most recently adopted an amendments to the Bicentennial Comprehensive Plan. The Comprehensive Plan is intended to guide future growth and redevelopment in the Town.

Figure 6 of the Bicentennial Comprehensive Plan is the Conceptual Land Use Plan and it depicts the Project Site as being appropriate for "Mixed Residential" use. A copy of Figure 6 of the Comprehensive Plan is provided at Exhibit "9". The Conceptual Land Use Plan is intended to communicate the overall direction and concept of future development in the Town of Amherst. The Mixed-Residential land use category is described in Chapter 3 of the Comprehensive Plan as

[1] A copy of the resolution adopted by the Town Board on January 2, 2007 for the purpose of adopting the Bicentennial Comprehensive Plan pursuant to Town Law Section 272-a is included at the beginning of the Comprehensive Plan. This resolution recites the lengthy planning history that incorporated numerous opportunities for public input as well as a coordinated environmental review pursuant to SEQRA that involved the preparation a Generic EIS and the issuance of a Findings Statement.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

being appropriate for a residential density of 4-12 units per acre the density of the proposed project is 7.66 units per acre.

Question 16(A)(2): Cite all text, map, and/or figures that must be amended to support the proposed zoning at this location and provide detailed suggested amendments.

Response to Question 16(A)(2): The adopted Comprehensive Plan does not need to be amended to accommodate the requested reclassification of the Project Site from NCD-SA to NCD-ND.

Question 16(A)(3): State why the proposed zoning is consistent with intent and objectives (Sec. 1-2-2) of the Zoning Ordinance:

Response to Question 16(A)(3): Section 1-2-1 of the Zoning Code is titled "Purpose" and it states as follows:

> *"The purpose of this Zoning Ordinance and the intent of the legislative authority in its adoption is to promote the environment of the town and its public health, safety, convenience, comfort, prosperity and the general welfare by regulating the use of buildings, other structures and land for residences, open space, public facilities, business, services, industry or other purposes; by regulating and restricting the bulk, height, design, building coverage and location of structures; by regulating and limiting population density; and for the aforesaid purposes, to divide the land within the limits of the town into districts of such number and dimensions generally consistent with the policies of the Comprehensive Plan and to provide procedures for the administration and amendment of said Zoning Ordinance."*

The request reclassification of the Project Site from NCD-SA to NCD-ND to accommodate the proposed residential project is consistent with the "Purpose" of the Zoning Code. Section 1-2-2 of the Zoning Code sets forth the objectives of the Zoning Code. This section of the Zoning Code lists thirteen (13) objectives that are discussed below as follows:

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

A. To protect the character and values of residential, institutional and public uses, business, commercial and manufacturing uses and to insure their orderly and beneficial development;

Response: The proposed project will be consistent with the objective of protecting the character and value of existing land uses and represents orderly and beneficial development.

B. To provide adequate open spaces for light, air and outdoor uses to include public, common and private open space areas;

Response: The proposed project is consistent with this objective.

C. To prevent overcrowding of land;

Response: The proposed residential project will not result in the overcrowding of land.

D. To prevent excessive concentration of population and to prevent spare and uncoordinated development;

Response: The proposed residential project will not result in an excessive concentration of population. The proposed residential project is not an example of uncoordinated development.

E. To regulate and control the location and spacing of buildings on the lot and in relation to the surrounding property generally consistent with the policies of the Comprehensive Plan.

Response: The requested reclassification of the Project Site from NCD-SA to NCD-ND and the proposed residential project are consistent with the policies of the Comprehensive Plan.

F. To protect persons and property from damage and injury due to fire or flood;

Response: The Site Plan review process will trigger the need for an Engineer's Report and SWPPP prepared by a licensed engineer to be prepared for review and approval by the Town's Engineering Department. The residential project will not increase the

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

likelihood of damage and injury due to fire and flood. The proposed project will be constructed per the stringent requirements of the NYS Building Code including the fire safety standards contained therein.

G. **To preserve and protect significant natural features and vegetation, thereby preventing ecological damage and visual blight which occur when those features or vegetation are eliminated or substantially altered to serve development purposes only.**

Response: The proposed residential project will not be inconsistent with this objective.

H. **To assure that structure and land use arrangements are aesthetically harmonious with nearby areas and structures.**

Response: The development of the Project Site in a manner consistent with the updated Concept Site Plan depicting a two-story building with 8 units will result in a residential project that is aesthetically harmonious with nearby areas and structures.

I. **To regulate the location of buildings and intensity of uses in relation to streets according to plans so as to cause the least interference with and be damaged least by traffic movements and hence result in lessened street congestion and improved public safety.**

Response: The proposed residential project will not result in any potentially significant traffic impacts and only curb cut will be provided onto North Forest Road, which is an Erie County Highway. The potential traffic impacts of the proposed project will be evaluated in connection with the coordinated environmental review of the project pursuant to SEQRA.

J. **To establish zoning patterns that insure economical extensions for sewers, water supply waste disposal and other public utilities, as well as development of recreation, schools and other public facilities;**

Response: The Project Site has access to sanitary sewer and water lines as well as necessary public utilities.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

K. To guide the future development of the town so as to being the gradual conformity of land, structures and uses generally consistent with the policies of the Comprehensive Plan.

Response: The proposed reclassification of the Project Site from NCD-SA to NCD-ND is consistent with this objective since the project is generally consistent with the recommended land use category of "Mixed Residential" as well as the planning objectives and policies in the Comprehensive Plan.

L. To accomplish the specific intents and goals set forth in the introduction to the respective sections.

Response: The proposed residential project is consistent with this objective.

M. To protect the community from visual pollution resulting from the unregulated use of signs and other advertising devices.

Response: The proposed residential project will not be inconsistent with this objective.

Question 16(C): Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:

Response to Question 16(C): The proposed project is compatible with the present zoning and conforming uses of nearby properties and the character of the neighborhood.

Question 16(D): Suitability of the subject property for uses permitted by the current versus the proposed district:

Response to Question 16(D): The Project Site is not suitable for agricultural uses allowed in the NCD-SA district given its size, location and nearby land uses.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

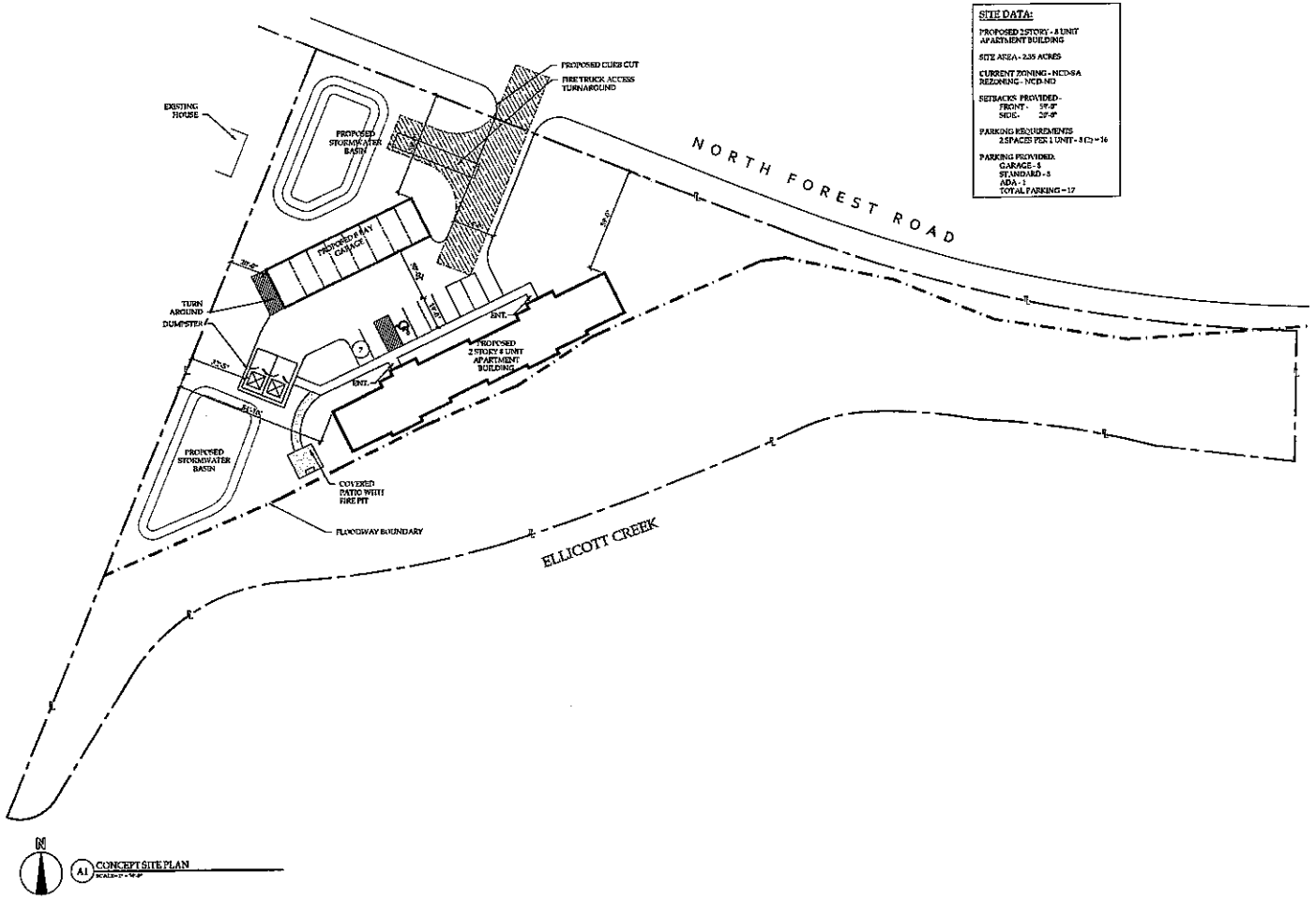
Question 16(E): **Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town:**

Response to Question 16(D): The requested reclassification of the Project Site from NCD-SA to NCD-ND to accommodate the proposed residential project will have positive impacts on the balance of uses in the Town since there is demand for upscale attached residential units for lease in the Town.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 7 – Reduced Size Copy of the Updated Concept Site Plan for the Proposed Project as Prepared by Silvestri Architects PC [Drawing AS-101 – Date: 12/16/20] [Note: A full size copy of Updated Concept Site Plan is also attached to this Amended Application]

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)



N

A1 CONCEPT SITE PLAN

NOTICE

This document, the property of, prepared and issued by the architect, is submitted for the specific project named _____ and the recipient by accepting this document assumes custody and agrees that this document will not be copied or reproduced in part or in whole, and any special features peculiar to this design shall not be incorporated in any other project, unless prior agreement has been obtained in writing. These documents will be returned immediately upon completion of the project or upon the request of the architect.

This document is the exclusive property of the architect, no rights to ownership are transferable, or shall be lost by the filing of this document with any and all public authorities for the purpose of compliance with Codes and or Ordinances, i.e. Building Permit, etc.

NORTH FOREST APARTMENTS

2160-2170 North Forest Rd
Amherst, ny

ISSUE:

SA PROJECT TEAM: PRINCIPAL R.Silvestri
PROJ. ARCH. S.Hunt DRAFTER B.Meinhardt
JOB CAPT. _____ INTERIORS K. Hanssen

SEAL:

TITLE:

CONCEPT SITE PLAN

SILVESTRI
ARCHITECTS • PC
1321 MILLERSPORT HWY PH. 716.691.0909
AMHERST, NY 14221 FAX 716.691.4773

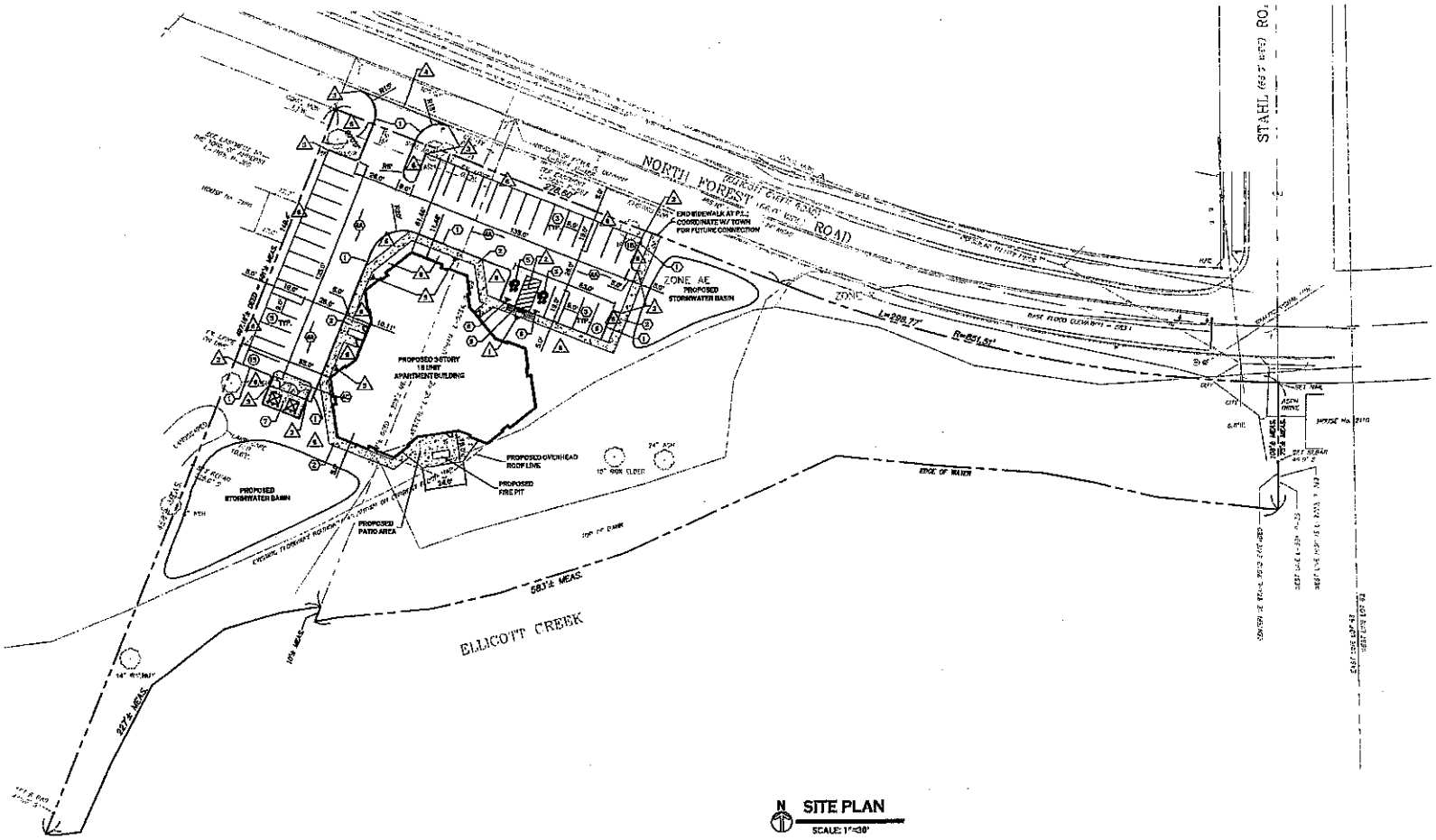
SA JOB #: 20060.02
DATE: 12/16/20

DRAWING #: AS-101

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 8 – Reduced Size Copy of the Previous Concept Site Plan as Prepared by Carmina Wood Morris DPC [Drawing C-100 – Date: August 2020]

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)



SITE DATA

TOTAL SITE: 2.36 ACRES
ZONED: HC/BA (CURRENT) TO BE REZONED TO HC/AD
USE: PROPOSED 3-STORY 18 UNIT APARTMENT BUILDING

PARKING REQ'D: 2 SPACE PER UNIT.
18 UNITS x 2 = 36 SPACES REQ'D.
56 SPACES PROVIDED.

SITE LEGEND

- PROPERTY LINE
- PROPOSED CONCRETE CURB
- PROPOSED CONCRETE SIDEWALK
- PROPOSED ASPHALT PAVEMENT
- PROPOSED SIGN
- PROPOSED PARKING NUMBER (27)
- PROPOSED LIGHT POLE
- PROPOSED WALL MOUNTED LIGHT

NOTE: BOUNDARY AND TOPOGRAPHIC INFORMATION PROVIDED BY OTHERS. CARMINA WOOD MORRIS, D.P.C. ASSUMES NO RESPONSIBILITY FOR ITS ACCURACY.

30 0 30 60FT.

GENERAL NOTES:

1. INSTALL ALL MATERIALS TO MANUFACTURER'S RECOMMENDATIONS AND BEST STANDARDS OF TRADE INVOLVED.
2. SUBSTITUTIONS SHALL BE MADE ONLY WITH OWNER'S APPROVAL AND BE OF EQUIVALENT QUALITY TO WHAT IS SPECIFIED.
3. WORK SHALL BE COMPLETED IN STRICT ACCORDANCE WITH ALL LOCAL CODES AND OSHA SAFETY RULES AND REGULATIONS.
4. VERIFY ALL EXISTING CONDITIONS AND DIMENSIONS AT THE SITE. NOTIFY OWNER & ENGINEER OF DISCREPANCIES IN CONDITIONS SHOWN ON DRAWINGS PRIOR TO PROCEEDING WITH THE WORK.
5. CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTION OF ANY EXISTING STRUCTURES TO REMAIN AND ANY FINISH MATERIAL INSTALLED WHILE WORKING ON OTHER COMPONENTS.
6. CONTRACTOR SHALL KEEP JOB FREE OF DEBRIS AND MAKE FINAL CLEANUP TO SATISFACTION OF OWNER.
7. CONTRACTOR SHALL ASCERTAIN THE LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION SO THAT THIS WORK WILL NOT DISTURB EXISTING LINES AND/OR INSTALLATIONS. COORDINATE ALL WORK WITH THE APPLICABLE UTILITY COMPANIES.
8. ALL OTHER PERMITS REQUIRED BY STATE OF NEW YORK, COUNTY OF ERIE, AND TOWN OF AMHERST ARE THE RESPONSIBILITY OF THE CONTRACTOR / DEVELOPER / OWNER.

SITE NOTES:

1. ALL RADII SHALL BE 3'-0" UNLESS OTHERWISE NOTED.
2. ALL DISTURBED AREAS: SHALL HAVE 4" MIN. OF TOPSOIL AND SEED.
3. ALL DIMENSIONS FROM PROPERTY LINES SHALL BE MEASURED PERPENDICULAR TO THE PROPERTY LINE.
4. CENTER ENTRANCE SIDEWALKS ON DOOR OPENINGS.
5. BUILDING DIMENSIONS ARE APPROXIMATE, REFER TO ARCHITECTURAL DRAWINGS FOR LAYOUT DIMENSIONS.

DETAIL LEGEND SEE SITE DETAIL SHEET

1. CONCRETE CURB
2. CONCRETE SIDEWALK, 5' WIDE UNLESS OTHERWISE NOTED
3. 90° PARKING STALL
4A. STANDARD DUTY ASPHALT
4C. EXTERIOR CONCRETE SLAB ON GRADE
5. HANDICAP PAVEMENT MARKINGS
6. HANDICAPPED PARKING SIGN
7. DUMPSTER ENCLOSURE
8. LIGHT POLE FOUNDATION
9. HANDICAP PAVEMENT RAMP

NOTE LEGEND

A. INSTALL "NO PARKING" SIGN, M.U.T.C.D. SIGN NO. R7-1C
A. 4" WIDE YELLOW PAINT STRIPE @ 45° @ 2'0 O.C., INFILL AREA AS SHOWN
A. BOXOUT CURB IN 2' OR MATCH EXISTING CURB
A. MATCH EX. EDGE OF PAVEMENT, SAWCUT AS REQ'D TO ACHIEVE SQUARE EDGE TO MATCH
A. INSTALL "NO PARKING - FIRE LANE" SIGN, M.U.T.C.D. SIGN NO. R8-3
A. LANDSCAPED AREA - SEE LANDSCAPE PLAN. IF NO PLANTINGS, INSTALL TOPSOIL & SEED

© Carmina Wood Morris DPC
All plans, sketches, designs, drawings, specifications, and computer files prepared or furnished by Carmina Wood Morris DPC are instruments of service and shall remain the property of Carmina Wood Morris DPC whether the project for which they are made is executed or not. They are not to be changed or copied in any form or manner whatsoever, nor are they to be assigned to any third party, without first obtaining the expressed written permission of Carmina Wood Morris DPC. Any unauthorized use, without specific written verification or adaptation by Carmina Wood Morris DPC for the specific project, shall be at the user's sole risk and without liability to Carmina Wood Morris DPC. The user shall indemnify and hold harmless Carmina Wood Morris DPC from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Carmina Wood Morris DPC to fair compensation for services in addition to the contract sum. Submission or distribution of documents to meet official regulatory requirements or for purposes in connection with the project is not to be construed as publication in derogation of Carmina Wood Morris DPC reserved rights.

Carmina Wood Morris DPC
457 Main Street Suite 300
Buffalo, New York 14203
P 716.842.3195
F 716.842.0263

REVISIONS:
No. Description Date

PROJECT NAME:
Site Development Plans for:
Proposed 3-Story Apartment bldg
2160 - 2170 North F[illegible] Road
Amherst, New York

Date: 08/2020
Drawn by: C. Wood
Scale: As Noted

DRAWING NAME:
Concept
Site Plan

DRAWING NO.
C-100
Project no.: 20.143

Packet Pg. 125

7.2.d

Exhibit 9 - Color Copy of Figure 6 of the Adopted Bicentennial Comprehensive Plan (titled "Conceptual Land Use Plan")

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Town of Amherst Bicentennial Comprehensive Plan

The Conceptual Land Use Plan is intended to communicate the overall direction and concept of future development. While it is not a zoning map and does not show the existing or proposed use of individual parcels, it is intended to show land use relationships, provide a generalized guide for future development, and establish a context for detailed area planning and design.

Location of Project Site - Designated as Appropriate for Mixed Residential Use

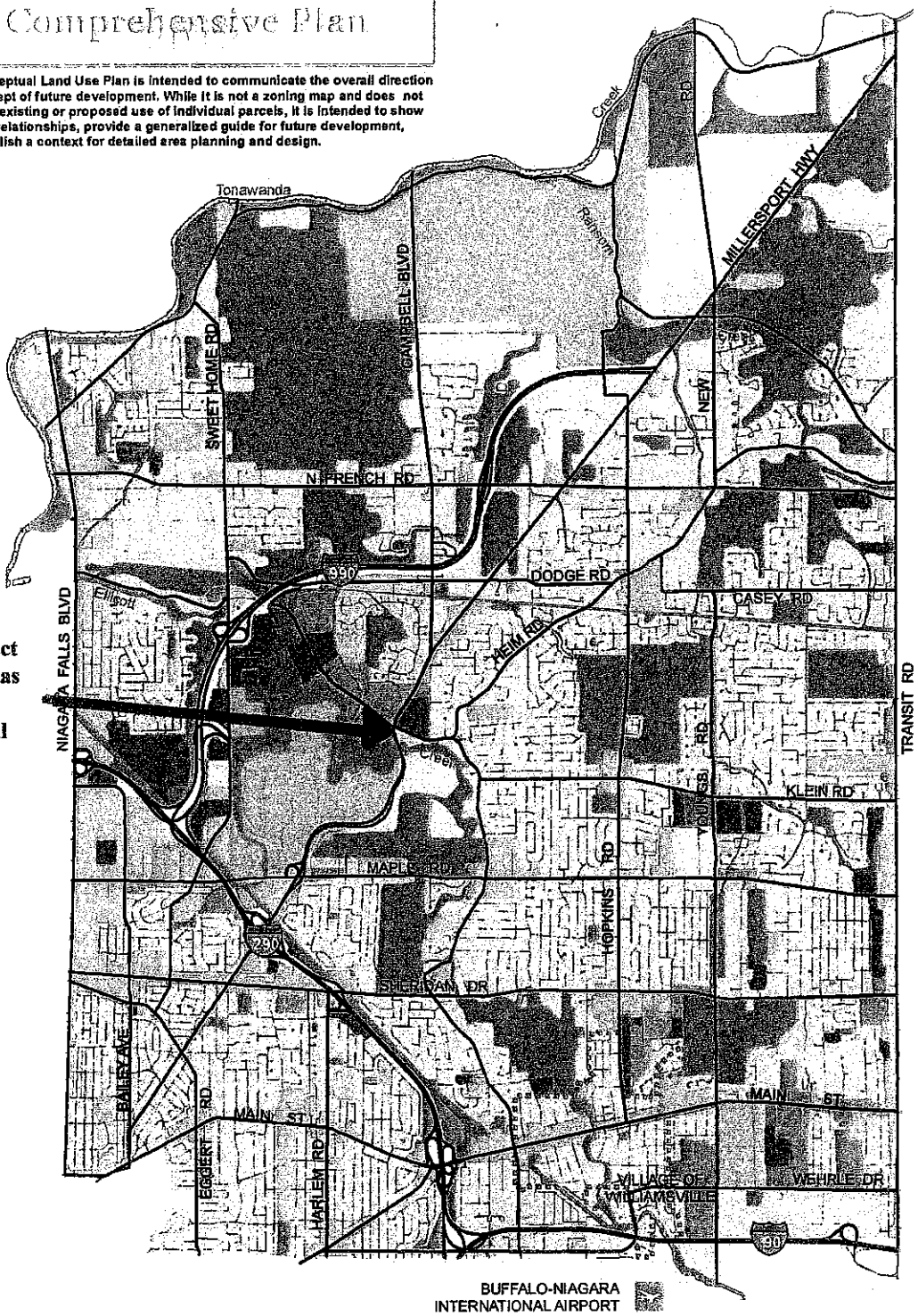


FIGURE 6

Conceptual Land Use Plan

Rural Residential
Single Family Residential
Mixed Residential
Medium Residential
Commercial / Mixed Use*
Special Use Center
Commercial - Office
Industrial - Office
Community Facilities
Educational Campus
Recreation, Open Space & Greenways
Agriculture
Transportation
Surface Water
Village of Williamsville Boundary

* See Map Figure 6-A for Additional Designations

SOURCE NOTES:

Original Source Data Provided by the Town of Amherst Information Technology Department, URS Corporation and Wallace Roberts & Todd, LLC

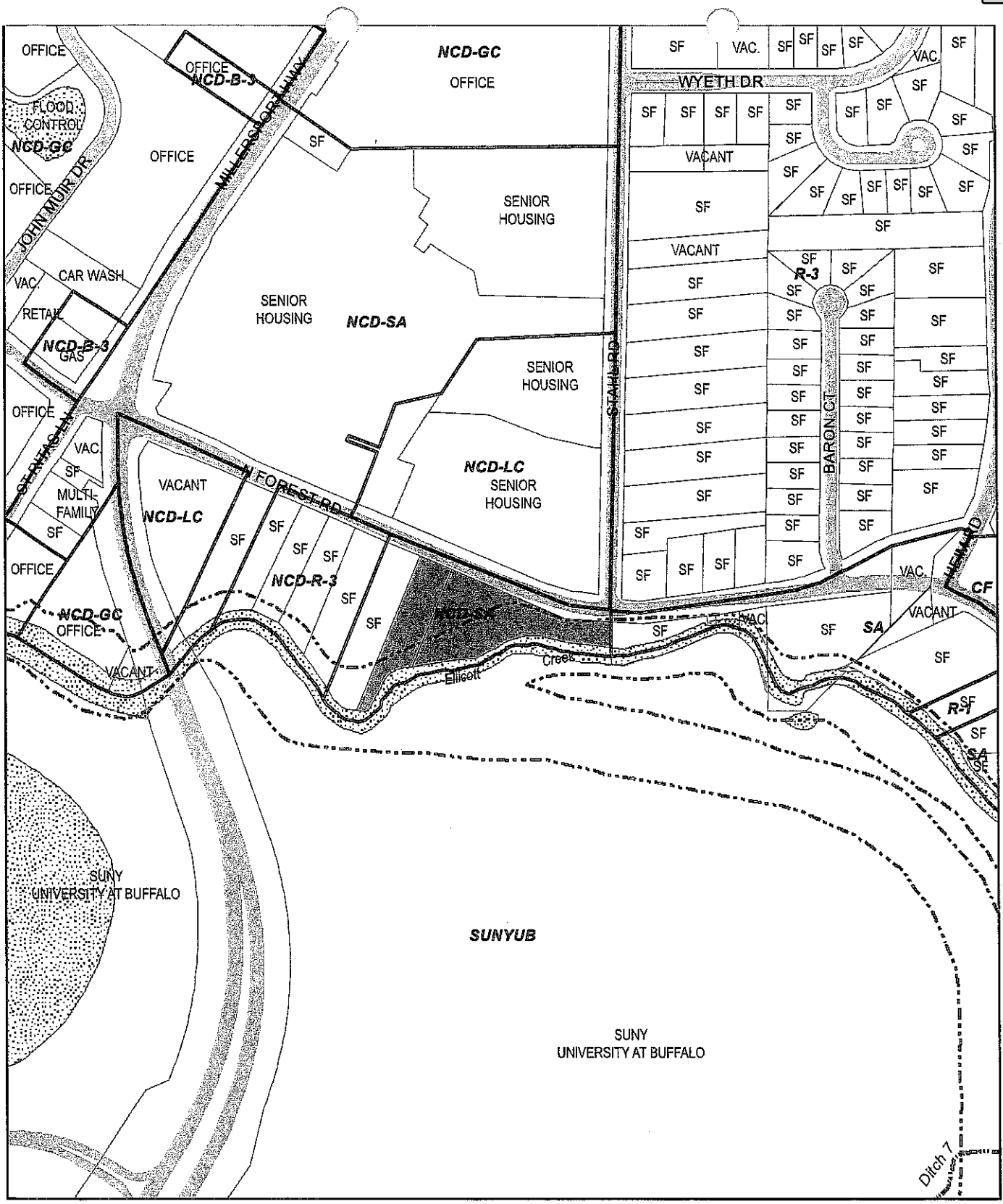
Map Compiled by the Town of Amherst Planning Department

Date: September 2019

N

0 0.25 0.5 0.75 1 1.25
Miles

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)



Z-2020-06
Proposed Amendment #73 to the Audubon New Community Development Plan to Reclassify 2.35+/- AC of Land from NCD-SA to NCD-ND
Property Located at 2160 & 2170 North Forest Road (NCD)

Coromandel Estates Amherst, LLC, Petitioner

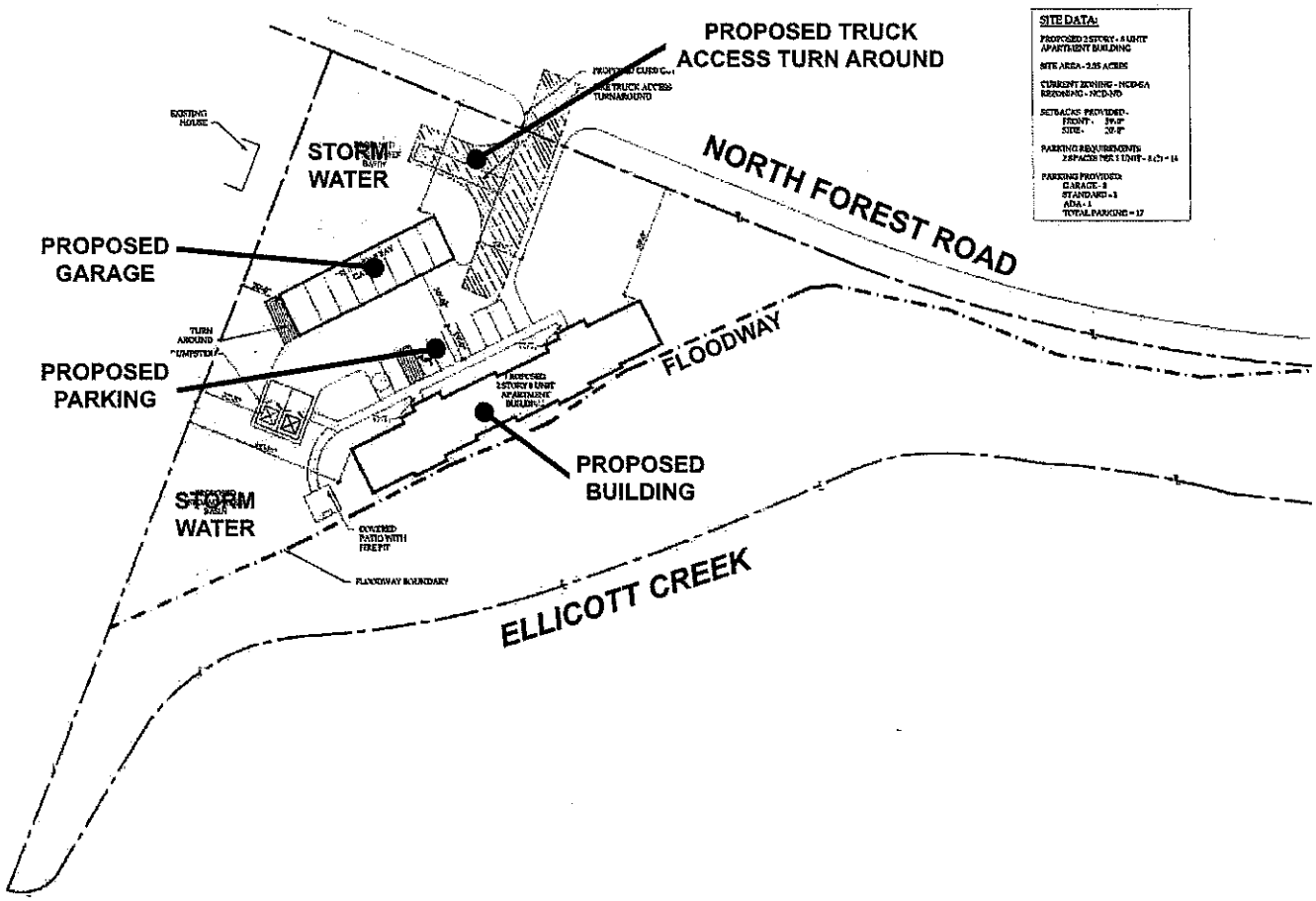
January 21, 2021

2160 & 2170 North Forest

Floodway Boundary

Prepared by the Town of Amherst Planning Department

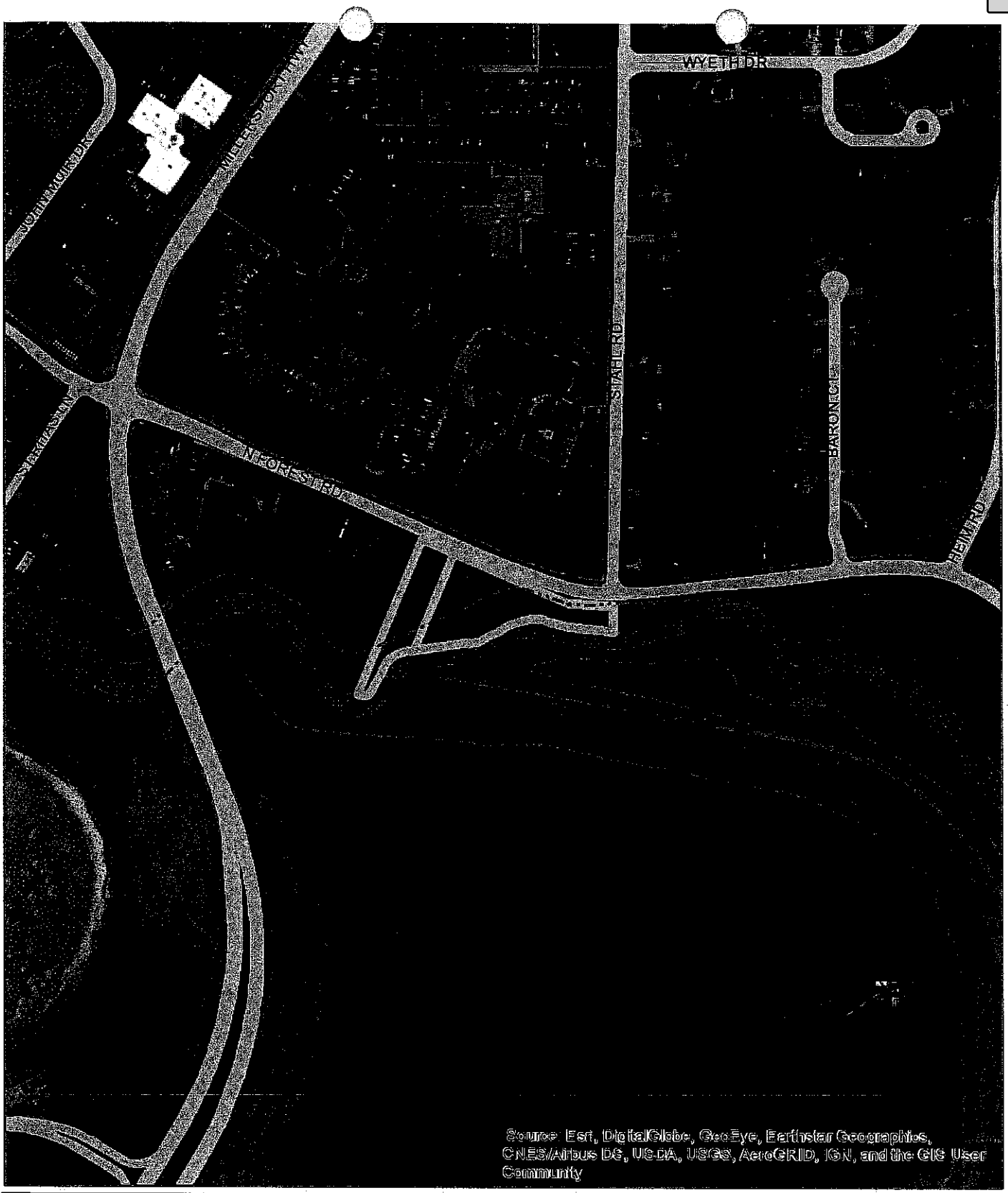
Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)



CONCEPT PLAN

Z-2020-06
2160 & 2170 North Forest Road
Received: 12/21/20

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)



Z-2020-06
Proposed Amendment #73 to the Audubon New Community Development Plan to Reclassify 2.35+/- AC of Land from NCD-SA to NCD-ND
Property Located at 2160 & 2170 North Forest Road (NCD)

Coromandel Estates Amherst, LLC, Petitioner
January 21, 2021

2160 & 2170 North Forest

Floodway Boundary

Prepared by the Town of Amherst Planning Department

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Williamsville Central Schools

Encouraging • Nurturing • Challenging

RECEIVED
SEP 22 2020
TOWN OF AMHERST
PLANNING DEPT.

September 15, 2020

Ms. Ellen Kost
Associate Planner
Town of Amherst Planning Department
5583 Main Street
Williamsville, NY 14221

RE: PROPOSED AMENTMENT #73 TO THE AUDUBON NEW COMMUNITY DEVELOPMENT PLAN TO RECLASSIFY 2.35 ACRES OF LAND FROM **NCD-SA** TO **NCD-ND, Z-2020-06**; PROPERTY LOCATED AT **2160 AND 2170 NORTH FOREST ROAD (NCD)**; COROMANDEL ESTATES AMHERST, LLC, PETITIONER.

Dear Ms. Kost:

The Williamsville Central School District has reviewed file number **Z-2020-06** for the request by Coromandel Estates Amherst, LLC to reclassify land for the above-named property.

Please note that the District has received this information and placed it on file. A future bus stop will be located at a driveway entrance at N. Forest Road in accordance with District policy.

Sincerely,

Thomas R. Maturski
Assistant Superintendent for Finance & Management Services

TRM/ld

cc: Coromandel Estates Amherst LLC c/o Sean Hopkins, Esq, 5500 Main St., Suite 343, Williamsville NY 14221; shopkins@hsr-legal.com
Scott Marshall, Principal Planner; smarshall@amherst.ny.us

105 Casey Road, P.O. Box 5000, East Amherst, NY 14051-5000 • Phone: (716) 626-8012, Fax: (716) 626-8017
www.williamsvillek12.org
Thomas R. Maturski, Assistant Superintendent for Finance & Management Services

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

William E. Geary, Jr.,
COMMISSIONER

DEPARTMENT OF PUBLIC WORKS
RATH BUILDING 14TH FLOOR

TELEPHONE:716.858.8300
FAX: 716.858.8228

September 27, 2020
Ms. Ellen M. Kost, AICP
Town of Amherst
5583 Main Street
Williamsville, NY 14221

Re: Lead Agency Request
Proposed 3 Story Apartment Building
2160-2170 North Forest Road (CR-294)
(T) of Amherst, County of Erie

Dear Ms. Kost:

This Department has received your request for Lead Agency for the above referenced project and the rezoning of 2.35 acres. Erie County Department of Public Works takes no exception with the Town of Amherst being the Lead Agency for this project. This approval of Lead Agency is only from Erie County Department of Public Works and does not imply that other County Departments concur with this approval, as their response will be coming by separate letter.

Permit Requirements

The Developer will be required to apply for and obtain an Erie County Highway Work Permit for Utility Work Perm-2 for construction within the North forest Road highway right-of-way.

The Developer will be required to apply for and obtain an Erie Count Highway Work Permit for Non-Utility Work, Perm 3 for construction of a new entrance drive within the North Forest Road highway right-of-way.

Traffic Concerns

A Traffic Impact Study may be needed due to the close proximity of the project to the intersection of North Forest and Stahl Road.

We ask that you please keep us informed as this project progresses and forward design plans and reports when they become available.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Sincerely,

ERIE COUNTY DEPARTMENT OF PUBLIC WORKS

Darlene M. Svilokos, P.E.
Principal Civil Engineer

cc: Karen Hoak, Deputy Commissioner – Highways
Brian A. Rose, P.E., Supervisor of Engineering
Gina Wilkolaski, P.E., Traffic and Safety Engineer
John Dennee, Senior Highway Maintenance Engineer
File: CR-294

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 9
270 Michigan Avenue, Buffalo, NY 14203-2915
P: (716) 851-7165 I F: (716) 851-7168
www.dec.ny.gov

January 22, 2021

Ms. Ellen Kost
Town of Amherst
5583 Main Street
Williamsville, NY 14221

Dear Ms. Kost,

SEQR Lead Agency Coordination
Audubon New Community Development
2160 and 2170 North Forest Road
Town of Amherst, Erie County

This letter is in response to your December 23, 2020 correspondence regarding the above-noted project. The revised project plan has been reviewed and the Department has no additional comments on the proposed project beyond those in the attached September 30, 2020 SEQR lead agency response letter from this agency. Thank you.

If you have any other questions, please feel free to contact Ms. Kerri Pickard-DePriest of my staff or me at 716/851-7165.

Sincerely,

David S. Denk

Digitally signed by David S. Denk
DN: cn=David S. Denk, o=NYS DEC, ou=Div. of Env. Permits, email=david.denk@dec.ny.gov, c=US
Date: 2021.01.22 14:13:13 -05'00'

David S Denk
Regional Permit Administrator

KPD

ecc: Mr. Theodore Myers, NYSDEC, Division of Water
Mr. Sean Hopkins, Esq, shopkins@hsr-legal.com

Z-2020-06

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst

Town of Amherst Planning Department *Erie County, New York*

RECEIVED
JAN 14 2021
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Directo

MEMORANDUM December 18, 2020

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
ECHWY
NYSDEC
Williamsville Central School District

DEC 23 2020
TOWN OF AMHERST
BUILDING DEPT

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: PROPOSED AMENDMENT #73 TO THE AUDUBON NEW COMMUNITY DEVELOPMENT PLAN TO RECLASSIFY 2.35± ACRES OF LAND FROM **NCD-SA** TO **NCD-ND;** PROPERTY LOCATED AT **2160 and 2170 NORTH FOREST ROAD (NCD);** COROMANDEL ESTATES AMHERST, LLC, PETITIONER. **Z-2020-06**

REVISED APPLICATION AND CONCEPT PLAN:
Received December 18, 2020

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: a floodplain development permit will be required

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: Doug Gesel **Date:** 1-13-21

EK/jfa
X:\Current_Planning\Files\Rezonings\2006\Z-2006-06_(9290_Transit_Rd)_2006\Z-2020-06_Rev_Transmittal_Application & Concept Plan_121820.doc

cc: Scott Marshall, Principal Planner
Coromandel Estates Amherst LLC, c/o Sean Hopkins, 5500 Main St., Suite 343, Williamsville, NY 14221
Thiru Vikram, c/o Coromandel Estates LLC, 4515 Chestnut Ridge Road, Unit 106, Amherst NY 14228
Chris Wood, Carmina Wood Morris, 487 Main St., Suite 500, Buffalo NY 14203
Christina Barmosz, Silvestri Architects, 1321 Millersport Hwy., Amherst, NY 14221
David Pawlik, Creative Structures Services, 550 Seneca St., Suite 100, Buffalo NY 14204

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
DEC 17 2020
TOWN ATTORNEY

MEMORANDUM December 18, 2020

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
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NYSDEC
Williamsville Central School District

RECEIVED
JAN 05 2021
TOWN OF AMHERST
PLANNING DEPT.

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: PROPOSED AMENDMENT #73 TO THE AUDUBON NEW COMMUNITY DEVELOPMENT PLAN TO RECLASSIFY 2.35± ACRES OF LAND FROM **NCD-SA** TO **NCD-ND**; PROPERTY LOCATED AT **2160 and 2170 NORTH FOREST ROAD (NCD);** COROMANDEL ESTATES AMHERST, LLC, PETITIONER. **Z-2020-06**

REVISED APPLICATION AND CONCEPT PLAN:
Received December 18, 2020

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: None at this time

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: Stanley Sliwa **Date:** 1/4/2021

EK/jfa
X:\Current_Planning\Files\Rezonings\2006\Z-2006-06_(9290_Transit_Rd)_2006\Z-2020-06_Rev_Transmittal_Application & Concept Plan_121820.doc

cc: Scott Marshall, Principal Planner
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David Pawlik, Creative Structures Services, 550 Seneca St., Suite 100, Buffalo NY 14204

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
DEC 21 2020
TOWN ATTORNEY

MEMORANDUM December 18, 2020

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
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NYSDEC
Williamsville Central School District

RECEIVED
JAN 05 2021
TOWN OF AMHERST
PLANNING DEPT.

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: PROPOSED AMENDMENT #73 TO THE AUDUBON NEW COMMUNITY DEVELOPMENT PLAN TO RECLASSIFY 2.35± ACRES OF LAND FROM **NCD-SA** TO **NCD-ND**; PROPERTY LOCATED AT **2160 and 2170 NORTH FOREST ROAD (NCD);** COROMANDEL ESTATES AMHERST, LLC, PETITIONER. **Z-2020-06**

REVISED APPLICATION AND CONCEPT PLAN:
Received December 18, 2020

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: N/A

General comments relative to your agency interests: N/A

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)
N/A

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 12/29/20

EK/jfa
X:\Current_Planning\Files\Rezonings\2006\Z-2006-06_(9290_Transit_Rd)_2006\Z-2020-06_Rev_Transmittal_Application & Concept Plan_121820.doc

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Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst

Town of Amherst Planning Department

Erie County, New York

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
DEC 31 2020
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM

December 18, 2020

TO: Daniel Ulatowski, Principal Planner
~~Dave Marrano~~, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
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Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
ECHWY
NYSDEC
Williamsville Central School District

TO: Ellen Kost
From: Dave Marrano
12/23/20
See Below

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: PROPOSED AMENDMENT #73 TO THE AUDUBON NEW COMMUNITY DEVELOPMENT PLAN TO RECLASSIFY 2.35± ACRES OF LAND FROM **NCD-SA** TO **NCD-ND**; PROPERTY LOCATED AT **2160 and 2170 NORTH FOREST ROAD (NCD);** COROMANDEL ESTATES AMHERST, LLC, PETITIONER. **Z-2020-06**

REVISED APPLICATION AND CONCEPT PLAN:
Received December 18, 2020

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: No Issue.

General comments relative to your agency interests: No Issue since units will be Leased, not sold w/ Condominium Tax Status

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) N/A

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 12/23/20

EK/jfa
X:\Current_Planning\Files\Rezonings\2006\Z-2006-06_(9290_Transit_Rd)_2006\Z-2020-06_Rev_Transmittal_Application & Concept Plan_121820.doc

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David Pawlik, Creative Structures Services, 550 Seneca St., Suite 100, Buffalo NY 14204

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst

Town of Amherst Planning Department *Erie County, New York*

RECEIVED
DEC 31 2020
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM December 18, 2020

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
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Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
ECHWY
NYSDEC
Williamsville Central School District

TOWN OF AMHERST
ENGINEERING
DEPARTMENT
2020 DEC 22 P 12:51

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: PROPOSED AMENDMENT #73 TO THE AUDUBON NEW COMMUNITY DEVELOPMENT PLAN TO RECLASSIFY 2.35± ACRES OF LAND FROM **NCD-SA** TO **NCD-ND**; PROPERTY LOCATED AT **2160 and 2170 NORTH FOREST ROAD (NCD);** COROMANDEL ESTATES AMHERST, LLC, PETITIONER. **Z-2020-06**

REVISED APPLICATION AND CONCEPT PLAN:
Received December 18, 2020

REVIEW:

Do you agree with all statements made? YES

If you do not, briefly state why: _____

General comments relative to your agency interests: None At This Time

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 12/30/20

EK/jfa
X:\Current_Planning\Files\Rezonings\2006\Z-2006-06_(9290_Transit_Rd)_2006\Z-2020-06_Rev_Transmittal_Application & Concept Plan_121820.doc

cc: Scott Marshall, Principal Planner
Coromandel Estates Amherst LLC, c/o Sean Hopkins, 5500 Main St., Suite 343, Williamsville, NY 14221
Thiru Vikram, c/o Coromandel Estates LLC, 4515 Chestnut Ridge Road, Unit 106, Amherst NY 14228
Chris Wood, Carmina Wood Morris, 487 Main St., Suite 500, Buffalo NY 14203
Christina Barmosz, Silvestri Architects, 1321 Millersport Hwy., Amherst, NY 14221
David Pawlik, Creative Structures Services, 550 Seneca St., Suite 100, Buffalo NY 14204

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
Williamsville Central School District
DEC 23 2020
Asst Superintendent for
Finance & Management Services

MEMORANDUM December 18, 2020

RECEIVED
DEC 31 2020
TOWN OF AMHERST
PLANNING DEPT.

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
ECHWY
NYSDEC
Williamsville Central School District

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: PROPOSED AMENDMENT #73 TO THE AUDUBON NEW COMMUNITY DEVELOPMENT PLAN TO RECLASSIFY 2.35± ACRES OF LAND FROM **NCD-SA** TO **NCD-ND**; PROPERTY LOCATED AT **2160 and 2170 NORTH FOREST ROAD (NCD);** COROMANDEL ESTATES AMHERST, LLC, PETITIONER. **Z-2020-06**

REVISED APPLICATION AND CONCEPT PLAN:
Received December 18, 2020

REVIEW:

Do you agree with all statements made? In regard to site plan and SEQRA, the

If you do not, briefly state why: District does not have comments on these items

General comments relative to your agency interests: Williamsville Central School District school bus service will follow policy, presently, bus service would be at entrance of the apartment complex.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: [signature] **Date:** 12/28/20

EK/jfa
X:\Current_Planning\Files\Rezonings\2006\Z-2006-06_(9290_Transit_Rd)_2006\Z-2020-06_Rev_Transmittal_Application & Concept Plan_121820.doc

cc: Scott Marshall, Principal Planner
Coromandel Estates Amherst LLC, c/o Sean Hopkins, 5500 Main St., Suite 343, Williamsville, NY 14221
Thiru Vikram, c/o Coromandel Estates LLC, 4515 Chestnut Ridge Road, Unit 106, Amherst NY 14228
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Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

TOWN OF AMHERST ENGINEERING DEPARTMENT
2020 DEC 22 P 12:37

MEMORANDUM December 18, 2020

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
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Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
ECHWY
NYSDEC
Williamsville Central School District

RECEIVED
DEC 28 2020
TOWN OF AMHERST
PLANNING DEPT.

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: PROPOSED AMENDMENT #73 TO THE AUDUBON NEW COMMUNITY DEVELOPMENT PLAN TO RECLASSIFY 2.35± ACRES OF LAND FROM **NCD-SA** TO **NCD-ND**; PROPERTY LOCATED AT **2160 and 2170 NORTH FOREST ROAD (NCD);** COROMANDEL ESTATES AMHERST, LLC, PETITIONER. **Z-2020-06**

REVISED APPLICATION AND CONCEPT PLAN:
Received December 18, 2020

REVIEW:

Do you agree with all statements made? YES.

If you do not, briefly state why: _____

General comments relative to your agency interests: NONE

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 12/24/20

EK/jfa
X:\Current_Planning\Files\Rezonings\2006\Z-2006-06_(9290_Transit_Rd)_2006\Z-2020-06_Rev_Transmittal_Application & Concept Plan_121820.doc

cc: Scott Marshall, Principal Planner
Coromandel Estates Amherst LLC, c/o Sean Hopkins, 5500 Main St., Suite 343, Williamsville, NY 14221
Thiru Vikram, c/o Coromandel Estates LLC, 4515 Chestnut Ridge Road, Unit 106, Amherst NY 14228
Chris Wood, Carmina Wood Morris, 487 Main St., Suite 500, Buffalo NY 14203
Christina Barmosz, Silvestri Architects, 1321 Millersport Hwy., Amherst, NY 14221
David Pawlik, Creative Structures Services, 550 Seneca St., Suite 100, Buffalo NY 14204

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

RECEIVED
NOV 30 2020
TOWN OF AMHERST
PLANNING DEPT.

Kost, Ellen

From: Rutkowski, Edward (DOT) <Edward.Rutkowski@dot.ny.gov>
Sent: Saturday, November 28, 2020 12:50 PM
To: Kost, Ellen
Subject: 2160-2170 North Forest Rd, Proposed Rezoning for 18 Unit Apartment Building, Amherst
Attachments: 2160-2170 N Forest.pdf

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

Ellen,

New York State Department of Transportation (NYSDOT) reviewed the information submitted for the subject project and has the following comments:

- NYSDOT concurs with the Town of Amherst acting as the Lead Agency.
- The proposed project will not have a significant impact to traffic on the Stathe Highway System.

If you have any questions, please contact me either by email or phone.

Sincerely,
Ed Rutkowski

Edward S. Rutkowski, P. E.
SEQR/Site Plan Review Coordinator
NYSDOT - Region 5
100 Seneca Street
Buffalo, New York 14203
716-847-3575

NEW YORK STATE OF OPPORTUNITY. Department of Transportation

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

NEW YORK STATE OF OPPORTUNITY. | Parks, Recreation, and Historic Preservation

ANDREW M. CUOMO
Governor

ERIK KULLESEID
Commissioner

October 30, 2020

Roberta Rappoccio
Associate Planner
Town of Amherst, NY Planning Department
5583 Main Street
Amherst, NY 14221

Re: DEC
Rezoning for 18-Unit 3-story New Construction Project
2160 North Forest Rd, Amherst, Erie County, NY
20PR05460
Z-2020-06

Dear Roberta Rappoccio:

Thank you for requesting the comments of the Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have reviewed the Phase I Archaeological Reconnaissance Survey report prepared by the University at Buffalo's Archaeological Survey (Whalen & Angelini, October 2020; 20SR00539) in accordance with the New York State Historic Preservation Act of 1980 (section 14.09 of the New York Parks, Recreation, and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources.

Based on this review, it is OPRHP's understanding that no archaeological sites were identified during the above-noted investigation, and we concur with the report's conclusion that no further archaeological investigations are warranted. It is, therefore, OPRHP's opinion that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project. Should the project design be changed OPRHP recommends further consultation with this office.

If you have any questions, I can be reached via e-mail at Josalyn.Ferguson@parks.ny.gov.

Sincerely,

Josalyn Ferguson, Ph.D.
Scientist Archaeology

via email only

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Carrato, Amy

From: ann bealer <annri35@msn.com>
Sent: Tuesday, October 06, 2020 3:26 PM
To: Carrato, Amy
Subject: Rezoning of property at 2160&2170 N. Forest Rd.

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

I am totally against the rezoning of the above properties for a 3 story apartment building. I spend my summers outside in my backyard and I would lose all my privacy. Traffic is a problem. We have trouble getting in and out of our driveways. At rush hour it is almost impossible. We also have frequent water brakes as the lines are old. They were supposed to put new lines in 3or4 years ago and they never did. How much more water can those pipes handle? Water pressure is another issue. Am and pm the pressure is low. I ask also where is the green space in Amherst. It seems all the developers want to do is build. And I would ask the Board members and the Planning Board if they would like a 3 story building right next door to them.

Ann Bealer
2204 N. Forest Rd.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Carrato, Amy

From: sprinter16@roadrunner.com
Sent: Sunday, October 11, 2020 11:29 AM
To: Carrato, Amy
Subject: Rezoning request located at 2160 & 2170 N Forest Rd.

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

To Whom It May Concern,

We received a notice regarding the request to rezone 2160 & 2170 N Forest Rd. We live at 2200 N Forest Rd which is 3 houses down from the proposed rezoning and would like it noted that we are definitely not in favor of a 3 story apartment building or any apartment building for that matter.

Several years ago an effort was made to rezone the corner of N Forest Rd and Millersport Hwy to a 3 story apartment building and that effort was successfully denied based on various issues such as excessive traffic which is already a terrible problem, frequent water main breaks that occur in our area and the proposed targeted tenants which would have been college students. At the time, there was a house on the property that was being rented out to college students and the loud parties and noise created many complaints that required a police response.

As well as the concerns already mentioned, the project calls for 2 retention ponds that will drain in to Ellicott Creek. We always have flooding occur on the lower portion of our property during heavy rains and we do not want additional discharge of water from other sources as we feel this will create more opportunity for additional flooding as well as perhaps change the flow of the water.

Most of the homes that would be directly impacted by the proposed apartment building would lose all backyard privacy based on the illustration provided in the rezoning request. One of the only saving graces of living on an extremely busy, noisy street is the fact that we have no rear neighbors and are able to enjoy the view of the creek as well as the natural habitat. Having a 3 story apartment building and the noise it will create just through everyday living will definitely have a negative impact on those of us nearest to it.

We will continue to remain involved in the meetings and decisions regarding this request.

Fran & Dennis Cummings

2200 N Forest Rd

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Carrato, Amy

From: Dan Boscarino <dboscarino@yahoo.com>
Sent: Tuesday, October 13, 2020 3:07 PM
To: Carrato, Amy
Subject: Property at 2160& 2170 North Forest Road Planning Board meeting October 15

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

I'm writing to voice my opinion that I'm not in favor of rezoning the property. The corner is extremely busy and less than a half a mile from a school zone. The traffic is already unbearable on weekday mornings and evenings. This is a residential neighborhood and should stay that way, with single family homes only. I cannot see how anyone could approve a zoning change.

Regards,

Daniel M. Boscarino
Carrie Boscarino
57 Baron Ct
Getzville, New York

Sent from Yahoo Mail for iPad

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Carrato, Amy

From: Rosemary Blando <rblando@durham.com>
Sent: Tuesday, October 13, 2020 8:04 AM
To: Carrato, Amy
Cc: jjh2180@verizon.net
Subject: 2160 & 2170 North Forest Rd
Attachments: Amherst final draft.docx; Signed petitions.pdf

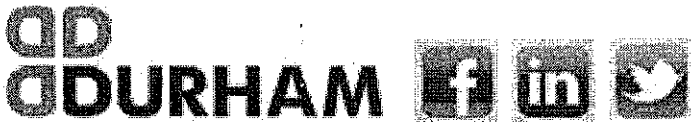
CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

Planning Board:
Attached please find our response to the request to approve **Amendment #73 of the Audubon New Community Development Plan**. This matter is scheduled to be heard as **item #3** on the Planning Board's **October 15th agenda**. Kindly acknowledge receipt via email as well as **jjh2180@vereizon.net**. My husband, Joseph Hausbeck plans to appear at the hearing, via Zoom, and requests permission to speak in rebuttal. The second attachment are (2) petitions in opposition to petitioner's request.
Thank you for your consideration,

Joseph J. Hausbeck
Rosemary Blando
Residents 2180 North Forest Rd
Williamsville, NY 14221

716.473.3972 cell

www.durhamstaffing.com



CONFIDENTIALITY NOTICE: The information contained in this email message is intended only for the personal and confidential use of the designated recipients named above. This message is an attorney-client communication or may be subject to a common interest privilege / protection, and as such, is privileged and confidential. If the reader of this message is not the intended recipient or any agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone 716-684-3333.

This email has been checked for viruses by Avast antivirus software.
www.avast.com

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst Planning Board
5583 Main Street
Williamsville, New York 14221

Via email to: acarrato@amherst.ny.us

Re: Request to Approve Amendment #73 of the Audubon New Community Development Plan to Reclassify Property located at 2160 and 2170 North Forest Road.

To Whom It May Concern:

My wife and I are the owners and residents of 2180 North Forest Road, the property immediately adjoining the subject property. We have resided there over 23 years. We are hereby expressing our **strong opposition** to the above referenced matter which is scheduled for consideration by the Town Planning Board on Thursday, October 15th.

PROCEDURAL MATTER:

Prior to setting forth our concerns about the proposed project, I wish to raise a **procedural** concern. I am very concerned that there has been insufficient notice given of the upcoming hearing. In preparation for the hearing, I attempted to contact local residents to gauge their interest in the matter. I was advised that the Beechwood Campus and, specifically, the residents of Asbury Point, located directly across from the subject property on North Forest Road, were **not** given notice of the hearing. In addition, in speaking with the residents of eight (8) other parcels in close proximity to the subject, three (3) residents advised that they had **not** received any notice whatsoever. I attempted to contact other residents without success, perhaps because of the Covid 19 times in which we are living. I am therefore respectfully requesting that the Town insure that all reasonable efforts are made to assure that all Town Residents potentially impacted by the requested action be afforded their basic right to Notice and an Opportunity to be Heard.

SUBSTANTIVE MATTERS:

I would like to address the Request from two (2) perspectives.

I. **Character of the Neighborhood and the Subject Property:**

The property in question is the eighth parcel on the west side of North Forest Road, south of Millersport Highway. It is the last parcel on North Forest before Stahl Road and is immediately adjacent to the "zombie" property, known throughout Amherst as "that white house". The seven parcels between it and Millersport consist of six (6) single family ranch homes and one (1) one- story building, housing a Women's Medical Center. The Medical Center is on the corner of Millersport Highway (a commercial thoroughfare) and North Forest Rd. There is a substantial fenced buffer zone between the Medical Center and the first residential property, including an area dedicated to a Stormwater Management Practices Bio-retention Project, permitted by the NYS Dept. of Environmental Conservation. The rear of all the ranch homes, as well as the subject property, abut Ellicott Creek.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

It should be noted that the Medical Center required a rezoning. However, prior to that being accomplished, a different developer attempted to rezone that property to build a similar residential rental structure. That proposed redevelopment plan was objected to by the residents and was not approved by the Town. The question may therefore be asked as to why the Town should approve this application for a three-story multifamily residence on property which sits further down the same block (removed from any commercial intersection) which also presents potentially significant adverse environmental impacts.

On the opposite side of North Forest sits Asbury Point, a quiet and pristine retirement residence. Asbury Point is set back far from North Forest Road. There are dense wooded areas, landscaped areas, abundant mature trees and open greenspaces that act as a buffer between Asbury Point and North Forest Rd. The Asbury Point structure referred to by the petitioner is, indeed, three stories, but it has some underground parking. The structure, as well as its infrequently used limited surface parking area, is setback, partially concealed, and surrounded by walking paths. The building is entirely occupied by senior citizens who have a vested interest in the self-contained elderly campus. They are wonderful neighbors.

In contrast, the proposed project is a three-story, 18 unit apartment building with surface area parking for 36 cars. The site abuts our southern property line and is just 17.5 feet (+ or -) from the south wall of our home. It should be noted that the site plan describes the site as being 2.35 acres. However, the structure, surface parking and all appurtenances are "sandwiched in" on less than ½ of the "site". The remainder of the site sits in the existing floodway and is unusable. It is wooded, but sits behind the proposed development and offers no buffer between the structure and the street or our adjoining property. The "sandwiching" is so tight, that the proposed site plan reveals that portions of the proposed fire pit actually encroach into the floodway.

The site plan appears to show only a 5' "landscaped" area between the 15 parking spaces (that face our lot line and house) and the lot line itself. As the wall of our home sits approximately 17.5' from the lot line, and our home (a ranch which has no basement) sits on a concrete pad, cars will be parked 22.5' from the south wall of our house, with headlights shining in our bedroom windows. In addition, most likely because of the "sandwiching", the site plan seeks to place what appears to be a double bay dumpster extremely close to both our unfenced yard (which we use regularly throughout the spring, summer and fall) and our home. For the past 23 years we have had an unobstructed view of Ellicott Creek and the Ellicott Creek Trailway (bikepath). If this project is approved, we will have only an unobstructed view of the dumpster. We are also concerned about the potential impact of dumpster odors and the potential for rodent and pest infestation. Throughout the entire 23 years we have lived here, we have enjoyed the wildlife that regularly occupies these parcels. That wildlife includes the deer which miraculously seem to present us, each spring, with two new spotted fawns. However, it also includes the raccoon (anxiously awaiting the installation of the dumpsters) that we have observed in the tree on the property line, these are not the only potential significant adverse impacts on our property, but they are clearly indicative of the fact that this project is simple much too large for this site.

I would encourage all members of the Planning Board to personally visit the site to fully appreciate the concerns expressed.

II. Specific Issues applicable to the Neighborhood:

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

The proposed project is totally out of character and inconsistent with our neighborhood. It simply does not fit the site (see preceding section). The quality of life for the current residents on North Forest Road, will be adversely affected for numerous reasons. There are serious concerns over potential loss of property values; there are privacy concerns, traffic and traffic safety concerns, water issues and flooding concerns, erosion concerns, and soil and land subsidence concerns, among others.

WATER ISSUES – Over the years, the proposed site, as well as adjacent properties, have Experienced flooding issues from Ellicott Creek. During wet weather events, waters from the adjacent creek and diversion channel regularly flood portions of the proposed site, our premises, and the premises of neighbors to the north.

Prior to the construction of the Ellicott Creek diversion channel, the subject property had large depressions that used to flood regularly. Neighbors have told me that the property was actually used by local children for ice skating, and at some point a public berm was constructed along the creek in an effort to prevent the flooding. I have also been told that this berm material was later excavated and used by a prior owner of the subject property to fill the depressed areas that regularly flooded. This story may be substantiated by the following observation: on the property, there is a large old willow tree sitting about 5' deep in a rip rap well. Within that well are several plastic drain hoses, with clamps that appear to drain into the "well" area. This may be some indication of the possible depth of fill placed upon the subject property by prior owners. However, I have no idea what the composition of that fill is.

Attached to the petitioner's application for a variance is a copy of a letter from Earth Dimensions, Inc. related to a preliminary wetland investigation. That letter references an attached map which "depicts the limits of our investigation". The attached map (entitled "Erie County On-Line Mapping Application") purports to depict the subject property (2170 and 2160 North Forest Road). Please compare the configuration of the subject property shown upon that map with the configuration of the "same" property (2170 and 2160 North Forest Road) shown on the site plan. A comparison may substantiate the alleged prior flooding and the later use of fill should these questions be relevant to the question of site suitability for the proposed project.

It is my understanding that a pipe for drainage of surface water from the Asbury Point property was installed years ago, and ran under North Forest Road to what was once a culvert along the road adjoining the proposed site. Allegedly, a prior owner of the proposed site later had a 36" drainage pipe installed. That pipe bisected the proposed site and discharged the drainage water to the bank or bed of Ellicott Creek. I believe the discharge pipe itself is visible at the creek bank. However, I was unable to note any reference to that discharge system on the site plans or application documents. I have no knowledge as to whether there is any public record of this.

Based upon:

Past and current flooding issues;
The addition of ½ acre of impervious surface;
The non-use of pervious surfaces;

Lack of information regarding proposed excavations;
Lack of information regarding storm water basins and their location with respect to the topography of adjacent lands;
The discharge of storm water to Ellicott Creek; and
concerns over storm water management generally,

We have serious concern that this project will have a significant adverse environmental impact on our property and that of our neighbors to the north.

ERROSION CONCERNS - We have personally observed substantial erosion of the bank of Ellicott Creek on the site of the subject property. When we acquired our property 23 years ago, the subject property, which adjoins ours, had a large concrete wall comprised of sections of concrete attached to metal supports mounted along the creek bank. The wall was along the peninsular-like portion of the western end of the property. Over the years, due to substantial erosion of the bed behind the wall, the entire wall has fallen, section by section, into Ellicott Creek. All that currently remains of the structure are a few of the metal supports.

At the opposite end of the subject property (at the Stahl Road intersection) sits the infamous "white house". Its driveway is a matter of inches from the eastern end of the subject property. The White house (a zombie property) is generally believed to be falling into Ellicott Creek.

In our mind, concern over erosion raises an issue as to the safety and appropriateness of a construction project of this magnitude.

FLOOD CONTROL EASEMENT - Our property (which adjoins the subject property) is subject to a Flood Control Easement held by, or of interest to NYSDEC, USACOE and the TOWN of AMHERST. We assume the adjoining upstream property is, or should be, also subject to such an easement. However, I did not see it directly addressed in the petitioner's Environmental Assessment Form.

Concerns over storm water and its management (see above) would seem to have a direct impact upon any Flood Control Easement applicable to the subject property, as well as to ours.

SEWERS - The petitioner's "Application to Reclassify" represents that there is adequate sanitary Sewer capacity for the proposed project. This may not be the case. We have learned that the proposed action is considered a Sanitary Sewer Extension by the NYSDEC, and a detailed sewer capacity analysis must be performed and submitted for review and approval. Further investigation is necessary to avoid potential substantial adverse environmental impacts upon the community.

PUBLIC WATER - Again, the "Application to Reclassify" represents that adequate public water

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

capacity exists. However, we can attest to the fact that, in the past, we and others in our block (North Forest Rd from Millersport Hwy to Stahl Rd) have experienced numerous interruptions in water service. These interruptions have occurred from broken pipes in our block, and have occurred principally during cold weather. Interruptions have been for long periods and have been extremely inconvenient. Ruptured pipes were the culprit and geysers with flooding of the street were common.

In August, 2016, the Town Board approved a measure to replace the water line from Stahl Road to Millersport Highway. To date, I do not believe that project has been completed. Further investigation is necessary to avoid potential adverse environmental impacts on the community.

TRAFFIC – Petition asserts that the proposed project will not result in a substantial increase in traffic above present levels. This is simply not true. Having lived on this block of North Forest for over 23 years, I am familiar with its unique problems. North Forest to Millersport Highway is a major route to the University of Buffalo. It is also the preferred route for many cars entering the Beechwood Complex on Stahl Road. It is also the route followed by large numbers of Amherst residents seeking to access the I-290 and I-990.

This block (between Millersport and Stahl) is a two way (one lane in each direction) residential street. It experiences the full impact of traffic going ***to*** the University in the morning and returning from it in the afternoon. Depending upon the time of day, the traffic can be backed up from Stahl to Millersport or from Millersport to Stahl.

As Stahl Road is the main access point for the Beechwood Complex, and ends at North Forest, traffic is also regularly backed up on Stahl Road, at the intersection. To complicate matters further, there is a serious bend on North Forest, right at the intersection. Between cars coming down North Forest and cars turning at Stahl, living on North Forest and being the first driveway from Stahl is a serious challenge. It makes it extremely difficult to find an opening in traffic long enough to enter or exit our driveway.

The proposed project seeks a curb cut for a driveway entrance onto the site. The proposed driveway is near our joint property line. It is, therefore, even closer to the Stahl Road intersection. The project allows for 36 parking places. Potentially, that makes 36 more cars attempting the same maneuvers as we must attempt and further obstructing our ability to enter and exit. This is a problem common to each of my neighbors.

It should be noted that "traffic concerns" are not limited solely to traffic flow and traffic visibility. A multi-family residential project such as this should consider the safety of pedestrians and cyclists. Due to the proximity to the University and to the Ellicott Creek Trailway (Bike Path), this stretch of North Forest Road is used regularly by both. There are no discrete bike paths along this section, and sidewalks are limited to the opposite side of North Forest. Additionally, it is questionable whether either could be practically installed along North Forest, south of the subject site, due to the proximity to the creek and its erosion issues in that area.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

SOIL ISSUES AND DEPTH TO BEDROCK – Over the years, there have been numerous efforts by individuals to acquire and build on the subject property. It is our understanding that most of the efforts involved proposed single family residences. Despite contractual agreements to purchase, none of these efforts materialized. We assume that some were discouraged because of the existence of floodplain/floodway issues. However, some failed as a result of depth to bedrock issues. Borings have been taken on a number of occasions and the results, which are unknown to us, are rumored to be unfavorable to construction due to the depth to bedrock. It should also be noted that we learned that when Asbury Point was constructed, it was necessary to drive an extraordinary number of I-beams into the ground, in places up to 40 to 50' in depth.

It is noted that the petitioner's EAF references the depth to bedrock as being "greater than 5 feet". It also identifies the soils on 100% of the site to be "cosad loamy fine sand" and 100% of the site to be poorly drained.

In light of the afore referenced information relating to prior flooding, the prior placement of fill, and existing erosion concerns, the possibility of depth to bedrock discrepancies simply reinforces our concerns relating to the integrity of the potential structure. We believe that a complete geo-technical investigation and inspection should be required. We have heard of instances of properties collapsing, in one case into a creek, within the Town of Amherst. We have no desire to see that occur next door.

CONCLUSION:

In a perfect world, the subject site would be a small neighborhood park and a continuation of the beautiful greenspace located directly across the creek from the site. It could contain a pedestrian bridge over Ellicott Creek, accessible by the general public seeking safer access to the Bike Trail, as well as the residents of Asbury Point, who, in the past, have casually strolled on this site. Possibly, a kayak launch point could serve this site as well. My wife and I, as adjoining neighbors would welcome such alternative uses. We do not oppose this proposal on the basis of change. However, the property is privately owned and we lack the power of Eminent Domain.

Based upon the foregoing considerations, we, Joseph Hausbeck and Rosemary Blando, strongly oppose approval of the petitioner's request. As 23 year residents of the site immediately adjoining the subject site, we are of the opinion that the proposed project will result in potentially significant adverse environmental impacts upon this community. Additionally, we are firmly of the belief that the applicant has failed to provide sufficient information to establish that there will be no impacts and, at the very least, a Draft Environmental Impact Statement should be required.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Town of Amherst Planning Board

5583 Main Street

Williamsville, NY 14221

We, the undersigned, being residents of North Forest Rd. between Stahl Rd and Millersport Highway, hereby **OPPOSE** the request filed by the petitioner **Coromandel Estates Amherst, LLC**, to approve amendment # 73 of the Audubon New Community Development Plan to reclassify 2.35 acres, more or less, of land located at 2160 and 2170 North Forest Rd.

Joseph Lagumbay 2160 North Forest Rd.
Rodney Rhands 2180 North Forest Rd
Ann Beahen 2204 N. Forest Rd.
Donna J Beahen 2204 N. Forest Rd.
Ina Dennis Cummings 2220 N. Forest Rd.
Sterling Lawson 1881 N. Forest Rd
Joan Amico, 1936 North Forest, Amh NY 14221
Steve Amico, 1936 North Forest, Amh NY 14221

October 2020

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Town of Amherst Planning Board

5583 Main Street

Williamsville, NY 14221

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George De Rosa
2220 North Forest Road, Williamsville, N.Y. 14221
Allen Miles
25 Stahl Rd, Getzville 14068 Allen Miles
[illegible]
[illegible] 2220 N. Forest Rd. 14221
Karen Macura 2230 N FOREST RD 14221

October 2020

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Z-2020-06
2160 & 2170 N. Forest Rd

Carrato, Amy

From: Joan Amico <jamico99@gmail.com>
Sent: Wednesday, October 14, 2020 7:15 AM
To: Carrato, Amy
Subject: Planning Board Meeting 10/15 - Amendment #73 of the Audubon New Community Development Plan.

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

My husband and I received notice of the proposed rezoning of residential property on North Forest Road and I would like to speak at the Planning Board meeting on October 15 about this rezoning.

Also, please share my comments below with the board:

This stretch of North Forest is primarily a residential area. It is not a commercial area and it should not be rezoned. It seems that over the last several years, long stretches of North Forest Road have been turned into apartment buildings and other commercial properties. Do we really need to build such structures alongside and embedded between single family homes? Would you want to live in-between commercial properties? Do we even need another apartment complex in this area?

The Town of Amherst should first and foremost make decisions that are best for the residents that live in their community. Please think about the residents, people like my husband and I, when deciding to rezone this and any property.

Kindly reply back to confirm receipt of this email.

Thank-you,

Joan and Steve Amico
1936 N Forest Rd, Williamsville, NY 14221

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Z-2020-06,
2160 and 2170 N. Forest

GINEERING DPC|DBA
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Fax: (585) 359-9668

September 17, 2020
Project No. WB-20-105
(SJB Project No. BE-20-105)

Postwork Capital

c/o Buffalo Automation
10236 Transit Road
East Amherst, New York
14051

Attn. Mr. Thiru Vikram, CEO

Re: Geotechnical Engineering Report
Proposed Elysium Apartment Complex
2160 North Forest Road
Town of Amherst, New York

Dear Mr. Vikram:

WMA Engineering DPC, dba Empire Geotechnical Engineering Services (Empire), is pleased to submit the enclosed Geotechnical Engineering Report for the above referenced project. We have also e-mailed you an electronic copy (pdf file format) of this report, for your use and for distribution. Please contact me should you have any questions or wish to discuss this report. Thank you for considering Empire for this work and we look forward to working with you through the completion of this project.

Sincerely,

WMA Engineering DPC, dba
Empire Geotechnical Engineering Services

Thomas R. Seider, P.E.
Geotechnical Engineer

RECEIVED
OCT 07 2020
TOWN OF AMHERST
PLANNING DEPT.

Enc.: Geotechnical Engineering Report

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

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Geotechnical Engineering Report
Proposed Elysium Apartment Complex
2160 North Forest Road
Town of Amherst, New York

Prepared For:

Postwork Capital

c/o Buffalo Automation
10236 Transit Road
East Amherst, New York
14051

Prepared By:

WMA Engineering, DPC
dba Empire Geotechnical Engineering Services
5167 South Park Avenue
Hamburg, New York, 14075



Project No. WB-20-105
(SJB Project No. BE-20-105)
September 2020

A Woman Owned Firm

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

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APPENDICES

APPENDIX A – SUBSURFACE EXPLORATION LOGS

Recently Completed Test Borings July 2020 (B-1 through B-5)

APPENDIX B – SUBSURFACE EXPLORATION LOGS

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APPENDIX C – GEOTECHNICAL REPORT LIMITATIONS

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

1.00 INTRODUCTION

1.10 GENERAL

This report presents the results of a subsurface exploration program completed by SJB Services, Inc. (SJB), and a geotechnical engineering evaluation completed by WMA Engineering DPC, dba Empire Geotechnical Engineering Services (Empire), for the proposed Elysium Apartment Complex, planned off of North Forest Road, within the Town of Amherst, New York. Postwork Capital retained SJB and Empire to complete this work, which was done in general accordance with SJB's June 29th, 2020 proposal, that was authorized on July 2, 2020.

SJB, our affiliated subsurface exploration company, recently completed five test borings and installed a groundwater observation well at the site. Prior to this investigation, SJB and Empire completed two separate subsurface investigations and prepared geotechnical evaluation reports for projects that were planned at the site. These included a proposed house in July 2014 and a proposed garage type structure in March 2020. The previous investigations each included one test boring along with some geotechnical laboratory testing. Neither of the two projects were constructed. It is our understanding that Postwork Capital has received approval to use the data developed during the first two investigations, to supplement the findings from the recently completed investigation.

Based on the findings from the recent investigation, and the two previous investigations, Empire has prepared this report, which summarizes the subsurface conditions encountered, and presents geotechnical recommendations for design and construction of the foundations, slab-on-grade floor, and pavement areas, as well as the associated site preparation work for the proposed project.

1.20 SITE AND PROJECT DESCRIPTION

The project site is located along the south side of North Forest Road, immediately west of its intersection with Stahl Road (street address 2160 North Forest Road) within the Town of Amherst, New York. As shown on Figure 1, Ellicott Creek forms the southern boundary of the project site, resulting in an irregular triangular shaped parcel, with about 550 feet of frontage along North Forest Road. As shown on Figure 2, the ground surface at the site slopes downward towards Ellicott Creek, with surface elevations ranging from about 583 feet to 570 feet.

Based on a cursory review of older USGS mapping (www.historicaerials.com), it appears Ellicott Creek formerly extended farther to the north than its current location. As discussed in later sections of this report, the fill soils encountered within the test borings could be related to site filling within the limits of the former creek location.

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The proposed apartment building will be located within the northwest corner of the site, beyond the floodway boundary, and where the site grades are more gradual. Based on the information provided by Silvestri Architects, PC, the apartment building will consist of a three story wood framed structure with an at-grade floor near the current site grades. Other than an elevator pit, no below grade structures are planned. Asphalt pavement driveways and parking areas are planned around the building. Figure 2 provides additional details about the proposed development.

2.00 SUBSURFACE EXPLORATIONS

2.10 JULY 2020 INVESTIGATION

The most recent subsurface exploration program included:

- 3 test borings completed within the limits of the proposed apartment building, designated as B-1 through B-3;
- 1 test boring completed within the southwest portion of the site, within a proposed terraced seating area, designated as B-4; and
- 1 test boring to the east of the proposed apartment building, within a future sports court area, designated as B-5.

The test boring locations were staked in the field by SJB, using a hand held global positioning system (GPS) instrument. The approximate test boring locations are shown on Figure 2. Survey level measurements were used to determine the approximate ground surface elevation at the test boring locations, using the rim of a catch basin frame within North Forest Road as a benchmark. The approximate benchmark location is shown on Figure 2, and has a reported elevation of 580.70 feet.

The recent test borings B-1 through B-5 were completed by SJB between July 23rd and July 27th, 2020, using a Central Mine Equipment (CME) model 550x, all-terrain tire mounted drill rig. Hollow stem auger and split spoon sampling techniques were used to advance the test borings through the overburden soils. Split spoon samples and Standard Penetration Test (SPT) were taken continuously from the ground surface to a depth of 12 feet, and in intervals of five feet or less for the remaining depth of the test borings. The split spoon samples and SPTs were completed general accordance with *ASTM D1586 – "Standard Test Method for Penetration Test and Split-Barrel Sampling of Soils"*.

Test borings B-1 through B-4 were advanced through the overburden until encountering the top of apparent bedrock, as identified by auger refusal, at depths of about 22 feet to 27.2 feet. After encountering auger refusal within test borings B-1 and B-4, 8 to 9 feet of rock coring was completed using an NQ'2' size core barrel, in accordance with *ASTM D 2113 – "Standard Practice for Rock Core Drilling and Sampling of Rock for Site Investigation"*. Test boring B-5 was completed to a depth of 15 feet.

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A Geologist prepared the test boring logs based on visual observations of the recovered soil and rock core samples and a review of the driller's field notes. The soil samples were described based on a visual/manual estimation of the grain size distribution, along with characteristics such as color, relative density, consistency, moisture, etc. The rock cores were also described, including characteristics such as color, rock type, hardness, weathering, bedding thickness, core recovery and rock quality designation (RQD). The test boring logs for the recently completed test borings B-1 through B-5 are presented in Appendix A, along with general information and a key of terms and symbols used to prepare the logs.

A groundwater monitoring well was installed within completed test boring B-2. The well consists of two inch diameter PVC screen and riser pipe, extending from the bottom of the test boring to above the ground surface. The sand pack extends from the bottom of the test boring up to a depth of about 14 feet. A bentonite chip seal was installed above the sand pack, with the remainder of the test boring backfilled with soil cuttings. Additional details regarding the construction of the well are shown on the Monitoring Well Completion Record, included in Appendix A, following test boring log B-2.

2.20 PREVIOUS INVESTIGATIONS

As noted, two previous investigations were completed at the site by SJB and Empire, each including one test boring along with some geotechnical laboratory testing. Test boring B-1 completed in June 2014 was drilled within the limits of the proposed apartment building. Test boring B-1 completed in February 2020 was completed within the southwest corner of the site. The approximate location of these test borings are shown on Figure 2. The test boring logs from the previous investigations, with updated ground surface elevations, are included in Appendix B. Additional information regarding the previous investigations is included in: Empire's July 11, 2014 Subsurface Exploration and Geotechnical Evaluation Report, along with the August 15, 2014 Follow-Up Information letter; and the March 14, 2020 Subsurface Exploration and Geotechnical Evaluation Report.

3.00 SUBSURFACE CONDITIONS

3.10 GENERAL

The subsurface conditions described in the following sections are based on the recently completed test borings B-1 through B-5, and previously completed test borings from 2014 and early 2020. Beneath the topsoil, fill type soils were encountered which extended to depths of about 4 feet to 10 feet. Beneath the fill, the upper indigenous soils consisted of silty clay soils, often containing intermixed organics, which extended to depths of about 18 to 20 feet. The remaining soils consisted of compact to very compact gravels and sands, which extended to the top of Shale bedrock at depths of about 25 to 28 feet. The soil and bedrock stratigraphy encountered along with the groundwater conditions observed are described in more detail below and on the test boring logs in Appendix A and Appendix B.

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3.20 FILL SOILS

Beneath the topsoil, fill type soils were encountered which extended to depths of about 4 to 10 feet. It should be expected that the depth of the fill will vary between and away from the exploration locations, and will be dependent on the original site topography and former limits of Ellicott Creek, prior to site filling and grading. As noted, based on a review of older USGS mapping, it appears Ellicott Creek formerly extended farther to the north than its current location.

The fill soils generally consisted of a reworked mixture of silty clays and sands with varying amounts of gravel and trace to little amounts of organics. Exceptions include: a layer of organic clayey silts encountered from about 4 to 6 feet within the 2014 test boring B-1; a zone of concrete fragments and soils observed within the upper four feet at test boring B-2; and a zone of asphalt fragments and soils observed from about 2 feet to 6 feet within test boring B-5. Trace amounts of glass, slag, concrete, organics, and asphalt were often observed within the fill soils. The Standard Penetration Test (SPT) "N" values obtained within the fill soils ranged from of 5 to "sample spoon refusal" (i.e. more than 50 blows required to advance the sample spoon with six inches or less of penetration). The variable nature of the fill soils, along with the variable relative density/consistency as determined from the SPT "N" values, indicate the fill soils were likely installed in an uncontrolled, non-engineered manner.

3.30 INDIGENOUS SOILS

Beneath the fill soils, and extending to depths of about 18 to 20 feet, the upper indigenous soils consisted of a mixture of silty clays and sands, often containing trace to little amounts of organics. Exception include the 15 to 17 feet deep sample from test boring B-2 which consisted predominately of organics. The silty clays and sands with organic are classified as CL, SC-SM, and OL-CL group soils using the Unified Soil Classification System (USCS). These upper indigenous soils appear to be alluvial deposited soils from Ellicott Creek. The SPT "N" values obtained within these soils ranged from "weight of hammer" (i.e. only the weight of the hammer and rods required to advance the sample spoon) to 8, indicating these soils have a "very soft" to "medium" consistency. Laboratory testing from the first two investigations indicate these soils, at depths shallower than about 12 to 14 feet, had a medium to high plasticity, a moisture content ranging from about 40% to 55%, and an organic content of about 5% to 8%.

Beneath a depth of about 18 to 20 feet, and extending to the top of bedrock at about 25 to 28 feet, the remaining indigenous soils consisted of a mixture of gravels and sands with little to some amounts of silts and clays. These soils are classified as GC-GM and SM group soils using the USCS. The SPT "N" values obtained within these deeper soils ranged from 40 to "sample spoon refusal", indicting the deeper soils have a "compact" to "very compact" relative density.

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3.40 BEDROCK

Recently completed test borings B-1 through B-4, along with test boring B-1 from 2014 and test boring B-1 from early 2020 were drilled through the overburden soils until encountering the top of apparent bedrock, as identified by auger refusal conditions. Following auger refusal within recently completed test borings B-1 and B-4, 8 feet, and 9 feet of rock coring was completed, respectively. The following table summarizes the depth and elevation where the top of bedrock was encountered, as identified by rock coring (C) or auger refusal (AR). At test boring B-4, rock coring was started at 22.0 feet. However, the upper portion of the recovered core consisted of soil, with the top of shale rock starting at a depth of about 24.4 feet.

Approximate Depth and Elevation of Top of Bedrock

Test Boring	Approximate Ground Surface Elevation (feet)	Depth / Elevation of Top of Bedrock (feet)
B-1	582.3	25.2 / 557.1 (C)
B-2	581.1	26.0 / 555.1 (AR)
B-3	579.5	26.5 / 553.0 (AR)
B-4	578.1	24.4 / 553.7 (C)
B-1 (2014)	581 +/-	26.0 / 555.0 (AR)
B-1 (Feb. 2020)	580.0	27.7 / 552.3 (AR)

The bedrock recovered from test borings B-1 and B-4 consisted of brown, medium hard, sound, laminated to thickly bedded, Shale bedrock. The core recoveries ranged from 66% to 100%. The rock quality designation (RQD) values for the first core runs were 21% and 47%, indicating the near surface bedrock has a "very poor" to "poor" rock mass quality. The RQD values for the second core runs were 81% and 85%, indicating the deeper bedrock has a "good" rock mass quality.

3.50 GROUNDWATER

Based on the information summarized below, a general groundwater condition at the time of our investigation appears to exist near a depth of about 10 to 11 feet, or approximate elevation 570 to 571 feet, which is near the water level within Ellicott Creek.

Water level measurements were made in the test borings following the completion of overburden drilling and sampling, and are presented on the test boring logs in Appendix A and Appendix B. At test boring B-3, the depth to water was about 21.5 feet below the ground surface. Within the remaining test borings, no water was observed. Based on the water levels measured within the observation well, as described below, it appears that

groundwater did not have sufficient time to fully accumulate and stabilize in the test holes within the time that had elapsed from the completion of drilling operations and the time of the measurements.

A groundwater observation well was installed within completed test boring B-2. SJB visited the site on August 6th, 2020, at which time the depth to water within the well was about 10.0 feet below the ground surface, correlating to approximate elevation 571 feet. Following the initial measurement, about 5 gallons of water was removed from the well, lowering the water level. SJB returned to the site on September 15th, 2020, at which time the depth to water within the well was about 11.1 feet below the surface, correlating to approximate elevation 570 feet. These depths generally correspond to the depths where the collected soil samples were described as "moist to wet" or "wet".

Some of the shallower samples of fill soils within test borings B-1 and B-5, along with some shallower samples of sandier indigenous soils within test boring B-3 were described as "moist to wet". These conditions could be representative of some perched or trapped groundwater within the more granular or looser fill and indigenous soils, which overlie less permeable indigenous soils. Perched groundwater conditions can be more prevalent following heavy or extended periods of precipitation and during seasonally wet periods. It should be expected that both permanent and perched groundwater conditions could vary with location and with changes in soil conditions, precipitation, seasonal conditions, and fluctuations of the water level within Ellicott Creek.

4.00 GEOTECHNICAL RECOMMENDATIONS

4.10 GENERAL CONSIDERATIONS AND RECOMMENDATIONS

The following general geotechnical considerations and recommendations are provided to assist with planning for the design and construction of the proposed apartment complex. More detailed recommendations are presented in the subsequent sections of this report.

1. Design and construction of the proposed building will be primarily impacted by: the fill soils that extend to depths of 4 to 10 feet; the underlying soft silty clay indigenous soils which also contain organics; and the apparent perched groundwater condition within some of the fill soils and shallower indigenous soils.

2. The fill soils and the underlying silty clay and organic indigenous soils are not suitable for supporting the proposed apartment building using a conventional shallow spread foundation design. These soils are highly compressible and can also subside with time due to decomposition of the organics, resulting in excessive amounts of settlement beneath spread foundations. In addition, the softer silty clay soils are considered marginal for support of spread foundations.

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3. Considering the issues associated with spread foundations, a deep foundation system is recommended for use at this site, which will transfer the building loads through the fill and softer indigenous soils and into the "compact" to "very compact" indigenous soils, first encountered about 18 to 20 feet below the surface. Suitable deep foundation options include: driven pipe piles; helical piles; and drilled, cast-in-place pier foundations (i.e. caissons or drilled shafts).

4. The deep foundation support options will generally eliminate the settlement risks discussed above for spread foundations. However, settlement risks will still remain with regard to the ground level floor, if designed as a conventional slab-on-grade. In order to eliminate all risks associated with a ground level floor constructed over the fill soils and softer indigenous / organic soils, the floor should be constructed as a structural floor supported by a deep foundation system. We understand, however, it may not be economically practical to use a structural floor slab.

   The Owner, therefore, could consider an approach of removing a portion of the existing fill and provide some additional Subbase Stone, along with a heavy duty stabilization geotextile and geo-grid reinforcement beneath the slab-on-grade construction. This will provide for a stiffer subgrade and reduce some of the differential settlement effects, if it were to occur. There are some uncertainties with this approach, such as the potential for some long-term differential settlement, resulting from unidentified zones of unsuitable fill soils or buried organics.

   If the Owner is willing accept these risks, then we would recommend the following be implemented as minimum requirements for constructing the slab-on-grade over the existing fill soils.

   - The existing fill subgrades should be thoroughly compacted and properly proof rolled, evaluated, and prepared in accordance with our recommendations provided in Section 4.90.6.
   - Any deleterious materials, such as organics, very soft soils, construction debris, etc., which are present within the fill soils at the bottom of the subgrade excavation, should be further undercut, removed, and replaced with additional Subbase Stone.
   - The slab-on-grade floor should be constructed over a minimum 24-inch thick layer of compacted Subbase Stone / Structural Fill, that is separated from the fill soils with a suitable stabilization/separation geotextile. The Structural Fill layer should also be reinforced with two separate layers of geo-grid.
   - Additional steel reinforcing within the floor slab should be considered to help further bridge and reduce the risks of any differential subsidence effects, should they occur.

5. The installation of new fill, necessary to raise the site grades within the proposed building will result in some settlement within the fill soils and softer zones of indigenous soils, which could induce some drown drag forces on the deep foundations. Accordingly, the amount of new fill installation should be limited and be completed at least 2 to 3 months prior to the installation of the deep foundations.

6. Excavations to construct the pile caps and elevator pit could encounter some perched groundwater. Appropriate dewatering measures should be implemented to allow for construction to proceed in the dry. Undercutting the subgrade soils by about 12 to 18 inches and replacing them with Structural Fill should be considered, to provide a firm and stable working surface for construction of the pile caps, grade beams, and elevator pit.

7. Based on the subsurface conditions encountered, the site can be classified as Seismic Site Class "D" in accordance with the criteria in the New York State Building Code.

4.20 DRIVEN PIPE PILES

A driven, closed end pipe pile, is recommended for use at the site due to its lager end bearing area, compared to an H-pile. The steel pipe pile should have a yield strength of at least 50 ksi, and should have a minimum wall thickness of 0.25 inches. A steel cap plate should be used to close the end of the pile. The perimeter of the cap plate should be flush with the outer surface of the pipe pile. Driving the pipe piles open ended is not recommended. Following driving and acceptance, the pipe pile should be filled with concrete or be capped, as determined by the Structural Engineer.

The pile foundations should be driven to practical refusal, into the "compact" to "very compact" gravel and sand soils, first encountered about 18 to 20 feet below the surface. A pipe pile driven to practical refusal can be designed for an allowable axial capacity equal to 25% of the pile yield strength or 12.5 kips per square inch (ksi), whichever is less, times the cross sectional area of the pile.

Based on the above design criteria, an 8.625 inch diameter pipe pile section (Grade 50 steel), with a wall thickness of 0.25 inches and a cross sectional area of 6.6 in^2, would provide an allowable axial compressive capacity of about 41 tons per pile. The pile, however, should be driven and tested for an ultimate capacity of 82 tons. The ultimate test capacity assumes a Factor of Safety of 2.0, as required by the Building Code of New York State.

Other pipe pile sections could also be used, based on current product availability, to obtain different allowable axial capacities, provided the same design criteria as outlined above is used.

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Pile foundations driven to practical refusal within the "compact" to "very compact" gravel and sand soils, are expected to undergo insignificant total settlement, when designed and constructed in accordance with our recommendations. Driven piles should be spaced a minimum of 3 pile widths apart, or three feet, whichever is greater. At this spacing, no group reduction factor is considered necessary. All exterior pile caps and grade beams for driven pile foundations should be embedded a minimum of 4 feet below final exterior grades for frost protection.

At least 3 random piles should be dynamically tested to confirm that the pile capacity has been obtained with an adequate factor of safety (i.e. Factor of Safety of 2.0 or greater as required by the Building Code of New York State).

It is possible that obstructions could be encountered within the fill soils. Such obstructions will hinder and impact the installation of the driven piles, and therefore should be anticipated and addressed as appropriate by the pile driving contractor. Accordingly, some pre-excavation and removal of these materials may be necessary for the proper installation of the piles.

4.30 HELICAL PILES

Helical piles, often referred to as "screw piles", bearing within the "compact" to "very compact" gravel and sand soils, first encountered about 18 to 20 feet below the surface, can be used for supporting the proposed building. Helical piles consist of a steel plate formed into the shape of a helix (one pitch of a screw thread) attached to a steel shaft. Installation is accomplished by applying torque to the shaft and screwing the pile into the soil. During the installation, the torque is measured as a correlation to the design capacity.

We recommend a performance specification for the helical piles be developed (i.e. required compressive and uplift capacities). The helical pile installation contractor can then provide a suitable design and installation procedure. Variables will include the diameter of the helical plate, the use of multiple plates, embedment length, number of piles, grouting or no grouting, etc. A New York registered Professional Engineer should prepare the helical pile design.

Preliminarily, helical piles designed to bear at a depth of about 20 feet, can be designed based on an allowable end bearing capacity of 15 kips per square foot (psf). Accordingly, a 14 inch diameter helix (end area of 1.07 square feet) would be expected to develop an allowable axial capacity of about 16 kips per pile. The actual design, however, should be completed by the contractor based on the performance specification developed for the project. Exterior grade beams and pile caps should be embedded a minimum of 4 feet for frost protection.

Due to the potential for the accumulation of perched or trapped groundwater within the fill soils, and the potential flooding events, we recommend the design groundwater elevation be assumed to exist at the ground surface.

At least one load test should be completed for each helical pile type to confirm the design capacity has been obtained with an adequate factor of safety (i.e. Factor of Safety of 2.0 or greater). The load test data should be correlated to the installation torque to provide acceptance criteria for the production piles. Based on the testing results, the actual production helical pile lengths may vary and therefore such contingencies should be planned for in the installation contracts.

4.40 DRILLED PIERS

Drilled pier foundations, if used, should bear within the "compact" to "very compact" gravel and sand soils, first encountered about 18 to 20 feet below the surface. We recommend the drilled piers bear at least 2 to 3 feet into the gravel and sand soils. Therefore, the drilled piers should bear at an elevation of about 559 to 560 feet, in order to develop adequate end bearing capacity. All drilled pier foundation construction should be monitored by qualified geotechnical personnel, to ensure the drilled piers are bearing on suitable indigenous soil bearing subgrades.

The drilled pier foundations can be sized based on a maximum net allowable end bearing capacity of 15 kips per square foot. In all cases, a minimum pier diameter of 30 inches is recommended. The piers will need to be sized based on the actual column and wall loads as determined by the designer.

Drilled piers should be spaced no closer than 3 pier diameters, center to center. Exterior grade beams and pier caps for a drilled pier foundation system should be embedded a minimum of 4 feet for frost protection. It is estimated that drilled pier foundations sized and properly constructed in accordance with our recommendations above will undergo a total settlement of less than ½ inch.

4.50 ELEVATOR PIT

As noted, a general groundwater condition is expected near elevation 570 feet to 571 feet, or about 10 to 11 feet below the existing surface. However, due to the potential for the accumulation of perched or trapped groundwater within the fill soils, and the potential flooding events, we recommend the groundwater conditions be assumed to exist at the ground surface. Accordingly, the below grade elevator pit walls, should be constructed with perimeter foundation drains to intercept any groundwater that may tend to collect against the walls, and the walls should be properly damp proofed. As an alternative, the walls could be designed to resist full hydrostatic pressures acting on the structure walls and bottom slab, and be designed as a fully waterproofed structure.

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The elevator pit walls should be designed to resist "at rest" lateral earth pressures generated by the earth backfill and any temporary or permanent surcharge loads, based on the soil parameters below. These parameters are based on the wall backfill consisting of Structural Fill, as described in Appendix C. In addition, perimeter exterior foundation drains should be incorporated in the design where the walls are designed for relieved hydrostatic pressures (i.e. drained conditions).

Where a foundation drainage system is not used, the walls should be designed to resist the hydrostatic pressures as well as the lateral earth pressures acting the walls. In this case, the lateral earth pressure should be computed based on a submerged soil unit weight. In addition, the floor / bottom slab must be designed to resist the hydrostatic uplift pressure acting on it, and the depressed structure should also be fully water proofed.

Recommended Soil Parameters for Elevator Pit Wall Design

- Coefficient of "At-Rest" Lateral Earth Pressure – 0.47
- Angle of Internal Friction – 32 Degrees
- Moist Unit Weight of Soil – 140 pcf
- Submerged or Buoyant Unit Weight of Soil – 80 pcf
- Surcharge Load Lateral Coefficient – 0.50

4.60 SLAB-ON-GRADE FLOOR

4.60.1 Floor Slab with Thickened Subbase

As discussed in Section 4.10, the ground level floor can be constructed as a slab-on-grade over the existing fill soils, provided the Owner is willing to accept the risks associated with this option. These risks include the potential for some on-going, long-term settlement, and unpredictable differential settlement, because of the variable composition and density of the fill, and potentially other undetected areas of unsuitable fill soils (i.e. organics, wood, etc.).

The existing fill soil subgrades should be thoroughly compacted and properly prepared and evaluated in accordance with our recommendations in Section 4.906 prior to placement of the geotextile and Subbase Stone material. A minimum of 24 inches of Subbase Stone should be placed beneath the slab-on-grade floor. A suitable stabilization/separation geotextile, such as Mirafi 600X, should be placed over the prepared subgrades and a geo-grid reinforcement such as a TriAx TX160, should be placed over the geotextile, prior to installation of the first lift of Subbase Stone. An additional layer of geo-grid should be installed after the first 12-inches of Structural Fill has been installed.

The slab-on-grade floors can be designed using a modulus of subgrade reaction of 200 pounds per cubic inch at the top of the 24 inches of Subbase Stone. Additional steel reinforcing within the floor slab should be considered to help further bridge and reduce the risks of any differential subsidence effects, should they occur.

It is understood the finished floor grade will be established above the surrounding exterior grades. Therefore, the use of a moisture barrier does not appear warranted, unless otherwise recommended by the finished flooring manufacturer. It is recommended that the slab-on-grade be constructed such that it floats on the subbase and subgrades, and is not structurally connected to or resting directly on, perimeter walls or column footings, in order to limit differential settlement effects, unless the slab / wall or column interface is designed with sufficient reinforcement to bridge potential differential settlement effects at these interfaces.

4.60.2 Structural Floor Slab

As discussed in Section 4.10, the floor system could also be designed as a structural slab supported by the selected deep foundation system. Although potentially more costly, a structural floor slab will negate the settlement risks associated with constructing the floor over the fill soils.

If the floor is structurally supported, it is recommended a minimum of 6 inches Subbase Stone material be placed beneath the structural slab to provide a suitable working surface to construct the slab. It is understood the finished floor grade will be established above the surrounding exterior grades. Therefore, the use of a moisture barrier does not appear warranted, unless otherwise recommended by the finished flooring manufacturer.

We note that the above subbase stone thickness is not adequate for carrying construction vehicle loads. Therefore, it may be desirable for the Contractor to temporarily increase the Subbase Stone thickness within the building pad area to provide a suitable working surface to stage the construction, carry construction vehicle loads and protect the underlying subgrades. This will be particularly important if construction proceeds during seasonally wet periods. The additional subbase stone material could then be removed and re-graded in preparation for the actual floor construction and re-used as foundation backfill, pavement subbase, or as otherwise determined appropriate.

4.70 SEISMIC DESIGN CONSIDERATIONS

Based on the subsurface conditions encountered in the test borings, the project site can be classified as Seismic Site Class "D" in accordance with ASCE 7-16, Table 20.3-1, as referenced in the 2020 Building Code of New York State. Therefore, seismic design can be based on this seismic site classification.

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The spectral response accelerations at the project site were obtained by Empire using the SEAOC / OSHPD web site application https://seismicmaps.org/. Using the site location, the spectral response accelerations are 0.170g for the short period (0.2 second) response (S_S) and 0.045g for the one second response (S_1). For design purposes, these spectral response accelerations must be adjusted for the Seismic Site Class "D" soil profile determined for the project site.

Accordingly, the adjusted spectral response accelerations for Site Class "D" are as follows:

- Short Period Response (S_{MS}) - 0.272g
- 1 Second Period Response (S_{M1}) - 0.109g

The corresponding five percent damped design spectral response accelerations (S_{DS} and S_{D1}) are as follows:

- S_{DS} - 0.181g
- S_{D1} - 0.072g

4.80 PAVEMENT DESIGN AND CONSTRUCTION

4.80.1 Pavement Design

Pavement construction should include: removal of the existing topsoil and organic soils; excavation of the subgrade soils as necessary to establish the pavement profile grade; preparation of the exposed subgrades (i.e. drying, compaction and proof-rolling); installation of subgrade fill (i.e. Suitable Granular Fill), if necessary to raise site grades; and placement of the geotextile, pavement subbase course, and asphalt pavement.

Pavement design recommendations are provided for a Medium Duty Asphalt Concrete Pavement section. The pavement section recommended assumes that the subgrades will be prepared as described in Section 4.90.6.

Medium Duty Asphalt Concrete Pavement

- 1.5 inches - Top Course
- 3.0 inches - Binder Course
- 12 to 15 inches - Subbase Course*
- Geotextile

*It is recommended the subbase course thickness be increased to 15 inches in the entrance / exit areas, which will be subject to more frequent and heavier loads. Also, it may be necessary to increase the subbase thickness in some areas to improve subgrade conditions and to promote drainage to underdrains, as discussed below.

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Materials for the above pavement structure components should consist of the following:

A. Asphalt Concrete Top Course - NYSDOT Standard Specifications, Hot Mix Asphalt, 9.5 F3 Top Course.

B. Asphalt Concrete Binder Course - NYSDOT Standard Specifications, Hot Mix Asphalt, 19 F9 Binder Course.

C. Subbase Course – Should comply with NYSDOT Standard Specifications, Item No. 304.12 - Type 2 Subbase, as described in Appendix C.

D. Geotextile - Woven polypropylene stabilization/separation geotextile (i.e., Mirafi 600X or approved suitable equivalent).

4.80.2 Pavement Drainage

The installation of underdrains or edge drains are recommended to drain the pavement subbase course within any low points, in order to limit the potential for frost action and improve pavement structure performance and design life. Alternatively, the pavement subbase course can also be allowed to daylight/drain to an adjacent perimeter drainage swale. This could be accomplished by raising the pavement grade. Drainage of the pavement subgrades can be achieved by grading the subgrade to a slope of at least 2 percent to allow drainage to the underdrains or drainage swale.

Underdrains, if used, should include a geotextile (i.e. Mirafi 160N or suitable equivalent), selected considering drainage and filtration, installed around drainage stone surrounding a slotted or perforated drain pipe. The drainage stone should be sized in accordance with the pipe slotting or perforations. A crushed aggregate (½-inch washed gravel or stone) is generally acceptable for slotted underdrain pipe. The underdrain pipes should be set in the bottom of the subbase layer, or preferably below the top of the soil subgrade elevation. The drainage stone and surrounding geotextile should extend above the underdrain pipe and into the subbase layer. Underdrain pipes should be connected to the site storm water drainage system.

4.80.3 Pavement Construction

Placement of the pavement Subbase course can proceed, following proper subgrade preparation and subgrade filling. Installation of adjacent geotextile panels should have minimum overlap of 12 to 18 inches. The Subbase Stone should be placed and compacted in accordance with the recommendations in Appendix C. Construction of the Asphalt Concrete Pavement should be performed in accordance with NYSDOT Standard Specification Section 400. The Binder and Top Course compaction / evaluation should comply with NYSDOT Standard Specifications – 80 Series Compaction procedures, as a minimum, or as otherwise required by the jurisdictional agency. In addition, placement of asphalt concrete courses should not be permitted on wet or snow covered surfaces or when the subgrade surface is less than 40° F.

4.90 SITE PREPARATION AND CONSTRUCTION

4.90.1 Construction Dewatering

Construction dewatering will be required for surface water control and for excavations which encounter groundwater conditions. A general groundwater condition is expected near the water level within Ellicott Creek, which will not likely be encountered within the relatively shallow pile cap excavations, but will be encountered within any drilled pier excavations. As noted, there appears to be some shallower zones of perched or trapped groundwater within some of the fill soils and shallower zones of sandier indigenous soils, which could be encountered within the pile cap excavations, or excavations to construct the elevator pit.

Water should be diverted away from the work areas and should be prevented from accumulating on exposed subgrades. Exposed soil subgrades will be susceptible to strength degradation in the presence of excess moisture. It is anticipated that diversion berms and proper site grading will be sufficient to control surface water.

Groundwater conditions, when encountered, should be depressed at least 1 to 2 feet below the excavation bottom. It is anticipated that sump and pump methods of dewatering will be sufficient to control perched groundwater conditions, should it be encountered within the fill soils or sandier indigenous soils. Surface water and groundwater dewatering plans should include implementation of measures to control erosion, sedimentation and the migration of soil fines.

4.90.2 Driven Pile Construction and Testing

The pipe piles should be driven using a hammer producing a suitable energy to obtain the desired ultimate capacity, yet not overstress the pile. Pile stresses should not exceed 85% of the pile yield stress. The appropriate hammer and driving criteria should be determined by the pile installation contractor through the use of the wave equation, based on the actual pile hammer and cushions that will be used for the project. If the wave equation analysis indicates that the pile may be overstressed during driving then the contractor should select an alternate hammer/cushion arrangement, which will not overstress the pile.

At least three random piles, across the limits of the site, should be dynamically tested in accordance with *ASTM D 4945 – Standard Test Method for High Strain Dynamic Testing of Piles* to confirm the driving criteria and to evaluate that the allowable pile capacity has been obtained with an adequate factor of safety (i.e. Factor of Safety of 2.0 or greater). The dynamic testing should be performed prior to installation of the production piles. The test piles may be used as production piles provided the test data is acceptable. The results of the dynamic testing should include an evaluation to simulate static load testing.

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The wave equation results, pile installation records and the results of the dynamic testing should be evaluated to confirm the design capacity and to possibly refine the driving criteria and pile lengths if determined necessary. It should be understood that the pile capacity provided was estimated using conventional static analyses based on engineering interpretation of the conditions disclosed by the test borings. Variations in soil conditions may occur, which can impact the actual pile installation requirements. Therefore, it is recommended that the contract documents contain provisions to make adjustments in the actual pile lengths required, should the installation conditions and field testing dictate such changes.

A qualified individual should observe all pile driving and should prepare an individual pile driving report for each pile installed. The report should include, pile number and location, hammer and cushion types, pile size and material, installed length, blows per foot, unusual conditions encountered during driving, top of pile elevation following driving and notes on any necessary re-striking.

Installed piles should be monitored for potential heaving during installation of adjacent piles. Any piles which heave should be re-driven and reseated as appropriate. Plumbness of the piles should be maintained within 1% of the total length. Any misaligned or damaged piles should be replaced. Following driving the inside of the pipe pile should be inspected, before concreting or capping, to assure that no damage occurred during driving. Any damaged piles should be removed and replaced.

4.90.3 Helical Pile Construction

Helical piles should be installed by a qualified and experienced contractor. The helical piles should be installed in a smooth continuous manner, with sufficient pressure to advance the helical piles. Alignment of the helical piles should be maintained within 1% of the total length. At least one load test should be completed to determine the helical pile capacity has been obtained with an adequate factor of safety (i.e. Factor of Safety of 2.0 or greater).

A correlation, using the torque during installation and the load testing data should be used to confirm subsequent helical piles are installed to two times the allowable design load. A qualified individual should observe the helical pile installation and prepare a report summarizing the installation process, load testing results, torque during installation, length of pile, etc.

4.90.4 Drilled Pier Foundation Construction

The drilled pier foundation construction is expected to encounter groundwater conditions near a depth of about 10 feet. Shallower zones of perched groundwater within the fill soils could also be encountered. Dewatering should be implemented as necessary to lower the groundwater within the drilled pier excavation casing in order to observe the pier excavation bottom and evaluate the bearing subgrade surface, and to allow construction in-the-dry.

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Alternatively, procedures for constructing the drilled piers below the groundwater elevation, can be implemented. However, there is less control during construction in-the-wet, and therefore, there may be greater risk associated with this construction procedure. If this method is used, the hole must be stabilized and the concrete must be placed in a manner that displaces slurry/water from the hole, such as a tremie method. It is recommended that the drilled piers be constructed only by a Contractor, who is qualified and experienced in such construction methods. In both cases the installation of temporary casing during drilling will be necessary to prevent the sloughing of the softer fill soils and indigenous soils into the excavations.

Initially, the excavation should extend to the proposed bearing grade. Loose soil should be removed from the bearing surface. The final bearing surface should be level or near level. Plumbness of the pier should be maintained within 1% of the total length. Casing removal during concrete placement should proceed in a manner that prevents or reduces to the extent possible, surrounding soil and water from protruding into the space that will be occupied by concrete. Qualified and experienced geotechnical personnel should monitor the drilled pier construction.

4.90.5 Excavation for Grade Beams and Pile Caps

Excavation for the pile caps and grade beams should be performed using a method, which reduces disturbance to the subgrade soils, such as a backhoe equipped with a smooth blade bucket. As noted, consideration should be given to undercutting the subgrade soils by about 12 to 18 inches and replacing them with Structural Fill, as described in Appendix C, to provide a firm and stable working surface.

Subgrades should be protected from precipitation and surface water. Water should not be allowed to accumulate on the soil subgrades and the subgrades should not be allowed to freeze, either prior to or after construction of foundations. If subgrades are not protected and degrade, they must be undercut/removed accordingly.

Excavations should be backfilled as soon as possible and prior to construction of the superstructure. It is recommended that the excavations be backfilled with a Structural Fill, as described in Appendix C.

4.90.6 Subgrade Preparation for Slab-on-Grade and Pavement Areas

The site preparation work should be performed during seasonally dry periods to minimize potential degradation of the subgrade soils and undercuts which may be required to establish a stable base for construction. It should be understood that the silty clay fill soils encountered at the site are sensitive and can degrade and lose strength when they are wet and disturbed by construction equipment traffic. Accordingly, efforts should be made to

maintain the subgrades in a dry and stable condition at all times, and minimize construction traffic directly over these soils. These efforts could include:

- Installation of drainage swales and underdrains (i.e. "French drains") to intercept and divert surface runoff and groundwater away from the construction areas;
- Proper grading and sloping of the subgrade and "sealing" of the surface with a smooth drum roller, at the end of each day or when rain is anticipated to promote runoff; and
- Restricting construction equipment traffic from traveling directly over the subgrade surfaces, especially when they are wet. Any subgrades, which become damaged, rutted or unstable should be undercut and repaired as necessary prior to placement of the overlying fill courses.

Existing trees, stumps, vegetation, topsoil, organic soils, soft or loose soils, and any other deleterious materials within the proposed slab-on-grade and pavement areas should be removed. Following stripping of the surface materials and any required excavation to the proposed subgrades, the exposed subgrades should be allowed to dry, as necessary, and then be thoroughly compacted/densified and then proof-rolled.

The subgrade compaction and proof-rolling should be performed prior to any required fill placement, using a vibratory smooth drum roller weighing at least 10 tons. The roller should be operated in the vibratory mode for compacting the subgrades and in the static mode for proof rolling. The roller should complete at least four passes over the exposed subgrades for the compaction/densification operation and at least two passes for the proof rolling evaluation.

The subgrade compaction and proof-rolling should be done under the guidance of, and observed by, a representative of Empire. Any areas, which appear wet, loose, soft, unstable or otherwise unsuitable, should be undercut. Over excavation, which may be required as the result of the proof-rolling, should be performed based on evaluation of the conditions by Empire. Resulting over-excavations should be backfilled with controlled Structural Fill. The placement of an initial lift of oversized stone fill material (i.e. "surge stone", "shot rock", etc.) encased in stabilization geotextile top and bottom, may be necessary in some cases to help stabilize the subgrades.

During construction, the Contractor should take precautions to limit construction traffic over the soil subgrades. Any subgrades, including existing soil subgrades or fill subgrades, which become damaged, rutted or unstable should be undercut and repaired as necessary prior to placement of the Subbase Stone.

Suitable Granular Fill, as described in Appendix C, can be used to raise the site grades beneath the Subbase Stone course for the slab-on-grade and pavement construction. The use of the on-site soils to raise site grades is not recommended as it is expected to be more difficult to obtain acceptable compaction and maintain stable fill subgrades (i.e. free of rutting and pumping conditions), due to its inherent finer grained composition and organic

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content. Placement of subgrade fill (Suitable Granular Fill), to raise site grades, should be observed and tested by a construction materials testing company. It is recommended that utility trenches located within pavement areas be backfilled with controlled Structural Fill.

5.00 CONCLUDING REMARKS

This report was prepared to assist in the design and construction of the proposed Elysium Apartment Complex, planned at 2160 North Forest Road, within the Town of Amherst, New York. The report has been prepared for the exclusive use of Postwork Capital, Buffalo Automation, Silvestri Architects, PC, and other members of the project design team, for specific application to this site and this project only.

The site information and recommendations were prepared based on Empire's understanding of the proposed project, as described herein, and through the application of generally accepted soils and foundation engineering practices. Empire should be consulted with any questions regarding the interpretation of the findings of our work, and/or the geotechnical considerations and recommendations presented. In addition, the recommendations presented are provided as guidance to the designer and should not be considered a project specification. No warranties, expressed or implied are made by the conclusions, opinions, recommendations or services provided.

Empire should be informed of any changes to the planned project so that it may be determined if any modifications to the information presented in this report are necessary. Empire and / or its designated representative should also be retained to review final plans and specifications and to monitor the foundation and site work construction to verify that the recommendations were properly interpreted and implemented.

Additional information regarding the use and interpretation of this report is presented in Appendix D.

Respectfully Submitted:

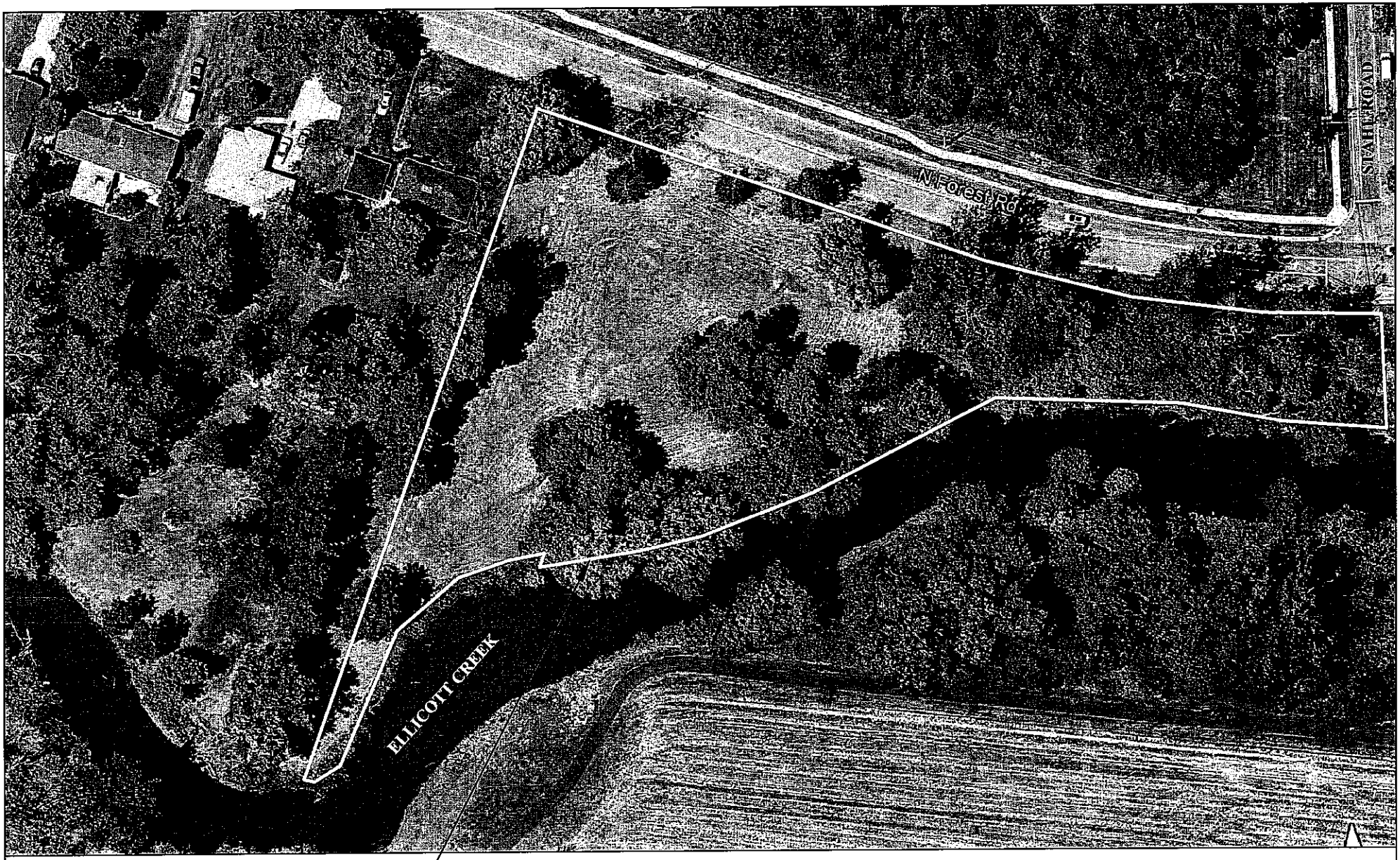
WMA Engineering DPC
dba Empire Geotechnical Engineering Services

Thomas R. Seider, P.E.
Senior Geotechnical Engineer

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FIGURES



APPROXIMATE SITE LOCATION

N

WMA ENGINEERING DPC|DBA
EMPIRE GEOTECHNICAL
ENGINEERING SERVICES

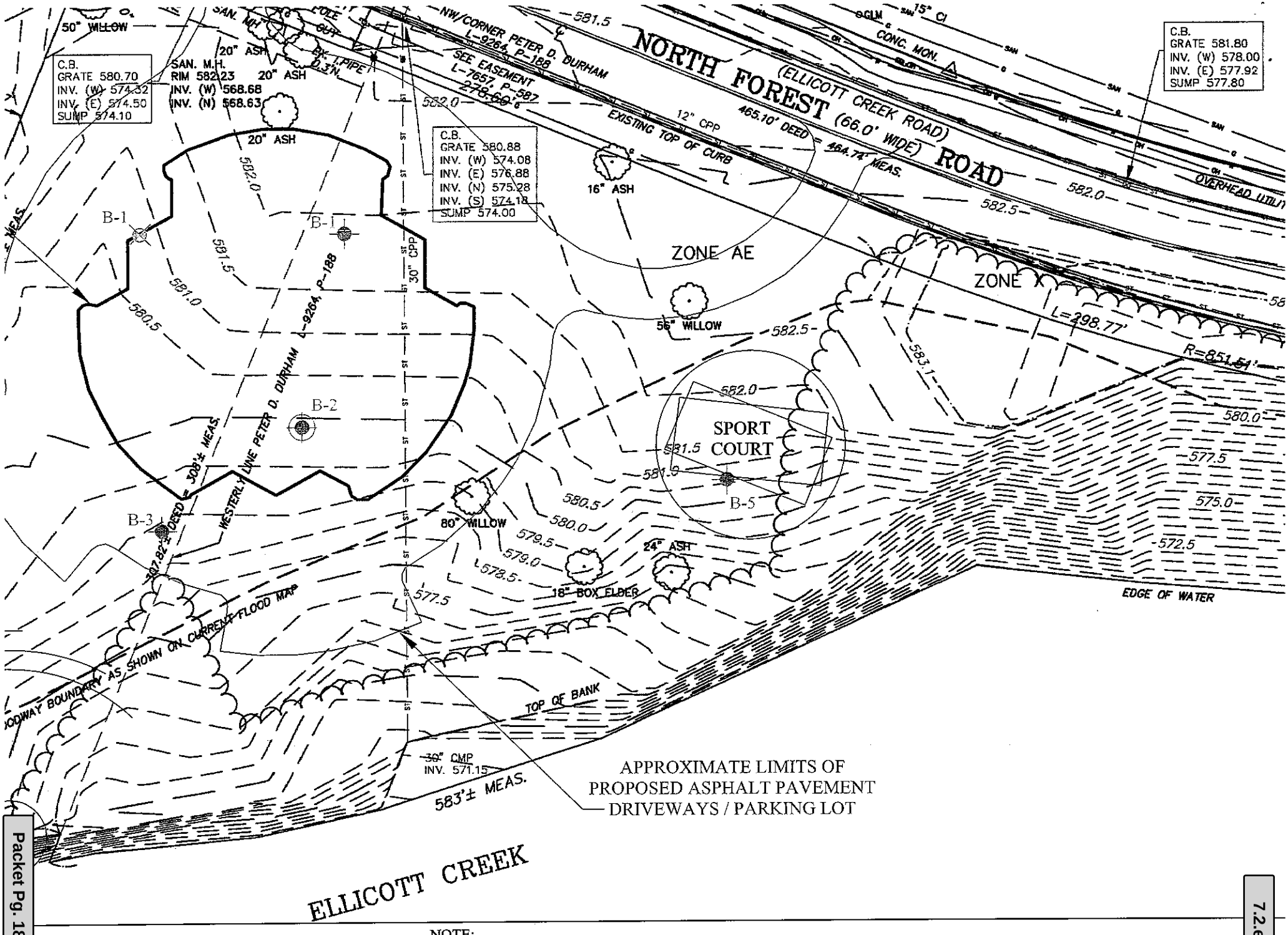
PROPOSED ELYSIUM APARTMENT COMPLEX
2160 NORTH FOREST ROAD
TOWN OF AMHERST, NEW YORK

DR BY: WMA	SCALE: NTS	PROJECT NO.: WB-20-105

NOTE:

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NOTE:

N B-1 INDICATES APPROXIMATE LOCATION AND DESIGNATION OF TEST BORING

FIGURE DEVELOPED FROM JUNE 24, 2014

PROPOSED ELVS

Packet Pg. 182

7.2.e

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APPENDIX A

SUBSURFACE EXPLORATION LOGS

Recently Completed Test Borings
July 2020 (B-1 through B-5)

GENERAL INFORMATION & KEY TO SUBSURFACE LOGS

The Subsurface Logs attached to this report present the observations and mechanical data collected by the driller at the site, supplemented by classification of the material removed from the borings as determined through visual identification by technicians in the laboratory. It is cautioned that the materials removed from the borings represent only a fraction of the total volume of the deposits at the site and may not necessarily be representative of the subsurface condition between adjacent borings or between the sampled intervals. The data presented of the Subsurface Logs together with the recovered samples provide a basi for evaluating the character of the subsurface conditions relative to the project. The evaluation must consider all the recorded details and their procedures to more accurately evaluate the subsurface conditions. Any evaluation of the contents of this report and recovered samples must be performed by qualified professionals. The following information defines some of the procedures and terms used of the Subsurface Logs to describe the conditions encountered, consistent with the numbered identifiers shown o the Key opposite this page.

1. The figures in the Depth column define the scale of the Subsurface Log.
2. The Samples column shows, graphically, the depth range from which a sample was recovered. See Table I for descriptions of the symbols used to represent the various types of samples.
3. The Sample No. is used for identification on sample containers and/or Laboratory Test Reports.
4. Blows on Sampler – shows the results of the "Penetration Test", recording the number of blows required to drive a split spoon sampler into the soil. The number of blows required for each six inches is recorded. The first 6 inches of penetration is considered seating drive. The number of blows required for the second and third 6 inches of penetration is termed the penetration resistance,
5. Blows on Casing – Shows the number of blows required to advance the casing a distance of 12 inches. The casing size, hammer weight, and length of drop are noted at the bottom of the Subsurface Log. If the casing is advanced by means other than driving, tl method of advancement will be indicated in the Notes column or under the Method of Investigation at the bottom of the Subsurfac Log. Alternatively, sample recovery may be shown in this column or other data consistent with the column heading.
6. All recovered soil samples are reviewed in the laboratory by an engineering technician, geologist, or geotechnical engineer, unless noted otherwise. Visual descriptions are made on the basis of a combination of the driller's field descriptions and noted observatio together with the sample as received in the laboratory. The method of visual classification is based primarily on the Unified Soil Classification System (ASTM D 2487) with regard to the particle size and plasticity (See Table No. II), and the Unified Soil Classification System group symbols for the soil types are sometimes included with the soil classification. Additionally, the relative portion, by weight, of two or more soil types is described for granular soils in accordance with "Suggested Methods of Test for Identification of Soils" by D.M. Burmister, ASTM Special Technical Publication 479, June 1970. (See Table No. III). Description o the relative soil density or consistency is based upon the penetration records as defined in Table No. IV. The description of the soil moisture is based upon the relative wetness of the soil as recovered and is described as dry, moist, wet, and saturated. Water introduced into the boring either naturally or during drilling may have affected the moisture condition of the recovered sample. Special terms are used as required to describe soil deposition in greater detail; several such terms are listed in Table V. When sampling gravelly soils with a standard two inch diameter split spoon, the true percentage of gravel is often not recovered due to tl relatively small sampler diameter. The presence of boulders and large gravel is sometimes, but not necessarily, detected by an evaluation of the casing and sampler blows or through the "action" of the drill rig as reported by the driller.
7. Rock description is based on review of the recovered rock core and the driller's notes. Frequently used rock classification terms a included in Table VI.
8. The stratification lines represent the approximate boundary between soil types and the transition may be gradual. Solid stratification lines delineate apparent changes in soil type, based upon review of recovered soil samples and the driller's notes. Dashed lines convey a lesser degree of certainty with respect to either a change in soil type or where such change may occur.
9. Miscellaneous observations and procedures noted by the driller are shown in this column, including water level observations. It is important to realize the reliability of the water level observations depends upon the soil type (water does not readily stabilize in a hole through fine grained soils), and that any drill water used to advance the boring may have influenced the observations. The ground water level will fluctuate seasonally, typically. One or more perched or trapped water levels may exist in the ground seasonally. All the available readings should be evaluated. If definite conclusions cannot be made, it is often prudent to examine th conditions more thoroughly through test pit excavations or groundwater observation wells.
10. The length of core run is defined as the length of penetration of the core barrel. Core recovery is the length of core recovered divided by the core run. The RQD (Rock Quality Designation) is the total length of pieces of NX core exceeding 4 inches divided b the core run. The size core barrel used is also noted in the Method of Investigation at the bottom of the Subsurface Log.

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

DATE

STARTED _____

FINISHED _____

SHEET ____ OF ____

SJB SERVICES, INC. SUBSURFACE LOG

PROJ. No. _____

HOLE No. _____

SURF. ELEV. _____

G.W. DEPTH _____

PROJECT _____ LOCATION _____

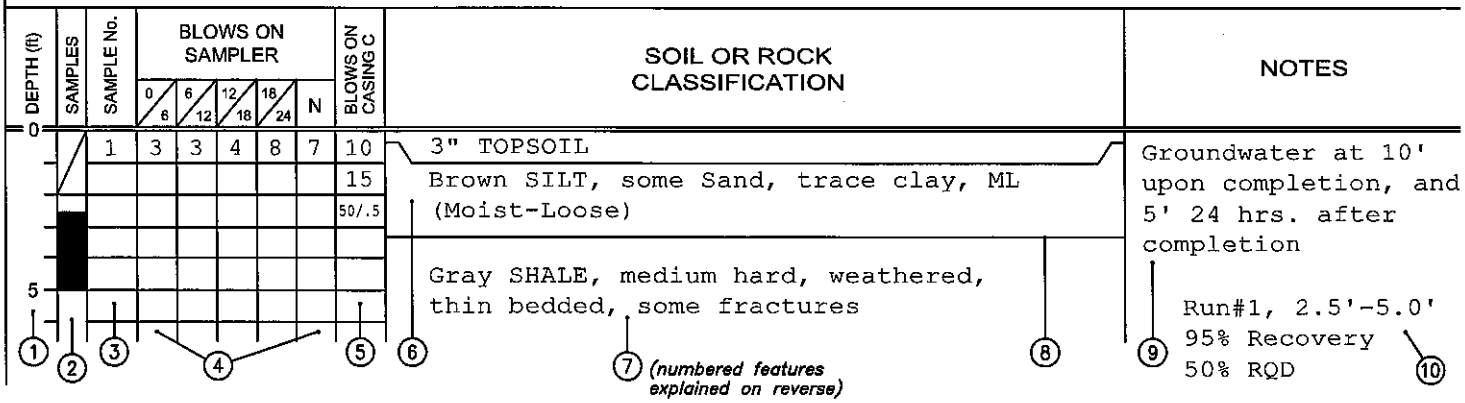


TABLE I

⁄	Split Spoon Sample
▮	Shelby Tube Sample
⊠	Geoprobe Macro-Core
▯	Auger or Test Pit Sample
■	Rock Core

TABLE II

Identification of soil type is made on basis of an estimate of particle sizes, and in the case of fine grained soils also on basis of plasticity.

Soil Type	Soil Particle Size	
Boulder	>12"	Coarse Grained (Granular)
Cobble	3" - 12"	
Gravel - Coarse	3" - 3/4"	
- Fine	3/4" - #4	
Sand - Coarse	#4 - #10	
- Medium	#10 - #40	
- Fine	#40 - #200	
Silt - Non Plastic (Granular) Clay - Plastic (Cohesive)	<#200	Fine Grained

TABLE III

The following terms are used in classifying soils consisting of mixtures of two or more soil types. The estimate is based on weight of total sample.

Term	Percent of Total Sample
"and"	35 - 50
"some"	20 - 35
"little"	10 - 20
"trace"	less than 10

(When sampling gravelly soils with a standard split spoon, the true percentage of gravel is often not recovered due to the relatively small sampler diameter.)

TABLE IV

The relative compactness or consistency is described in accordance with the following terms:

Granular Soils		Cohesive Soils	
Term	**Blows per Foot, N**	**Term**	**Blows per Foot, N**
Very Loose	0 - 4	Very Soft	0 - 2
Loose	4 - 10	Soft	2 - 4
Firm	10 - 30	Medium	4 - 8
Compact	30 - 50	Stiff	8 - 15
Very Compact	>50	Very Stiff	15 - 30
		Hard	>30

(Large particles in the soils will often significantly influence the blows per foot recorded during the penetration test)

TABLE V

Varved	Horizontal uniform layers or seams of soil(s).
Layer	Soil deposit more than 6" thick.
Seam	Soil deposit less than 6" thick.
Parting	Soil deposit less than 1/8" thick.
Laminated	Irregular, horizontal and angled seam and partings of soil(s).

TABLE VI

Rock Classification Term		Meaning
Hardness	- Soft	Scratched by fingernail
	- Medium Hard	Scratched easily by penknife
	- Hard	Scratched with difficulty by penknife
	- Very Hard	Cannot be scratched by penknife
Weathering	- Very Weathered	Judged from the relative amounts of disintegration, iron staining, core recovery, clay seams, etc.
	- Weathered	
	- Sound	

Rock Classification Term		Meaning	
Bedding	- Laminated	(<1")	Natural breaks in Rock Layers
	- Thin Bedded	(1" - 4")	
	- Bedded	(4" - 12")	
	- Thick Bedded	(12" - 36")	
	- Massive	(>36")	

(Fracturing refers to natural breaks in the rock oriented at some angle to the rock layers)

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

DATE:
START 7/23/2020
FINISH 7/23/2020
SHEET 1 OF 1

SJB SERVICES, INC.
SUBSURFACE LOG

HOLE NO. B-1
SURF. ELEV 582.3'
G.W. DEPTH See Notes

PROJECT: PROPOSED ELYSIUM APARTMENT COMPLEX
PROJ. NO.: BE-20-105
LOCATION: 2160 NORTH FOREST ROAD
AMHERST, NY

DEPTH FT.	SMPL NO.	BLOWS ON SAMPLER 0/6	6/12	12/18	N	SOIL OR ROCK CLASSIFICATION	NOTES
	1	2	4			TOPSOIL	Driller noted topsoil at the surface
		6	8		10	Brown Silty CLAY, some fine Gravel, little f-c Sand, tr.organics (moist, FILL)	
	2	8	7				
		6	5		13	One piece of coarse GRAVEL (moist, FILL)	WOH = Weight of Hammer and Rods
5	3	3	3			Brown Silty CLAY, some f-c Sand, little fine Gravel,	
		3	2		6	tr.slag, tr.organics (moist-wet, FILL)	
	4	3	3			Contains tr.gravel, tr.glass, no slag	Sample #4: Contains wood
		4	3		7		
	5	WOH	2			Dark Brown Silty CLAY, little f-m Sand, tr.organics	Sample #5: Exhibits an organic odor
10		2	3		4	(moist, medium, CL)	
	6	1	1			Contains tr.sand (moist-wet, soft)	
		1	1		2		Sample #6: Contains wood
15							
	7	WOH	1			Contains little f-m Sand, little Organics	Sample #7: Exhibits an organic odor, contains wood
		2	1		3		
20							REF = Sample Spoon Refusal
	8	6	21			Brown fine GRAVEL, some f-c Sand, little Silty Clay	
		35	50/0.2		56	(moist, v.compact, GC-GM)	Driller noted hard augering at 20' to 25'
25							NQ '2' Size Rock Core
	9	50/0.2			REF		
						Brown SHALE Rock, medium hard, sound, thickly bedded, both natural and mechanical fractures	RUN #1: 25.2' - 30.2' REC = 72% RQD = 47%
30							
						Becomes laminated to thickly bedded	RUN #2: 30.2' - 33.2' REC = 100% RQD = 81%
						Boring Complete at 33.0'	No Free Standing Water encountered before coring
35							Free Standing Water recorded at 1' after coring
40							

N = NO. BLOWS TO DRIVE 2-INCH SPOON 12-INCHES WITH A 140 LB. PIN WT. FALLING 30-INCHES PER BLOW

CLASSIFIED BY: Geologist

DRILLER: A. KOSKE
DRILL RIG TYPE : CME-550X

METHOD OF INVESTIGATION ASTM D-1586 USING HOLLOW STEM AUGERS

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

DATE:
START 7/27/2020
FINISH 7/27/2020
SHEET 1 OF 1

SJB SERVICES, INC.
SUBSURFACE LOG

HOLE NO. B-2
SURF. ELEV 581.1'
G.W. DEPTH See Notes

PROJECT: PROPOSED ELYSIUM APARTMENT COMPLEX
PROJ. NO.: BE-20-105
LOCATION: 2160 NORTH FOREST ROAD
AMHERST, NY

DEPTH FT.	SMPL NO.	BLOWS ON SAMPLER 0/6	6/12	12/18	N	SOIL OR ROCK CLASSIFICATION	NOTES
	1	4	15			TOPSOIL	Driller noted topsoil at the surface
		21	19		36	Brown CONCRETE fragments, some Silty Clay, little f-c Sand (moist, FILL)	
	2	15	8				
		5	6		13	Contains little Silty Clay	Sample #1: Poor Recovery
5	3	2	2			Brown Silty CLAY, some f-c Sand, little fine Gravel, tr.organics (moist, FILL)	Sample #2: Poor Recovery
		3	6		5		
	4	4	50/0.2		REF	Contains some fine Gravel, little f-c Sand, tr.concrete (moist-wet)	
	5	50/0			REF		Sample #5: No Recovery
10							
	6	2	2			Dark Brown Silty CLAY, little Organics, tr.sand (moist-wet, medium, CL)	REF = Sample Spoon Refusal
		3	3		5		
15							
	7	1	2			Brown Organics, tr.sand (wet)	Sample #7: Poor Recovery, contains wood
		1	6		3		
20							
	8	31	40			Brown fine GRAVEL, some f-c Sand, little Silty Clay (wet, v.compact, GC-GM)	
		45	50/0.4		85		
25							
	9	50	50/0.2		REF		
						Boring Complete with Auger Refusal at 26.0'	No Free Standing Water reading obtained at boring completion
30							2" PVC groundwater observation well installed within completed test boring. Refer to completion record for details.
35							
40							

N = NO. BLOWS TO DRIVE 2-INCH SPOON 12-INCHES WITH A 140 LB. PIN WT. FALLING 30-INCHES PER BLOW

CLASSIFIED BY: Geologist

DRILLER: R. STEINER

DRILL RIG TYPE : CME-550X

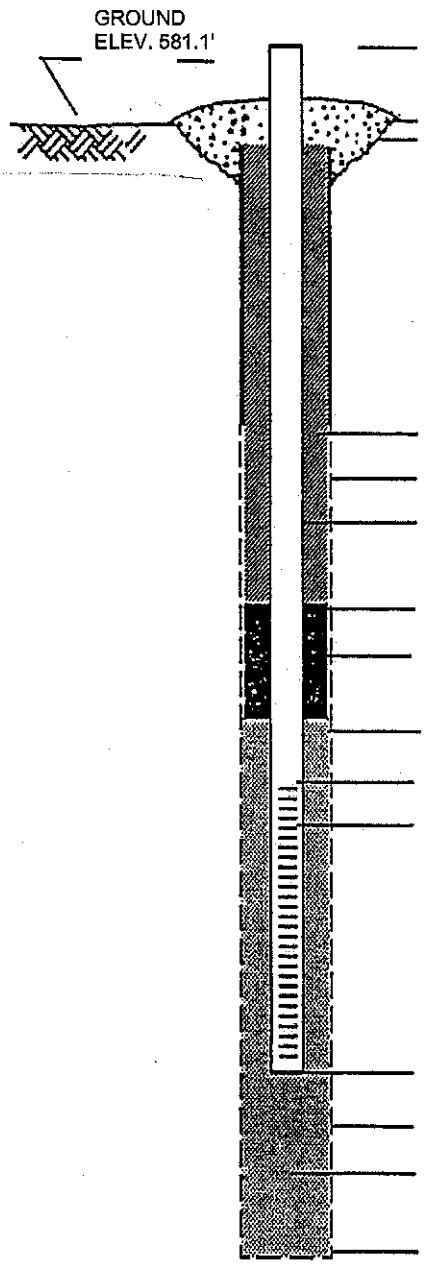
METHOD OF INVESTIGATION ASTM D-1586 USING HOLLOW STEM AUGERS

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

MONITORING WELL COMPLETION RECORD

SJB SERVICES, INC.

WELL NUMBER: B-2	
PROJECT: Elysium Apartments	**DRILLING METHOD:** ASTM D-1586 USING HSA
PROJECT NUMBER: BE-20-105	**GEOLOGIST:** N/A
DRILLER: R. Steiner	**INSTALLATION DATE(S):** 7/27/2020



TYPE OF SURFACE SEAL:	SOIL
TYPE OF BACKFILL:	SOIL AUGER CUTTINGS
BOREHOLE DIAMETER:	7" ±
I.D. OF RISER PIPE:	2"
TYPE OF RISER PIPE:	PVC
DEPTH OF SEAL:	12'
TYPE OF SEAL:	BENTONITE CHIPS
DEPTH OF SAND PACK:	14'
DEPTH OF TOP OF SCREEN:	15.6'
TYPE OF SCREEN:	PVC
SLOT SIZE X LENGTH:	0.01' x 10'
I.D. OF SCREEN:	2"
TYPE OF SAND PACK:	No. 0 Silica Sand
DEPTH BOTTOM OF SCREEN:	25.6'
DEPTH BOTTOM OF SAND PACK:	26.0'
TYPE OF BACKFILL BELOW OBSERVATION WELL:	N/A
ELEVATION/ DEPTH OF HOLE:	26.0'

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

DATE:
START 7/24/2020
FINISH 7/24/2020
SHEET 1 OF 1

SJB SERVICES, INC.
SUBSURFACE LOG

HOLE NO. B-3
SURF. ELEV 579.5'
G.W. DEPTH See Notes

PROJECT: PROPOSED ELYSIUM APARTMENT COMPLEX
PROJ. NO.: BE-20-105
LOCATION: 2160 NORTH FOREST ROAD
AMHERST, NY

DEPTH FT.	SMPL NO.	BLOWS ON SAMPLER 0/6	6/12	12/18	N	SOIL OR ROCK CLASSIFICATION	NOTES
	1	5	6			TOPSOIL	Driller noted topsoil at the surface
		15	10		21	Brown Silty CLAY, some f-c Sand, tr.organics (moist, FILL)	
	2	8	8			Contains little fine Gravel	
		10	11		18		Sample #2: Poor Recovery
5	3	2	2			Dark Gray f-c SAND, little Silty Clay, tr.organics	
		3	4		5	(moist-wet, loose, SC-SM)	
	4	3	2			(wet)	Sample #4: Contains wood
		3	2		5		
	5	2	2			Contains some Silty Clay (v.loose)	Sample #5: Contains wood
10		1	1		3		
	6	WOH/1.0				Contains little Organics, little Silty Clay	WOH = Weight of Hammer and Rods
		WOH/1.0			WOH		
15	7	WOH/1.0				Brown Silty CLAY, some f-c Sand, little fine Gravel	
		3	5		3	(wet, soft, CL)	
							Driller noted hard augering at 18' to 26.5'
20	8	28	47			Brown fine Gravel, some f-c Sand, little Silty Clay	
		50/0.4			REF	(moist, v.compact, GC-GM)	REF = Sample Spoon Refusal
25	9	50/0.2			REF		Sample #9: No Recovery
						Boring Complete with Auger Refusal at 26.5'	Free Standing Water recorded at 21.5' at boring completion
30							
35							
40							

N = NO. BLOWS TO DRIVE 2-INCH SPOON 12-INCHES WITH A 140 LB. PIN WT. FALLING 30-INCHES PER BLOW
CLASSIFIED BY: Geologist
DRILLER: R. STEINER
DRILL RIG TYPE : CME-550X
METHOD OF INVESTIGATION ASTM D-1586 USING HOLLOW STEM AUGERS

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

DATE:
START 7/23/2020
FINISH 7/23/2020
SHEET 1 OF 1

SJB SERVICES, INC.
SUBSURFACE LOG

HOLE NO. B-4
SURF. ELEV 578.1'
G.W. DEPTH See Notes

PROJECT: PROPOSED ELYSIUM APARTMENT COMPLEX
PROJ. NO.: BE-20-105
LOCATION: 2160 NORTH FOREST ROAD
AMHERST, NY

DEPTH FT.	SMPL NO.	BLOWS ON SAMPLER 0/6	6/12	12/18	N	SOIL OR ROCK CLASSIFICATION	NOTES
	1	1	2			TOPSOIL	Driller noted topsoil at the surface
		3	3		5	Brown Silty CLAY, some fine Gravel, little f-c Sand, tr.organics (moist, FILL)	
	2	2	5				
		10	50/0.2		15	Brown fine GRAVEL, some f-c Sand, little Concrete, little Silty Clay (moist, FILL)	
5	3	21	5				Sample #3: Contains wood
		3	3		8	Dark Brown Silty CLAY, tr.sand, tr.organics (moist, medium, CL)	
	4	4	2				Sample #4: Contains wood
		3	2		5	Contains little Organics, little f-c Sand (moist-wet) (soft)	
	5	1	1				Sample #5: Contains wood, Exhibits an organic odor
10		1	1		2		
	6	2	1			Brown Silty CLAY, little f-c Sand, tr.gravel (moist-wet, soft, CL)	
		1	2		2		
15							
	7	2	2			Contains some fine Gravel (moist, medium)	Driller noted hard augering at 18' to 22'
		4	7		6		
20							REF = Sample Spoon Refusal
	8	20	19			Brown fine GRAVEL, some f-c Sand, little Silty Clay (moist, compact, GC-GM)	
		21	25		40		NQ '2' Size Rock Core
	9	50/0			REF	22.0' to 24.4': Brown f-c GRAVEL, some f-c Sand, little Silty Clay (moist, GC-GM)	RUN #1: 22.0' - 27.0' REC = 66% RQD = 21%
25						Brown SHALE Rock, medium hard, sound, laminated to thickly bedded, both natural and mechanical fractures	
							RUN #2: 27.0' - 31.0' REC = 90% RQD = 85%
30							
						Boring Complete at 31.0'	No Free Standing Water encountered before coring
35							Free Standing Water recorded at 1' after coring
40							

N = NO. BLOWS TO DRIVE 2-INCH SPOON 12-INCHES WITH A 140 LB. PIN WT. FALLING 30-INCHES PER BLOW

CLASSIFIED BY: Geologist

DRILLER: A. KOSKE
DRILL RIG TYPE : CME-550X

METHOD OF INVESTIGATION ASTM D-1586 USING HOLLOW STEM AUGERS

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

DATE:
START 7/24/2020
FINISH 7/24/2020
SHEET 1 OF 1

SJB SERVICES, INC.
SUBSURFACE LOG

HOLE NO. B-5
SURF. ELEV 582.0'
G.W. DEPTH See Notes

PROJECT: PROPOSED ELYSIUM APARTMENT COMPLEX
PROJ. NO.: BE-20-105
LOCATION: 2160 NORTH FOREST ROAD
AMHERST, NY

DEPTH FT.	SMPL NO.	BLOWS ON SAMPLER 0/6	6/12	12/18	N	SOIL OR ROCK CLASSIFICATION	NOTES
	1	1	4			TOPSOIL	Driller noted topsoil at the surface
		7	10		11	Brown Silty CLAY, some fine Gravel, little f-c Sand,	
	2	8	9			tr.organics (moist-wet, FILL)	
		10	12		19	Brown-Black ASPHALT fragments, little Silty Clay,	
5	3	7	10			little fine Gravel, tr.sand (moist, FILL)	
		15	16		25	Contains some fine Gravel, little f-c Sand, tr.silty clay	
	4	5	5			tr.organics	
		6	6		11	Dark Brown Silty CLAY, tr.sand, tr.organics (moist, stiff, CL)	
	5	1	2			Contains little f-m Sand (moist-wet, medium)	Sample #5: Contains wood
10		2	2		4		
	6	1	1			Brown-Gray f-m SAND, little Silty Clay, tr.organics	Samples #6 & #7: Contains wood
		2	1		3	(moist-wet, v.loose, SC-SM)	
	7	1	2			Contains tr.gravel, tr.shells	
15		2	3		4		
						Boring Complete at 15.0'	No Free Standing Water recorded at boring completion
20							
25							
30							
35							
40							

N = NO. BLOWS TO DRIVE 2-INCH SPOON 12-INCHES WITH A 140 LB. PIN WT. FALLING 30-INCHES PER BLOW

CLASSIFIED BY: Geologist

DRILLER: R. STEINER
DRILL RIG TYPE : CME-550X
METHOD OF INVESTIGATION ASTM D-1586 USING HOLLOW STEM AUGERS

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

APPENDIX B

SUBSURFACE EXPLORATION LOGS

Previously Completed Test Borings
February 2020 (B-1)
June 2014 (B-1)

DATE:
START 2/20/2020
FINISH 2/20/2020
SHEET 1 OF 1

SJB SERVICES, INC.
SUBSURFACE LOG

HOLE NO. B-1
SURF. ELEV 580.0'
G.W. DEPTH See Notes

PROJECT: PROPOSED NEW HOME
PROJ. NO.: BE-20-010
LOCATION: 2160-2170 NORTH FOREST
AMHERST, NY

DEPTH FT.	SMPL NO.	BLOWS ON SAMPLER 0/6	6/12	12/18	N	SOIL OR ROCK CLASSIFICATION	NOTES
	1	WOH	2			TOPSOIL	Driller noted Topsoil at the surface
		3	5		5	Brown Silty CLAY, tr.sand, tr.organics (moist, FILL)	
	2	6	3			Becomes Dark Brown to Brown, Contains tr.asphalt,	
		2	3		5	tr.brick	
5	3	2	2			Brown Silty CLAY, tr.gravel, tr.sand (moist-wet, FILL)	
		3	3		5		
	4	4	4			Brown Silty CLAY, tr.gravel, tr.sand, tr.organics	
		3	3		7	(moist-wet, medium, CL / Possible FILL)	
	5	1	1			Dark Brown Silty CLAY, tr.sand, tr.organics	
10		1	1		2	(moist, v.soft, CL)	
	6	WOH	WOH			Becomes Dark Brown to Dark Gray, occasional	WOH = Weight of Hammer and Rods
		WOH	WOH		WOH	moist-wet partings	
	7	WOH	WOH			Red Brown Silty CLAY, some f-c Sand	
		WOH	WOH		WOH	(moist-wet, v.soft, CL)	
15	8	WOH	WOH			Contains some f-c Gravel	
		2	3		2		
	9	7	8			Contains little f-c Gravel (v.stiff)	
		8	8		16		
	10	8	12			Contains some f-c Gravel (moist)	
20		12	13		24		
	11	15	24			Contains little f-c Sand (hard)	
		17	19		41		
							REF = Sample Spoon Refusal
25							
	12	27	50/0.4		REF	Brown f-c SAND, some Silt, little f-c Gravel	Sample #13: Poor Recovery, possible weathered bedrock
						(moist, v.compact, SM)	
	13	50/0.2			REF	Brown fine GRAVEL, tr.sand (moist, v.compact, GP)	
30						Boring Complete with Auger Refusal at 27.7'	No Free Standing Water encountered at boring completion
35							
40							

N = NO. BLOWS TO DRIVE 2-INCH SPOON 12-INCHES WITH A 140 LB. PIN WT. FALLING 30-INCHES PER BLOW

CLASSIFIED BY: Geologist

DRILLER: S. WOLKIEWICZ JR.

DRILL RIG TYPE : CME-550X

METHOD OF INVESTIGATION ASTM D-1586 USING HOLLOW STEM AUGERS

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

DATE
START 6/30/2014
FINISH 6/30/2014
SHEET 1 OF 1

SJB SERVICES, INC.
SUBSURFACE LOG

HOLE NO. B-1
SURF. ELEV 581' +/-
G.W. DEPTH See Notes

PROJECT: PROPOSED RESIDENTIAL HOME
PROJ. NO.: BE-14-109
LOCATION: 2160 NORTH FOREST ROAD
AMHERST, NY

DEPTH FT.	SMPL NO.	BLOWS ON SAMPLER 0/6	6/12	12/18	N	SOIL OR ROCK CLASSIFICATION	NOTES
	1	3	4			TOPSOIL	Driller notes approx. 6" Topsoil
		5	7		9	Red-Brown and Black Silty CLAY, tr.sand, tr.gravel (moist, FILL)	
	2	5	8				
		7	10		15	Brown-Gray and Black f-m SAND, some Silt, tr.gravel (moist, FILL)	
5	3	3	3				
		4	4		7	Black Organic Clayey SILT, little f-c Sand (moist, FILL)	
	4	2	2			Gray and Black Organic Silty CLAY, tr.peat (moist, medium, OL-CL)	
		3	4		5		
	5	2	3				
10		3	3		6		
	6	2	2				
		2	2		4		
	7	3	2				
		3	4		5		
15	8	WOH/1.5				Becomes Red-Brown (wet, v.soft)	WOH = Weight of Hammer and Rods
			1		WOH		
	9	1	1				
		1	1		2	Contains little f-c Sand, tr.gravel	REF = Sample Spoon Refusal
	10	31	50/0.3		REF	Red-Brown f-m SAND and Silt, tr.gravel (moist, SM)	
20							
	11	19	23				
		21	22		44	(compact)	
25							
	12	19	50/0.4		REF		
						Boring Complete with Sample Spoon Refusal at 25.9' and Auger Refusal at 26.0'	No Free Standing Water encountered at Boring Completion
30							
35							
40							

N = NO. BLOWS TO DRIVE 2-INCH SPOON 12-INCHES WITH A 140 LB. PIN WT. FALLING 30-INCHES PER BLOW

CLASSIFIED BY: Geologist

DRILLER: A. JAKUBCZAK

DRILL RIG TYPE : CME-550X

METHOD OF INVESTIGATION ASTM D-1586 USING HOLLOW STEM AUGERS

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

APPENDIX C

FILL MATERIAL AND EARTHWORK RECOMMENDATIONS

APPENDIX C

FILL MATERIAL AND EARTHWORK RECOMMENDATIONS

I. Material Recommendations

A. Structural Fill

Structural Fill should consist of a crusher run stone, free of clay, organics and friable or deleterious particles. As a minimum, the crusher run stone should meet the requirements of New York State Department of Transportation, Standard Specifications, Item 304.12 – Type 2 Subbase, with the following gradation requirements.

Sieve Size Distribution	Percent Finer by Weight
2 inch	100
¼ inch	25-60
No. 40	5-40
No. 200	0-10

B. Subbase Stone

The subbase stone course placed as the aggregate course beneath slab-on-grade and pavement construction should conform to the same material requirements as Structural Fill as stated above.

C. Suitable Granular Fill

Suitable soil material, well graded from coarse to fine and classified as GW, GP, GM, SW, SP or SM type soil using the Unified Soil Classification System (ASTM D-2487) and having no more than 85 percent by weight material passing the No. 4 sieve, no more than 20 percent by weight material passing the No. 200 sieve and which is generally free of particles greater than 6 inches, will be acceptable as Suitable Granular Fill. It should also be free of topsoil, asphalt, concrete rubble, wood, debris, clay and other deleterious materials.

Suitable Granular Fill can be used as foundation backfill and as subgrade fill to raise site grades beneath slab-on-grade and pavement construction. Material meeting the requirements of New York State Department of Transportation, Standard Specifications, Item 203.07 – Select Granular Fill, or Item 203.20 Select Granular Subgrade is acceptable for use as Suitable Granular Fill.

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

II. Placement and Compaction Requirements

All controlled fill placed beneath foundations, slab-on-grade construction and pavement construction should be compacted to a minimum of 95 percent of the maximum dry density as measured by the modified Proctor test (ASTM D1557). Fill placed in non-loaded grass areas can be compacted to a minimum of 90 percent of the maximum dry density (ASTM D1557).

Placement of fill should not exceed a maximum loose lift thickness of 6 to 9 inches with the exception of subbase courses beneath slab on grade and pavement construction, which can be placed in a single lift not exceeding 15 inches. The loose lift thickness should be reduced in conjunction with the compaction equipment used so that the required density is attained.

Fill should have a moisture content within two percent of the optimum moisture content at the time of compaction. Subgrades should be properly drained and protected from moisture and frost. Placement of fill on frozen subgrades is not acceptable. It is recommended that all fill placement and compaction be monitored and tested on a full-time basis by a representative of Empire Geo-Services, Inc.

III. Quality Assurance Testing

The following minimum laboratory and field quality assurance testing frequencies are recommended to confirm fill material quality and post placement and compaction conditions. These minimum frequencies are based on generally uniform material properties and placement conditions. Should material properties vary or conditions at the time of placement vary (i.e. moisture content, placement and compaction, procedures or equipment, etc.) Then additional testing is recommended. Additional testing, which may be necessary, should be determined by qualified geotechnical personnel, based on evaluation of the actual fill material and construction conditions.

A. Laboratory Testing of Material Properties

- Moisture content (ASTM D-2216) - 1 test per 4,000 cubic yards or no less than 2 tests per each material type.
- Grain Size Analysis (ASTM D-422) - 1 test per 4,000 cubic yards or no less than 2 tests per each material type.
- Liquid and Plastic Limits (ASTM D-4318) 1 test per 4,000 cubic yards or no less than 2 tests per each material type. Liquid and Plastic Limit testing is necessary only if appropriate, based on material composition (i.e. clayey or silty soils).

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

- Modified Proctor Moisture Density Relationship (ASTM D-1557) 1 test per 4,000 cubic yards or no less than 1 test per each material type. A maximum/minimum density relationship (ASTM D-4253 and ASTM D-4254) may be an appropriate substitute for ASTM D-1557 depending on material gradation.

B. Field In-Place Moisture/Density Testing (ASTM D-3017 and ASTM D-2922)

- Backfilling along trenches and foundation walls - 1 test per 50 lineal feet per lift.
- Backfilling Isolated Excavations (i.e. column foundations, manholes, etc.) 1 test per lift.
- Filling in open areas for slab-on-grade construction - 1 test per 2,500 square feet per lift.

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

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APPENDIX D

GEOTECHNICAL REPORT LIMITATIONS

GEOTECHNICAL REPORT LIMITATIONS

WMA Engineering DPC / DBA Empire Geotechnical Engineering Services (Empire) has endeavored to meet the generally accepted standard of care for the services completed, and in doing so is obliged to advise the geotechnical report user of our report limitations. Empire believes that providing information about the report preparation and limitations is essential to help the user reduce geotechnical-related delays, cost over-runs, and other problems that can develop during the design and construction process. Empire would be pleased to answer any questions regarding the following limitations and use of our report to assist the user in assessing risks and planning for site development and construction.

PROJECT SPECIFIC FACTORS: The conclusions and recommendations provided in our geotechnical report were prepared based on project specific factors described in the report, such as size, loading, and intended use of structures; general configuration of structures, roadways, and parking lots; existing and proposed site grading; and any other pertinent project information. Changes to the project details may alter the factors considered in development of the report conclusions and recommendations. *Accordingly, Empire cannot accept responsibility for problems which may develop if we are not consulted regarding any changes to the project specific factors that were assumed during the report preparation.*

SUBSURFACE CONDITIONS: The site exploration investigated subsurface conditions only at discrete test locations. Empire has used judgement to infer subsurface conditions between the discrete test locations, and on this basis the conclusions and recommendations in our geotechnical report were developed. It should be understood that the overall subsurface conditions inferred by Empire may vary from those revealed during construction, and these variations may impact on the assumptions made in developing the report conclusions and recommendations. *For this reason, Empire should be retained during construction to confirm that conditions are as expected, and to refine our conclusions and recommendations in the event that conditions are encountered that were not disclosed during the site exploration program.*

USE OF GEOTECHNICAL REPORT: Unless indicated otherwise, our geotechnical report has been prepared for the use of our client for specific application to the site and project conditions described in the report. *Without consulting with Empire, our geotechnical report should not be applied by any party to other sites or for any uses other than those originally intended.*

CHANGES IN SITE CONDITIONS: Surface and subsurface conditions are subject to change at a project site subsequent to preparation of the geotechnical report. Changes may include, but are not limited to, floods, earthquakes, groundwater fluctuations, and construction activities at the site and/or adjoining properties. *Empire should be informed of any such changes to determine if additional investigative and/or evaluation work is warranted.*

MISINTERPRETATION OF REPORT: The conclusions and recommendations contained in our geotechnical report are subject to misinterpretation. *To limit this possibility, Empire should review project plans and specifications relative to geotechnical issues to confirm that the recommendations contained in our report have been properly interpreted and applied.*

Subsurface exploration logs and other report data are also subject to misinterpretation by others if they are separated from the geotechnical report. This often occurs when copies of logs are given to contractors during the bid preparation process. *To minimize the potential for misinterpretation, the subsurface logs should not be separated from our geotechnical report and the use of excerpted or incomplete portions of the report should be avoided.*

OTHER LIMITATIONS: Geotechnical engineering is less exact than other design disciplines, as it is based partly on judgement and opinion. For this reason, our geotechnical report may include clauses that identify the limits of Empire's responsibility, or that may describe other limitations specific to a project. These clauses are intended to help all parties recognize their responsibilities and to assist them in assessing risks and decision making. Empire would be pleased to discuss these clauses and to answer any questions that may arise.

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

March 3, 2021

Brian J. Kulpa, Supervisor
Town of Amherst Town Board
5583 Main Street
Williamsville, NY 14221

Re: Application to Reclassify 2160 and 2170 North Forest Road from
NCD-SA to NCD-ND and to Amend the Audubon Development Plan [Z-2020-06]
Applicant/Project Sponsor: Coromandel Estates Amherst LLC
File 10181.1

Dear Supervisor Kulpa and Councilmembers:

This letter is being submitted on behalf of Applicant for the purpose of submitting an updated Concept Site Plan incorporating modifications to the project layout made based on input received during the public hearing held by the Town Board on February 22nd as well as additional modifications made for the purpose of improving the layout of the proposed residential project.

Attached as Exhibit "1" is the updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21] prepared by Christina Barmosz of Silvestri Architects PC incorporating the following modifications to the project layout:

1. The previously proposed stormwater basin on the western portion of the Project Site adjacent to the property at 2180 North Forest Road has been eliminated;

2. The dumpster enclosure has been relocated from the western portion of the Project Site to the eastern portion of Project Site. Additionally, screening has been added on the exterior edges of the dumpster enclosure;

3. The previously proposed two-story eight-unit building has been replaced with 2 two-story four-unit buildings;

4. The proposed covered patio with a fire pit has been relocated so that it will between the 2 two-story four-unit buildings;

5. Landscaping and a fence has been added along the western boundary of the Project that is contiguous to 2180 North Forest Road;

6. Landscaping has been added along the North Forest Road frontage of the Project Site;

7. The parking to be provided on the Project Site has been increased from 17 spaces to 23 spaces (2.88 parking spaces per unit) consistent with the zoning condition recommended by the Planning Board on January 21st in connection with its issuance of a favorable

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

recommendation to the Town Board stating: "That the petitioner include additional parking spaces beyond the 17 spaces shown on the concept plan at the site plan stage.[1]"

Attached as Exhibit "2" are copies of the project update letters to interested property owners dated March 2nd that included an 11" x 17" size copy of the updated Concept Site Plan. The updated Concept Plan demonstrates the concerted effort that has been made by the project team to incorporate input received from the public during the public hearing held on February 22nd.

The Town Board will be holding continuation of the virtual public hearing in connection with the pending request to reclassify the Project Site from NCD-SA to NCD-ND and to amend the Audubon Development Plan during its meeting on Monday, March 8th at 7:00 p.m. The Applicant is requesting that the Town Board adopt a resolution during its upcoming meeting for the purpose of issuing a negative declaration pursuant to the State Environmental Quality Review Act ("SEQRA") and approving the requested reclassification of the Project Site from NCD-SA to NCD-ND and an amendment of the Audubon New Community Development Plan.

If you have any questions regarding this letter or the attached documentation, please feel free to contact me at 510-4338 or via e-mail at shopkins@hsr-legal.com.

Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

cc: Jacqualine Berger, Deputy Supervisor
Deborah Bruch Bucki RN PhD, Councilmember
Shawn Lavin, Councilmember
Michael Szukala, Councilmember
Francina J. Spoth, Town Clerk
Kathy Cooper, Deputy Town Clerk
Stanley J. Sliwa, Esq., Town Attorney
Ellen Kost, AICP, Assistant Planning Director
Thiru Vikram, Coromandel Estates Amherst LLC
Christina Barmosz, Silvestri Architects PC
Christopher Wood, P.E., Carmina Wood Morris DPC

[1] During its meeting on January 21st, the Planning Board adopted a resolution by a unanimous 7-0 vote recommending that the Town Board: 1. Issue a negative declaration pursuant to SEQRA; 2. Approve the reclassification of the Project Site from NCD-SA to NCD-ND; and, 3. Approve Amendment #73 to the Audubon New Community District Development Plan. The Planning Board findings in support of its favorable recommendation were as follows: A. The proposed Revision to the Development Plan meets the intent and objectives of a New Community District as expressed in Subsection 1-1.1; B. The proposed Revision to the Development Plan meets all the requirements of Section 5-2-3 through 5-2-6; C. The proposed Revision to the Development Plan is conceptually sound in that it meets present and future community needs; D. There are or will be adequate services and utilities available or proposed to be made available in the construction of the development; and, E. The proposed Amendment to the Development Plan is consistent with the Town Comprehensive Plan.

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

Exhibit 1 – Updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21] Prepared by Christina Barmosz of Silvestri Architects PC

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon



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NORTH FOREST APARTMENTS

2160-2170 North Forest Rd
Amherst, ny

ISSUE:

SA PROJECT TEAM: PRINCIPAL P.Silvestri
PROJ. ARCH. S. Hunt DRAFTER W. Manhardt
JOB CAPT. _____ INTERIORS K. Hamann

SEAL:

TITLE:

CONCEPT SITE PLAN

SILVESTRI
ARCHITECTS · PC
1321 MILLERSPORT HWY PH. 716.691.0300
AMHERST, NY 14221 FAX. 716.691.4773

SA JOB #: 20060.02
DATE: 03/01/21

DRAWING #: AS-101

Exhibit 2 – Project Update Letters to Residents dated March 2, 2021

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

HSM

March 2, 2021

Joan Amico
1936 North Forest Road
Williamsville, NY 14221

Re: Application to Reclassify 2160 and 2170 North Forest Road from NCD-SA to NCD-ND and to Amend the Audubon Development Plan [Z-2020-06]
Applicant/Project Sponsor: Coromandel Estates Amherst LLC
File 10181.1

Dear Ms. Amico:

This letter is being sent to you to provide you with a project update. Based on the input received during the virtual public hearing held by the Town Board on February 22nd, the layout of the proposed project has been updated.

An 11" x 17" size copy of the updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21] is enclosed depicting the following modifications to the project layout:

1. The previously proposed stormwater basin on the western portion of the Project Site adjacent to the property at 2180 North Forest Road has been eliminated;

2. The dumpster enclosure has been relocated from the western portion of the Project Site to the eastern portion of Project Site. Additionally, screening has been added on the exterior edges of the dumpster enclosure;

3. The previously proposed two-story eight-unit building has been replaced with 2 two-story four-unit buildings;

4. The proposed covered patio with a fire pit has been relocated so that it will between the 2 two-story four-unit buildings;

5. Landscaping and a fence has been added along the western boundary of the Project that is contiguous to 2180 North Forest Road; and

6. Landscaping has been added along the North Forest Road frontage of the Project Site.

The Town Board will be holding continuation of the virtual public hearing in connection with the pending request to reclassify the Project Site from NCD-SA to NCD-ND and to amend the Audubon Development Plan during its meeting on **Monday, March 8th at 7:00 p.m.**

If the Town Board approves the pending application, then the next step in the project review process will be to seek Site Plan approval from the Planning Board once the fully engineered plans

HOPKINS SORGI & MCCARTHY PLLC
Attorneys at Law
5500 Main Street, Suite 343 • Williamsville, New York 14221
Direct: 716-510-4338 • E-mail: shopkins@hsr-legal.com • www.hsr-legal.com

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

and related technical documentation have been prepared by Carmina Wood Morris DPC, the project engineering firm.

Please feel free to contact me with any questions at 510-4338 or via e-mail at shopkins@hsr-legal.com if you have any questions regarding this letter or the enclosed updated Concept Site Plan.

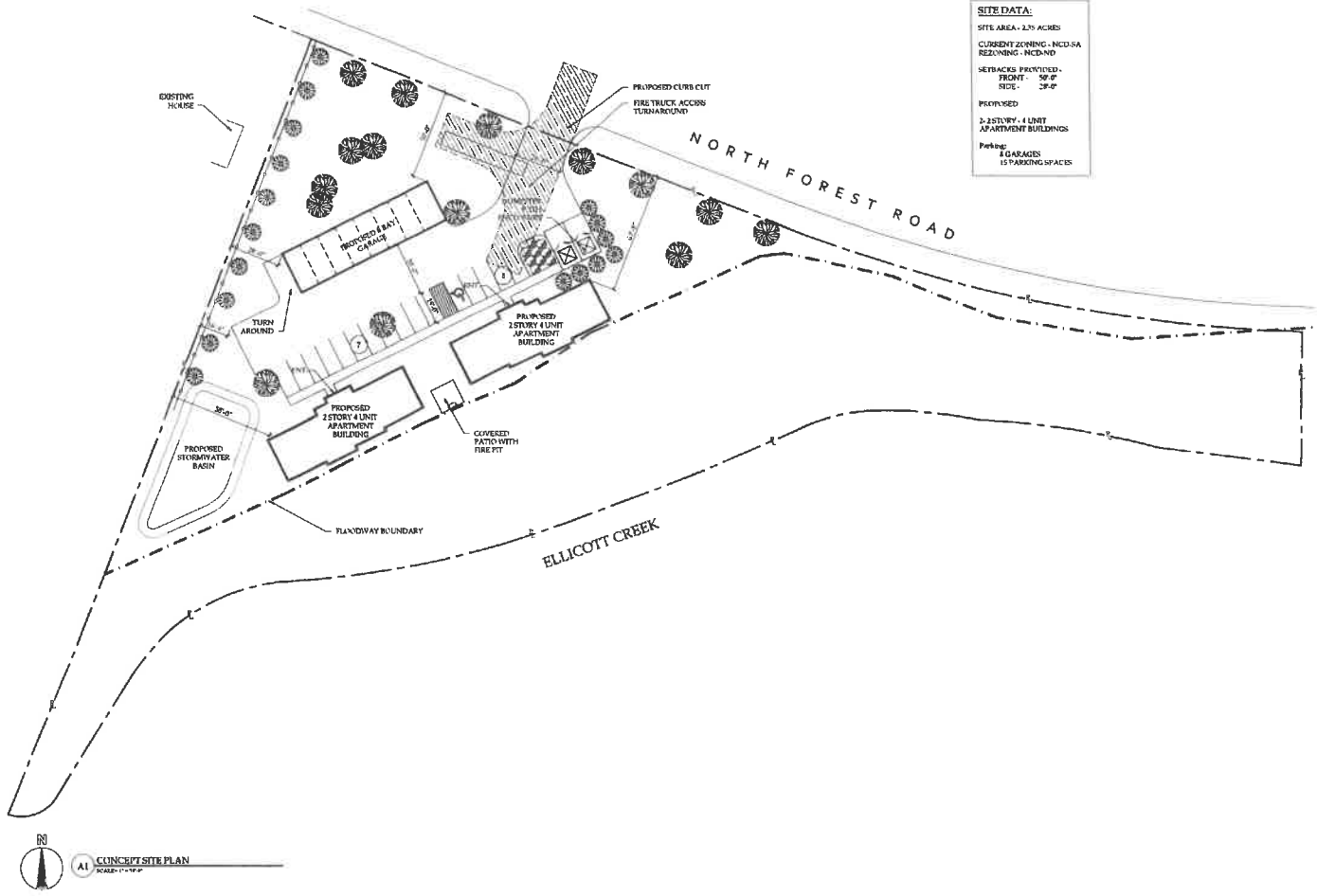
Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

Enc. 11" x 17" copy updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21]

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon



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NORTH FOREST APARTMENTS

2160-2170 North Forest Rd
Amherst, ny

ISSUE

SA PROJECT TEAM: PRINCIPAL P.Silvestri
PROJ. ARCH. S.Hurd DRAFTER W.Masharoff
FOR CAPT. _____ INTERIORS K.Hansen

SEAL:

TITLE:

CONCEPT SITE PLAN

SILVESTRI
ARCHITECTS · PC
1321 A BLASDELL HWY PH. 716.891.0900
AMHERST NY 14221 FAX 716.891.4773

SA JOB #: 20060.02
DATE: 03/01/21
DRAWING #: AS-101

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

HSM

March 2, 2021

Joseph Hausbeck
2180 North Forest Road
Williamsville, NY 14221

Re: Application to Reclassify 2160 and 2170 North Forest Road from NCD-SA to NCD-ND and to Amend the Audubon Development Plan [Z-2020-06]
Applicant/Project Sponsor: Coromandel Estates Amherst LLC
File 10181.1

Dear Mr. Hausbeck:

This letter is being sent to you to provide you with a project update. Based on the input received during the virtual public hearing held by the Town Board on February 22nd, the layout of the proposed project has been updated.

An 11" x 17" size copy of the updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21] is enclosed depicting the following modifications to the project layout:

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5. Landscaping and a fence has been added along the western boundary of the Project that is contiguous to 2180 North Forest Road; and

6. Landscaping has been added along the North Forest Road frontage of the Project Site.

The Town Board will be holding continuation of the virtual public hearing in connection with the pending request to reclassify the Project Site from NCD-SA to NCD-ND and to amend the Audubon Development Plan during its meeting on **Monday, March 8th at 7:00 p.m.**

If the Town Board approves the pending application, then the next step in the project review process will be to seek Site Plan approval from the Planning Board once the fully engineered plans

HOPKINS SORGI & MCCARTHY PLLC
Attorneys at Law
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Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

and related technical documentation have been prepared by Carmina Wood Morris DPC, the project engineering firm.

Please feel free to contact me with any questions at 510-4338 or via e-mail at shopkins@hsr-legal.com if you have any questions regarding this letter or the enclosed updated Concept Site Plan.

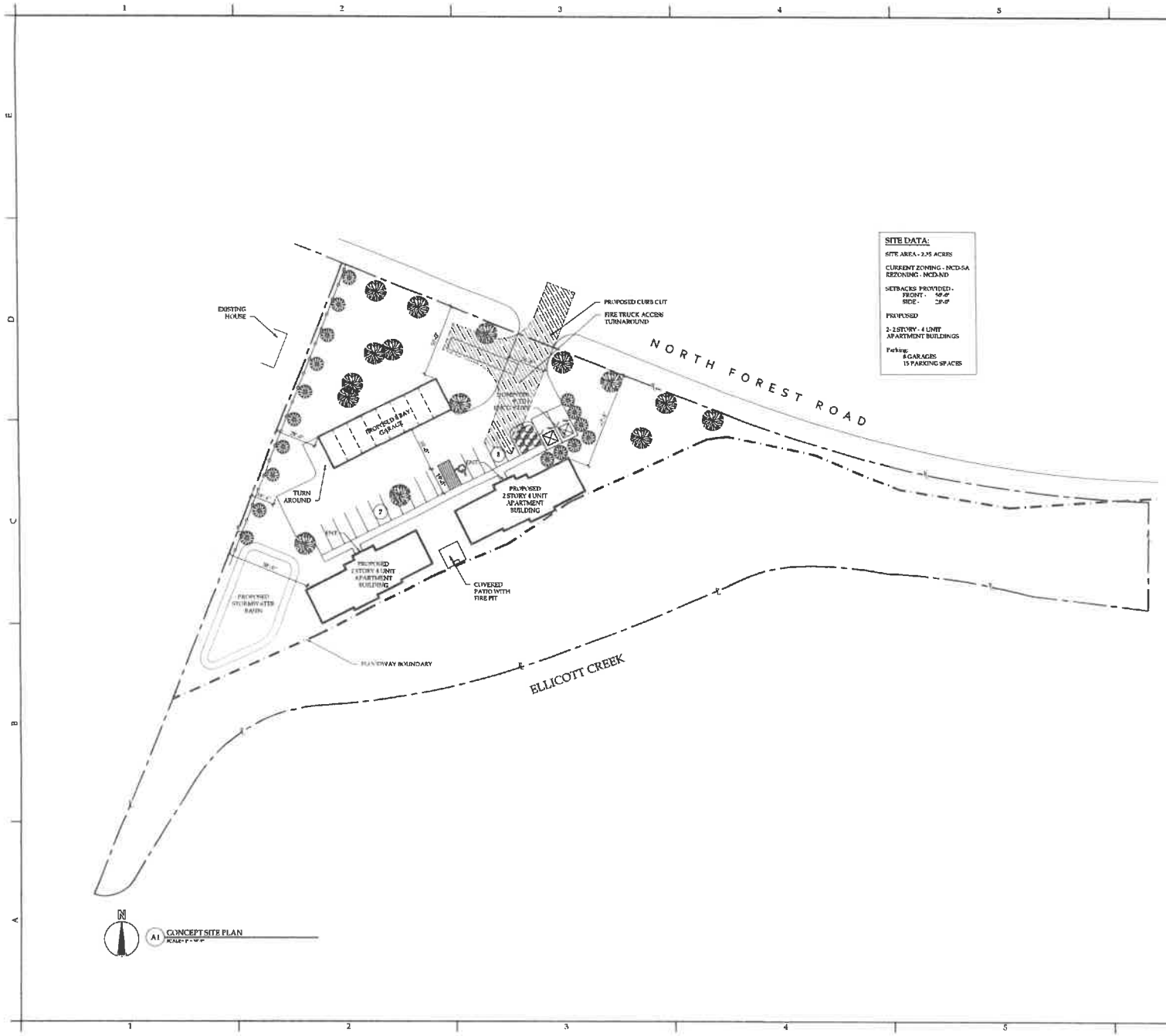
Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

Enc. 11" x 17" copy updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21]

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon



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NORTH FOREST APARTMENTS

2160-2170 North Forest Rd
Amherst, ny

ISSUE:

SA PROJECT TEAM: PRINCIPAL P.Silvestri
PROJ. ARCH. S.Hunt DRAFTER W.Manhardt
JOB CAPT. INTERIORS K.Hermann

SEAL:

TITLE:

CONCEPT SITE PLAN

SILVESTRI
ARCHITECTS · PC
1301 MILLERSPORT HWY PH. 716.691.0800
AMHERST NY 14221 FAX 716.691.4773

SA JOB #: 20060.02
DATE: 03/01/21
DRAWING #: AS-101

HSM

March 2, 2021

Fran Cummings
2200 North Forest Road
Williamsville, NY 14221

Re: Application to Reclassify 2160 and 2170 North Forest Road from NCD-SA to NCD-ND and to Amend the Audubon Development Plan [Z-2020-06]
Applicant/Project Sponsor: Coromandel Estates Amherst LLC
File 10181.1

Dear Ms. Cummings:

This letter is being sent to you to provide you with a project update. Based on the input received during the virtual public hearing held by the Town Board on February 22nd, the layout of the proposed project has been updated.

An 11" x 17" size copy of the updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21] is enclosed depicting the following modifications to the project layout:

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3. The previously proposed two-story eight-unit building has been replaced with 2 two-story four-unit buildings;

4. The proposed covered patio with a fire pit has been relocated so that it will between the 2 two-story four-unit buildings;

5. Landscaping and a fence has been added along the western boundary of the Project that is contiguous to 2180 North Forest Road; and

6. Landscaping has been added along the North Forest Road frontage of the Project Site.

The Town Board will be holding continuation of the virtual public hearing in connection with the pending request to reclassify the Project Site from NCD-SA to NCD-ND and to amend the Audubon Development Plan during its meeting on **Monday, March 8th at 7:00 p.m.**

If the Town Board approves the pending application, then the next step in the project review process will be to seek Site Plan approval from the Planning Board once the fully engineered plans

HOPKINS SORGI & MCCARTHY PLLC
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Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

and related technical documentation have been prepared by Carmina Wood Morris DPC, the project engineering firm.

Please feel free to contact me with any questions at 510-4338 or via e-mail at shopkins@hsr-legal.com if you have any questions regarding this letter or the enclosed updated Concept Site Plan.

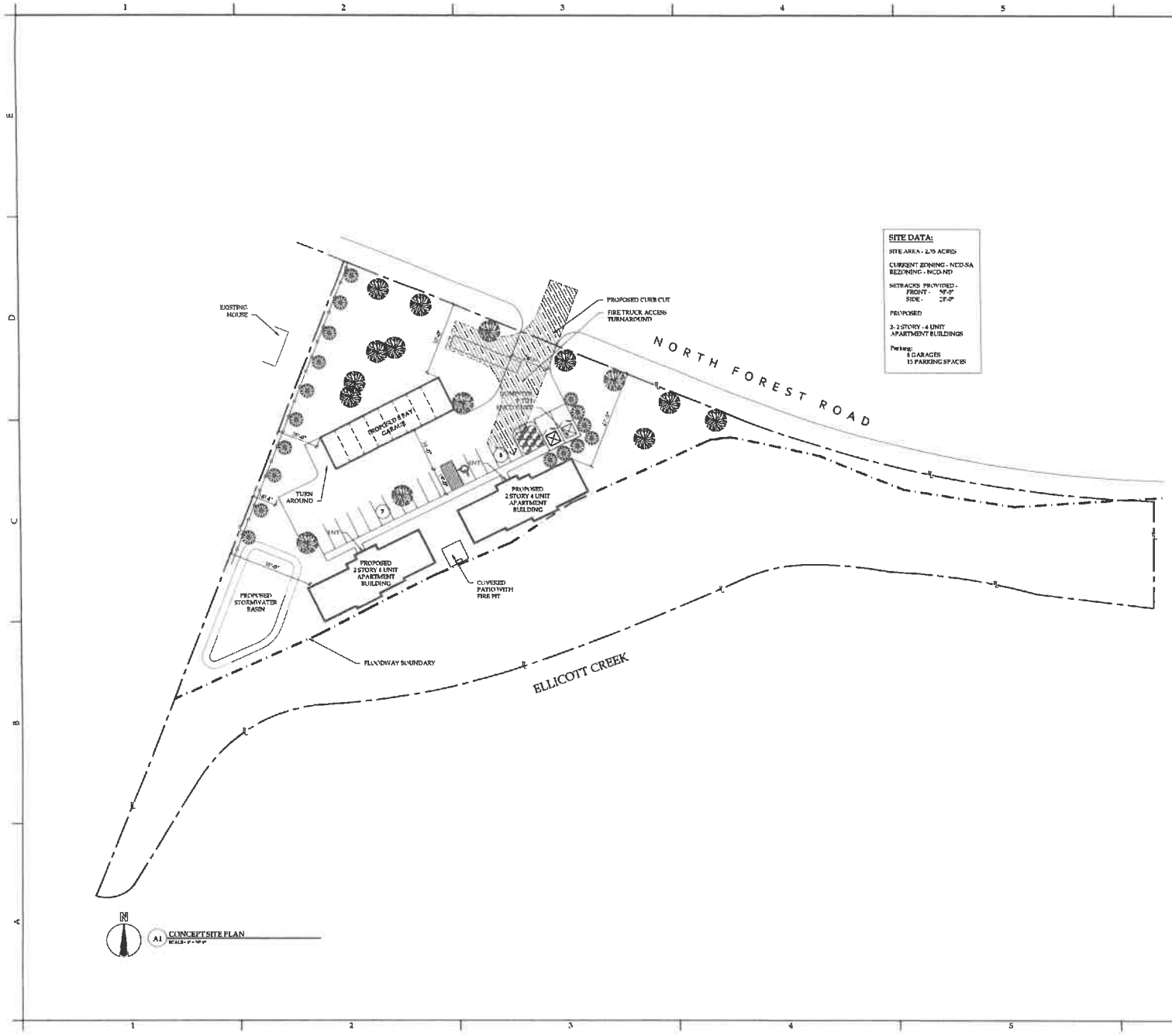
Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

Enc. 11" x 17" copy updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21]

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon



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NORTH FOREST APARTMENTS

2160-2170 North Forest Rd
Amherst, ny

ISSUE:

SA PROJECT TEAM: PRINCIPAL P.Silvestri
PROJ. ARCH. S. Hunt DRAFTER W. Manhardt
JOB CAPT. _____ INTERIORS K. Hamann

SEAL:

TITLE:

CONCEPT SITE PLAN

SILVESTRI
ARCHITECTS · PC
1324 MILITARY/SPORT HWY PH. 716.691.0000
AMHERST NY 14221 FAX 716.691.4773

SA JOB #: 20060.02
DATE: 03/01/21
DRAWING #: AS-101

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

HSM

March 2, 2021

Karen Macris
2230 North Forest Road
Williamsville, NY 14221

Re: Application to Reclassify 2160 and 2170 North Forest Road from NCD-SA to NCD-ND and to Amend the Audubon Development Plan [Z-2020-06]
Applicant/Project Sponsor: Coromandel Estates Amherst LLC
File 10181.1

Dear Karen:

This letter is being sent to you to provide you with a project update. Based on the input received during the virtual public hearing held by the Town Board on February 22nd, the layout of the proposed project has been updated.

An 11" x 17" size copy of the updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21] is enclosed depicting the following modifications to the project layout:

1. The previously proposed stormwater basin on the western portion of the Project Site adjacent to the property at 2180 North Forest Road has been eliminated;

2. The dumpster enclosure has been relocated from the western portion of the Project Site to the eastern portion of Project Site. Additionally, screening has been added on the exterior edges of the dumpster enclosure;

3. The previously proposed two-story eight-unit building has been replaced with 2 two-story four-unit buildings;

4. The proposed covered patio with a fire pit has been relocated so that it will between the 2 two-story four-unit buildings;

5. Landscaping and a fence has been added along the western boundary of the Project that is contiguous to 2180 North Forest Road; and

6. Landscaping has been added along the North Forest Road frontage of the Project Site.

The Town Board will be holding continuation of the virtual public hearing in connection with the pending request to reclassify the Project Site from NCD-SA to NCD-ND and to amend the Audubon Development Plan during its meeting on **Monday, March 8th at 7:00 p.m.**

If the Town Board approves the pending application, then the next step in the project review process will be to seek Site Plan approval from the Planning Board once the fully engineered plans

HOPKINS SORGI & MCCARTHY PLLC
Attorneys at Law
5500 Main Street, Suite 343 • Williamsville, New York 14221
Direct: 716-510-4338 • E-mail: shopkins@hsr-legal.com • www.hsr-legal.com

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

and related technical documentation have been prepared by Carmina Wood Morris DPC, the project engineering firm.

Please feel free to contact me with any questions at 510-4338 or via e-mail at shopkins@hsr-legal.com if you have any questions regarding this letter or the enclosed updated Concept Site Plan.

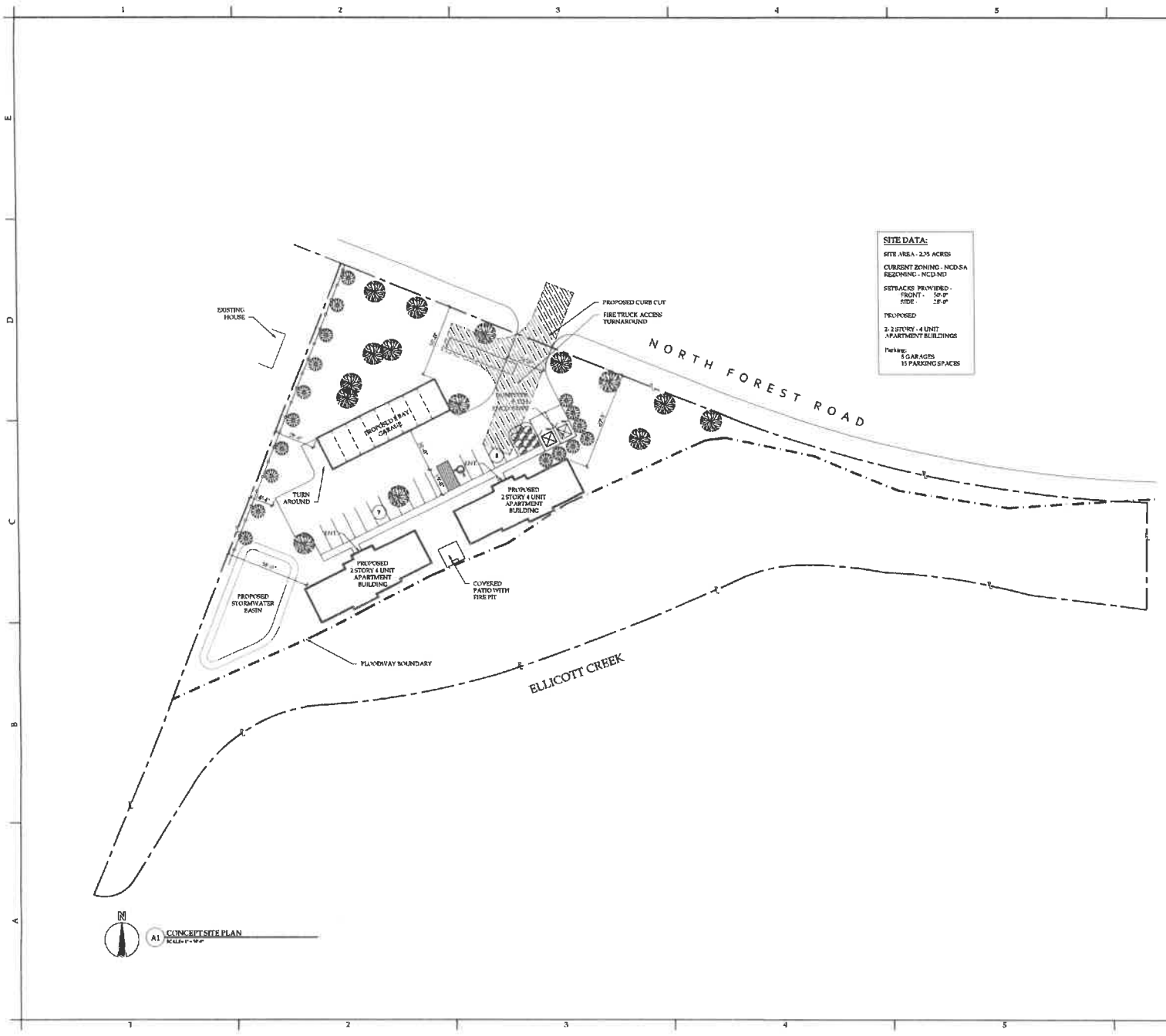
Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

Enc. 11" x 17" copy updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21]

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon



NOTICE

This document, the property of, prepared and issued by the architect, is submitted for the specific project namely _____ and the recipient by accepting this document assumes custody and agrees that this document will not be copied or reproduced in part or as whole, and any special features pertinent to this design shall not be incorporated in any other project, unless prior agreement has been obtained in writing. These documents will be returned immediately upon completion of the project or upon the request of the architect.

This document is the exclusive property of the architect, no rights to ownership are transferable, or shall be lost by the filing of this document with any and all public authorities for the purpose of compliance with Codes and or Ordinances, i.e. Building Permits, etc.

NORTH FOREST APARTMENTS

2160-2170 North Forest Rd
Amherst, ny

ISSUE:

SA PROJECT TEAM: PRINCIPAL P. Silvestri
PROJ. ARCH. S. Hynd DRAFTER W. Manlowski
JOB CAPT. _____ INTERIORS K. Hamann

SEAL:

TITLE:

CONCEPT SITE PLAN

SILVESTRI
ARCHITECTS - PC
1321 AIRLEFSPORT HWY PH. 716.691.0000
AMHERST NY 14221 FAX 716.691.4773

SA JOB #: 20060.02
DATE: 03/01/21
DRAWING #: AS-101

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 22989 **RESOLUTION 2021-243** **ADOPTED**

39 Getzville Road Rezoning

Adoption of Local Law to Amend the Zoning Map
(39 Getzville Road, Z-2020-10)

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of January 21, 2021 that the proposed Community Facilities (CF) zoning at 39 Getzville Road is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that to the extent the proposed zoning is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed zoning at this location, and be it further

RESOLVED, that in accordance with Section 203-8-3 of the Town Code (Zoning), the Town Board adopts Local Law (#) to amend the Town Zoning map.

3/22/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:25 PM.

Don Hoefler of LaBella Associates presented. Don Philips of Daemen College also spoke.

There were no speakers from the public, therefore Supervisor Kulpa moved to adjourn the public hearing and set a decision date for April 5th. The motion was seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was adjourned at 7:34 PM.

4/5/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was opened at 7:39 PM.

There were no speakers from the public, therefore Supervisor Kulpa moved to adjourn the public hearing to April 19th. The motion was seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was adjourned at 7:42 PM.

4/19/2021

A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:10 PM.

Daemen College President, Gary Olson, answered questions from the Board. He stated their intention is not to demolish the house at 39 Getzville Road.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was closed at 7:18 PM.

A motion to approve was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. Councilmember Bucki voted for approval based on Dr. Olson's comment that there is no intention to demolish the house at 39 Getzville Road.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Jacqualine Berger, Deputy Supervisor
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

D R A F T (3/22/21)

SEQR

NEGATIVE DECLARATION

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency: Town of Amherst
Town Board

Project: Z-2020-10

Address: 5583 Main Street
Williamsville, NY 14221
(716) 631-7051

Date:

This notice is issued pursuant to Part 617 and Local Law #3-82, as amended, of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law.

The Lead Agency has determined that the proposed action described below will not have a significant adverse effect on the environment.

Title of Action: Rezoning Request.

SEQR Status: Unlisted action.

Description of Action: Rezoning of 1.43 ± acres of land from R-3 to CF to bring this parcel into conformity with the remainder of the Daemen College campus.

Location: 39 Getzville Road, Town of Amherst, Erie County, New York

Petitioner: Daemen College

Attachment: Z-2020-10_Draft TB Neg Dec_032221 (RES-2021-243 : 39 Getzville Road Rezoning)

Reasons Supporting This Determination

Based on information submitted by the applicant, including a Short Environmental Assessment Form (EAF) - Part 1, a complete rezoning application, and concept plan, a preliminary staff analysis was undertaken. Compared to the criteria listed in Section 617.7, all indications are that the proposed rezoning of 1.43 ± acres of land from R-3 to CF, will not have a significant impact on the environment, as follows:

1. The project is not expected to cause a substantial adverse change in existing air quality, ground or surface water quality or quantity, or noise levels; a substantial increase in solid waste production; or a substantial increase in the potential for erosion, flooding, leaching or drainage problems. The Town Engineering Department on November 25, 2020 reviewed the application and EAF submitted on November 16, 2020, and had no objection or comments on the proposed rezoning.

2. The project will not result in the removal or destruction of large quantities of vegetation or fauna; or in significant adverse impacts to fish or wildlife species, habitats or other natural resources. A Landscape/Tree preservation Plan shall be required of the applicant upon submittal of a site plan application for development of the site at which stage all landscape requirements of the Zoning Ordinance will be met.

3. The project is not expected to create any material conflict with the Town Comprehensive Plan. The project will comply with all regulations of the Town Zoning Ordinance before final site plan approval is granted. The Town Building Department on November 23, 2020 reviewed the application and EAF submitted on November 16, 2020, and has no objection or comments on the proposed rezoning.

4. The project is within an area identified by the State as potentially containing significant cultural or archeological resources, however, no changes to the site are proposed, therefore the rezoning will not impair the character or quality of important historical resources.

5. The project will not impair the character or quality of important aesthetic resources or of existing community or neighborhood character. The subject request is for rezoning from R-3 to CF. The neighboring use is a college campus zoned CF; therefore, the project is consistent with surrounding land use.

6. The proposed rezoning to CF will not cause a major change in the use of either the quantity or type of energy.

7. The rezoning to CF will not create any hazard to human health.

Attachment: Z-2020-10_Draft TB Neg Dec_032221 (RES-2021-243 : 39 Getzville Road Rezoning)

8. The rezoning to CF will not cause a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses. The proposed rezoning will be consistent with the scale of surrounding land uses.

9. The rezoning to CF, will not significantly increase the number of people using the site over its previous level of use.

10. Review by the Town Traffic/Safety Board on November 30, 2020**,** indicates that significant negative traffic impacts are not expected to result from the proposed project.

11. Coordinated reviews of the project have been undertaken by Town Departments including Building on November 30, 2020, Engineering on November 25, 2020, Traffic/Safety Board on November 30, 2020, Assessor on November 20, 2020, Fire Chiefs' Council on December 3, 2020, and Right-of-Way Agent on November 30, 2020 along with outside agencies including Erie County Department of Environment & Planning on December 28, 2020. These reviews have not identified any significant environmental issues and indicate that the proposal will not have a significant damaging impact on the environment.

12. Issues not specifically mentioned above and/or those not specifically reviewed were not raised by Town departments, outside agencies or the public and are not determined to be causing significant negative environmental impacts.

_____ _____
Signature & title of preparer date

_____ _____
Brian J. Kulpa, Supervisor date

TV/ac
X:\Current_Planning\Files\Rezonings\2020\Z-2020-10_ (39 Getzville) _2020
cc: Amherst Town Clerk
Amherst Building Department
ECDEP
LaBella Associates, Don Hoefler, 300 Pearl St. Suite 301, Buffalo, NY 14202
Daemen College, 4380 Main St., Amherst, NY 14226

Attachment: Z-2020-10_Draft TB Neg Dec_032221 (RES-2021-243 : 39 Getzville Road Rezoning)

LOCAL LAW NO. _____-2021

TOWN OF AMHERST
COUNTY OF ERIE, STATE OF NEW YORK

A LOCAL LAW AMENDING CHAPTER 203 OF THE TOWN OF AMHERST CODE, KNOWN AS THE ZONING ORDINANCE, TO REZONE 39 Getzville Road_____ FROM _R-3__ TO __CF_ AND TO AMEND THE ZONING MAP ACCORDINGLY.

Be it enacted by the Town Board of the Town of Amherst as follows:

Section 1. Title.

This Local Law shall be referred to as, "A Local Law Amending Chapter 203 of Town of Amherst Code, Known As The Zoning Ordinance, to Rezone 39 Getzville Road from _R-3_ to _CF_ and to Amend The Zoning Map Accordingly."

Section 2. Legislative Findings and Intent.

The Town Board of the Town of Amherst finds that an application to rezone __39 Getzville Road__ from Residential District Three (R-3) to Community Facilities (CF) zoning has been filed and is in proper order. The Town Board further finds that the rezoning is consistent with the Comprehensive Plan.

Section 3. Amherst Zoning Map.

The Town Board hereby amends its zoning map which is incorporated by reference in the Town zoning code by amending from _R-3_ to _CF_ the zoning of Community Facilities **subject to any conditions imposed by the authorizing resolution**; legally described as follows:

Attachment: Z-2020-10_39 Getzville Local Law (002) (RES-2021-243 : 39 Getzville Road Rezoning)

Certificate of Complete Record Search, County of ERIE
against all that plot of land situated in the Town of Amherst, County of Erie and State of New York, being part of Lot Number fifteen (15), Township twelve (12), Range seven (7) of the Holland Land Company's Survey, bounded and described as follows:-

BEGINNING at a point in the easterly line of Getzville Road (so-called), being the road running southerly from Main Street, formerly known as the Buffalo Road, through Town Lot Number fifteen (15), which first mentioned point is distant from said Main Street five hundred thirty-four and two-thirds (534 2/3) feet to the land conveyed to Fred C. Humburch by deed recorded in Erie County Clerk's Office in Liber 1434 of Deeds at page 462; thence easterly along said Fred C. Humburch's land as above conveyed about four hundred thirty-two (432) feet more or less to the center of a creek; thence southerly along the center line of said creek to a line drawn parallel with said southerly line of Fred C. Humburch's land distant one hundred forty-eight (148) feet southerly therefrom; thence westerly along said line drawn parallel with said southerly line of said Fred C. Humburch's land distant one hundred forty-eight (148) feet southerly therefrom about four hundred twenty-four (424) feet more or less to the easterly line of said Getzville Road; thence northerly along said easterly line of said Getzville Road as defined, one hundred forty-eight (148) feet to the place of beginning.

Section 4. Validity.

This Local Law is adopted under the authority granted to the Town Board of the Town of Amherst pursuant to §§10(1)(ii)(a)(12), 20 and 27 of the Municipal Home Rule Law and §265 of the Town Law of the State of New York.

Attachment: Z-2020-10_39 Getzville Local Law (002) (RES-2021-243 : 39 Getzville Road Rezoning)

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 5. Effective Date.

This Local Law shall take effect immediately when it is filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law and published pursuant to Sections 130 & 133 of the Town Law and Chapter 28 of the Code of the Town of Amherst.

Francina J. Spoth
Town Clerk
Town of Amherst
County of Erie, State of New York

X:\Current_Planning\Files\Rezonings\Forms\Local Law (Master).doc

Attachment: Z-2020-10_39 Getzville Local Law (002) (RES-2021-243 : 39 Getzville Road Rezoning)

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor

Daniel C. Howard, A
Planning Director

Ellen M. Kost, AICP
Assistant Planning Dir

Town Board Agenda of March 22, 2021

March 15, 2021

The Honorable Town Board
Town of Amherst
5583 Main Street
Williamsville, NY 14221

Subject: Request to rezone 1.43 ± acres of land from R-3 to CF; property located at 39 Getzville Road. Daemen College, Petitioner. (Z-2020-10).

Honorable Members:

The subject property is a 1.43 ± acre rectangular parcel located on the east side of Getzville Road, 388± feet north of Main Street. The parcel has 148 ± ft. of frontage on Getzville Road and a depth of 430 ± ft.

The property is currently occupied by a single family, detached house with driveway access to Getzville Road bounded by a wooded area on the eastern property line. Daemen College has already acquired the adjacent Getzville Road parcels (portion of 73, 89, 99, 109 Getzville) which are zoned CF. Town ditch 5 runs along the eastern property line of the subject parcel.

For information on the surrounding zoning and land use, please refer to the attached sketch.

The purpose of this request is the rezoning of 39 Getzville Road to the Community Facilities (CF) zoning designation that would allow consistency with the rest of the Daemen College parcel. No improvements to the site are planned at this time.

There is no history of any previous rezoning requests or site plan approvals for the subject property.

The Planning Board offers the following findings consistent with Section 8-3 of the Zoning Ordinance.

INTENT AND OBJECTIVES OF THE COMPREHENSIVE PLAN

The Conceptual Land Use Plan (Figure 6) in the Town Comprehensive Plan shows the subject parcel as well as the entire Daemen College campus as "educational campus" land use. This rezoning is consistent with the Comprehensive Plan.

continued . . .

Attachment: 39 Getzville TB letter 2 (RES-2021-243 : 39 Getzville Road Rezoning)

Honorable Town Board

Rezone 1.43 ± acres of land from R-3 to CF;
property located at 39 Getzville Road.
Agenda of March 22, 2021

INTENT AND OBJECTIVES OF THE ZONING ORDINANCE

The proposal is consistent with Section 1-2-2K of the Zoning Ordinance which seeks to guide the future development of the Town to bring about the gradual conformity of land and building uses in accordance with the objectives of the Comprehensive Plan.

CONSISTENCY/COMPATIBILITY WITH SURROUNDING DEVELOPMENT/ZONING

Section 3.3.6 in the Town Comprehensive Plan refers to Daemen College and states that *"The College and the Town should continue to work together to ensure that new development around the edges of the campus is designed to complement the surrounding neighborhoods."* The CF zoning on the subject parcel will be consistent with the previous rezoning on the east side of Getzville Road adjacent to the Daemen campus. The surrounding neighborhood to the north and west is predominantly single-family homes. The anticipated use for the subject parcel will be consistent with the existing surrounding land uses.

ADEQUATE SERVICES AND UTILITIES

All services and utilities necessary for the proposed rezoning are available and adequate at the subject location. This is an unlisted action, and an environmental assessment in accordance with SEQR has been prepared for the subject proposal. Pursuant to Local Law #3-82, as amended, the requirements of SEQR are complete and the proposal is not expected to have a significant adverse effect on the environment.

RECOMMENDATION

The Planning Board recommends that your Honorable Body concur with the Planning Board's findings relative to SEQR and issue the attached Negative Declaration, and that the subject request be **approved** based on the attached resolution.

Very truly yours,

DANIEL HOWARD, AICP
Planning Director

DH/TV/ac
Att.
X:\Current_Planning\Files\Rezonings\2020\Z-2020-10_ (39 Getzville) _2020
cc: Stanley Sliwa, Town Attorney

Planning Board Approval January 21, 2021
Ayes 7; Noes 0

Attachment: 39 Getzville TB letter 2 (RES-2021-243 : 39 Getzville Road Rezoning)

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2020-10

PETITIONER

Daemen College
4380 Main St.
Amherst, NY 14226

PROPERTY LOCATION

39 Getzville Road

JAN29'21 AM 8:33 RCVD

WHEREAS the Town of Amherst Planning Board on Thursday, January 21, 2021 held a public hearing on the proposed rezoning of land from R-3 to CF, and

WHEREAS the Planning Board has reviewed plans and other materials regarding the rezoning proposal, and

WHEREAS the materials and plans have been referred to the Town's various review agencies, and

WHEREAS in accordance with Section 8-3-5 of the Zoning Ordinance the Planning Board finds that:

A. The proposed zoning and development plan are generally consistent with the policies of the Comprehensive Plan and the Zoning Ordinance.
The proposal is also consistent with the Comprehensive Plan's Conceptual Land Use Plan which projects "Educational Campus" uses in this area of Town. and is consistent with the uses outlined in Section 3.3.5, "Community Facilities". The rezoning of the subject parcel will assist in maintaining the scale and character of the surrounding area.

B. There are adequate services and utilities available or proposed to be made available in the construction of the development.

C. The proposal is compatible with the proposed zoning and conforming uses of nearby properties and with the character of the neighborhood.

D. The subject property is more suitable for uses permitted by the proposed district versus the current district.

E. The proposed change does tend to improve the balance of uses, or meets a specific demand in the Town.

F. Review by the US Army Corps of Engineers under Section 404 of the Clean Water Act may be waived since hydric/potentially hydric soils have not been identified on the parcel.

Attachment: 39 Getzville TB letter 2 (RES-2021-243 : 39 Getzville Road Rezoning)

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2020-10

PETITIONER

Daemen College

PROPERTY LOCATION

39 Getzville Road

JAN29'21 AM 8:33 RCVD

Pursuant to Local Law #3-82, as amended, the Planning Board recommends that the Town Board determine that the requirements of SEQR are complete and that the subject proposal is not expected to have a significant adverse effect on the environment.

NOW THEREFORE BE IT RESOLVED that the Planning Board recommends to the Town Board in accordance with Section 8-3-4 of the Zoning Ordinance, that the rezoning request be approved.

The foregoing resolution was adopted by the Town of Amherst Planning Board, January 21, 2021; moved by Chmiel; seconded by Penberthy; ayes 7, noes 0.

Robert J. Gilmour, Chair

1/28/21
Date

TV/ac
X:\Current_Planning\Files\Rezonings\2020\Z-2020-10_(39 Getzville)_2020\Z-2020-10_resolution_012121_TV.doc
cc: Town Clerk
Commissioner of Building
Highway Superintendent
Town Engineer
Traffic/Safety Coordinator
LaBella Associates, Don Hoefler, 300 Pearl St. Suite 301, Buffalo, NY 14202
Daemen College, 4380 Main St., Amherst, NY 14226

Attachment: 39 Getzville TB letter 2 (RES-2021-243 : 39 Getzville Road Rezoning)



Z-2020-10
Proposed Rezoning from R-3 to CF
Property Located at 39 Getzville Road

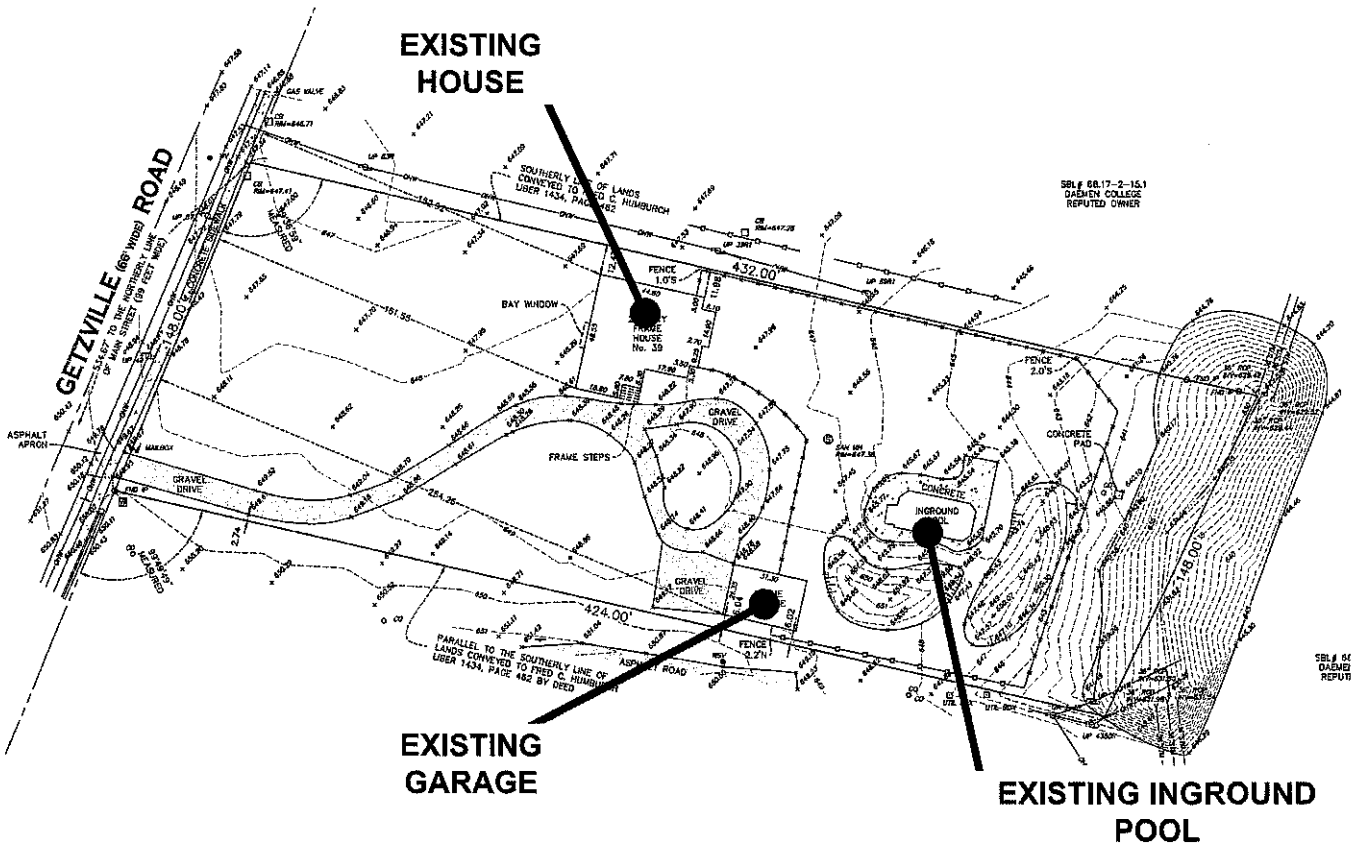
Daemen College, Petitioner

January 21, 2021

39 Getzville Road

Prepared by the Town of Amherst Planning Department

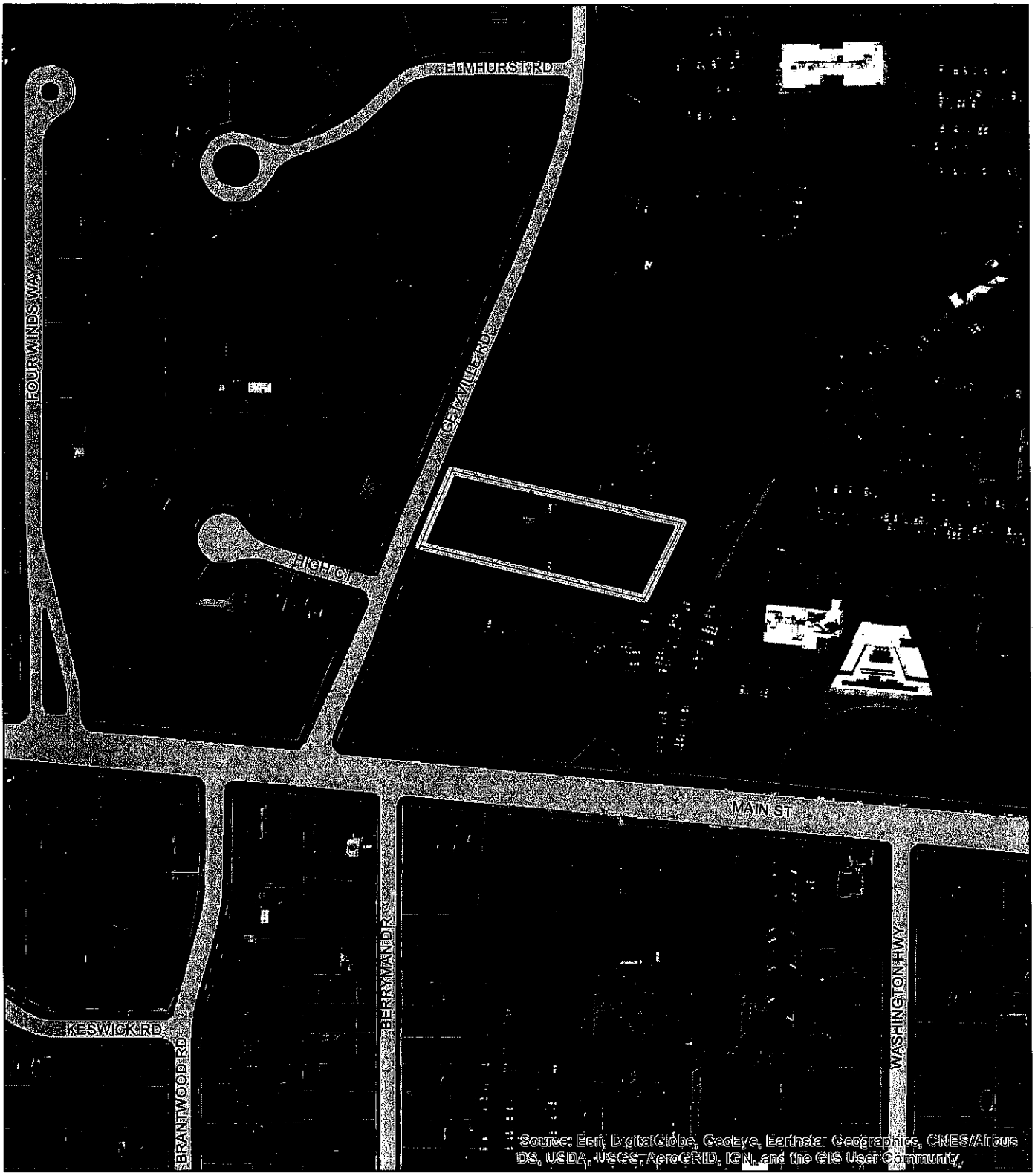
Attachment: 39 Getzville TB letter 2 (RES-2021-243 : 39 Getzville Road Rezoning)



SURVEY PLAN

Z-2020-10
39 Getzville Road
Received: 11/16/20

Attachment: 39 Getzville TB letter 2 (RES-2021-243 : 39 Getzville Road Rezoning)



Z-2020-10
Proposed Rezoning from R-3 to CF
Property Located at 39 Getzville Road

Daemen College, Petitioner

January 21, 2021

39 Getzville Road

Prepared by the Town of Amherst Planning Department

Attachment: 39 Getzville TB letter 2 (RES-2021-243 : 39 Getzville Road Rezoning)

SITE PLAN OR ZONING REFERRAL TO COUNTY OF ERIE, NY AND REPLY TO MUNICIPALITY

Note: Please complete and send one copy with attachments to Erie County Division of Planning, Room 1053, 95 Franklin Street, Buffalo, N.Y. 14202. Retain a copy for your files.

DO NOT WRITE IN THIS SPACE

Case No.: ZR-20-514

Received: 11/19/20

The proposed action described herein is referred in accordance with the provisions of the General Municipal Law, which provides that if no reply is received in 30 days after receipt of full information including a SEQR EAF if applicable, the municipal agency may take final action without considering such reply. If, however, reply is received at any time prior to municipal action, such reply must be considered.

Description of Proposed Action

1. **Name of Municipality:** Town of Amherst, NY

2. **Hearing Schedule:** **Date** 01/21/2021 **Time** 6:30pm **Location** Amherst Town Offices

3. **Action is before:** [X] Legislative Body [ ] Board of Appeals [X] Planning Board

4. **Action consists of:** [ ] New Ordinance [X] Rezone/Map Change [ ] Ordinance Amendment
   [ ] Site Plan [ ] Variance [ ] Special Use Permit [ ] Other

5. **Location of Property:** [ ] Entire Municipality [X] Specific as follows: 39 Getzville Rd.

6. **Referral required as Site is within 500'of:** [ ] State or County Property/Institution [ ] Municipal Boundary [ ] Farm Operation located in an Agricultural District
   [ ] Expressway [ ] County Road [X] State Highway [ ] Proposed State or County Road, Property, Building/ Institution, Drainageway

7. **Proposed change or use:** Proposed rezoning of 1.43 acres from R-3 to CF to make consistent the campus zoning.

8. **Other remarks: (ID#, SBL#, etc.)** Z-2020-10

9. **Submitted by:** Roberta Rapaccio, Associate Planner **Date:** 11/17/20

Mailing Address: 5583 Main Street, Williamsville, NY 14221

Reply to Municipality by Erie County Division of Planning

Receipt of the above-described proposed action is acknowledged on 11/30/20. The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.

1. [ ] **The proposed action is not subject to review under the law.**
2. [ ] **Form ZR-3, Comment on Proposed Action is attached hereto.**
3. [ ] **The proposed action is subject to review; the Division makes the recommendation shown on Form ZR-4, Recommendation on Proposed Action, which is attached hereto.**
4. [X] **No recommendation; proposed action has been reviewed and determined to be of local concern**

By the Division of Planning: Jean M. Hamill **Date:** 12/28/20

Attachment: 39 Getzville TB letter 2 (RES-2021-243 : 39 Getzville Road Rezoning)

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Directo

MEMORANDUM November 19, 2020

FROM

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way
Integrated Review Coordinator, ECDEP

RECEIVED
NOV 30 2020
TOWN OF AMHERST
PLANNING DEPT.

TO

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 1.43± ACRES OF LAND FROM R-3 TO CF **Z-2020-10**; PROPERTY LOCATED AT **39 GETZVILLE ROAD**. DAEMEN COLLEGE, PETITIONER.

REVIEW:

Do you agree with all statements made? yes.

If you do not, briefly state why: N/A

General comments relative to your agency interests: N/A

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) N/A

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 11/24/20

EK/RR/bf
X:\Current_Planning\Files\Rezonings\2020\Z-2020-10_(34 Getzville)_2020\Z-2020-10_Transmittal_111920.doc
cc: Scott Marshall, Principal Planner
Kathy Cooper, Deputy Town Clerk

Attachment: 39 Getzville TB letter 2 (RES-2021-243 : 39 Getzville Road Rezoning)

RECEIVED
NOV 30 2020
TOWN OF AMHERST
PLANNING DEPT.

TOWN OF AMHERST
ENGINEERING
DEPARTMENT
2020 NOV 20 A 11:59

Amherst
Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICI
Planning Director
Ellen M. Kost, AICP
Assistant Planning Direct

MEMORANDUM November 19, 2020

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way
Integrated Review Coordinator, ECDEP

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 1.43± ACRES OF LAND FROM R-3 TO CF **Z-2020-10**; PROPERTY LOCATED AT **39 GETZVILLE ROAD**. DAEMEN COLLEGE, PETITIONER.

REVIEW:

Do you agree with all statements made? YES.

If you do not, briefly state why: _____

General comments relative to your agency interests: None @ This Time.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 11/20/20

EK/RR/bf
X:\Current_Planning\Files\Rezonings\2020\Z-2020-10_(34 Getzville)_2020\Z-2020-10_Transmittal_111920.doc
cc: Scott Marshall, Principal Planner
Kathy Cooper, Deputy Town Clerk

Attachment: 39 Getzville TB letter 2 (RES-2021-243 : 39 Getzville Road Rezoning)

Amherst
Town of Amherst Planning Department
Erie County, New York

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Directo

TOWN OF AMHERST
ENGINEERING
DEPARTMENT
2020 NOV 20 A 11:52

RECEIVED
NOV 25 2020
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM

November 19, 2020

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
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FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 1.43± ACRES OF LAND FROM R-3 TO CF **Z-2020-10**; PROPERTY LOCATED AT **39 GETZVILLE ROAD**. DAEMEN COLLEGE, PETITIONER.

REVIEW:

Do you agree with all statements made? YES.

If you do not, briefly state why: _____

_____.

General comments relative to your agency interests: NONE

_____.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

_____

_____

_____.

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 11/24/20

EK/RR/bf
X:\Current_Planning\Files\Rezonings\2020\Z-2020-10_(34 Getzville)_2020\Z-2020-10_Transmittal_111920.doc
cc: Scott Marshall, Principal Planner
Kathy Cooper, Deputy Town Clerk

Attachment: 39 Getzville TB letter 2 (RES-2021-243 : 39 Getzville Road Rezoning)

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Directo

MEMORANDUM November 19, 2020

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
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Ann Demopoulos, Deputy Town Attorney, Right-of-Way
Integrated Review Coordinator, ECDEP

RECEIVED
NOV 23 2020
TOWN OF AMHERST
PLANNING DEPT.

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 1.43± ACRES OF LAND FROM R-3 TO CF **Z-2020-10**; PROPERTY LOCATED AT **39 GETZVILLE ROAD**. DAEMEN COLLEGE, PETITIONER.

REVIEW:

Do you agree with all statements made? Yes.

If you do not, briefly state why: _____

_____.

General comments relative to your agency interests: N/A at this time

_____.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

_____

_____

_____.

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 11/20/20

EK/RR/bf
X:\Current_Planning\Files\Rezonings\2020\Z-2020-10_(34 Getzville)_2020\Z-2020-10_Transmittal_111920.doc
cc: Scott Marshall, Principal Planner
Kathy Cooper, Deputy Town Clerk

Attachment: 39 Getzville TB letter 2 (RES-2021-243 : 39 Getzville Road Rezoning)

Amherst

Town of Amherst Planning Department — *Erie County, New York*

RECEIVED
NOV 23 2020
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM November 19, 2020

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
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FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 1.43± ACRES OF LAND FROM R-3 TO CF **Z-2020-10**; PROPERTY LOCATED AT **39 GETZVILLE ROAD**. DAEMEN COLLEGE, PETITIONER.

REVIEW:

Do you agree with all statements made? yes.

If you do not, briefly state why: _____

General comments relative to your agency interests: none at this time.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 11-20-2020

EK/RR/bf
X:\Current_Planning\Files\Rezonings\2020\Z-2020-10_(34 Getzville)_2020\Z-2020-10_Transmittal_111920.doc
cc: Scott Marshall, Principal Planner
Kathy Cooper, Deputy Town Clerk

Attachment: 39 Getzville TB letter 2 (RES-2021-243 : 39 Getzville Road Rezoning)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 23134 **RESOLUTION 2021-344** **ADOPTED**

Briar Hollow Subdivision, Phase 2 - Stop Signs

A public hearing to install stop signs at the Phase II roadways of Briar Hollow Subdivision.

"The tee intersection of Winterbrook Drive and Florence Lane is hereby designated as a stop intersection and a stop sign shall be installed at the southeast corner."

and,

"The easterly tee intersection of Corsica Way and Winterbrook Drive is hereby designated as a stop intersection and a stop sign shall be installed at the northwest corner."

and,

"The westerly tee intersection of Corsica Way and Winterbrook Drive is hereby designated as a stop intersection and a stop sign shall be installed at the northeast corner."

and,

"The tee intersection of Corsica Way and Daisy Lane is hereby designated as a stop intersection and a stop sign shall be installed at the northwest corner."

4/19/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was opened at 7:19 PM.

Christopher Schregel, Traffic Safety Liaison, presented.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was closed at 7:23 PM.

A motion to approve was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Councilmembers
Initiated by: **Jacqualine Berger**
Co-Sponsored by:

DOC ID: 23137 **RESOLUTION 2021-345** **ADOPTED**

Reappointment to the Arts & Culture in Public Places in Amherst Board

WHEREAS, Town of Amherst created the Arts & Culture in Public Places Board to promote public art and culture within the town and to collaborate and cooperate with various and appropriate individuals, groups, associations, organizations and institutions concerned with art and culture; and

WHEREAS, to promote, ensure and enhance the function, object and mission of the visual and performing arts; and

WHEREAS, the Arts & Culture in Public Places Board, also known as Arts & Culture, consists of nine (9) members, each serving a term of two (2) years; and

WHEREAS, Michael E. Russo has served on the Arts & Culture Board and has expressed interest in continuing to serve.

NOW, THEREFORE, BE IT RESOLVED that the Amherst Town Board re-appoint Michael E. Russo for a term to conclude December 31, 2022.

4/19/2021
Consent

FINANCIAL IMPACT:

None.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Jacqualine Berger, Deputy Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Councilmembers
Initiated by: **Jacqualine Berger**
Co-Sponsored by:

DOC ID: 23139 **RESOLUTION 2021-346** **ADOPTED**

KNOX Key Security Upgrade

WHEREAS, the Amherst Fire Inspectors coordinate and administer the KNOX Box program for the Town of Amherst; and

WHEREAS, KNOX is a sole source provider of the E key and master key retention devices used by Town of Amherst Fire Companies; and

WHEREAS, the proposed decoders and upgraded key cores are needed to maintain the KNOX Box program within the Town of Amherst and are replacing the older SentraLock boxes we currently utilize that are no longer produced; and

WHEREAS, in an effort to maintain the highest level of security an upgrade to our aging system is required and the utilization of the new E Key increases that security.

NOW, THEREFORE, BE IT RESOLVED that the Amherst Town Board approves the temporary transfer of funds from Avoidable Alarm Fund T-2999-4002 to KP2116 for the purchase of decoders and key cores from KNOX.

4/19/2021
Consent

FINANCIAL IMPACT:

A cost not to exceed $60,000.00 temporary transfer from account T2999-4002 to KP2116.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Jacqualine Berger, Deputy Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Town Attorney
Initiated by: **Stanley J. Sliwa**
Co-Sponsored by:

DOC ID: 23146 **RESOLUTION 2021-347** **ADOPTED**

Request to Schedule Public Hearing - Local Law Amending Chapter 148

AGENDA ITEM : APRIL 19TH, 2021

TO: **Town Board**

FROM: **Stanley J. Sliwa, Esq., Town Attorney**

DATE: **April 14, 2021**

RE: **Request For Public Hearing**
A Local Law Amending Chapter 148
Peddling, Soliciting, Transient Business and Mobile Food Vending

Kindly adopt a resolution to set a Public Hearing for May 17, 2021 at 7:00 p.m. to adopt the above entitled Local Law. A copy of the proposed law is attached hereto.

The final version of this Local Law will be distributed to the Town Board at least ten (10) days before the public hearing as required by law.

Thank you.

SJS:nmb
Attachment
c: Kathy Cooper, Deputy Town Clerk
(*w/attachment*, **Agenda Item : April 19th, 2021**)
Mark S. Berke, PE, Commissioner of Building (*w/attachment*)

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

****Formatting issues will be corrected prior to the Public Hearing and on or before the 10th day before such Public Hearing when the Town Board will receive the proposed final draft of the law in preparation for the Public Hearing being held on May 17th.****

LOCAL LAW NO. __-2021

TOWN OF AMHERST

COUNTY OF ERIE, STATE OF NEW YORK

A Local Law Amending Chapter 148 Of The Code Of The Town of Amherst, Peddling, Soliciting, Transient Businesses and Mobile Food Vending

Be it enacted by the Town Board of the Town of Amherst as follows:

Section 1. Title.

This Local Law shall be referred to as, "A Local Law Amending Chapter 148 of the Code of the Town of Amherst, Peddling, Soliciting, Transient Businesses and Mobile Food Vending."

Section 2. Purpose

The purpose of this Local Law shall be to amend various sections of Chapter 148 of the Code of the Town of Amherst with respect to peddlers, solicitors, transient businesses and mobile food vendors.

Section 3.

Section 148-2 of the Code of the Town of Amherst is hereby amended as follows:

§ 148-2. Definitions.

The following words and phrases shall have the meanings set forth unless the context of their use clearly indicates otherwise:

APPLICANT

Any person by or for whom an application is made under this chapter.

CHARITABLE ORGANIZATION

A. Any benevolent, philanthropic, patriotic, military veterans, not-for-profit,

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLL (RES-2021-347 : Request to Schedule Public Hearing - Local Law Amending Chapter 148)

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educational or religious association, society or other organization or any other association, society or organization qualified as a tax-exempt organization under Section 501 of the Internal Revenue Code.

B. Any governmental entity or organization, including, without limitation, a school district, fire district and fire company.

MOBILE FOOD VEHICLE

A self-contained mobile food ~~unit~~ vehicle where business is conducted ~~per~~ as a *mobile food unit.* ~~in which ready-to-eat food is prepared, cooked, wrapped, packaged, processed or portioned for service, sale, or distribution.~~

MOBILE FOOD UNIT

A mobile food unit in which ready-to-eat food is prepared, cooked, wrapped, packaged, processed or portioned for service, sale, or distribution. This shall include trailers, mobile grills (propane, charcoal, etc), mobile smokers, a temporary structure, tent or stand.

MOBILE FOOD VENDOR

The owner or owner's agent of a mobile food vehicle or a mobile food unit~~.~~

PEDDLER

A person who engages in peddling.

PEDDLING

A. Selling or offering for sale, barter or exchange any property or service, either for immediate or future delivery or performance upon any street, road or highway or from house to house in the Town, and including, without limitation, activities commonly known as "hawking."

B. Delivery or distribution of advertising matter, literature, pamphlets, samples or handbills house to house or on any of the streets, roads or highways or by going from place to place in the Town, but not including the delivery or distribution of newspapers, magazines or political or religious materials.

PERSON

A natural person, corporation, partnership, association, joint venture, society or other organization or association of any kind, whether acting as principal, agent, employer or employee.

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLL (RES-2021-347 : Request to Schedule Public Hearing - Local Law Amending Chapter 148)

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PROPERTY

Any goods, wares, merchandise or other article or thing of every kind or nature except newspapers.

SOLICITING

A. Seeking, taking or offering contracts or orders for any property for future sale or delivery or performance of any service upon any street, road or highway or from house to house in the Town.

B. Seeking or taking subscriptions or contributions of money or property, upon any street, road or highway or from house to house in the Town.

SOLICITOR

A person who engages in soliciting.

TOWN

The Town of Amherst outside the Village of Williamsville.

TRANSIENT BUSINESS

A retail or wholesale business, other than a mobile food ~~vehicle~~ vendor (as regulated separately in this Local Law), conducted from a temporary structure or tent, truck, van or trailer, stand, parking lot or vacant parcel of land, in a public right-of-way or in or on any other place in the Town, but not (1) outdoor sales of property or services accessory to a business conducted within a permanent structure on a same premises or (2) the sale of food products raised or produced on the same premises from a temporary or seasonal stand, provided that the principal structure or activities otherwise comply with the zoning and other ordinances of the Town.

Section 4.

Section 148-3 of the Code of the Town of Amherst is hereby amended as follows:

§ 148-3. Permit or registration required.

A. No person shall engage in peddling, soliciting, mobile food ~~vehicle~~ vending or a transient business without first obtaining a permit or registering or both as required by this chapter.

B. No motor vehicle or trailer shall be used for peddling, mobile food ~~vehicle~~ vending or conducting a transient business unless a permit shall first have been obtained, which

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLL (RES-2021-347 : Request to Schedule Public Hearing - Local Law Amending Chapter 148)

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permit shall at all times be displayed in a conspicuous location that is visible from the outside of the vehicle.

Section 5.

Section 148-5 of the Code of the Town of Amherst is hereby amended as follows:

§ 148-4. Exemptions.

No permit under this chapter shall be required:

A. By any charitable organization or its agents or employees or veterans licensed pursuant to General Business Law § 32. This does not apply to a Mobile Food Vehicle or a Mobile Food Unit.

B. By any business, service or activity licensed under any other ordinance or law of the Town of Amherst.

C. For lawn cutting, leaf raking and snow shoveling services for residential property.

D. By political parties and candidates for public office.

E. For peddlers and solicitors not over sixteen (16) years old.

Section 6.

Section 148-7 of the Code of the Town of Amherst is hereby amended as follows:

§ 148-7. Application requirements.

A. An application for a permit under this chapter shall contain the following:

(1) The name, home address and local address, if any, of the applicant.

(2) For peddlers or solicitors, a~~A~~ physical description of the applicant, giving date of birth, height, weight and color of hair and eyes. A photograph may be required.

(3) The name and address of the person, if any, by whom the applicant is employed and for whom or through whom orders are to be solicited, cleared, filled or delivered.

(4) A description of the business or activity in which the applicant intends to engage and of the nature of any property or services involved.

(5) For peddlers or solicitors, a list of crimes for which the applicant has been

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Attachment: ProposedLL (RES-2021-347 : Request to Schedule Public Hearing - Local Law Amending Chapter 148)

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arrested or convicted, including the dates and places.

(6) A statement as to the period of time during which the applicant intends to engage in the business or activity regulated under this chapter.

(7) Proof that the applicant, or his or her employer or principal, is registered for sales tax purposes, if the business or activity to be conducted is subject to sales or use tax.

(8) A description of any motor vehicle that will be used for pickup or delivery of property or for the purpose of bringing any such property into the Town for peddling, soliciting or transient business purposes, or from which a transient business will be conducted, to include the name of manufacturer, year, type of vehicle, vehicle identification number, registration plate number, title holder and name of the person other than the title holder to whom the vehicle is registered, if any.

(9) The location where a transient business or mobile food vending operation is to be conducted, if known.

(10) Further information required by the Town Clerk or the Police Department.

B. The application shall be signed by the applicant and sworn to before a notary public or other officer authorized to administer oaths.

C. If mobile food vending or a transient business is to be conducted on private property, the written consent of the property owner, if other than the applicant, shall be filed with the application or shall be prominently displayed on the mobile food vending vehicle/unit or at the transient business site.

Section 7.

Section 9 of Chapter 148 of the Code of the Town of Amherst is hereby amended as follows:

Type of Permit	**Fee**
Peddler's or solicitor's permit	$50
Transient business permit	$50
Mobile Food Vehicle / Vendor permit	$~~400~~ 250 for the first year (includes 1 vehicle for mobile food vehicle permit)~~vehicle~~ $~~200~~ 250 for each additional vehicle

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLL (RES-2021-347 : Request to Schedule Public Hearing - Local Law Amending Chapter 148)

****Formatting issues will be corrected prior to the Public Hearing and on or before the 10th day before such Public Hearing when the Town Board will receive the proposed final draft of the law in preparation for the Public Hearing being held on May 17th.****

$~~200~~ 250 for permit renewals in accordance with § **148-10B**.

$100 for a single event (only 1 per calendar year allowed)

Section 8.

Section 10 of Chapter 148 of the Code of the Town of Amherst is hereby amended as follows:

§ 148-10. Permit regulations.

A. After receipt of reports from the Police Department and Building Department, when required, the Town Clerk shall issue the permit requested unless the applicant for a peddler's or solicitor's permit has been convicted of a felony at any time or a misdemeanor involving moral turpitude within five (5) years prior to the application, and has not been granted relief from civil disabilities, or otherwise is found not to be a person of good moral character and reputation.

B. Solicitors', peddlers' or transient business permits issued pursuant to this chapter automatically expire ninety (90) days after issuance. Mobile food vendor permits shall automatically expire one (1) year after the date of issuance.

~~A. Mobile food vendor permit that is renewed prior to the date of expiration or within thirty (30) days after the date of expiration shall be eligible for the renewal fee.~~

C. Permits issued under this chapter shall not be transferable.

D. A permit issued pursuant to this chapter may be revoked if, following its issuance, the Police Department determines that the applicant was convicted for any crime not reported in the application or is otherwise not a person of good moral character and reputation. A permit may also be revoked for any violation of this chapter committed after its issuance.

E. A transient business permit shall be limited to a single location. If the location is in a

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Attachment: ProposedLL (RES-2021-347 : Request to Schedule Public Hearing - Local Law Amending Chapter 148)

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public right-of- way, it must be approved by the state, county or town authority having jurisdiction. If the location is not in a public right-of-way, it must be approved by the Building Department.

F. For Mobile Food Vendors:

(1) It shall be unlawful to conduct business from a mobile food vehicle or mobile food unit within a public right-of-way or on private property within the Town without having first obtained a valid mobile food vendor permit for each mobile food vehicle.

(2) It shall be unlawful for a mobile food vendor to conduct business in a location within ~~one~~two ~~–~~hundred fifty ~~–~~(~~100~~250) feet of the primary entrance of an establishment that is open to the public and where ready-to-eat food is prepared, cooked, wrapped, packaged, processed or portioned for service, sale, or distribution. This requirement shall be waived if permission for the mobile food vending operation is obtained from the owner of the property that contains the establishment where ready-to-eat food is prepared, cooked, wrapped, packaged, processed or portioned for service, sale or distribution.

(3) Within non-residential zoning districts, it shall be unlawful for a mobile food vendor to conduct business at a single location within a public right-of-way for a duration exceeding three (3) hours. Within residential zoning districts, it shall be unlawful for a mobile food vendor to conduct business within a public right-of-way except for mobile food vehicles that operate for less that[1] twenty (20) minutes at a single location or that operate within an area where a block party is being conducted.

[1] So in original. Should be "than."

(4) At all times, mobile food vendors must abide by the New York State Transportation Law and all applicable Parking, Vehicle and Traffic Laws, Ordinances, Rules and Regulations.

(5) All signage associated with a mobile food vendor must be permanently affixed to the mobile food vehicle or mobile food unit. No accessory signage shall be placed outside or around the mobile food vehicle or mobile food unit.

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLL (RES-2021-347 : Request to Schedule Public Hearing - Local Law Amending Chapter 148)

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(6) All mobile food vendors must provide trash receptacles of sufficient capacity to contain all trash and waste generated in association with the business of the mobile food vendor. All waste and trash shall be placed in the trash receptacles. All trash, waste, litter and debris shall be removed from the site of the vending operation at the end of each daily operation.

[

(7) It shall be unlawful to discharge liquid waste, fats, oils or grease on the land. Such discharges shall be held in appropriate containers and then disposed in a legally permissible manner.

(8) Mobile food vendors shall not conduct operation from a site that contains a gasoline service.

(9) Each mobile food ~~vehicle~~ vendor shall be inspected annually by the Building Department for fire and life ~~–~~safety code compliance.

(10) All required permits shall be posted conspicuously on the mobile food vehicle.

(11) Each mobile food vehicle shall be registered as a commercial vehicle with the New York State Department of Motor Vehicles.

(12) When parked on a public or private right-of-way, products shall not be dispensed from the street side of the mobile food vehicle.

(13) A mobile food vehicle shall not be operated in reverse in order to attempt or make a sale.

(14) When parked on a public or private right-of-way, a mobile food vehicle shall not be parked within sixty (60) feet of an intersection with another public or private right-of-way boundary.

(15) Shall meet requirements of TITLE 19 NYCRR, Chapter XXXIII, Subchapter A, Part 1225 Fire Prevention, NFPA 1 and NFPA 96.

(16) ~~(14)~~ No mobile food vendors shall be exempt from the requirements of this law for any reason. Permits, fees and a fire and life safety inspection are required for every mobile food vehicle or mobile food unit.

Attachment: ProposedLL (RES-2021-347 : Request to Schedule Public Hearing - Local Law Amending Chapter 148)

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****Formatting issues will be corrected prior to the Public Hearing and on or before the 10th day before such Public Hearing when the Town Board will receive the proposed final draft of the law in preparation for the Public Hearing being held on May 17th.****

Section 9. Effective Date

This Local Law shall take effect immediately and be filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law and published pursuant to Sections 130 and 133 of the Town Law and Chapter 28 of the Code of the Town of Amherst.

Francina J. Spoth, Town Clerk
Town of Amherst
County of Erie, New York

Attachment: ProposedLL (RES-2021-347 : Request to Schedule Public Hearing - Local Law Amending Chapter 148)

~~Strikethrough~~ = Deleted language; Underline = Added language

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Town Attorney
Initiated by: **Stanley J. Sliwa**
Co-Sponsored by:

DOC ID: 23143 **RESOLUTION 2021-348** **ROLL CALL VOTE (ADOPTED)**

Golf Course Maintenance Equipment (Bond Resolution - $400,000)

AGENDA ITEM - APRIL 19th, 2021

TO: **Town Board**

FROM: **Stanley J. Sliwa, Esq., Town Attorney**

DATE: **April 12, 2021**

RE: **Golf Course Maintenance Equipment**
2021-2026 C.I.P. - Project YR-10
Bond Resolution - $400,000.00

Kindly take the following action with respect to the above bond request:

(1) Adopt the attached bond resolution authorizing the issuance of $400,000.00 in serial bonds for the above-referenced Town improvement.

The adoption of the bond resolution does ***not*** require a public hearing to be held because the improvement is a Town improvement not involving a special district.

Also attached is the Map Plan and Report which provides further detail on the scope of the project.

Thank you.

SJS:nmb
Attachment
c: Kathy Cooper, Deputy Town Clerk
(w/attachment, **Agenda Item - April 19th, 2021**)
Daryl C. Bramer, Comptroller *(w/attachment)*
Lynda Juul, Director of Finance *(w/attachment)*
Dan Howard, Director of Planning *(w/attachment)*
Ellen M. Kost, Assistant Director of Planning *(w/attachment)*
Mary-Diana Pouli, Executive Director
Town of Amherst Youth and Recreation Department (*w/attachment*)
Eric W. Guzdek, Recreation Specialist
Town of Amherst Youth and Recreation Department *(w/attachment)*

4/19/2021

A motion to adopt the Bond resolution was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved via Roll Call vote 5-0.

FINANCIAL IMPACT:

Bond Resolution - $400,000

RESULT:	**ROLL CALL VOTE (ADOPTED) [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Jacqualine Berger, Deputy Supervisor
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

EXTRACT OF MINUTES

Meeting of the Town Board of the

Town of Amherst, in the

County of Erie, New York

April 19, 2021

* * *

A regular meeting of the Town Board of the Town of Amherst, in the County of Erie, New York, was held at the Town Hall, 5583 Main Street, Williamsville, New York, on April 19, 2021.

There were present:	Hon. Brian J. Kulpa, Supervisor; and
Board members:	Jacqualine Berger, Councilwoman Deborah Bruch Bucki Councilwoman Shawn Lavin, Councilman Michael R. Szukala, Councilman
There were absent:	
Also present:	Francina J. Spoth, Town Clerk

* * *

_____ offered the following resolution and moved its adoption:

Attachment: CertBondReso (RES-2021-348 : Golf Course Maintenance Equipment (Bond Resolution - $400,000))

BOND RESOLUTION OF THE TOWN OF AMHERST, NEW YORK, ADOPTED APRIL 19, 2021, AUTHORIZING ACQUISITION OF GOLF COURSE MAINTENANCE EQUIPMENT, STATING THE ESTIMATED MAXIMUM COST THEREOF IS $400,000, APPROPRIATING SAID AMOUNT FOR SUCH PURPOSE, AND AUTHORIZING THE ISSUANCE OF BONDS IN THE PRINCIPAL AMOUNT OF $400,000 TO FINANCE SAID APPROPRIATION

THE TOWN BOARD OF THE TOWN OF AMHERST, IN THE COUNTY OF ERIE, NEW YORK, HEREBY RESOLVES (by the favorable vote of not less than two-thirds of all the members of said Town Board) AS FOLLOWS:

Section 1. The Town of Amherst, in the County of Erie, New York (herein called the "Town"), is hereby authorized to undertake acquisition of golf course maintenance equipment as described in the memo dated April 12, 2021 from the Director of Finance to the Town Attorney (2021 Capital Improvement Program Project YR-10A). The estimated maximum cost thereof, including preliminary costs and costs incidental thereto and the financing thereof, is $400,000 and said amount is hereby appropriated for such purpose. The plan of financing includes the issuance of bonds in the principal amount of $400,000 to finance said appropriation, and the levy and collection of taxes on all the taxable real property in the Town to pay the principal of said bonds and the interest thereon as the same shall become due and payable.

Section 2. Bonds of the Town in the principal amount of $400,000 are hereby authorized to be issued pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (herein called the "Law"), to finance said appropriation.

Attachment: CertBondReso (RES-2021-348 : Golf Course Maintenance Equipment (Bond Resolution - $400,000))

Section 3. The following additional matters are hereby determined and declared:

(a) The period of probable usefulness applicable to the objects or purposes for which said bonds are authorized to be issued, within the limitations of Section Sections 11.00 a. 89 of the Law, is five (5) years.

(b) The proceeds of the bonds herein authorized and any bond anticipation notes issued in anticipation of said bonds may be applied to reimburse the Town for expenditures made after the effective date of this resolution for the purpose for which said bonds are authorized. The foregoing statement of intent with respect to reimbursement is made in conformity with Treasury Regulation Section 1.150-2 of the United States Treasury Department.

(c) The proposed maturity of the bonds authorized by this resolution will not exceed five (5) years.

Section 4. Each of the bonds authorized by this resolution, and any bond anticipation notes issued in anticipation of the sale of said bonds, shall contain the recital of validity as prescribed by Section 52.00 of the Law and said bonds, and any notes issued in anticipation of said bonds, shall be general obligations of the Town, payable as to both principal and interest by general tax upon all the taxable real property within the Town. The faith and credit of the Town are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds, and any notes issued in anticipation of the sale of said bonds, and provision shall be made annually in the budget of the Town by appropriation for (a) the amortization and redemption of the bonds, and any notes in anticipation thereof to mature in such year, and (b) the payment of interest to be due and payable in such year.

Attachment: CertBondReso (RES-2021-348 : Golf Course Maintenance Equipment (Bond Resolution - $400,000))

Section 5. Subject to the provisions of this resolution and of the Law and pursuant to the provisions of Section 21.00 of the Law relative to the authorization of the issuance of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and Section 50.00 and Sections 56.00 to 60.00 and 168.00 of the Law, the powers and duties of the Town Board relative to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized, and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said bond anticipation notes, and as to the execution of agreements for credit enhancements, are hereby delegated to the Supervisor, the chief fiscal officer of the Town.

Section 6. The validity of the bonds authorized by this resolution, and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

(a) such obligations are authorized for an object or purpose for which the Town is not authorized to expend money, or

(b) the provisions of law which should be complied with at the date of the publication of such resolution, or a summary thereof, are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

(c) such obligations are authorized in violation of the provisions of the constitution.

Section 7. This bond resolution shall take effect immediately, and the Town Clerk is hereby authorized and directed to publish the foregoing resolution, in summary, together with a Notice attached in substantially the form prescribed by Section 81.00 of the Law in the

Attachment: CertBondReso (RES-2021-348 : Golf Course Maintenance Equipment (Bond Resolution - $400,000))

"Amherst Bee," a newspaper having a general circulation within said Town and hereby designated as the official newspaper of the Town for such publication.

The adoption of the foregoing resolution was seconded by _____and duly put to a vote on roll call, which resulted as follows:

AYES:

NOES:

The resolution was declared adopted.

****

Attachment: CertBondReso (RES-2021-348 : Golf Course Maintenance Equipment (Bond Resolution - $400,000))

CERTIFICATE

I, FRANCINA J. SPOTH, Town Clerk of the Town of Amherst, in the County of Erie, State of New York, HEREBY CERTIFY that the foregoing annexed extract from the minutes of a meeting of the Town Board of said Town of Amherst duly called and held on April 19, 2021, has been compared by me with the original minutes as officially recorded in my office in the Minute Book of said Town Board and is a true, complete and correct copy thereof and of the whole of said original minutes so far as the same relate to the subject matters referred to in said extract.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Town of Amherst this _____day of April, 2021.

(SEAL)

_____
Town Clerk

Attachment: CertBondReso (RES-2021-348 : Golf Course Maintenance Equipment (Bond Resolution - $400,000))

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Town Attorney
Initiated by: **Stanley J. Sliwa**
Co-Sponsored by:

DOC ID: 23144 **RESOLUTION 2021-349** **ADOPTED**

2020 Service Award Program TOA/VOW Fire Protection Districts - 30-Day Mandatory Posting Period

AGENDA ITEM : APRIL 19TH, 2021

TO: **Town Board**

FROM: **Stanley J. Sliwa, Esq., Town Attorney**

DATE: **April 14, 2021**

RE: **2020 Service Award Program**
***East Amherst Fire Department**
***Ellicott Creek Fire Protection District**
***Getzville Fire Protection District**
***Main Transit Fire Protection District**
***North Amherst Fire Protection District**
***North Bailey Fire Protection District**
***Swormville Fire Company, Inc.**

Kindly adopt the following resolution with respect to the above matter:

RESOLVED, the Town Board approves the posting of the following fire company lists in their respective fire halls for the mandatory period of thirty (30) days:

East Amherst Fire Department
Ellicott Creek Fire Protection District
Getzville Fire Protection District
Main Transit Fire Protection District
North Amherst Fire Protection District
North Bailey Fire Protection District
Swormville Fire Company, Inc.

Thank you.

SJS:nmb
c: Kathy Cooper, Deputy Town Clerk (**Agenda Item : April 19th, 2021**)

4/19/2021
Consent

FINANCIAL IMPACT:

None for the purposes of this resolution.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Town Clerk
Initiated by: **Kathleen Cooper**
Co-Sponsored by:

DOC ID: 23138 **RESOLUTION 2021-350** **ADOPTED**

New Firefighters for the Getzville Fire Company

The two new firefighters for the Getzville Fire Company both live in the Town of Amherst and reside within the Getzville Fire District.

Robert J. Zacher (past member who is moving back to active status)
154 Paul Drive
Amherst, NY 14228

Colin Nelson
301 Robin Road
Amherst, NY 14228

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

TOWN OF AMHERST
VOLUNTEER FIRE DEPARTMENT MEMBERSHIP
RESIDENCY VERIFICATION FORM

Applicant Name: Robert J. Zacher

Applicant Home Address: 154 Paul Drive, Amherst NY 14228

Under penalty of perjury I, Robert J. Zacher affirm I am an applicant to be a member of the, Getzville (fire dept.) and my address of residence is listed above.

- [x] My address is in the fire distract I've applied to or territory which is afforded protection by the fire department of the fire district or fire company pursuant to contract.
- [ ] My address is outside the district or territory that provides protection by the fire district or company, but is in the vicinity of my occupation, in which I will be able to render active service as a volunteer. My occupation address is:

Signature of Applicant: _____

I have verified the applicant's address or employment, where applicable, by examining their driver's license or other suitable document such as a utility bill, lease or pay stub.

Signature: _____

Title: Corporate Secretary

Date: 3-24-21

Submit this completed form to:
Amherst Town Clerk
5583 Main Street
Williamsville, NY 14221

Attachment: Zacher residency form (RES-2021-350 : New Firefighters for the Getzville Fire Company)

TOWN OF AMHERST
VOLUNTEER FIRE DEPARTMENT MEMBERSHIP
RESIDENCY VERIFICATION FORM

Applicant Name: Colin Nelson

Applicant Home Address: 301 Robin RD, Amherst NY 14228

Under penalty of perjury I, Colin Nelson affirm I am an applicant to be a member of the, Getzville (fire dept.) and my address of residence is listed above.

☑ My address is in the fire distract I've applied to or territory which is afforded protection by the fire department of the fire district or fire company pursuant to contract.

☐ My address is outside the district or territory that provides protection by the fire district or company, but is in the vicinity of my occupation, in which I will be able to render active service as a volunteer. My occupation address is:

_____

Signature of Applicant: Colin Nelson

I have verified the applicant's address or employment, where applicable, by examining their driver's license or other suitable document such as a utility bill, lease or pay stub.

Signature: [redacted]

Title: Corporate Secretary

Date: 3-24-21

Submit this completed form to:
Amherst Town Clerk
5583 Main Street
Williamsville, NY 14221

Attachment: Colin Nelson residency form (RES-2021-350 : New Firefighters for the Getzville Fire Company)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Comptroller
Initiated by: **Daryl Bramer**
Co-Sponsored by:

DOC ID: 23147 **RESOLUTION 2021-351** **ADOPTED**

Budget Transfers and Amendments

For April 19, 2021 Town Board Agenda

To: Town Board
From: Office of Town Comptroller
Date: 4/14/2021
Re: Various Department Budget Transfers / Amendments

I have received the following request(s) requiring budget transfers and / or amendments. Based on my review, I ask that the Town Board approve the following list;

BUDGET TRANSFERS - 2021

FROM:	***TO:***
N2052.4003 Amherst HOME Admin $3,572.10	N2042.4000 Contractual $3,572.10
Transfer to cover administrative costs due to program year closing.	
G9916-4800 Plant 16 -Chemicals $61,867.93	G9916.2600 Other Equip. $61,867.93
Transfer to cover PO 22110139 for emergency purchase for O2 plant.	

BUDGET AMENDMENTS - 2021

INCREASE:	***INCREASE:***
N2042.02785 Amherst Acq. Rehab $3,750.00	N2042.4000 Contractual $3,750.00
N2054.02785 Amherst Home Admin - PI $1,250.00	N2054.4003 Admin Fee $1,250.00
To recognize Community Development program income from 115 Meadow Lea Dr, Amherst.	
N2044.02785 Cheektowaga Home Rehab - PI $13,087.80	N2044.4000 Contractual $13,087.80
N2049.02785 Cheektowaga Home Admin- PI $1,454.20	N2049.4003 Admin Fee $1,454.20
To recognize Community Development program income from 73 Hillside Drive, Cheektowaga.	
N2023.02785 CDBG & VG - PI $170.00	N2023.4000 Contractual $170.00
To recognize Community Development program income from 179 Hillcrest Drive, Amherst.	
N1042.05002 Em'ee Health Ins. Contribution $1,902.96	N1042.8050 Health Ins. $1,902.96
To recognize Community Development 1st quarter employee health insurance contributions.	

4/19/2021
Consent

FINANCIAL IMPACT:

N/A

Community Development program income.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Engineering
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 23149 **RESOLUTION 2021-352** **ADOPTED**

Stormwater Inspection Services Amendment - Marquis Engineering CRS No. 2547

The Engineering Department is requesting that the Town Board authorize the Town Supervisor to sign the attached time extension amendment between the Town of Amherst and Marquis Engineering, P.C. to perform stormwater inspection services, on an "as-needed" basis, on behalf of the Town. The extension of this agreement will be valid from May 1, 2021 through April 30, 2022.

Funds for these consultant services will be collected from developers by the Engineering Department as Stormwater Inspection Permit fees. The fees will be placed in an escrow account (AG4010-0699) and will be paid to consultants following project completion. The entire cost of inspection services will be funded through the fee collection, with no financial impact to the Town.

This request is pending successful completion of the contract review process.

Thank you for consideration of this request.

4/19/2021
Consent

FINANCIAL IMPACT:

AG4010-0699

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

1. Background Data:

   a. Effective Date of Original Agreement: **March 18, 2019**

   b. Owner: Town of Amherst

   c. Firm: Marquis Engineering, P.C.

   d. Project: SWPPP related inspection services.

2. Nature of Amendment

   X Modifications to time(s) for rendering services

3. Description of Modifications

   This amendment will extend this professional services contract from May 1, 2021 through April 30, 2022.

4. Agreement Summary:

   - Lump Sum Fees shall be paid to the ENGINEER based on a sliding scale associated with the project size (acreage) as defined below.

     a. Lump Sum amount of $1,800.00 shall be paid to the ENGINEER for completing the nine inspections and submission of the required inspection reports detailed in Appendix A Section 2(A)(2.01)(D)(23) for a project size of 1 - 4.99 acres.

     b. Lump Sum amount of $3,200.00 shall be paid to the ENGINEER for completing the nine inspections and submission of the required inspection reports detailed in Appendix A Section 2(A)(2.01)(D)(23) for a project size of 5 - 10 acres.

     c. Lump Sum amount of $5,600.00 shall be paid to the ENGINEER for completing the nine inspections and submission of the required inspection reports detailed in Appendix A Section 2(A)(2.01)(D)(23) for a project size greater than 10 acres.

Change in time for services (days or date, as applicable): extend contract through 04/30/22.

Attachment: Marquis - Stormwater (RES-2021-352 : Stormwater Inspection Services Amendment - Marquis Engineering)

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

Owner: Town of Amherst	Firm: Marquis Engineering, P.C.
_____	_____
By: Brian J. Kulpa	By: KEITH D. MARQUIS
Title: Town Supervisor	Title: Principal
Date Signed: _____	Date Signed: 4/6/2021

Attachment: Marquis - Stormwater (RES-2021-352 : Stormwater Inspection Services Amendment - Marquis Engineering)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Engineering
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 23150 **RESOLUTION 2021-353** **ADOPTED**

Stormwater Inspection Services Amendment - JM Davidson CRS No. 2549

The Engineering Department is requesting that the Town Board authorize the Town Supervisor to sign the attached time extension amendment between the Town of Amherst and JM Davidson Engineering, D.P.C. to perform stormwater inspection services, on an "as-needed" basis, on behalf of the Town. The extension of this agreement will be valid from May 1, 2021 through April 30, 2022.

Funds for these consultant services will be collected from developers by the Engineering Department as Stormwater Inspection Permit fees. The fees will be placed in an escrow account (AG4010-0699) and will be paid to consultants following project completion. The entire cost of inspection services will be funded through the fee collection, with no financial impact to the Town.

This request is pending successful completion of the contract review process.

Thank you for consideration of this request.

4/19/2021
Consent

FINANCIAL IMPACT:

AG4010-0699

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

1. Background Data:

   a. Effective Date of Original Agreement: **March 18, 2019**

   b. Owner: Town of Amherst

   c. Firm: JM Davidson Engineering, D.P.C.

   d. Project: SWPPP related inspection services.

2. Nature of Amendment

   X Modifications to time(s) for rendering services

3. Description of Modifications

   This amendment will extend this professional services contract from May 1, 2021 through April 30, 2022.

4. Agreement Summary:

   - Lump Sum Fees shall be paid to the ENGINEER based on a sliding scale associated with the project size (acreage) as defined below.

     a. Lump Sum amount of $1,800.00 shall be paid to the ENGINEER for completing the nine inspections and submission of the required inspection reports detailed in Appendix A Section 2(A)(2.01)(D)(23) for a project size of 1 - 4.99 acres.

     b. Lump Sum amount of $3,200.00 shall be paid to the ENGINEER for completing the nine inspections and submission of the required inspection reports detailed in Appendix A Section 2(A)(2.01)(D)(23) for a project size of 5 - 10 acres.

     c. Lump Sum amount of $5,600.00 shall be paid to the ENGINEER for completing the nine inspections and submission of the required inspection reports detailed in Appendix A Section 2(A)(2.01)(D)(23) for a project size greater than 10 acres.

Change in time for services (days or date, as applicable): extend contract through 04/30/22.

Attachment: JM Davidson - Stormwater Amendment K (RES-2021-353 : Stormwater Inspection Services Amendment - JM Davidson)

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

Owner: Town of Amherst	Firm: JM Davidson Engineering, D.P.C.
_____	Jaime M. Davidson
By: Brian J. Kulpa	By: Jaime M. Davidson
Title: Town Supervisor	Title: Principal
Date Signed: _____	Date Signed: 03/31/21

Attachment: JM Davidson - Stormwater Amendment K (RES-2021-353 : Stormwater Inspection Services Amendment - JM Davidson)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Engineering
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 23151 **RESOLUTION 2021-354** **ADOPTED**

Stormwater Inspection Services Amendment - Watts Architecture & Engineering Time Extension CRS No. 2552

The Engineering Department is requesting the Town Board authorize the Town Supervisor to sign the attached time extension amendment between the Town of Amherst and Watts Architecture & Engineering to perform stormwater inspection services for on-going projects. Three projects (Penny Lane, 1265 Sweet Home Rd. and 2213 Sweet Home) required additional time for completion so we are requesting approval for a retroactive time extension from January 1, 2020 to October 31, 2020.

Funds for these consultant services are collected from developers by the Engineering Department as Stormwater Inspection Permit Fees. The entire cost of inspection services is funded through the fee collection, with no financial impact to the Town.

May we please have approval of this amendment and approval to process payment of these inspection services under PO# 22114228? The total amount due is $1,590.00 and funding is available from account AG 4010 - 0699. This request is pending the successful completion of the contract review procedure. Thank you for considering this request.

4/19/2021
Consent

FINANCIAL IMPACT:

AG4010-0699; $1,590.00

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

1. Background Data:

   a. Effective Date of Original Agreement: **January 16, 2018**

   b. Owner: Town of Amherst

   c. Firm: Watts Architecture and Engineering

   d. Project: SWPPP related inspection services.

2. Nature of Amendment

   X Modifications to time(s) for rendering services

3. Description of Modifications

   This amendment will extend this professional services contract retroactively from January 1, 2020 through October 31, 2020.

4. Agreement Summary:

   - Lump Sum Fees shall be paid to the ENGINEER based on a sliding scale associated with the project size (acreage) as defined below.

   a. Three projects required longer time for completion (Penny Lane, 1265 Sweet Home Road, and 2213 Sweet Home Road). The projects were part of the Lump Sum amount of $1,800.00 to be paid to the ENGINEER for completing the nine inspections and submission of the required inspection reports detailed in Appendix A Section 2(A)(2.01)(D)(23) for a project size of 1 - 4.99 acres.

   b. **Owner shall pay Engineer $1,590.00.**

Change in time for services (days or date, as applicable): Extend contract through 10/31/20.

Attachment: Watts Amendment K (RES-2021-354 : Stormwater Inspection Services Amendment - Watts Architecture & Engineering)

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

Owner: Town of Amherst	Firm: Watts Architecture and Engineering.
_____	_____
By: Brian J. Kulpa	By: _____
Title: Town Supervisor	Title: Principal
Date Signed: _____	Date Signed: _____

Attachment: Watts Amendment K (RES-2021-354 : Stormwater Inspection Services Amendment - Watts Architecture & Engineering)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Engineering
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 23153 **RESOLUTION 2021-355** **ADOPTED**

WPCF Disinfection and Metering System Improvements - Change Order No. 1 Frey Electric Construction Co., Inc. CRS No. 2550

We are requesting the Town Board approve the above referenced Change Order, which calls for a $4,755.21 increase in the contract price. The project's revised contract price will be $391,106.21. This Change Order will cover the costs associated with the Contractor providing electrical power to the pressure relief valves for the three (3) ferric chloride feed pumps being installed in Building 4. This item was not included in the original bid scope, but is necessary for a fully operational ferric chloride feed pumps.

Funding for this request is available from bond account KP1621-4972.

Pending successful completion of the contract approval procedure, may we have your approval to award Frey Electric Construction Co., Inc. the above referenced Change Order? Thank you for considering this request.

4/19/2021
Consent

FINANCIAL IMPACT:

$4,755.21; KP1621-4972

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Change Order

PROJECT: *(Name, address and Project File No.)*

CHANGE ORDER: **# 1**

DATE: 4-7-21

WPCF: Disinfection and Metering System Improvements – Electrical Contract

Project No. **2016.002A**

TO CONTRACTOR: *(Name and address)*

Frey Electric Construction Co., Inc.
100 Pearce Ave.
Tonawanda, NY 14150

The Contract is changed as follows:

(*Include, where applicable, any undisputed amount attributable to previously executed construction Change Directives*)

1. Provide electrical power to the pressure relief valves for the three (3) ferric chloride feed pumps being installed in Building 4.

All other terms and conditions remain the same.

The original (Contract Sum) (~~Guaranteed Maximum Price~~) was	$ 386,405.00
The net change by previously authorized Change Orders	$ 0.00
The (Contract Sum) (~~Guaranteed Maximum Price~~) prior to this Change Order was	$ 386,405.00
The (Contract Sum) (~~Guaranteed Maximum Price~~) will be (increased) (~~decreased~~) (~~unchanged~~) by this Change Order in the amount of	$ 4,755.21
The new (Contract Sum) (~~Guaranteed Maximum Price~~) including this Change Order will be	$ 391,106.21
The Contract Time will be (~~increased~~) (~~decreased~~) (unchanged) by ( ) days	
The date of Substantial Completion as of the date of this Change Order therefore is	No change

(Note: This change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive).

NOT VALID UNTIL SIGNED BY THE ENGINEER, CONTRACTOR AND OWNER.

ENGINEER (*Firm name*)	CONTRACTOR (*Firm name*)	OWNER (*Firm name*)
AECOM USA, Inc.	Frey Electric Construction Co., Inc.	Town of Amherst
ADDRESS: 257 West Genesee Street Buffalo, NY 14202	ADDRESS: 100 Pearce Ave. Tonawanda, NY 14150	ADDRESS: 5583 Main Street Williamsville, NY 14221
BY (*Signature*)	BY (*Signature*)	BY (*Signature*)
(*Typed name*)	(*Typed name*)	(*Typed name*): Brian J. Kulpa
DATE	DATE	DATE

Attachment: Change Order #1 Form - Frey Electric (#2016.002A) (RES-2021-355 : WPCF Disinfection and Metering System Improvements -

Change Request Proposal

FREY ELECTRIC CONSTRUCTION CO.

Project: 20-0255-00 / Amherst WPCF Disinfection
455 Tonawanda Creek Road
Amherst, NY 14228

Change request number: 9
Description: Pressure switches for Ferric Chloride

Customer: Amherst Town Of

Notice to Proceed

Submitted date:
Received date:

Status: Quoted
Origination date: 02/08/21

Quotation Quote is valid for 30 days

Submitted date: 02/08/21
Due date:
Submitted amount: 4,755.21
Requested days delay: 0

Revenue Detail

Billing Item	Description	Revenue
	Ferric chloride valves	4,755.21
	Total Revenue For CR 9	**4,755.21**

Approvals

Customer: Amherst Town Of

Authorized Representative: _____

By: _____

Date: _____

Contractor: Frey Electric Construction

Project Manager: Mike Bishop

By: _____

Date: _____

Attachment: Frey Electric Proposal (#2016.002A) 2-8-21 (RES-2021-355 : WPCF Disinfection and Metering System Improvements - Change

NECA
NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

FREY
ELECTRIC CONSTRUCTION CO.

CHANGE ORDER RECAP

Job Name:	**Amherst WWTP**	Date:	2/8/2021
Contract No.:	Change Order No.:	Job No.:	255

Description:
Pressure switches for Ferric chloride

Material	Material Total	Labor	Hours	Rate	Labor Total
Attached Estimate Sheet	$ 1,064.39				$ -
		Foreman	17	$ 86.49	$ 1,470.33
		Journeyman	17	$ 79.81	$ 1,356.77
					$ -
					$ -
					$ -
					$ -
					$ -
					$ -
Material Subtotal:	$ 1,064.39				$ -
Job Expenses:					$ -
Document Control		Tool Usage			
Travel Time Costs		**Total Labor Costs:**			$ 2,827.10
Telephone		**SUBTOTAL(L+M+JE)**			$ 4,076.30
Transportation		Research & Layout			
Storage / Warehouse		Material Handling			
Safety (3% of Labor)	$ 84.81	Clean Up Costs:			
Inspections & Permits					
Record Drawings	$ 100.00				
Fuel Surcharges (4% of Material)		**SUBTOTAL:**			$ 4,076.30
		Overhead		10%	$ 407.63
Total Job Expenses	$ 184.81	Profit		5%	$ 224.20
Qualifications & Clarifications:		Subcontract			
1.) Sales Tax is NOT included		Subcontract Mark-up		5%	$ -
2.) Straight Time only-NO overtime included		TOTAL:			$ 4,708.13
3.) No cutting and patching included		Tax on Total		-	$ -
4.) Schedule Impact		Bond Cost		1%	$ 47.08
		QUOTE TOTAL			**$ 4,755.21**

We reserve the right to correct any and all errors and omissions

Attachment: Frey Electric Proposal (#2016.002A) 2-8-21 (RES-2021-355 : WPCF Disinfection and Metering System Improvements - Change

COST WORK SHEET

Project: Amherst WWTP 255 **BY: MB** **Date: 2/8/21**

Change Description: 120v power to pressure switches Ferric Chloride

Material	Item	Quantity	Material Cost	Per	Total	Labor	Per	Total
Building 4								-
3/4" rigid conduit		60	$ 167.00	C	$ 100.20	0.15	E	9.00
3/4" OCAL conduit		60	$ 4.30	E	$ 258.00	0.16	E	9.60
3/4" rigid T condulet		1	$ 8.88	E	$ 8.88	0.5	E	0.50
3/4" OCAL T condulet		3	$ 109.00	E	$ 327.00	0.65	E	1.95
3/4" Sealtite		10	$ 0.62	E	$ 6.20	0.062	E	0.62
3/4" sealtite fittings		6	$ 4.95	E	$ 29.70	0.5	E	3.00
#12 wire		400	$ 152.53	M	$ 61.01	0.791	C	3.16
Fiberglas unistrut 10'		1	$ 128.50	E	$ 128.50	2	E	2.00
Strut straps		10	$ 10.00	E	$ 100.00	0.1	E	1.00
1/4" rod SS		10	$ 1.99	E	$ 19.90	0.1	E	1.00
1/4" nuts/washers lot SS		1	$ 25.00	E	$ 25.00	1	E	1.00
				E	$ -		E	-
				E	$ -		E	-
				E	$ -		E	-
				E	$ -		E	-
				E	$ -		E	-
				E	$ -		E	-
				E	$ -		E	-
				E	$ -		E	-
				E	$ -		E	-
					$ 1,064.39			32.83

Attachment: Frey Electric Proposal (#2016.002A) 2-8-21 (RES-2021-355 : WPCF Disinfection and Metering System Improvements - Change

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 23130 **RESOLUTION 2021-356** **ADOPTED**

Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller CRS #2557

NOW THEREFORE BE IT RESOLVED, the Town Board authorizes the purchase of one (1) Caterpillar CB1.7 03 A UT Compact Roller.

The purchase is from Southworth Milton CAT, 4610 E. Saile Drive, Batavia, NY 14020 for a net cost of $26,774.42.

The pricing is based on NYS-OGS, Group # 40625, Award # PGB22792, Contract # PC66988. Funding is available to pay under CHIPS Account D5112 - 2800.

4/19/2021
Consent

FINANCIAL IMPACT:

D5112 : 2800 $26,774.42

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 23130 **RESOLUTION (ID # 23130)**

Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller

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FINANCIAL IMPACT:

D5112 : 2800 $26,774.42

Attachment: CAT ORIGINAL (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

REQUISITION

22 - 120

12.M.1.a

TOWN OF AMHERST HIGHWAY DEPT.

TO MILTON CATERPILLAR

DATE 4/1/21

ADDRESS

☐ TOWN CHARGE

☐ HIGHWAY CHARGE

V# 15260

QUANT.	DESCRIPTION	UNIT PR.	TOTAL	CHARGED
- ONE -	CB1.7 ROLLER			
	CHIPS FUNDS			
	26,774.42		$ 26,774.42	
			C	
-1-	CB1.7 ROLLER - LOT	$ 33,780.00		
	DISCOUNTS	(7,005.58)		D511
		$ 26,774.42		25 DC
			C	

APPROVED BY DBryan 4-7-2021

REQUISITIONED BY MPL MARK

Attachment: CAT ORIGINAL (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

Milton CAT

SALES ORDER

04/01/2021
ORDER DATE

SOLD TO: Town of Amherst
D/B/A:
ADDRESS: 1042 N Forest Rd
CITY: Williamsville STATE: NY ZIP: 14221
PHONE #: CELL: 716-208-6285
Fax #: EMAIL: mgortzig@amherst.ny.us
INVOICE TO Customer # : P.O.#: 22-120053
SHIP TO ADDRESS: 1042 N Forest Rd
CITY, STATE, ZIP: Williamsville New 14221

Customer #: 0569567
FOB: Williamsville, NY
SELL PRICE: $26,774.42
TRADE IN: $0.00
NET BALANCE: $26,774.42
STATE TAX: Exempt
SALES TAX: $0.00
FREIGHT $ $0.00
TOTAL DUE: $26,774.42
DOWN PYMT: $0.00
PAYOFF AMT: $0.00
BALANCE: $26,774.42

DESCRIPTION

MAKE: CATERPILLAR SERIAL #: 64300347
MODEL: CB1.7 ID #: EQ172526

ATTACHMENTS & NOTES:

3 year or 1,500 hr CVA included (Free Filters up to 1,500 hrs)

NYSOGS/NJPA #PC66988
NYS Vendor ID# 1000000018

Condition: NEW PRODUCT
WARRANTY: 3 year / 1500 hrs Powertrain & Hyd Warranty

TRADE IN: MAKE: MODEL: SERIAL #: ALLOWANCE: $0.00
DESCRIPTION YEAR: SOLD TO CUSTOMER # / SALESMAN #:

TRADE IN: MAKE: MODEL: SERIAL #: ALLOWANCE: $0.00
DESCRIPTION YEAR: SOLD TO CUSTOMER # / SALESMAN #:

TRADE IN: MAKE: MODEL: SERIAL #: ALLOWANCE: $0.00
DESCRIPTION YEAR: SOLD TO CUSTOMER # / SALESMAN #:

My.CAT.com VisionLink
CSA or TM&R
CVA
Rental Conversion / Reverse Months
Merchandising Program Code(s)
STR21UCOMCVA (EPP)

SUBJECT TO CREDIT APPROVAL: ☐ CAT Financing ☐ SMI Financing

FINANCING TERMS:
☑ Net Cash Upon Receipt of Invoice
☐ See Installment Sale Contract
☐ Skip Payment
Other

PAYABLE AS FOLLOWS:

ADDITIONAL TERMS AND CONDITIONS ON REVERSE SIDE

Seller
SOUTHWORTH-MILTON, INC.

BY: Dan Farnham G1 00023
(SALES AGENT) DIV/TYPE/#/STORE

ACCEPTED BY: Mike Courchaine (Apr 1, 2021 15:47 EDT)
(BRANCH OR SALES MANAGER)

PURCHASER

Print: PO# 22-120053 - Mark Gortzig

By: X Mark Gortzig (Apr 1, 2021 15:45 EDT)

J.X.L. 12/22/15

Attachment: CAT ORIGINAL (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

Milton CAT

294 Ainsley Dr
Syracuse, NY 13210
315-476-9981 Office
NYS Vendor ID# 1000000018

Town of Amherst
CB 1.7

570-1306	CB1.7 03A UT COMP DCA2	$33,780.00
0P-9001	LANE 1 ORDER	$0.00
421-8926	SERIALIZED TECHNICAL MEDIA KIT	$0.00
0P-0210	PACK, DOMESTIC TRUCK	$0.00
	CAT CB1.7 List Price	$33,780.00
	NYS OGS/NJPA Contract #PC66988 Advertised Discount 17% - -	-$6,418.00
	Caterpillar Special Discount - -	-$587.58
	Caterpillar CB1.7 Sale Price - -	**$26,774.42**

Attachment: CAT ORIGINAL (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

TERMS AND CONDITIONS

This order is subject to the following terms and conditions in addition to those stated on the front hereof:

1. Excusable Delivery Delays: Delays in delivery shall be excused when caused by strikes, lockouts, accidents, fire, delays of manufacturer or carrier, acts of God, embargoes, or government action. Or any other cause beyond the reasonable control of the seller, whether the same as, or different from, the matters and things hereinbefore specifically enumerated, and if for such reasons Sellers may, at its option, cancel this order without liability except for return of the amounts paid on this order.

2. Responsibility for Shipment: The Seller's responsibility for shipments ceases upon delivery to transportation company, and any claim for shortages, delays or damages occurring thereafter shall be made by the Purchaser direct to the transportation company. Any claims against the Seller for shortages in shipments shall be made within fifteen (15) days after receipt of shipment.

3. Duration of Offer: The Purchaser agrees that this order shall not be countermanded or revoked by Purchaser for a period of ten (10) days from date; thereafter it may be countermanded or revoked up to and until Seller does accept, and that when it is accepted (and until the execution and delivery of the Security Agreement(s) and/or Financing Statement(s) and/or Note(s), and/or other documents required to consummate the sale as above specified) it will cover all agreements between the parties relative to this transaction.

4. Execution of Other Documents: When the property necessary to fill this order is available, the Purchaser agrees on demand to execute and deliver to the Seller such security agreements, financing statements and other documents as maybe required by the Seller to secure the purchase price. In the event that the Purchaser fails to execute and deliver to the Seller such documents, the entire balance of the purchase price shall, at the Seller's option, become immediately due and payable.

5. Disclaimer of Warranties and Limitation of Liability: Equipment of machinery described herein as new is sold subject to such warranties as are made in writing by the manufacture thereof. Seller will cooperate with Purchaser in obtaining adjustment from manufacture for breach of any such manufacture's warranty, any expense to be for Purchaser's account. In the event it is found that there are defective parts within such period as the appropriate manufacture's agreement to replace defective parts is applicable. Seller will furnish at Seller's repair facilities during regular working hours such labor as is required or repair of defective parts covered by manufacture's warranty. Cost of necessary transportation to and/or from Seller's repair facilities shall be born solely by Purchaser. Except for warranty of title by Seller and except for the is agreed obligation to furnish labor to make replacement or repair of defective parts covered by manufacture's warranty within the manufacturer's warranty period. Seller shall not be liable for defects in or for any damages or loss to property sold nor in a separate writing signed by Seller in the manner provided on the reverse side hereof: and under no circumstances shall Seller or Manufacture be liable for any indirect, special, incidental or consequential damages to the Purchaser or to any third party. **THE FORGOING UNDERTAKING WITH RESPECT TO NEW MACHINERY AND EQUIPMENT IS IN LIEU OF ANY OTHER WARRANTIES, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXPRESS OR IMPLIED; FURTHER SELLER MAKES NO WARRANTIES WHATSOEVER INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXPRESS OR IMPLIED, WITH RESPECT TO USED EQUIPMENT AND PURCHASER TAKES ANY USED EQUIPMENT "AS IS" AND WITH ALL FAULTS OR DEFECTS UNLESS A MODIFICATION IS ENDORSED HEREIN OR CONTAINED IN A SEPARATE WRITING SIGNED BY SELLER IN THE MANNER PROVIDED ON THE REVERSE SIDE OF THIS ORDER.**

6. Taxes: Unless otherwise stated, the quoted prices do not include sales, use or similar taxes. Such taxes shall be paid by the Purchaser. Consequently in addition to the quoted prices, in effect at the time of the sale, lease or rental, the amount of any present or applicable sales use or similar tax applicable to the sale, lease or rental of the property shall be paid by the purchaser, or in lieu thereof the Purchaser shall provide the company with a tax-exemption certificate acceptable to the taxing authorities. From and after the transfer of possession of the property covered hereby, Purchaser shall timely pay all taxes and other charges assessed by any public body against same, including applicable property taxes.

7. Insurance: The property shall at all times after delivery to the purchaser, Purchaser's agent or a transportation company, whichever first occurs, be the sole responsibility of Purchaser, and all loss or damage to said property or any part thereof occasioned by fire or in any manner whatsoever, shall be borne by Purchaser and shall not operate to extinguish or diminish liability of Purchaser to Seller. Purchaser shall have said property insured in favor of Seller against fire, and other hazards generally covered by extended fire coverage insurance and any other hazards required any Seller for full insurable value thereof and the policy of insurance or proof satisfactory to Seller shall be delivered to Seller. Until and unless Purchaser obtains such insurance Seller may have same insured for Seller's benefit and Purchaser shall be liable for premiums thereon and shall pay or reimburse Seller for same. Any property shall be insured by the purchaser in companies acceptable to Seller to the full extent of any balance remaining unpaid and all such policies shall name as a co-beneficiary.

8. Attorney Fees: In the event of suit by Seller on this Purchase Order on account of Purchaser's breach thereof, Seller shall be entitled to recover costs and expenses of such suit, including reasonable attorneys' fees.

9. Definitions: Where applicable herein the word "property" will include labor and/or services.

10. Additional Matters and/or Modifications:

Attachment: CAT ORIGINAL (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

CB1.7 - Town of Amherst - Sales Agreement

Final Audit Report 2021-04-01

Created:	2021-04-01
By:	Dan Farnham (dan_farnham@miltoncat.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAclkVkbEEt962iW1YKj8Wx8X6Q1jFHIV0

"CB1.7 - Town of Amherst - Sales Agreement" History

Document created by Dan Farnham (dan_farnham@miltoncat.com)
2021-04-01 - 7:33:24 PM GMT- IP address: 20.49.122.132

Document emailed to Mark Gortzig (mgortzig@amherst.ny.us) for signature
2021-04-01 - 7:35:34 PM GMT

Email viewed by Mark Gortzig (mgortzig@amherst.ny.us)
2021-04-01 - 7:43:28 PM GMT- IP address: 68.133.43.195

Document e-signed by Mark Gortzig (mgortzig@amherst.ny.us)
Signature Date: 2021-04-01 - 7:45:49 PM GMT - Time Source: server- IP address: 68.133.43.195

Document emailed to Mike Courchaine (mike_courchaine@miltoncat.com) for signature
2021-04-01 - 7:45:51 PM GMT

Email viewed by Mike Courchaine (mike_courchaine@miltoncat.com)
2021-04-01 - 7:47:03 PM GMT- IP address: 24.61.234.148

Document e-signed by Mike Courchaine (mike_courchaine@miltoncat.com)
Signature Date: 2021-04-01 - 7:47:24 PM GMT - Time Source: server- IP address: 24.61.234.148

Agreement completed.
2021-04-01 - 7:47:24 PM GMT

Milton CAT
POWERED BY Adobe Sign

Attachment: CAT ORIGINAL (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

You can now create an account to manage your preferences and personalize your experience on Cat.com. ×

TANDEM VIBRATORY ROLLERS
CB1.7
COMPACT PERFORMANCE

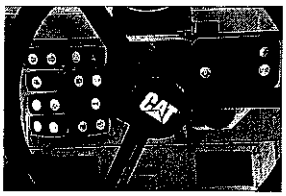
OPERATING WEIGHT
3538 lb
STANDARD COMPACTION WIDTH
35 in
GROSS POWER
24.7 HP

OVERVIEW

The CB1.7 is a versatile 1.7 metric ton utility roller with 900 mm (35") tandem vibratory drums. This machine is easy to operate, simple to transport, and provides efficient compaction performance.

FEATURES AT A GLANCE

- **SIMPLE OPERATION**
- **EFFICIENT PERFORMANCE**
- **OPTIMIZED POWER**
- **RELIABLE AND EASY TO MAINTAIN**



- **Ergonomic operating environment with vandal protection**
- **Spacious seating and easy access due to logically placed handles and lower platform height**
- **Simple operation with mechanical propel and speed control levers**

PRODUCT SPECIFICATIONS FOR CB1.7

WEIGHTS

Operating Weight	3538 lb

Attachment: CAT ORIGINAL (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

OPERATING SPECIFICATIONS

Standard Compaction Width	35 in
Curb Clearance	16 in
Ground Clearance	10 in
Travel Speed - Maximum	5.3 mile/h
Static Linear Load	72 lb/in

ENGINE

Gross Power	24.7 HP
Engine Model	Cat C1.1

DIMENSIONS

Overall Length	80 in
Overall Width	40 in
Maximum Machine Height	94.5 in
Drum Width	35 in
Drum Diameter	22.5 in

VIBRATORY SYSTEM

Frequency	3420 V/m
Nominal Amplitude - High	0.019 in
Centrifugal Force per Drum - Maximum	3057 lb

SERVICE REFILL CAPACITIES

Fuel Tank Capacity	7.9 gal (US)
Water Spray Tank Capacity	38 gal (US)

CB1.7 OPTIONAL EQUIPMENT

BATTERY DISCONNECT SWITCH

BIO-HYDRAULIC OIL

LIGHTS, WORKING, ROADING, IR

Attachment: CAT ORIGINAL (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

LIGHT GUARD

NON-SUSPENSION SEAT

PRODUCT LINK

ROPS, FIXED

ROPS, FOLDING

SINGLE POINT LIFT

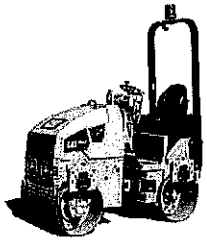
SUSPENSION SEAT

WARNING BEACON

SEE HOW CB1.7 COMPARES AGAINST FREQUENTLY COMPARED PRODUCTS.

COMPACTORS

CB1.7



OPERATING WEIGHT
3538 LB

STANDARD COMPACTION WIDTH
35 IN

GROSS POWER
24.7 HP

COMPACTORS

CB1.8



OPERATING WEIGHT
3825 LB

STANDARD COMPACTION WIDTH
39 IN

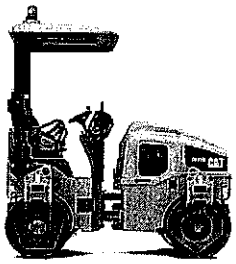
GROSS POWER
24.7 HP

MODEL DETAILS

Attachment: CAT ORIGINAL (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

COMPACTORS

CB22B



OPERATING WEIGHT
5629 LB

STANDARD COMPACTION WIDTH
39 IN

GROSS POWER
36.2 HP

Use the comparison tool to compare detailed specs of Cat and competitor models.

TOOLS AND EXPERT HELP AT EVERY TURN

MODEL DETAILS | PAYMENT CALCULATOR | CURRENT OFFERS | RENTAL OPTIONS | USED OPTIONS | FIND DEALER

COMPATIBLE TECHNOLOGY AND SERVICES

Leverage Caterpillar connected data and security principles to improve efficiencies, increase productivity and make your business more profitable.

LINK

CAT APP

MY.CAT.COM

Attachment: CAT ORIGINAL (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)



COOKIES ARE REQUIRED TO WATCH VIDEOS

To watch this video, please open our cookie policy and accept the use of cookies.

Efficient equipment management starts with the Cat App. Track the location and health of your equipment, order service and parts, and activate telematics devices directly from your mobile device. Staying on to...

CHECK OUT CURRENT OFFERS FOR THE CB1.7

Attachment: CAT ORIGINAL (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

NEW YORK STATE OF OPPORTUNITY.

Office of General Services
Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | https://ogs.ny.gov/procurement | customer.services@ogs.ny.gov | 518-474-6717

Contract Award Notification

Title	:	**Group 40625 –Heavy Equipment (Statewide)** **Classification Code(s): 21, 22, 23, 24, 25, 39 and 40**
Award Number	:	**PGB-22792**
Contract Period	:	**Various. See Contractor Information page**
Bid Opening Date	:	**May 30, 2014**
Date of Issue	:	**July 8, 2014 (Revised March 16, 2021)**
Specification Reference	:	**As Incorporated In The Piggyback Agreements**
Contractor Information	:	**Appears on Page 2 of this Award**

Address Inquiries To:

5-19-2021

State Agencies & Vendors	Political Subdivisions & Others
Name : Jacqueline Burke Title : Contract Management Specialist Phone 518-486-1821 E-mail : jacqueline.burke@ogs.ny.gov	Procurement Services Customer Services Phone : 518-474-6717 E-mail : customer.services@ogs.ny.gov

Procurement Services values your input.
Complete and return "Contract Performance Report" at end of document.

Description

This award includes a wide variety of heavy duty equipment including but not limited to aerial lift trucks, backhoes, compaction rollers, compression rollers, compressors, dozers, graders, excavators, mowing tractors, and mowing attachments and trailers with related accessories, attachments and supplies.

PR # 22792

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

NOTE: See individual contract items to determine actual awardees.

CONTRACT #	CONTRACTOR & ADDRESS	FED.IDENT.# / NYS VENDOR#
PC68200	Alamo Group (TX) Inc. DBA Alamo Industrial 1502 East Walnut St. Seguin, TX 78155	742362509 1000058230
PC68526	Altec Industries, Inc. 33 Inverness Center Pkwy, Suite 110 Birmingham, AL 35242	630362926 1000009606
PC68218	Atlantic Machinery, Inc. 2628 Garfield Ave. Silver Spring, MD 20910	521190648 1100147906
PC66988	Caterpillar Inc. 100 NE Adams St., Peoria IL 61629	370602744 1100137599
PC68956	Cives Corporation DBA Viking Cives (USA) 14331 Mill Street Harrisville, NY 13648	160955800 1000007605
PC67141	Clark Equipment Company d/b/a Bobcat Company 250 E. Beaton Dr. West Fargo, ND 58078	380425350 1000009236
PC69204	Clark Equipment Company d/b/a Doosan Portable Power 1293 Glenway Drive Statesville, NC 28625-9218	380425350 1000009236
PC69377	CNH Industrial America, LLC 700 State Street Racine, WI 53404 (Agriculture)	760433811 1100123548
PC67265	CNH Industrial America, LLC 700 State Street Racine, WI 53404 (Construction)	760433811 1100123548
PC68131	Deere & Company 2000 John Deere Run Cary, NC 27513	362382580 1000009176
PC69378	Deere & Company 2000 John Deere Run Cary, NC 27513	362382580 1000009176

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

CONTRACT #	CONTRACTOR & ADDRESS	FED.IDENT.# / NYS VENDOR#
PC68466	Falcon Road Maintenance Equipment, Inc. 2000 Austin St. Midland, MI 48642	472654196 1100158088
PC69232	Felling Trailers, Inc. 1525 Main Street South Sauk Centre, MN 56378	411329390 1100157965
PC69150	Gradall Industries, Inc. 406 Mill Ave. S.W. New Philadelphia, OH 44663	742660540 1100121209
PC68449	Gradall Industries, Inc. 406 Mill Ave. S.W. New Philadelphia, OH 44663 (Vacall Product Line)	742660540 1100121209
PC69052	Henderson Products, Inc. 1085 South 3rd Street Manchester, IA 52057	271184835 1000034909
PC68962	J.A. Larue, Inc. 660 Lenoir St. Quebec City, QC, Canada G1X3W3	300431656 1100143510
PC69235	JCB, Inc. 2000 Bamford Blvd Pooler, GA 31322	520907423 1000018096
PC67075	John Deere Shared Services, Inc. d/b/a John Deere Construction Retail Sales 1515 5th Ave. Moline, IL 61205	363387700 1000044783
PC67693	Kubota Tractor Corporation 1000 Kubota Drive Grapevine, TX 76051	952801513 1100162991
PC68527	Morbark, LLC 8507 S. Winn Rd. P.O. Box 1000 Winn, MI 48896	382805772 1000044812
PC69161	RPM Tech Inc. 1318 Principale St-Valerien-de-Milton, Quebec Canada J0H 2B0	981521239 1100243801
PC69050	Schwarze Industries, Inc. 1055 Jordan Road Huntsville, AL 35811	630727445 1100213939

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

PC68233	Textron Inc. d/b/a Jacobsen, a division of Textron, Inc. 1451 Marvin Griffin Rd. Augusta, GA 30906	050315468 1100019546
PC68896	The Toro Company 8111 Lyndale Ave. South Bloomington, MN 55420-1196	410580470 1100137208
PC68687	Trail King Industries 300 E Norway Ave. Mitchell, SD 57301	460320593 1100162815

For Contractor and pricing information, and equipment for this Award, please see the "Contractor Information Summary" page in the "Contractor Info" weblink and "Equipment" page located on the OGS website at: http://online.ogs.ny.gov/purchase/spg/awards/4062522792can.HTM

Cash Discount, If Shown, Should be Given Special Attention.
INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
(See "Contract Payments" and "Electronic Payments" in this document.)

AGENCIES SHOULD NOTIFY PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO PROCUREMENT SERVICES.

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

CONTRACT BILLINGS AND PAYMENTS:

a. Billings. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate. Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

b. Payment of Contract purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment. The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at http://www.osc.state.ny.us/epay/index.htm or by e-mail at epayments@osc.state.ny.us.

Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above. Inquiries relating to OSC's Electronic Payments program should be directed to:

NYS Office of the State Comptroller
Vendor Management Unit
110 State Street Mail Drop 10-4
Albany, NY 12236
Telephone: (855) 233-8363
E-Mail: helpdesk@sfs.ny.gov

c. Payment of Contract purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment. The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

OGS PROCUREMENT SERVICES DISPUTE RESOLUTION POLICY:

It is the policy of the Office of General Services' Procurement Services to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to OGS Procurement Services bid solicitations or contract awards. OGS Procurement Services encourages vendors to seek resolution of disputes through consultation with OGS Procurement Services staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of OGS Procurement Services Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this document or through the OGS website (www.ogs.ny.gov).

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

State of New York
Office of General Services
PROCUREMENT SERVICES
Contract Performance Report

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

Contract No.:_____ **Contractor.**_____

Describe Product* Provided (Include Item No., if available):_____

*Note: "**Product**" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

CONTRACTOR

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments:_____

_____

_____(over)

Agency:_____ Prepared by:_____

Address:_____ Title:_____

_____ Date:_____

_____ Phone:_____

_____ E-mail:_____

Please detach or photocopy this form & return to jacqueline.burke@ogs.ny.gov or mail to:

OGS PROCUREMENT SERVICES
Customer Services, 38th Floor
Attn: Jacqueline Burke
Corning Tower - Empire State Plaza
Albany, New York 12242
* * * * *

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

NEW YORK STATE OF OPPORTUNITY. | Office of General Services
Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | https://ogs.ny.gov/procurement | customer.services@ogs.ny.gov | 518-474-6717

Contractor Information Summary

Updated: March 17, 2021

Group 40625 – HEAVY DUTY EQUIPMENT (Statewide)

Award Number: PGB-22792 **Contract Period** *See Below for Specific Contract Periods*

For a list of available equipment types for each Contractor, please click here:
https://online.ogs.ny.gov/purchase/spg/pdfdocs/4062522792Equipment.pdf

OGS CONTRACT NUMBER	CONTRACTOR INFORMATION		CONTRACT SPECIFICS
PC68200	**Alamo Group (TX), Inc.** **DBA Alamo Industrial** 1502 East Walnut St. Seguin, TX 78155 **Federal ID:** 742362509 **NYS Vendor ID:** 1000058230	**Contract Period:** 08/08/2018 to 10/02/2021	Contractor and Pricing Information Terms & Conditions
PC68526	**Altec Industries, Inc.** Suite 110 33 Inverness Center Parkway Birmingham, AL 35242 **Federal ID:** 630362926 **NYS Vendor ID:** 1000009606	**Contract Period:** 02/13/2020 to 03/14/2022	Contractor and Pricing Information Terms & Conditions
PC68218	**Atlantic Machinery, Inc.** 2628 Garfield Ave. Silver Spring, MD 20910 **Federal ID:** 521190648 **NYS Vendor ID:** 1100147906	**Contract Period:** 09/21/2018 to 02/20/2022	Contractor and Pricing Information Terms & Conditions
PC66988	**Caterpillar Inc.** 100 NE Adams St. Peoria IL 61629 **Federal ID:** 370602744 **NYS Vendor ID:** 1100137599	**Contract Period:** 07/08/2015 to 05/19/2021	Contractor and Pricing Information Terms & Conditions
PC68956	**Cives Corporation** **DBA Viking Cives (USA)** 1431 Mill Street Harrisville, NY 13648 **Federal ID:** 160955800 **NYS Vendor ID:** 1000007605	**Contract Period:** 12/24/2019 to 10/29/2022	Contractor and Pricing Information Terms & Conditions

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

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Contractor Information Summary

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Group 40625 – HEAVY DUTY EQUIPMENT (Statewide)

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For a list of available equipment types for each Contractor, please click here:
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OGS CONTRACT NUMBER	CONTRACTOR INFORMATION		CONTRACT SPECIFICS
PC67141	**Clark Equipment Company** **DBA Bobcat Company** 250 East Beaton Drive West Fargo, ND 58078 **Federal ID:** 380425350 **NYS Vendor ID:** 1000009236	**Contract Period:** 09/09/2015 to 05/19/2021	Contractor and Pricing Information Terms & Conditions
PC69204	**Clark Equipment Company** **DBA Doosan Portable Power** 1293 Glenway Drive Statesville, NC 28625-9218 **Federal ID:** 380425350 **NYS Vendor ID:** 1000009236	**Contract Period:** 10/22/2020 to 06/17/2023	Contractor and Pricing Information Terms & Conditions
PC69377	**CNH Industrial America, LLC (Agriculture)** 700 State Street Racine, WI 53404 **Federal ID:** 760433811 **NYS Vendor ID:** 1100123548	**Contract Period:** 03/16/2021 to 12/30/2023	Contractor and Pricing Information Terms & Conditions
PC67265	**CNH Industrial America, LLC (Construction)** 700 State Street Racine, WI 53404 **Federal ID:** 760433811 **NYS Vendor ID:** 1100123548	**Contract Period:** 11/12/2015 to 05/19/2021	Contractor and Pricing Information Terms & Conditions
PC68131	**Deere & Company** 2000 John Deere Run Cary, NC 27513 **Federal ID:** 362382580 **NYS Vendor ID:** 1000009176	**Contract Period:** 05/16/2018 to 08/18/2021	Contractor and Pricing Information Terms & Conditions

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

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Contractor Information Summary

Updated: March 17, 2021

Group 40625 – HEAVY DUTY EQUIPMENT (Statewide)

Award Number: PGB-22792 **Contract Period** *See Below for Specific Contract Periods*

For a list of available equipment types for each Contractor, please click here:
https://online.ogs.ny.gov/purchase/spg/pdfdocs/4062522792Equipment.pdf

OGS CONTRACT NUMBER	CONTRACTOR INFORMATION		CONTRACT SPECIFICS
PC69378	**Deere & Company** 2000 John Deere Run Cary, NC 27513 **Federal ID:** 362382580 **NYS Vendor ID:** 1000009176	**Contract Period:** 03/16/2021to 12/30/2023	Contractor and Pricing Information Terms & Conditions
PC68466	**Falcon Road Maintenance Equipment, LLC.** 2600 W Salzburg Freeland, MI 48623 **Federal ID:** 472654196 **NYS Vendor ID:** 1100158088	**Contract Period:** 12/20/2018 to 10/02/2021	Contractor and Pricing Information Terms & Conditions
PC69232	**Felling Trailers, Inc.** 1525 Main Street South Sauk Centre, MN 56378 **Federal ID:** 411329390 **NYS Vendor ID:** 1100157965	**Contract Period:** 12/10/2020 to 05/16/2023	Contractor and Pricing Information Terms & Conditions
PC69150	**Gradall Industries Inc (Gradall)** 406 Mill Avenue S.W. New Philadelphia OH 44663 **Federal ID:** 742660540 **NYS Vendor ID:**1100121209	**Contract Period:** 6/15/2019 to 5/31/2023	Contractor and Pricing Information Terms & Conditions
PC68449	**Gradall Industries, Inc. (Vacall)** 406 Mill Avenue S.W. New Philadelphia, OH 44663 **Federal ID:** 742660540 **NYS Vendor ID:** 1100121209	**Contract Period:** 12/20/2018 to 02/20/2022	Contractor and Pricing Information Terms & Conditions

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

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Contractor Information Summary

Updated: March 17, 2021

Group 40625 – HEAVY DUTY EQUIPMENT (Statewide)

Award Number: PGB-22792 **Contract Period** *See Below for Specific Contract Periods*

For a list of available equipment types for each Contractor, please click here:
https://online.ogs.ny.gov/purchase/spg/pdfdocs/4062522792Equipment.pdf

OGS CONTRACT NUMBER	CONTRACTOR INFORMATION		CONTRACT SPECIFICS
PC69052	**Henderson Products, Inc.** 1085 South 3rd Street Manchester, IA 52057 **Federal ID:** 271184835 **NYS Vendor ID:** 1000034909	**Contract Period:** 03/16/2020 to 10/29/2022	Contractor and Pricing Information Terms & Conditions
PC68962	**JA Larue, Inc.** 3003 Watt Avenue Quebec City, QC G1X3W2 **Federal ID:** 300431656 **NYS Vendor ID:** 1100143510	**Contract Period:** 02/06/2020 to 10/29/2022	Contractor and Pricing Information Terms & Conditions
PC69235	**JCB, Inc.** 2000 Bamford Blvd Pooler, GA 31322 **Federal ID:** 520907423 **NYS Vendor ID:** 1000018096	**Contract Period:** 01/07/2021 to 05/31/2023	Contractor and Pricing Information Terms & Conditions
PC67075	**John Deere Shared Services** **DBA John Deere Construction Retail Sales** 1515 5th Avenue Moline, IL 61205 **Federal ID:** 363387700 **NYS Vendor ID:** 1000044783	**Contract Period:** 10/22/2015 to 05/19/2021	Contractor and Pricing Information Terms & Conditions
PC67693	**Kubota Tractor Corporation** 1000 Kubota Drive Grapevine, TX 76051 **Federal ID:** 952801513 **NYS Vendor ID:** 1100162991	**Contract Period:** 02/01/2017 to 05/19/2021	Contractor and Pricing Information Terms & Conditions

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

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Contractor Information Summary

Updated: March 17, 2021

Group 40625 – HEAVY DUTY EQUIPMENT (Statewide)

Award Number: PGB-22792 **Contract Period** *See Below for Specific Contract Periods*

For a list of available equipment types for each Contractor, please click here:
https://online.ogs.ny.gov/purchase/spg/pdfdocs/4062522792Equipment.pdf

OGS CONTRACT NUMBER	CONTRACTOR INFORMATION		CONTRACT SPECIFICS
PC68527	**Morbark, LLC** 8507 S. Winn Rd. P.O. Box 1000 Winn, MI 48896 **Federal ID:** 382805772 **NYS Vendor ID:** 1000044812	**Contract Period:** 09/04/2019 to 08/18/2021	Contractor and Pricing Information Terms & Conditions Dealer Area Representation Tree Care Dealer Area Representation Industrial
PC69161	**RPM Tech Inc.** 1318 Principale St-Valerien-de-Milton, Quebec Canada JOH2BO **Federal ID:** 981521239 **NYS Vendor ID:** 1100243801	**Contract Period:** 08/6/2020 to 10/29/2022	Contractor and Pricing Information Terms & Conditions
PC69050	**Schwarze Industries, Inc.** 1055 Jordan Road Huntsville, AL 35811 **Federal ID:** 630727445 **NYS Vendor ID:** 1100213939	**Contract Period:** 02/10/2020 to 02/20/2022	Contractor and Pricing Information Terms & Conditions
PC68233	**Textron, Inc. dba Jacobsen** **A division of Textron Inc.** 1451 Marvin Griffin Rd. Augusta, GA 30906 **Federal ID:** 050315468 **NYS Vendor ID:** 1100019546	**Contract Period:** 01/10/2019 to 08/18/2021	Contractor and Pricing Information Terms & Conditions
PC68896	**The Toro Company** 8111 Lyndale Ave. South Bloomington, MN 55420-1196 **Federal ID:** 410580470 **NYS Vendor ID:** 1100137208	**Contract Period:** 10/01/2019 to 08/18/2021	Contractor and Pricing Information Terms & Conditions

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

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Contractor Information Summary

Updated: March 17, 2021

Group 40625 – HEAVY DUTY EQUIPMENT (Statewide)

Award Number: PGB-22792 **Contract Period** *See Below for Specific Contract Periods*

For a list of available equipment types for each Contractor, please click here:
https://online.ogs.ny.gov/purchase/spg/pdfdocs/4062522792Equipment.pdf

OGS CONTRACT NUMBER	CONTRACTOR INFORMATION		CONTRACT SPECIFICS
PC68687	**Trail King Industries** 300 East E Norway Ave. Mitchell, SD 57301 **Federal ID:** 460320593 **NYS Vendor ID:** 1100162815	**Contract Period:** 12/24/2019 to 02/11/2023	Contractor and Pricing Information Terms & Conditions

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

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Contract Award Notification Update

Subject: Extension of Contracts, Updated Price Lists, And New Contractor Listing

DATE: May 19, 2020 **AWARD #:** PGB-22792 **GROUP #:** 40625

AWARD DESCRIPTION: Heavy Equipment (Statewide)

CONTRACT PERIOD: See Contractor Information

CONTACT: Jacqueline Burke | 518-486-1821 | jacqueline.burke@ogs.ny.gov

CONTRACT NO.:	CONTRACTOR:
PC66988	Caterpillar Inc.
PC67265	CNH Industrial America, LLC (Construction)
PC67075	John Deere Shared Services DBA John Deere Construction Retail Services
PC69052	Henderson Products, Inc.

Please be advised that the above-mentioned contracts have been extended. The new expiration dates are as follows:

- PC66988 Caterpillar Inc. – Expiration date: 05/19/2021
- PC67265 CNH Industrial America, LLC (Construction) – Expiration date: 05/19/2021
- PC67075 John Deere Shared Services DBA John Deere Construction Retail Services– Expiration date: 05/19/2021

The price list for CNH Industrial has also been updated.

The contract for Henderson Products, Inc. was effective 03/16/2020 but was unintentionally left off the Contractor Information Summary.

An updated "Contractor Information Summary" page for this award showing the new expiration date of this contract has been posted on OGS Procurement Services' website, under "Contractor Info" at: https://online.ogs.ny.gov/purchase/spg/awards/4062522792CAN.HTM

All other terms and conditions under this Award remain the same.

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

Group 40625– Award 22792, Heavy Equipment

Caterpillar, Inc.

Contractor and Pricing Information
Revised: January 9, 2020

Contract #	Contractor & Address	Centralized Contract Contact	Federal ID NYS Vendor ID
NYS Contract: PC66988 **NJPA Contract:** 032515-CAT	Caterpillar Inc. 100 NE Adams St., Peoria IL 61629	Name: Patty Redpath Phone: 309-494-4578 Fax: 309-675-4301 Email: redpath_patty@cat.com	**Federal ID** 370602744 **NYS Vendor ID** 1100137599
Business Hours: M - F 7:00 AM – 5:00 PM Eastern Time			

Additional Contact (expediting orders and for emergencies after business hours)

Name: Ann Schreifels
Phone: 309-266-0471
Fax: 309-675-4301
Email: schreifels_ann_m@cat.com

Contract Pricelist

Contractor Price List (List Prices): Contact the Centralized Contract Contact listed above for price list. The Contract discounts from List Price are listed on the following page. ***Note: Used equipment, which is available on the master NJPA contract, is excluded from the OGS contract.***

NOTE: Price shall include all customs duties and charges. Shipping costs from the shipping point will be added to the invoice for product(s). Shipping costs are to be prepaid by Contractor and orders are to be shipped on an F.O.B. destination basis. Contractor shall provide the authorized user with an estimate of shipping charges prior to placement of an order. All orders shall be shipped by the most economical method for the proper delivery of product(s) unless special instructions are stated on the Purchase Order by the authorized user.

Payment/Ordering Information

Does Contractor offer Electronic Access Ordering (EDI)?	No
Does Contractor accept the NYS Procurement Card for orders not to exceed $15,000	No
Does Contractor offer Prompt Payment Discounts?	No

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

Group 40625-22792 Caterpillar Contractor & Pricing Information

Discount off List Price for each Machine Model*

Machine Model*	New Equipment
2020	Discount to Customer (Off List Price)
Pavers	
AP255	18.00%
AP300	18.00%
AP355	18.00%
AP500	18.00%
AP555	18.00%
AP600	18.00%
AP655	18.00%
AP1000	18.00%
AP1055	18.00%
Rollers	
CB1.7	19.00%
CB1.8	19.00%
CB7	19.00%
CB8	19.00%
CB10	19.00%
CB13	19.00%
CB15	19.00%
CB16	19.00%
CB22	19.00%
CB24	19.00%
CB32	19.00%
CB34	19.00%
CB36	19.00%
CB64	19.00%
CB66	19.00%
CB68	19.00%
CC24	19.00%
CC34	19.00%
CCS7	19.00%
CCS9	19.00%
CD8	19.00%
CD10	19.00%
CP34	19.00%
CP44	19.00%
CP54	19.00%
CP56	19.00%
CP68	19.00%
CP74	19.00%
CS34	19.00%
CS44	19.00%
CS54	19.00%
CS56	19.00%
CS64	19.00%
CS68	19.00%
CS74	19.00%
CS78	19.00%
CW16	19.00%
CW34	19.00%

*Note: Base machines are listed. There may be several different base machine configurations available. The base machine discount will be applied to any model configuration plus any and all options listed on the Caterpillar Machine price list.

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

Machine Model*	New Equipment
2020	Discount to Customer (Off List Price)
Track Type Tractors	
D3	23.00%
D4	23.00%
D5	23.00%
D6	23.00%
D7	19.00%
D8	19.00%
D9	10.00%
D10	10.00%
Wheeled Excavators	
M314F	26.00%
M315F	26.00%
M316F	26.00%
M317F	26.00%
M318F	26.00%
M320F	26.00%
M322F	26.00%
Material Handlers	
MH3022	26.00%
MH3024	26.00%
MH3026	26.00%
Cold Planers	
PM310	20.00%
PM312	20.00%
PM313	20.00%
PM620	20.00%
PM622	20.00%
PM820	20.00%
PM822	20.00%
PM825	20.00%
Reclaimers	
RM300	20.00%
RM500	20.00%
Telehandlers	
TH255	23.00%
TH3510	24.00%
TH357	24.00%
TH408	24.00%
TH514	24.00%
TL642	24.00%
TL943	24.00%
TL1055	24.00%
TL1255	24.00%
Motor Graders	
12	30.00%
120	34.00%
140	30.00%
150	30.00%
160	30.00%
14	19.00%
Skid Steer Loaders	
226	21.00%
232	21.00%
236	21.00%
242	21.00%
246	21.00%
262	21.00%
272	21.00%

*Note: Base machines are listed. There may be several different base machine configurations available. The base machine discount will be applied to any model configuration plus any and all options listed on the Caterpillar Machine price list.

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

Machine Model*	New Equipment
2020	Discount to Customer (Off List Price)
Multi-Terrain Loaders	
257	21.00%
277	21.00%
287	21.00%
297	21.00%
Compact Track Loaders	
239	21.00%
249	21.00%
259	21.00%
279	21.00%
289	21.00%
299	21.00%
Excavators	
300.9	20.00%
301.4	20.00%
301.5	20.00%
301.7	20.00%
301.8	20.00%
302	20.00%
302.4	20.00%
302.7	20.00%
303	20.00%
303.5	20.00%
304	20.00%
304.5	20.00%
305	20.00%
305.5	20.00%
306	20.00%
307	20.00%
307.5	20.00%
308	20.00%
309	20.00%
310	20.00%
311	18.00%
313	15.00%
313GC	16.00%
315	19.00%
316	19.00%
318	16.00%
320	15.00%
320GC	16.00%
323	15.00%
325	15.00%
326	15.00%
330	15.00%
335	15.00%
336	15.00%
349	10.00%
352	10.00%
374	10.00%
Forest Machines	
538	15.00%
548	15.00%
558	15.00%
568	15.00%
Backhoe Loaders	
415	22.00%
416	22.00%
420	22.00%
430	22.00%
432	22.00%
440	22.00%
450	22.00%

*Note: Base machines are listed. There may be several different base machine configurations available. The base machine discount will be applied to any model configuration plus any and all options listed on the Caterpillar Machine price list.

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

Machine Model*	New Equipment
2020	Discount to Customer (Off List Price)
Wheel Tractor Scrapers	
621	18.00%
623	18.00%
627	18.00%
637	18.00%
Articulated Trucks	
725	17.00%
730	17.00%
735	17.00%
740GC	17.00%
745	17.00%
Rigid Frame Trucks	
770	3.00%
773	3.00%
Landfill Compactors	
816	12.00%
826	12.00%
836	12.00%
Wheel Dozers and Soil Compactors	
814	15.00%
815	13.00%
824	15.00%
825	13.00%
834	15.00%
Wheel Loaders	
903	23.00%
906	23.00%
907	23.00%
908	23.00%
910	23.00%
914	23.00%
918	24.00%
920	24.00%
926	24.00%
930	24.00%
938	24.00%
950GC	20.00%
950M	18.00%
962	18.00%
966	15.00%
972	11.00%
980	11.00%
982	11.00%
988	11.00%
Track Loaders	
953	19.00%
963	22.00%
973	23.00%
Aftermarket Worktools	15.00%
Caterpillar Safety Services	15.00%

*Note: Base machines are listed. There may be several different base machine configurations available. The base machine discount will be applied to any model configuration plus any and all options listed on the Caterpillar Machine price list.

Used Equipment is discounted 20% from Original Customer List

Rental Equipment is discounted 10% from dealership Rental Rates

Parts & Service is discounted by the servicing dealer according to work order volume

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

Rental Equipment is discounted 10% from dealership Rental Rates.

Parts & Service is discounted by the servicing dealer according to work order volume.

Authorized Resellers

Note: Caterpillar is the contractor and has authorized the resellers listed below to receive purchase orders, issue invoices and take payments on behalf of the contractor. Purchase orders should reference the NYS contract number and the appropriate reseller. Caterpillar will continue to assume full responsibility for all the terms and conditions of the contract.

Dealer Name	Dealer Address	Telephone	FEIN/ NYS Vendor ID	SB/WBE
H.O. PENN MACHINERY CO. INC.	660 Union Ave. Holtsville, NY 11742	(631) 758-7500	Federal ID 131158790 NYS Vendor ID 1000012466	
H.O. PENN MACHINERY CO. INC.	122 Noxon Rd. Poughkeepsie, NY 12603	(845) 452-1200	Federal ID 131158790 NYS Vendor ID 1000012466	
H.O. PENN MACHINERY CO. INC.	699 Brush Ave. Bronx, NY 10465	(718) 863-3800	Federal ID 131158790 NYS Vendor ID 1000012466	
H.O. PENN MACHINERY CO. INC.	15 Middle Ave. Holtsville, NY 11742	(631) 758-7500	Federal ID 131158790 NYS Vendor ID 1000012466	
H.O. PENN MACHINERY CO. INC.	783 Bloomingburg Rd. Bloomingburg, NY 12721	(845) 733-6400	Federal ID 131158790 NYS Vendor ID 1000012466	
MILTON CAT	500 Commerce Dr. Clifton Park, NY 12065-1314	(518) 877-8000	Federal ID 0202584444 NYS Vendor ID 1000000018	
MILTON CAT	294 Ainsley Dr. Syracuse, NY 13210	(315) 476-9981	Federal ID 0202584444 NYS Vendor ID 1000000018	
MILTON CAT	4610 East Saile Dr. Batavia, NY 14020	(585) 815-6200	Federal ID 0202584444 NYS Vendor ID 1000000018	

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

Authorized Resellers (Cont'd)

Note: Caterpillar is the contractor and has authorized the resellers listed below to receive purchase orders, issue invoices and take payments on behalf of the contractor. Purchase orders should reference the NYS contract number and the appropriate reseller. Caterpillar will continue to assume full responsibility for all the terms and conditions of the contract.

Dealer Name	Dealer Address	Telephone	FEIN/ NYS Vendor ID	SB/WBE
MILTON CAT	500 Industrial Park Dr. Binghamton, NY 13904	(607) 772-6500	Federal ID 0202584444 NYS Vendor ID 1000000018	

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
NEW YORK STATE PROCUREMENT
PIGGYBACK CONTRACT FOR COMMODITIES

New York State Contract #	**PC66988**
Master Contract #	032515-CAT

DESIGNATED CONTACTS:	
Primary Contact: Dorah Rosenzweig **E-mail address:** **dorah.rosenzweig@ogs.ny.gov**	**Secondary Contact: Mike Riley** **E-mail address:** **Michael.riley@ogs,ny.gov**

THIS CONTRACT for establishment of a "piggyback" contract is made between the People of the State of N York, acting by and through the Commissioner of the Office of General Services (hereinafter "State" or "OG whose principal place of business is the 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Emp State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance L §163(10)(e), and Caterpillar, Inc. (hereinafter "Contractor," "Vendor" or "Offerer"), with its principal place business at 100 NE Adams Street, Peoria, IL 61629. OGS and Contractor are hereby individually referred to a "Party" and collectively referred to herein as "the Parties".

Whereas, in accordance with New York State Finance Law §163(10)(e), the Commissioner of OGS (hereinaf "Commissioner") may authorize purchases required by New York State agencies or other authorized purchas by approving the use of a contract let by any department, agency or instrumentality of the United Sta government and/or any department, agency, office, political subdivision or instrumentality of any state or stat and

Whereas, the National Joint Powers Alliance ("NJPA"), a department, agency, office, political subdivision instrumentality of the State of Minnesota, let a certain Contract Number 032515-CAT with Contractor for Hea Construction Equipment with Related Accessories, Attachments, and Supplies (hereinafter "Master Contract and

Whereas, OGS is a member of NJPA and is therefore authorized to utilize NJPA contracts; and

Whereas, OGS New York State Procurement (hereinafter "NYSPro"), on behalf of the Commissioner, finds necessary and desirable to enter into such a contract (hereinafter "Piggyback Contract" or "Contract"), wi Contractor for the purchase of specified products or services under the terms and conditions established pursua to the Master Contract; and

Whereas, OGS placed notice of its intention to enter into a single source contract with Contractor by placing notice in the May 30, 2104 edition of the New York State Contract Reporter.

Therefore, by completing and signing this Piggyback Contract, Contractor is willing and able to enter into contract and authorizes OGS to process the Piggyback Contract and provide notification regarding the availabili of this Piggyback Contract.

1. PIGGYBACK CONTRACT SCOPE

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

This document sets forth the terms and conditions governing acquisitions under this Piggyback Contract for by Authorized Users. All the terms, conditions, covenants and representations contained herein and in the Mas Contract, except as modified by this Piggyback Contract, are hereby incorporated by reference and deemed to a part of this Piggyback Contract as if fully set forth at length herein. The terms and conditions of this Piggyba Contract shall supersede any conflicting terms and conditions set forth in the Master Contract.

The Master Contract is expressly amended as noted in Section 4, *Merger of Appendices/Conflict of Claus* below.

2. TERM

The term of this Piggyback Contract shall be the last date of execution by the Parties through the end of the Mas Agreement term, unless otherwise mutually agreed by the Parties in writing.

3. CONTRACT AMENDMENTS AND RENEWALS

Any modifications to this Piggyback Contract must be made by an instrument in writing executed by the Part hereto. Contractor shall submit copies of any modifications to or renewals of the Master Contract, including n products, terms, or price changes, to NYSPro within 48 hours of enactment. NYSPro may accept a modificati to or renewal of the Master Contract in full. If a modification is not fully acceptable to NYSPro, either t Contractor or OGS may terminated the Piggyback Contract in accordance with its terms or amend the Piggyba Contract to accept the modification to the Master Contract in part.

However, in accordance with Appendix B, Section 40, *Modification of Contract Terms*, an Authorized User sh have the authority to accept an offer from Contractor for more advantageous terms and pricing than those unc this Piggyback Contract. An Authorized User shall not have the authority to accept any other requests t modifications to the Piggyback Contract, which must be handled as outlined herein.

4. MERGER OF APPENDICES/CONFLICT OF CLAUSES

This Piggyback Contract shall incorporate the following appendices as if set forth herein at length. Or documents expressly enumerated below shall be deemed a part of this Piggyback Contract, and referenc contained in those documents to additional Contractor documents not enumerated below shall be of no force a effect. Conflicts between these documents shall be resolved in the following descending order of precedenc which supersedes the order of precedence stated in Appendix B.

I. Appendix A	Standard Clauses for NYS Contracts
II. Piggyback Contract	This Document
III. Appendix B	OGS General Specifications
IV. Master Contract	NJPA Contract # 032515-CAT.

5. APPENDIX B AMENDMENTS

The following sections of Appendix B are hereby deleted: 6 (*International Bidding*), 7 (*Bid Opening*), 8 (*E Submission*), 9 (*Facsimile Submissions*), 10 (*Authentication of Facsimile Bids*), 11 (*Late Bids*), 12 (*Bid Content* 13 (*Extraneous Terms*), 15 (*Release of Bid Evaluation Materials*), 21 (*Product References*), 26 (*Site Inspectio* 28 (*Samples*), 30 (*Conditional Bid*), 31 (*Clarification/Revisions*), 32 (*Prompt Payment Discounts*), 33 (*Equivale or Identical Bids*), 36 (*Quantity Changes Prior To Award*) and 37 (*Timeframe for Offers*).

6. APPLICABLE LAW

This Piggyback Contract shall be governed by and construed in accordance with the laws of the State of Ne York. Any claims or actions brought by Contractor against the State for monetary damages shall be brought the New York State Court of Claims. See Section 14, *Governing Law*, in Appendix A.

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

7. AUTHORIZED USERS

Authorized User" shall have the meaning set forth in the State Finance Law section 163(1)(k). This Piggyba Contract is for use by Authorized Users, which includes, but is not limited to, New York State agencies, politi subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit librari and certain other nonpublic/nonprofit organizations.

Upon request, all eligible non-State agencies must furnish the Contractor with the proper tax exempti certificates and documentation certifying eligibility to use State contracts. Questions regarding an organizatio eligibility to purchase from New York State contracts may also be directed to OGS NYSPro Customer Servi at 518-474-6717 or at customer.services@ogs.ny.gov.

8. PREFERRED SOURCES

New York State Finance Law §162 mandates that a New York State agency, public authority, political subdivisi or public benefit corporation obtain certain commodities and services from preferred sources, such as Correctio Industries (Corcraft), the blind and the disabled, when such products or services meet the form, function a utility of the entity. Some products or services under this Piggyback Contract may be available from one or m preferred sources. Contractor understands and agrees that such products and services must be purchased fron preferred source in accordance with New York State Law.

9. NOTICES

All notices, demands, designations, certifications, requests, reports, offers, consents, approvals and oth instruments given pursuant to this Piggyback Contract shall be in writing and shall be validly given when mail by registered, certified or overnight mail, or hand delivered and, (i) if to the State, addressed to the State at address identified as indicated below, or (ii) if to the Contractor, addressed to the Contractor at its addr identified as indicated below. A Party may, from time to time, specify any address in the United States as address for purposes of notices under this Piggyback Contract by giving fifteen (15) days written notice to t other Party. The Parties mutually agree to designate individuals in their respective organizations for purposes receiving notice pursuant to this Piggyback Contract. The representatives for the State and the Contractor will identified, and updated, on the Contract Award Notification page associated with this Piggyback Contract.

10. PROCESSING CONTRACT PAYMENTS

The Contractor acknowledges that a contract payment cannot be processed by an Authorized User until t contract products have been delivered and accepted.

11. CONTRACT BILLINGS AND PAYMENTS

Appendix B, Section 62, *Contract Billings*, is hereby deleted and replaced with the following:

I. Billings. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, sh provide complete and accurate billing invoices to each Authorized User in order to receive payme Billing invoices submitted to an Authorized User must contain all information required by the Piggyba Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice a payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding price adjustment in any case where the Product delivered is found to deviate from the terms and conditio of this Piggyback Contract or where the billing was inaccurate.

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

Contractor shall provide, upon request of the Commissioner, any and all information necessary to ver the accuracy of the billings. Such information shall be provided in the format requested by Commissioner and in a media commercially available from the Contractor. The Commissioner may dir the Contractor to provide the information to the State Comptroller or to any Authorized User of Piggyback Contract.

II. Payment of Piggyback Contract purchases made by an Authorized User when the State Comptrolle responsible for issuing such payment. The Authorized User and Contractor agree that payments invoices submitted by the Contractor shall only be rendered electronically unless payment by paper ch is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuat circumstances. Such electronic payments shall be made in accordance with ordinary State procedures a practices. The Contractor shall comply with the State Comptroller's procedures to authorize electro payments. Authorization forms are available at the State Comptroller website http://www.osc.state.ny.us/epay/index.htm or by e-mail at epayments@osc.state.ny.us. Contrac acknowledges that it will not receive payment on any invoices submitted under this Piggyback Contr that are payable by the State Comptroller if it does not comply with the State Comptroller's electro payment procedures, except where the Commissioner has expressly authorized payment by paper ch as set forth above. Inquiries relating to OSC's Electronic Payments program should be directed to:

NYS Office of the State Comptroller
Vendor Management Unit
110 State Street Mail Drop 10-4
Albany, NY 12236
Telephone: (855) 233-8363
E-Mail: helpdesk@sfs.ny.gov

III. Payment of Piggyback Contract purchases made by an Authorized User when the State Comptroller is r responsible for issuing such payment. The Authorized User and Contractor agree that payments for su Piggyback Contract purchases shall be billed directly by Contractor on invoices/vouchers, together w complete and accurate supporting documentation as required by the Authorized User. Such payme shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Su Authorized User and Contractor are strongly encouraged to establish electronic payments.

12. PAYMENTS OF INTEREST

Appendix B, Section 64, *Interest on Late Payments*, is hereby deleted and replaced with the following:

a. **State Agencies** Upon acceptance of product or as otherwise provided by this Piggyback Contra Contractor may invoice for payment. The required payment date shall be thirty (30) calendar da excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with St Finance Law §179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and ow by Agency may be made in accordance with State Finance Law §§179-d et. seq. and the implementi regulations (2 NYCRR §18.1 et seq.).

b. **By Non-State Agencies** Upon acceptance of product or as otherwise provided by this Piggyback Contra Contractor may invoice for payment. The required payment date shall be thirty (30) calendar da excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a pro invoice. The terms of State Finance Law Article 11-A apply only to procurements by and the consequ payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on a purchases made by a Non-State Agency Authorized User.

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

c. **By Contractor** Should the Contractor be liable for any payments to the State hereunder, interest, l payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of State Finance Law.

The Federal Prompt Payment Law (or any other law governing payment terms incorporated in the Mas Contract) does not apply to the Piggyback Contract regardless of customer.

13. PRODUCT DELIVERY

Appendix B, Section 45, *Product Delivery*, is hereby deleted and replaced with the following:

Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with terms of the Contract or Contract Award Notice. Unless otherwise agreed by the Authorized User and Contract delivery shall be made within ninety calendar days after receipt of a Purchase Order by the Contractor. T decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for de in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. A extension of time for delivery must be requested in writing by the Contractor and approved in writing by t Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, the Commissioner's discretion, the Contract.

14. REPORT OF CONTRACT PURCHASES

Contractor shall furnish a report of all Products provided under the Piggyback Contract during each quarte period, no later than the 15th of the month following the close of each quarter. Quarterly periods will end March 31st, June 30th, September 30th and December 31st. Purchases by Non-state agencies, politi subdivisions and others authorized by law shall be reported in the same report and be indicated as required. A fields of information shall be accurate and complete. The report is to be submitted electronically via electro mail utilizing the template provided in Microsoft Excel 2003, or newer (or as otherwise directed by OGS), to t attention of the individual shown on the front page of the Contract Award Notification and shall reference t New York State Contract Number, Sales Period, and Contractor's (or other authorized agent) Name, and all oth fields required. OGS reserves the right to amend the report template during the Piggyback Contract term. T report or the information therein shall also be made available to NJPA upon request in accordance with the Mas Contract.

15. PRICE AND DISCOUNT

I. MINIMUM ORDER. There are no minimum order quantities under the Master Contract or th Piggyback Contract.

II. PRICE AND DISCOUNTS. Price shall include all customs duties and charges and be net, F.O. destination any point in New York State as designated by the ordering Authorized User.

In the alternative, shipping costs from the shipping point may be added to invoice for the product, with a copy the freight bill. Shipping costs are to be prepaid by Contractor and such orders are to be shipped on an F.O. destination basis. Contractor shall provide the Authorized User with an estimate of shipping charges prior placement of an order. All such orders shall be shipped by the most economical method for the proper delive of the product unless special instructions are stated on the Purchase Order by the Authorized User.

Any prompt payment terms (cash discounts) or quantity (volume) discounts which are included in the Mast Contract will also be included in this Piggyback Contract.

III. "OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

Purchases of the commodities included in the Piggyback Contract are subject to the "OGS or Le provisions of State Finance Law §163(3)(a)(v). This means that State agencies can purchase products fr sources other than the Contractor provided that such products are substantially similar in form, function or uti to the commodities herein and are:

A. lower in price
-and/or-
B. available under terms that are more economically efficient to the State agency (e.g. deliv terms, warranty terms, etc.).

State agencies are reminded that the Contractor must be provided an opportunity to match the non-contract savi at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility m meet all requirements of law including, but not limited to, advertising in the New York State Contract Report prior approval of the Comptroller's Office and competitive bidding of requirements exceeding the discretion bid limit.

16. USE OF SUBCONTRACTORS/RESELLERS/DISTRIBUTORS/DEALERS

Consistent with Sections 3.23 – 3.23.2 of NJPA RFP #032515, Contractor shall be fully liable for Subcontract Reseller, Distributor and/or Dealer performance under this Piggyback Contract, and their compliance with Piggyback Contract terms and conditions.

17. OVERLAPPING CONTRACT ITEMS

Products/services available under this Piggyback Contract may also be available from other New York St contracts. Authorized Users will be advised to select the most cost effective procurement alternative that me their program requirements, and to document the basis for this selection in the procurement record.

18. CONTRACTOR'S INSURANCE REQUIREMENTS

The Contractor shall procure at its sole cost and expense, prior to this Piggyback Contract taking effect, and sh maintain in force at all times during the term of this Piggyback Contract, policies of insurance as herein belo set forth, written by companies licensed or authorized by the New York State Department of Financial Servic to issue insurance in the State of New York with an A.M. Best Company rating of "A-" Class "VII" or better. during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced later than the renewal date of the policy with an insurer acceptable to OGS and rated at least "A-" Class "VII" the most recently published Best's Insurance Report.

The Contractor shall deliver to OGS evidence of such policies in a form acceptable to OGS. These policies mu be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/ approval by OGS does not and shall not be construed to relieve Contractor of any obligations, responsibilities liabilities under this Piggyback Contract.

I. General Conditions Applicable to Insurance. All policies of insurance required by tl Piggyback Contract must meet the following requirements:

A. Coverage Types and Policy Limits. The types of coverage and policy limits requir from the Contractor are specified in Paragraph II Insurance Requirements below.

B. Policy Forms. Except as may be otherwise specifically provided herein or agreed to writing by OGS, policies must be written on an occurrence basis.

C. Certificates of Insurance/Notices. Contractor shall provide a Certificate or Certificat of Insurance and all required endorsements, in a form satisfactory to OGS, prior to this Piggyba Contract taking effect, and within three (3) business days of request to OGS.

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

1. Certificates shall reference the New York State Contract Number.

2. **ALL OF THE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-1 MUST NAME**: The New York State Office of General Services, New York St Procurement (NYSPro), 38th floor, Corning Tower, Albany NY 12242 as the Ent Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

3. Certificates shall be submitted to:

The New York State Office of General Services
New York State Procurement (NYSPro)
Corning Tower- 38th Floor
Empire State Plaza
Albany, NY 12242

4. Unless otherwise agreed, policies shall be written so as to include a provision tl the policy will not be canceled, materially changed, or not renewed without at least thi (30) days prior written notice except for non-payment, in which case, notice shall provided as required by law to OGS, Attention: NYSPro, Corning Tower – 38th Flo Empire State Plaza, Albany, New York 12242. The Contractor shall not take any acti or omit to take any action that would suspend or invalidate any of the required coverag during the period of time such coverages are required to be in effect. Not less than thi (30) days prior to the expiration date or renewal date, the Contractor shall supply OC updated replacement Certificates of Insurance, and amendatory endorsements.

5. Certificates of Insurance shall:

a. Be in the form approved by OGS;
b. Disclose any deductible, self-insured retention, aggregate limit or a exclusion to the policy that materially changes the coverage required by tl Piggyback Contract;
c. Specify the Additional Insureds and Named Insured as required herein;
d. Refer to this Piggyback Contract by its New York State Contract Numb and any other attachments on the face of the certificate; and,
e. Be signed by an authorized representative of the insurance carrier producer.

6. Only original documents or electronic forms that can be directly traced back to t insurance carrier, agent or broker via e-mail distribution (Certificates of Insurance a other attachments) will be accepted.

D. Primary Coverage. All insurance policies shall provide that the required coverage sh apply on a primary and not on an excess or contributing basis as to any other insurance that m be available to OGS or any Authorized User for any claim arising from the Contractor's wo under this Piggyback Contract, or as a result of the Contractor's activities. Any other insuran maintained by OGS or any Authorized User shall be excess of and shall not contribute with tl Contractor's insurance.

E. Policy Renewal/Expiration. At least thirty (30) days prior to the expiration of any poli required by this Piggyback Contract, evidence of renewal or replacement policies of insuran with terms no less favorable to the State than the expiring policies shall be delivered to OGS in tl manner required for service of notice in Paragraph I.C. Certificates of Insurance/Notices, abov If, at any time during the term of this Piggyback Contract, the coverage provisions and limits the policies required herein do not meet the provisions and limits set forth in this Piggyba Contract, or proof thereof is not provided to OGS, the Contractor shall immediately cease work.

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

The Contractor shall not resume work until authorized to do so by OGS. Should the Contrac fail to provide or maintain any insurance required by this Piggyback Contract, or proof thereo not provided, OGS or Authorized Users may withhold further payments due under this Piggyb Contract or treat such failure as a breach or default of this Piggyback Contract. In the event such a breach, the Contractor shall be subject to liability for damages, indemnification and all ot legal remedies available to OGS. The Contractor's failure to obtain and/or keep in effect any a all required insurance shall also provide the basis for OGS' immediate termination of t Piggyback Contract, subject only to a five (5) business day cure period. Any termination by O or any delay, time lost or additional cost incurred as a result of the Contractor not having insura required by this Piggyback Contract or not providing proof of same in a form acceptable to O(shall in no event constitute or be deemed a breach of this Piggyback Contract and no liability sh be incurred or arise against OGS or any Authorized User, its agents and employees therefrom lost profits or any other damages.

F. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate applicable deductible/self-insured retention on each policy. Deductibles or self-insured retenti above $100,000 are subject to approval from OGS. The Contractor shall be solely responsible all claim expenses and loss payments within the deductible or self-insured retention.

G. Subcontractors. Should the Contractor engage a Subcontractor, the Contractor sh require all Subcontractors, prior to commencement of an agreement between Contractor and Subcontractor, to secure and keep in force during the term of this Piggyback Contract the insura requirements of this document on the Subcontractor, as applicable. Proof thereof shall be suppl to OGS.

All insurance required by this Piggyback Contract shall name The People of the State of N York, its officers, agents, and employees as additional insureds hereunder. The General Liabil Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number (20 26 11 85 or the equivalent. Such coverage shall be extended to afford Additional Insured sta to those entities during the Products/Completed Operations term. Additional Insu Endorsements shall be provided prior to this Piggyback Contract taking effect and within three business days of request to OGS, NYSPro, Corning Tower – 38th Floor, Empire State Pla Albany, New York 12242. The additional insured requirement does not apply to Work Compensation, Disability or Professional Liability coverage.

II. Insurance Requirements. The Contractor, throughout the term of this Piggyback Contract, or otherwise required by this Piggyback Contract, shall obtain and maintain in full force and effect, t following insurance with limits not less than those described below and as required by the terms of t Piggyback Contract, or as required by law, whichever is greater (limits may be provided through combination of primary and umbrella/excess policies):

A. Commercial General Liability Insurance (CGL) covering the liability of the Contractor bodily injury, property damage and personal/advertising injury from all work and operation under t Piggyback Contract. The limits under such policy shall not be less than the following:

1. Each Occurrence limit - $2,000,000.00
2. General Aggregate - $2,000,000.00
3. Products/Completed Operations Aggregate - $2,000,000.00
4. Personal/Advertising Injury - $1,000,000.00
5. Damage to Rented Premises - $50,000.00
6. Medical Expenses - $5,000.00
7. Coverage shall include, but not be limited to, the following:
   a. premises liability;

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b. independent contractors;
c. blanket contractual liability, including tort liability of another assumed i contract;
d. defense and/or indemnification obligations, including obligations assum under this Piggyback Contract;
e. cross liability for additional insureds;
f. products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by this Piggybac Contract;
g. explosion, collapse, and underground hazards; and,
h. contractor means and methods.

8. The following ISO forms must be endorsed to the policy:
a. CG 00 01 01 96 or an equivalent – Commercial General Liability Covera Form
b. CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees c Contractors (Form B)
c. Waiver of Subrogation

B. Comprehensive Business Automobile Liability Insurance covering liability arising out any automobile in connection with the work required under this Piggyback Contract, includi owned, leased, hired and non-owned automobiles bearing or, under the circumstances under whi they are being used, required by the Motor Vehicles Laws of the State of New York to bear, licer plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage at least $2,000,000.00 each accident and shall name the People of the State of New York, officers, agents, and employees and the New York State Office of General Services as additio insureds. The limits may be provided through a combination of primary and umbrella liabil policies.

C. Garage Liability Insurance including coverage for all garage operations of the Contract including premises and operations; products and completed operations, and garagekeepers liabil coverage with minimum limits of:

- Garage liability insurance-$1,000,000.00 for garage operations; and
- Garagekeepers liability-$100,000.00 per vehicle in custody, $500,000.00 aggregate on a "direct primary" basis.

The policy shall name the People of the State of New York, its officers, agents, and employe and the New York State Office of General Services as additional insureds. In the event th Contractor will not be towing, repairing or garaging any products sold under this Piggyba Contract, Contractor need not maintain the Garage Liability Insurance required hereund provided that any of Contractor's subcontractors/dealers/distributors/resellers who will be towir repairing or garaging products sold under this Piggyback Contract shall maintain such Gara Liability Insurance. By signing this Piggyback Contract, Contractor certifies and represents th all such subcontractors/dealers/distributors/resellers have Garage Liability Insurance in effect required herein. Contractor shall provide the State with proof of such coverage upon request.

Waiver of Subrogation. For the coverages required above, the Contractor shall cause to l included in each of its policies insuring against loss, damage or destruction by fire or other insur casualty a waiver of the insurer's right of subrogation against The People of the State of New Yor its officers, agents and employees, the New York State Office of General Services and a Authorized User of this Piggyback Contract. Waiver of Subrogation Endorsements shall l

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provided prior to this Piggyback Contract taking effect and within three (3) business days request to OGS, NYSPro, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

III. Workers' Compensation Insurance and Disability Benefits Requirements

New York State Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal a state entities to ensure that businesses applying for permits, licenses or contracts document that they ha appropriate workers' compensation and disability benefits insurance coverage. These requirements ap to both original contracts and renewals, whether the governmental agency is having the work done o simply issuing the permit, license or contract. Failure to provide proof of such coverage or a le exemption will result in Offerer/Contractor not being considered for this Piggyback Contract or renewal same.

A. Proof of Compliance with Workers' Compensation Coverage Requirements:

An ACORD form is NOT acceptable proof of workers' compensation coverage.

1. In order to provide proof of compliance with the requirements of the New Yo State Workers' Compensation Law pertaining to workers' compensation coverage, contractor shall:
   a. Be legally exempt from obtaining Workers' Compensation insurance coverage; or
   b. Obtain such coverage from an insurance carrier; or
   c. Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

2. A Contractor seeking to enter into a contract with the State of New York sh provide one of the following forms to the Office of General Services **before th Piggyback Contract can be executed by the Commissioner**.
   a. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York St Workers' Compensation and/or Disability Benefits Insurance Coverage Not Required, which is available on the Workers' Compensation Boar website (www.wcb.ny.gov).
   b. Certificate of Workers' Compensation Insurance:
      i. Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services, or
      ii. Form U-26.3 if coverage is provided by the State Insurance Fund contractor must request that the State Insurance Fund send this for to the New York State Office of General Services.
   c. Form SI-12, Certificate of Workers' Compensation Self-Insurance availab from the New York State Workers' Compensation Board's Self-Insuran Office.
   d. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insuran Administrator.

B. Proof of Compliance with Disability Benefits Coverage Requirements:

1. In order to provide proof of compliance with the requirements of the New Yo State Workers' Compensation Law pertaining to disability benefits, a contractor shall:
   a. Be legally exempt from obtaining disability benefits coverage; or
   b. Obtain such coverage from an insurance carrier; or
   c. Be a Board-approved self-insured employer.

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2. A Contractor seeking to enter into a contract with the State of New York sh provide one of the following forms to the Office of General Services **before t Piggyback Contract can be executed by the Commissioner**.

a. Form CE-200, Certificate of Attestation for New York Entities With Employees and Certain Out of State Entities, That New York St Workers' Compensation and/or Disability Benefits Insurance Coverage Not Required, which is available on the Workers' Compensation Boar website (www.wcb.ny.gov).

b. Form DB-120.1, Certificate of Disability Benefits Insurance. Contrac must request its business insurance carrier to send this form to the New Yo State Office of General Services; or

c. Form DB-155, Certificate of Disability Benefits Self-Insurance. T Contractor must call the Board's Self-Insurance Office at 518-402-0247 obtain this form.

19. PURCHASE ORDERS

Purchase Orders shall be effective and binding upon Contractor when placed in the mail or electronica transmitted during this Piggyback Contract period addressed to the Contractor at the address for receipt of orde designated in the Master Contract or Contract Award Notification. Any discrepancies between the terms stat on the Contractor's order form, confirmation or acknowledgment, and the Piggyback Contract terms shall resolved in favor of the terms most favorable to the Authorized User. If an Authorized User of the Piggyba Contract adds written terms and conditions to the Purchase Order that conflict with the terms and conditions the Piggyback Contract, the Contractor may reject the Purchase Order within five (5) business days of its rece or fulfill the Purchase Order. Prior to rejection of any additional terms and conditions to the Purchase Order, t Contractor has an obligation to attempt to negotiate the additional written terms and conditions in good faith w the Authorized User. For more details on these provisions, See Appendix B, Section 44, *Purchase Orders*.

20. ESTIMATED / SPECIFIC QUANTITIES

Appendix B, Section 42, *Estimated/Specific Quantity Contracts*, is hereby deleted and replaced with t following:

a. Estimated quantity contracts, also referred to as indefinite delivery/indefinite quantity contracts, a expressly agreed and understood to be made for only the quantities, if any, actually ordered during t Piggyback Contract term. No guarantee of any quantity(s) is implied or given.

b. With respect to any specific quantity stated in the Piggyback Contract or Participation Agreement, t Commissioner reserves the right after award to order up to 20% more or less (rounded to the ne highest whole number) than the specific quantities called for in the Piggyback Contract or Participati Agreement. Notwithstanding the foregoing, the Commissioner may purchase greater or less percentages of Piggyback Contract or Participation Agreement quantities should the Commission and Contractor so agree. Such agreement may include an equitable price adjustment.

21. INDEFINITE DELIVERY, INDEFINITE QUANTITY CONTRACT

This Piggyback Contract will be an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. All quantities dollar values listed within the Piggyback Contract or applicable Participation Agreement are estimates.

Numerous factors could cause the actual volume of product purchased under the Piggyback Contract to va substantially from the estimates in the Piggyback Contract or applicable Participation Agreement. Such facto include, but are not limited to, the following:

- Such Piggyback Contracts will be nonexclusive contracts;

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- There is no guarantee of volume to be purchased, nor is there any guarantee that demand v continue in any manner consistent with previous purchases;
- The individual value of each Piggyback Contract is indeterminate and will depend upon act Authorized User demand, and actual quantities ordered during the contract period; and,
- The State reserves the right to terminate any Piggyback Contract for cause or convenience prio the end of the term pursuant to the terms and conditions of the Piggyback Contract.

In NYSPro's experience, depending on the price of a particular item, the actual volume of purchases for that it could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual contr pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially grea than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, act quantities purchased could be substantially lower than the estimates. By execution of this Piggyback Contra Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term the resulting Piggyback Contract could vary substantially from the estimates provided in this Piggyback Contr or applicable Participation Agreement.

22. CATALOGS AND PRICE SHEETS

Catalogs and price lists shall be provided in accordance with the terms of the Master Contract. Upon reque Contractor shall also assist Authorized Users in the use of such documents.

23. DISPUTE RESOLUTION POLICY

It is the policy of NYSPro to provide the Contractor with an opportunity to administratively resolve disput complaints or inquiries related to this Piggyback Contract. NYSPro encourages the Contractor to seek resoluti of disputes through consultation with NYSPro staff. All such matters will be accorded impartial and time consideration. A copy of NYSPro Dispute Resolution Procedures for Vendors may be obtained by contacti OGS or through the OGS website at http://www.ogs.ny.gov/BU/PC/Docs/VendorDisputePolicy.pdf.

24. SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING:

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions communications between OGS and an offerer/bidder during the procurement process. An offerer/bidder restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award a approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restrict period") to other than designated staff unless it is a contact that is included among certain statutory exceptio set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified on the first pa of this Piggyback Contract. OGS employees are also required to obtain certain information when contact during the restricted period and make a determination of the responsibility of the offerer/bidder pursuant to the two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event two findings within a four-year period, the offerer/bidder is debarred from obtaining governmental Procureme Contracts. Further information about these requirements can be found on the OGS websit http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp.

25. NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT BUSINES ENTITY

I. OGS conducts a review of prospective contractors ("offerers") to provide reasonable assurances that offerer is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire is used for non-construction contracts and is designed to provide information to assess an offerer's responsibili to conduct business in New York based upon financial and organizational capacity, legal authority, busine integrity, and past performance history. If interested in contracting with New York State, an offerer must agr and hereby agrees to fully and accurately complete the Questionnaire. The offerer acknowledges that the State

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execution of a contract will be contingent upon the State's determination that the offerer is responsible and t the State will be relying upon the offerer's responses to the Questionnaire when making its responsibil determination.

OGS recommends each offerer file the required Questionnaire online via the New York State VendRep Syste To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support Vendors available at the Office of the State Comptroller's (OSC) websi http://www.osc.state.ny.us./vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online https://portal.osc.state.ny.us.

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a h desk. The OSC Help Desk contact information is located at http://www.osc.state.ny.us/portal/contactbuss.ht Offerers opting to complete the paper questionnaire can access this form and associated definitions via the O website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

In order to assist the State in determining the responsibility of the offerer prior to contract award, the offerer m complete and certify (or recertify) the Questionnaire no more than six (6) months prior to OGS' transmittal to y of this Piggyback Contract. An offerer's Questionnaire cannot be viewed by OGS until the offerer has certifi the Questionnaire. It is recommended that all offerers become familiar with all of the requirements of t Questionnaire and complete as soon as possible to allow sufficient time for OGS review prior to Piggyba Contract execution.

II. The Contractor shall at all times during the Piggyback Contract term remain responsible. The Contrac agrees, if requested by the Commissioner of OGS or her designee, to present evidence of its continuing le authority to do business in New York State, integrity, experience, ability, prior performance, and organizatio and financial capacity.

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or activities under this Piggyback Contract, at any time, when he or she discovers information that calls into questi the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written noti outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with t terms of the suspension order. Activity under the Piggyback Contract may resume at such time as t Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under t Piggyback Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS offici or staff, the Piggyback Contract may be terminated by the Commissioner of OGS or her designee at t Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be no responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requiremer in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Piggyback Contract by the State be deemed a breach thereof, nor sh the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as result of such termination.

26. NEW YORK STATE TAX LAW SECTION 5-a

Tax Law §5-a requires certain contractors awarded state contracts for commodities, services and technolo valued at more than $100,000 to certify to NYS Department of Taxation and Finance (DTF) that they a registered to collect New York State and local sales and compensating use taxes. The law applies to contrac where the total amount of such contractors' sales delivered into New York State is in excess of $300,000 for t four quarterly periods immediately preceding the quarterly period in which the certification is made, and wi respect to any affiliates and subcontractors whose sales delivered into New York State exceeded $300,000 for t four quarterly periods immediately preceding the quarterly period in which the certification is made.

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A contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that contractor filed the ST-220-TD with DTF. Note: NYS DTF receives the completed Form ST-220-TD, not O(OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed as soon as possible upon O(transmittal to Contractor of this Piggyback Contract and submitted to the procuring covered Agency certify that the contractor filed the ST-220-TD with DTF. Contractor should complete and return the certification fo within five (5) business days of request (if the forms are not completed and returned prior to such request). Fail to make either of these filings may render a contractor non-responsive and non-responsible. Contractor shall t the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the l

Website links to the contractor certification forms and instructions are provided below. Form ST-220-TD m be filed with and returned directly to DTF and can be found http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf Unless the information upon which the ST-2 TD is based changes, this form only needs to be filed once with DTF. If the information changes for contractor, its affiliate(s), or its subcontractor(s), a new Form ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the contrac filed the ST-220-TD with DTF. This form can be found http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

Vendors may call DTF at 518-485-2889 for any and all questions relating to Section 5-a of the Tax Law a relating to a company's registration status with DTF. For additional information and frequently asked questio please refer to the DTF web site: http://www.tax.ny.gov/.

27. NEW YORK STATE VENDOR FILE REGISTRATION

Prior to being awarded a contract, the contractor and any designated authorized dealers/distributors/resellers w accept payment directly from the State must be registered in the New York State Vendor File (Vendor Fi administered by the OSC. This is a central registry for all vendors who do business with New York State Agenc and the registration must be initiated by a State Agency. Following the initial registration, a unique New Y(State ten-digit vendor identification number (Vendor ID) will be assigned to your company and Vendor IDs w be assigned to each of your authorized dealers/distributors/resellers (if any) for usage on all future transactic with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service applicati to manage certain vendor information in one central location for all transactions related to the State of New Yo

If the contractor is already registered in the Vendor File, the contractor must enter its ten-digit Vendor ID on t Piggyback Contract.

If the contractor is not currently registered in the Vendor File, it must request assignment of a Vendor ID numb from OGS. Complete the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237_fe.p and submit the form to OGS. Please send this document to a Designated Contact for this Contract. In additi if an authorized dealer/distributor/reseller is to be used that does not have a Vendor ID, an OSC Substitute W form (http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf) should be completed by each designat authorized reseller and submitted to OGS. The OGS will initiate the vendor registration process for all compan and their authorized dealers/distributors/resellers. Once the process is initiated, registrants will receive an e-m identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Servi application. For more information on the Vendor File please visit the following websi http://www.osc.state.ny.us/vendor_management/.

28. ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER 4

New York State is committed to environmental sustainability and endeavors to procure products with reduc environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing State Green Procurement and Agency Sustainability Program), which imposes certain requirements on st

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agencies, authorities, and public benefit corporations when procuring commodities, services, and technolo More information on Executive Order No. 4, including specifications for offerings covered by this Contract, n be found at http://ogs.ny.gov/EO/4/Default.asp. State entities subject to Executive Order No. 4 are advised become familiar with the specifications that have been developed in accordance with the Order, and to incorpor them, as applicable, when making purchases under this Contract.

29. USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State supports and encourages contractors to use recycled, remanufactured or recovered materials the manufacture of products and packaging to the maximum extent practicable without jeopardizing t performance or intended end use of the product or packaging unless such use is precluded due to health or saf requirements or product specifications contained herein. Refurbished or remanufactured components or produ are required to be restored to original performance and regulatory standards and functions and are required meet all other requirements of this Piggyback Contract. Warranties on refurbished or remanufactured compone or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty wh remanufacturer does not offer new equipment. See Appendix B, Section 22, *Remanufactured, Recycl Recyclable or Recovered Materials*.

30. TAKE-BACK/RECYCLING

I. A State agency is reminded of its obligation to comply with the New York State Finance Law §§167 a 168 regarding surplus property redistribution before utilizing take-back, recycling, or other options t disposition of equipment that is still in operable condition.

II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of dispositi to all Authorized Users who participate in the take-back/recycling program for units transferred t disposition. Contractor shall provide documentation that the units were disposed of in an environmenta sound manner in compliance with applicable local, state and federal laws. See subsection III below t specific requirements governing electronic equipment recycling.

III. If Contractor is a manufacturer of covered electronic equipment pursuant to the NYS Department Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act"), it agrees comply with the requirements of the Act. The Act requires manufacturers to establish a convenient syste for the collection, handling, and recycling or reuse of electronic waste. More information regarding t Act can be found on the DEC website at: http://www.dec.ny.gov/chemical/65583.html.

IV. If a Contractor offers a take-back/recycling program, and an Authorized User participates in same, th the Authorized User shall provide certification of data destruction from any hard drives surrendered wi the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrend the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contract shall advise the Authorized User in advance if the retention of the hard drive results in additional fees reduction in trade-in value.

V. Where Contractor's authorized subcontractor/dealer/distributor/reseller offers a take-back recycli program, Contractor shall pass through the requirements of this section so that they are binding on su subcontractors/dealers/distributors/resellers for purposes of this Piggyback Contract.

31. BULK DELIVERY AND ALTERNATE PACKAGING

New York State encourages the use of innovative packaging that reduces the weight of packaging and tl generation of packaging waste. A contractor is encouraged to use reusable materials and containers and to utili packaging configurations that take advantage of storage containers designed to be part of the product for tl shipment of multi-unit purchases. New York State recognizes that these packaging methods are in tl

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development stage and may not be currently available. Authorized Users are urged to inquire about th programs at the time of purchase and determine the best solution for their needs.

32. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT T STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A an NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or in excess of $100,000 for real property renovations and construction.

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York St Executive Law Article 15-A. These requirements include equal employment opportunities for minor group members and women ("EEO") and contracting opportunities for New York State Certified minor and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith effor pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deem supplementary to, and not in lieu of, the nondiscrimination provisions required by New York St Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, nc responsibility and/or a breach of contract, leading to the withholding of funds or such other actio liquidated damages pursuant to subsection VII of this Section or enforcement proceedings as allowed the Contract.

II. Contract Goals

For purposes of this procurement, OGS conducted a comprehensive search and determined that this contr does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, servi providers and suppliers to Contractor. Contractor is however encouraged to make every good faith effort promote and assist the participation of MWBEs on this Contract for the provision of services and materia To locate MWBEs, the Directory of Certified Businesses can be viewed http://www.esd.ny.gov/MWBE/directorySearch.html

III. Equal Employment Opportunity (EEO)

A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgat by the Division of Minority and Women's Business Development of the Department of Econom Development (the "Division"). If any of these terms or provisions conflict with applicable law regulations, such laws and regulations shall supersede these requirements.

B. Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure th minority group members and women are afforded equal employment opportunities witho discrimination because of race, creed, color, national origin, sex, age, disability or marital status. F these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotic upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensatic
2. The Contractor shall:
    a. Submit an EEO policy statement to OGS with the bid, or
    b. If Contractor does not have an existing EEO policy statement, the Contractor shall sign a submit Appendix C, Minority and Women-Owned Business Enterprises and Equ Employment Opportunity Policy Statement annexed hereto; or
    c. Contractor shall certify and affirm that the text set forth in clause 12 of Appendix A, attach

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hereto and made a part hereof, is Contractor's equal employment opportunity policy.

3. The Contractor's EEO policy statement shall include the following language:
   a. The Contractor will not discriminate against any employee or applicant for employm because of race, creed, color, national origin, sex, age, disability or marital status, v undertake or continue existing EEO programs to ensure that minority group members a women are afforded equal employment opportunities without discrimination, and shall ma and document its conscientious and active efforts to employ and utilize minority gro members and women in its work force.
   b. The Contractor shall state in all solicitations or advertisements for employees that, in performance of the contract, all qualified applicants will be afforded equal employm opportunities without discrimination because of race, creed, color, national origin, sex, a disability or marital status.
   c. The Contractor shall request each employment agency, labor union, or authoriz representative of workers with which it has a collective bargaining or other agreement understanding, to furnish a written statement that such employment agency, labor union, representative will not discriminate on the basis of race, creed, color, national origin, sex a disability or marital status and that such union or representative will affirmatively cooperate the implementation of the Contractor's obligations herein.
   d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsectio and Paragraph "E" of this Section II, which provides for relevant provisions of the Hum Rights Law, in every subcontract in such a manner that the requirements of the subdivisio will be binding upon each subcontractor as to work in connection with the Contract.

C. To ensure compliance with this Section, the Contractor shall submit Form EEO 100- Staffing Plan document the composition of the proposed workforce to be utilized in the performance of the Contract the specified categories listed, including ethnic background, gender, and Federal occupational categori Contractors shall complete the Staffing plan form and submit it as part of their contract.

D. Form EEO 101 - Workforce Employment Utilization Report ("Workforce Report")
Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in t performance of the Contract from Contractor's and/or subcontractor's total workforce and that t information provided on the previously submitted Staffing Plan is Contractor's total workforce during t subject time frame, not limited to work specifically under the contract.

E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statute and constitutional non-discrimination provisions. Contractor and subcontractors shall not discrimina against any employee or applicant for employment because of race, creed (religion), color, sex, natior origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital stat or domestic violence victim status, and shall also follow the requirements of the Human Rights Law w regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

33. MERCURY-ADDED CONSUMER PRODUCTS

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any produc containing elemental mercury for any purpose under this Piggyback Contract.

34. DIESEL EMISSION REDUCTION ACT OF 2006

Pursuant to § 19-0323 of the N.Y. Environmental Conservation Law ("the Law") it is a requirement that hea duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra-lc sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on beha of, or leased by State agencies and State or regional public authorities. It also requires that such vehicles owne operated by or on behalf of, or leased by State agencies and State or regional public authorities with more th half of their governing body appointed by the Governor utilize BART.

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The Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities and require certain reports from contract vendors. All heavy duty diesel vehicles must have BAR December 31, 2015 (unless further extended by law). The Law also provides a list of exempted vehi Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Contractor hereby cert and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, comply with the specifications and provisions of NYECL §19-0323, and 6 NYCRR Parts 248 and 249.

35. ENTIRE AGREEMENT

This Piggyback Contract and the referenced appendices constitute the entire agreement between the Parties he and no statement, promise, condition, understanding, inducement or representation, oral or written, expresse implied, which is not contained herein shall be binding or valid and the Piggyback Contract shall not be chan modified or altered in any manner except as provided in Section 3 of this Piggyback Contract.

36. CAPTIONS

The captions contained in this Piggyback Contract are intended for convenience and reference purposes only shall in no way be deemed to define or limit any provision thereof.

37. SEVERABILITY

If any provision of this Piggyback Contract is deemed invalid or unenforceable, such determination shall hav effect on the balance of the Piggyback Contract, which shall be enforced and interpreted as if such provision never included in the Piggyback Contract.

IN WITNESS WHEREOF, the Parties therefore hereby execute their mutual agreement to the terms of Piggyback Contract. This Piggyback Contract shall be a binding agreement between the Parties when exec and created as set forth in clause 38 of Appendix B. The State further warrants that, where Contractor is aske execute multiple original copies of this signature page along with a complete original copy of the Contract, approved signature page(s) will be affixed by the State to additional copies of this Contract which conform exa to the complete original copy as submitted by Contractor and executed simultaneously therewith.

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify y express authority to sign on behalf of yourself, your company, or other entity and full knowledge and accepta of this Piggyback Contract, Appendix A (Standard Clauses For New York State Contracts), Appendix B (C General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that information provided is complete, true and accurate. By signing, Contractor affirms that it understands and ag to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139- and §139-j(6)(b).

CATERPILLAR, INC.

By: Ann Schreifels

Name: Ann Schreifels

Title: Marketing Supervisor

Contractor Firm Name: Caterpillar Inc.

Federal Tax Identification #:370602744

STATE OF NEW YORK

By: Donald R Greene

Name: Donald R Greene

Title: Director

NYS Office of General Services

Date: 7/8/15

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Vendor Identification Number: 1100137599

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF ILLINOIS }

: **Sworn Statement:**

COUNTY OF PEORIA }

On the 11 day of June in the year 2015, before me personally appe Ann Schreifels, known to me to be the person who executed the foregoing instrument, being duly sworn by me did depose and say that she maintains an office at

Town of PEORIA

County of PEORIA, State of IL; and further that:

[Check One]

(☐ **If an individual):** he executed the foregoing instrument in his/her name and on his/her own behalf.

(☑ **If a corporation):** she is the Governmental Marketing Supervisor Caterpillar Inc, the corporation described in said instrument; that, by authority of the Boar Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purpose forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of corporation as the act and deed of said corporation.

(☐ **If a partnership):** he is the _____, the partnership described in said instrument; that, by the terms of said partners he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, purs to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of partnership.

(☐ **If a limited liability company):** he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that, h authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability compan the act and deed of said limited liability company.

Patricia A. Colwell

Signature of Notary Public

Notary Public Registration No. 513593

State ILLINOIS

OFFICIAL SEAL
PATRICIA A COLWELL
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:08/20/16

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are requ to be covered by the provisions of the Workers' Compensa Law.

5. NON-DISCRIMINATION REQUIREMENTS. To extent required by Article 15 of the Executive Law (also kn as the Human Rights Law) and all other State and Fed statutory and constitutional non-discrimination provisions, Contractor will not discriminate against any employee applicant for employment because of race, creed, color, (including gender identity or expression), national ori sexual orientation, military status, age, disability, predispos genetic characteristics, marital status or domestic viole victim status. Furthermore, in accordance with Section 22 of the Labor Law, if this is a contract for the constructi alteration or repair of any public building or public work or the manufacture, sale or distribution of materials, equipmen supplies, and to the extent that this contract shall be perfor within the State of New York, Contractor agrees that neithe nor its subcontractors shall, by reason of race, creed, co disability, sex, or national origin: (a) discriminate in hir against any New York State citizen who is qualified available to perform the work; or (b) discriminate against intimidate any employee hired for the performance of w under this contract. If this is a building service contract defined in Section 230 of the Labor Law, then, in accorda with Section 239 thereof, Contractor agrees that neither it its subcontractors shall by reason of race, creed, color, natio origin, age, sex or disability: (a) discriminate in hiring agai any New York State citizen who is qualified and available perform the work; or (b) discriminate against or intimidate employee hired for the performance of work under this contr Contractor is subject to fines of $50.00 per person per day any violation of Section 220-e or Section 239 as well as possi termination of this contract and forfeiture of all moneys hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a pub work contract covered by Article 8 of the Labor Law o building service contract covered by Article 9 thereof, neitl Contractor's employees nor the employees of its subcontract may be required or permitted to work more than the number hours or days stated in said statutes, except as otherw provided in the Labor Law and as set forth in prevailing wa and supplement schedules issued by the State Lal Department. Furthermore, Contractor and its subcontract must pay at least the prevailing wage rate and pay or prov the prevailing supplements, including the premium rates overtime pay, as determined by the State Labor Department accordance with the Labor Law. Additionally, effective Ap 28, 2008, if this is a public work contract covered by Articl of the Labor Law, the Contractor understands and agrees tl the filing of payrolls in a manner consistent with Subdivision a of Section 220 of the Labor Law shall be a condition precede to payment by the State of any State approved sums due a owing for work done upon the project.

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7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) Contractor shall timely inform an appropriate State official writing, that said records should not be disclosed; and (ii) s records shall be sufficiently identified; and (iii) designatior said records as exempt under the Statute is reasonable. Noth contained herein shall diminish, or in any way adversely aff the State's right to discovery in any pending or future litigati

11. IDENTIFYING INFORMATION AND PRIVA NOTIFICATION. (a) Identification Number(s). Ev invoice or New York State Claim for Payment submitted t New York State agency by a payee, for payment for the sale goods or services or for transactions (e.g., leases, easeme licenses, etc.) related to real or personal property must incl the payee's identification number. The number is any or all the following: (i) the payee's Federal employer identificat number, (ii) the payee's Federal social security number, and (iii) the payee's Vendor Identification Number assigned by Statewide Financial System. Failure to include such numbe numbers may delay payment. Where the payee does not h such number or numbers, the payee, on its invoice or Claim Payment, must give the reason or reasons why the payee d not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the abo personal information from a seller of goods or services o lessor of real or personal property, and the authority to maint such information, is found in Section 5 of the State Tax La Disclosure of this information by the seller or lessor to the St is mandatory. The principal purpose for which the informat is collected is to enable the State to identify individua businesses and others who have been delinquent in filing returns or may have understated their tax liabilities and generally identify persons affected by the taxes administered the Commissioner of Taxation and Finance. The informati will be used for tax administration purposes and for any otl purpose authorized by law. (2) The personal information requested by the purchasing unit of the agency contracting purchase the goods or services or lease the real or perso property covered by this contract or lease. The information maintained in the Statewide Financial System by the Vend Management Unit within the Bureau of State Expenditur Office of the State Comptroller, 110 State Street, Albany, N York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FC MINORITIES AND WOMEN. In accordance with Secti 312 of the Executive Law and 5 NYCRR 143, if this contr is: (i) a written agreement or purchase order instrume providing for a total expenditure in excess of $25,000.(whereby a contracting agency is committed to expend or dc expend funds in return for labor, services, supplies, equipme materials or any combination of the foregoing, to be perform for, or rendered or furnished to the contracting agency; or (ii written agreement in excess of $100,000.00 whereby contracting agency is committed to expend or does expe funds for the acquisition, construction, demolitic replacement, major repair or renovation of real property a improvements thereon; or (iii) a written agreement in excess $100,000.00 whereby the owner of a State assisted housing

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project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms this Appendix A, the terms of this Appendix A shall control

14. GOVERNING LAW. This contract shall be governed the laws of the State of New York except where the Fede supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and a interest to be paid to Contractor for late payment shall governed by Article 11-A of the State Finance Law to the ext required by law.

16. NO ARBITRATION. Disputes involving this contra including the breach or alleged breach thereof, may not submitted to binding arbitration (except where statuto authorized), but must, instead, be heard in a court of compet jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods service allowed by the State Civil Practice Law & Ru ("CPLR"), Contractor hereby consents to service of proc upon it by registered or certified mail, return receipt request Service hereunder shall be complete upon Contractor's act receipt of process or upon the State's receipt of the retu thereof by the United States Postal Service as refused undeliverable. Contractor must promptly notify the State, writing, of each and every change of address to which serv of process can be made. Service by the State to the last kno address shall be sufficient. Contractor will have thirty (3 calendar days after service hereunder is complete in which respond.

18. PROHIBITION ON PURCHASE OF TROPICA HARDWOODS. The Contractor certifies and warrants that wood products to be used under this contract award will be accordance with, but not limited to, the specifications a provisions of Section 165 of the State Finance Law, (Use Tropical Hardwoods) which prohibits purchase and use tropical hardwoods, unless specifically exempted, by the St or any governmental agency or political subdivision or pub benefit corporation. Qualification for an exemption under t law will be the responsibility of the contractor to establish meet with the approval of the State.

In addition, when any portion of this contract involving the u of woods, whether supply or installation, is to be performed any subcontractor, the prime Contractor will indicate a certify in the submitted bid proposal that the subcontractor h been informed and is in compliance with specifications a provisions regarding use of tropical hardwoods as detailed §165 State Finance Law. Any such use must meet with t approval of the State; otherwise, the bid may not be consider responsive. Under bidder certifications, proof of qualificati for exemption will be the responsibility of the Contractor meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. accordance with the MacBride Fair Employment Princip (Chapter 807 of the Laws of 1992), the Contractor here stipulates that the Contractor either (a) has no busine

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operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may s to obtain offset credits from foreign countries as a result of contract and agrees to cooperate with the State in these effc

21. RECIPROCITY AND SANCTIONS PROVISIO Bidders are hereby notified that if their principal place business is located in a country, nation, province, state political subdivision that penalizes New York State vend and if the goods or services they offer will be substanti produced or performed outside New York State, the Omni Procurement Act 1994 and 2000 amendments (Chapter 684 Chapter 383, respectively) require that they be denied contr which they would otherwise obtain. NOTE: As of May 2002, the list of discriminatory jurisdictions subject to provision includes the states of South Carolina, Alaska, W Virginia, Wyoming, Louisiana and Hawaii. Contact N Department of Economic Development for a current list jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STA INFORMATION SECURITY BREACH A NOTIFICATION ACT. Contractor shall comply with provisions of the New York State Information Security Bre and Notification Act (General Business Law Section 899- State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTA DISCLOSURE LAW. If this is a contract for consult services, defined for purposes of this requirement to incl analysis, evaluation, research, training, data processi computer programming, engineering, environmental, hea and mental health services, accounting, auditing, paralej legal or similar services, then, in accordance with Section (4-g) of the State Finance Law (as amended by Chapter 1(the Laws of 2006), the Contractor shall timely, accurately properly comply with the requirement to submit an ann employment report for the contract to the agency that awar the contract, the Department of Civil Service and the St Comptroller.

24. PROCUREMENT LOBBYING. To the extent t agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing t agreement the contractor certifies and affirms that disclosures made in accordance with State Finance L Sections 139-j and 139-k are complete, true and accurate. the event such certification is found to be intentionally false intentionally incomplete, the State may terminate the agreem by providing written notification to the Contractor accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION COLLECT SALES AND COMPENSATING USE TAX CERTAIN STATE CONTRACTORS, AFFILIATES A SUBCONTRACTORS.
To the extent this agreement is a contract as defined by Tax L Section 5-a, if the contractor fails to make the certificati required by Tax Law Section 5-a or if during the term of contract, the Department of Taxation and Finance or covered agency, as defined by Tax Law 5-a, discovers that

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certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. **IRAN DIVESTMENT ACT**. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:
http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

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APPENDIX B

GENERAL SPECIFICATIONS

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1. **APPLICABILITY** The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to the resulting procurement contracts let by the Office of General Services Procurement Services Group, or let by any other Authorized User where incorporated by reference in its Bid Documents. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

2. **GOVERNING LAW** This procurement, the resulting contract and any purchase orders issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the contract shall be heard in a court of competent jurisdiction in the State of New York.

3. **ETHICS COMPLIANCE** All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the Bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

4. **CONFLICT OF TERMS** Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

a. **Appendix A** (Standard Clauses for NYS Contracts)

b. **Mini-Bid Project Definition** if applicable and in accordance with the terms and conditions of the Back-Drop Contract.

c. **Contract and other writing(s)** setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph.

d. **Bid Documents** (Other than Appendix A).
   i. Bid Specifications prepared by the Authorized User.
   ii. Appendix B (General Specifications).
   iii. Incorporated Contract Appendices, if any, following the order of precedence as stated for Contract above.

e. **Contractor's Bid or Mini-Bid Proposal**.

f. **Unincorporated Appendices** (if any).

5. **DEFINITIONS** Terms used in this Appendix B shall have the following meanings:

AFFILIATE Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that effectively controls another company in which (a) the Bidder owns more than 50% of the ownership; or (b) any individual or other legal entity which owns more than 50% of the ownership of the Bidder. In addition, if a Bidder owns less than 50% of the ownership of another legal entity, but directs or has the right to direct such entity's daily operations, that entity will be an Affiliate.

AGENCY OR AGENCIES The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

ATTORNEY GENERAL Attorney General of the State of New York.

AUTHORIZED USER(S) Agencies, or any other entity authorized by the laws of the State of New York to participate in NYS centralized contracts (including but not limited to political subdivisions, public authorities, public benefit corporations and certain other entities set forth in law), or the State of New York acting on behalf of one or n such Agencies or other entities, provided that each such Agency or o entity shall be held solely responsible for liabilities or payments du a result of its participation.

BID OR BID PROPOSAL An offer or proposal submitted by a Bi to furnish a described product or a solution, perform services or me of achieving a practical end, at a stated price for the stated Contract te As required by the Bid Documents, the Bid or proposal may be sub to modification through the solicitation by the Agency of best and f offers during the evaluation process prior to recommendation for aw of the Contract.

BIDDER/OFFERER Any individual or other legal entity (incluc but not limited to sole proprietor, partnership, limited liability compa firm or corporation) which submits a Bid in response to a Solicitation. The term Bidder shall also include the term "offeror." the case of negotiated Contracts, "Bidder" shall refer to "Contractor."

BID DOCUMENTS Writings by the State setting forth the sc terms, conditions and technical specifications for a procurement Product. Such writings typically include, but are not limited Invitation for Bids (IFB), Request for Quotation (RFQ), Request Proposals (RFP), addenda or amendments thereto, and terms conditions which are incorporated by reference, including but limited to, Appendix A (Standard Clauses for NYS Contrac Appendix B, (General Specifications). Where these Gen Specifications are incorporated in negotiated Contracts that have been competitively Bid, the term "Bid Documents" shall be deeme refer to the terms and conditions set forth in the negotiated Contract associated documentation.

BID SPECIFICATION A written description drafted by Authorized User setting forth the specific terms of the inten procurement, which may include: physical or functional characterist the nature of a commodity or construction item, any description of work to be performed, Products to be provided, the necess qualifications of the Bidder, the capacity and capability of the Bidde successfully carry out the proposed Contract, or the process achieving specific results and/or anticipated outcomes or any ot requirement necessary to perform work. Where these Gen Specifications are incorporated in negotiated Contracts that have been competitively Bid, the term "Bid Specifications" shall be deen to refer to the terms and conditions set forth in the negotiated Contr and associated documentation.

COMMISSIONER Commissioner of OGS, or in the case of l Specifications issued by an Authorized User, the head of s Authorized User or their authorized representative.

COMPTROLLER Comptroller of the State of New York.

CONTRACT The writing(s) which contain the agreement of Commissioner and the Bidder/Contractor setting forth the total le obligation between the parties as determined by applicable rules of l and which most typically include the following classifications of pul procurements:

a. **Agency Specific Contracts** Contracts where the specifications a Product or a particular scope of work are described and defined meet the needs of one or more Authorized User(s).

b. **Centralized Contracts** Single or multiple award Contracts wh the specifications for a Product or general scope of work are descril and defined by the Office of General Services to meet the needs Authorized Users. Centralized Contracts may be awarded through

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multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency or competitive basis. Once established, procurements may be made from the selected Contractor(s) without further competition or Mini-Bid unless otherwise required by the Bid Specifications or Contract Award Notification.

c. **Back-Drop Contracts** Multiple award Centralized Contracts where the Office of General Services defines the specifications for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor(s) from among Back-Drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a Mini-Bid among qualified Back-Drop contract holders, or such other method as set forth in the Bid Document.

d. **Piggyback Contract** A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or state(s) which is adopted and extended for use by the OGS Commissioner in accordance with the requirements of the State Finance Law.

e. **Contract Letter** A letter to the successful Bidder(s) indicating acceptance of its Bid in response to a solicitation. Unless otherwise specified, the issuance of a Letter of Acceptance forms a Contract but is not an order for Product, and Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized User(s).

CONTRACT AWARD NOTIFICATION An announcement to Authorized Users that a Contract has been established.

CONTRACTOR Any successful Bidder(s) to whom a Contract has been awarded by the Commissioner.

DOCUMENTATION The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, which are necessary to enable an Authorized User to properly test, install, operate and enjoy full use of the Product.

EMERGENCY An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

ENTERPRISE The total business operations in the United States of Authorized User (s) without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Authorized User.

ENTERPRISE LICENSE A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

ERROR CORRECTIONS Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

GROUP A classification of Product, services or technology which is designated by OGS.

INVITATION FOR BIDS (IFB) A type of Bid Document which is most typically used where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder(s).

LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes e corrections, upgrades, enhancements or new releases, and deliverables due under a maintenance or service contract (e.g., patc fixes, PTFs, programs, code or data conversion, or cus programming).

LICENSEE One or more Authorized Users who acquire Product f Contractor by issuing a Purchase Order in accordance with the te and conditions of the Contract; provided that, for purposes compliance with an individual license, the term "Licensee" shal deemed to refer separately to the individual Authorized User(s) took receipt of and who is executing the Product, and who shall be so responsible for performance and liabilities incurred. In the cas acquisitions by State Agencies, the Licensee shall be the State of N York.

LICENSE EFFECTIVE DATE The date Product is delivered t Authorized User. Where a License involves Licensee's right to co previously licensed and delivered Master Copy of a Program, the lic effective date for additional copies shall be deemed to be the date which the Purchase Order is executed.

LICENSOR A Contractor who transfers rights in proprietary Proc to Authorized Users in accordance with the rights and obligati specified in the Contract.

MINI-BID PROJECT DEFINITION A Bid Document contair project specific Bid Specifications developed by or for an Authori User which solicits Bids from Contractors previously qualified und Back-Drop Contract.

MULTIPLE AWARD A determination and award of a Contract in discretion of the Commissioner to more than one responsive responsible Bidder who meets the requirements of a specificati where the multiple award is made on the grounds set forth in the Document in order to satisfy multiple factors and needs of Authori Users (e.g., complexity of items, various manufacturers, difference performance required to accomplish or produce required end resu production and distribution facilities, price, compliance with deliv requirements, geographic location or other pertinent factors).

NEW PRODUCT RELEASES (Product Revisions) A commercially released revisions to the licensed version of a Produc may be generally offered and available to Authorized Users. N releases involve a substantial revision of functionality from a previou released version of the Product.

OGS The New York State Office of General Services.

PROCUREMENT RECORD Documentation by the Authorized U of the decisions made and approach taken during the procurem process and during the contract term.

PRODUCT A deliverable under any Bid or Contract which n include commodities, services and/or technology. The term "Produ includes Licensed Software.

PROPRIETARY Protected by secrecy, patent, copyright or tradem against commercial competition.

PURCHASE ORDER The Authorized User's fiscal form or forr that is used when making a purchase (e.g., formal written Purch Order, Procurement Card, electronic Purchase Order, or ot authorized instrument).

REQUEST FOR PROPOSALS (RFP) A type of Bid Document t is used for procurements where factors in addition to cost are considered

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and weighted in awarding the contract and where the method of award is "best value," as defined by the State Finance Law.

REQUEST FOR QUOTATION (RFQ) A type of Bid Document that can be used when a formal Bid opening is not required (e.g., discretionary, sole source, single source or emergency purchases).

RESPONSIBLE BIDDER A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the OGS Commissioner.

SINGLE SOURCE A procurement where two or more Bidders can supply the required Product, and the Commissioner may award the contract to one Bidder over the other.

SITE The location (street address) where Product will be executed or services delivered.

SOLE SOURCE A procurement where only one Bidder is capable of supplying the required Product.

SOURCE CODE The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine Object Code.

STATE State of New York.

SUBCONTRACTOR Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

TERMS OF LICENSE The terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of order placement.

VIRUS Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

6. **INTERNATIONAL BIDDING** All offers (tenders), and all information and Product required by the solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars ($US). Any offers (tenders) submitted which do not meet the above criteria will be rejected.

7. **BID OPENING** Bids may, as applicable, be opened publicly. The Commissioner reserves the right at any time to postpone or cancel a scheduled Bid opening.

8. **BID SUBMISSION** All Bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their Bids to the location set forth in the Bid Specifications prior to the stated Bid opening date/ti

A Bid return envelope, if provided with the Bid Specifications, sh be used with the Bid sealed inside. If the Bid response does not fit the envelope, the Bid envelope should be attached to the outside of sealed box or package with the Bid inside. If using a commer delivery company that requires use of their shipping package envelope, Bidder's sealed Bid, labeled as detailed below, should placed within the shipper's sealed envelope to ensure that the Bid is prematurely opened.

All Bids must have a label on the outside of the package or shipp container outlining the following information:

"**BID ENCLOSED** (bold print, all capitals)

- Group Number
- IFB or RFP Number
- Bid Submission date and time"

In the event that a Bidder fails to provide such information on the ret Bid envelope or shipping material, the receiving entity reserves the ri to open the shipping package or envelope to determine the proper number or Product group, and the date and time of Bid opening. Bid shall have no claim against the receiving entity arising from s opening and such opening shall not affect the validity of the Bid or procurement.

Notwithstanding the receiving agency's right to open a Bid to ascert the foregoing information, Bidder assumes all risk of late deliv associated with the Bid not being identified, packaged or labeled accordance with the foregoing requirements.

All Bids must be signed by a person authorized to commit the Bidde the terms of the Bid Documents and the content of the Bid (offer).

9. **FACSIMILE SUBMISSIONS** Unless specifically prohibited the terms of the Bid Specifications, facsimile Bids may SUBMITTED AT THE SOLE OPTION AND RISK OF THE BIDDI Only the FAX number(s) indicated in the Bid Specifications may used. Access to the facsimile machine(s) is on a "first come, first ser basis, and the Commissioner bears no liability or responsibility a makes no guarantee whatsoever with respect to the Bidder's access such equipment at any specific time. Bidders are solely responsible submission and receipt of the entire facsimile Bid by the Authori User prior to Bid opening and must include on the first page of transmission the total number of pages transmitted in the facsim including the cover page. Incomplete, ambiguous or unreada transmissions in whole or in part may be rejected at the sole discreti of the Commissioner. Facsimile Bids are fully governed by conditions outlined in the Bid Documents and must be submitted forms or in the format required in the Bid Specifications, including executed signature page and acknowledgment.

10. **AUTHENTICATION OF FACSIMILE BIDS** The act submitting a Bid by facsimile transmission, including an execut signature page or as otherwise specified in the Bid Documents, shall deemed a confirming act by Bidder which authenticates the signing the Bid.

11. **LATE BIDS** For purposes of Bid openings held and conducted OGS, a Bid must be received in such place as may be designated in t Bid Documents or if no place is specified in the OGS Mailroom locat in the Empire State Plaza, Albany, New York 12242, at or before t date and time established in the Bid Specifications for the Bid openi For purposes of Bid openings held and conducted by Authorized Us other than OGS, the term late Bid is defined as a Bid not received in the

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location established in the Bid Specifications at or before the date and time specified for the Bid opening.

Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Bid Documents are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids were received to satisfy the multiple award; and acceptance of the late Bid is in the best interests of the Authorized Users. Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with their specifications. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Authorized User shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall not excuse late Bid submissions. Determinations relative to Bid timeliness shall be at the sole discretion of the Commissioner.

12. BID CONTENTS Bids must be complete and legible. All Bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Commissioner or may be grounds for rejection of the Bid. Changes, corrections and/or use of white-out in the Bid or Bidder's response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their Bids before submission, as amendments to Bids or requests for withdrawal of Bids received by the Commissioner after the time specified for the Bid opening, may not be considered.

13. EXTRANEOUS TERMS Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

Only those extraneous terms that meet all the following requirements may be considered as having been submitted as part of the Bid:

a. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and

b. The writing must identify the particular specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and

c. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed "material," shall be incorporated into a Contract or Purchase Order unless submitted in accordance with the above and the Commissioner or Authorized User expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

14. CONFIDENTIAL/TRADE SECRET MATERIALS

a. Contractor Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as "confidential" or "proprietary" on its face or in the document he or footer shall not be considered by the Commissioner or Author User to be sufficient without specific justification as to why disclo of particular information in the Bid would cause substantial injury tc competitive position of the Bidder. Bidders/Contractors intendin seek an exemption from disclosure of these materials under the Free of Information Law must request the exemption in writing, setting f the reasons for the claimed exemption. Acceptance of the clai materials does not constitute a determination on the exemption req which determination will be made in accordance with statu procedures. Properly identified information that has been design confidential, trade secret, or proprietary by the Bidder will not disclosed except as may be required by the Freedom of Information I or other applicable State and federal laws.

b. Commissioner or Authorized User Contractor further warra covenants and represents that any confidential information obtaine Contractor, its agents, Subcontractors, officers, distributors, reseller employees in the course of performing its obligations, including with limitation, security procedures, business operations information, commercial proprietary information in the possession of the State or Authorized User hereunder or received from another third party, not be divulged to any third parties. Contractor shall not be require keep confidential any such material that is publicly available through fault of Contractor, independently developed by Contractor with reliance on confidential information of the Authorized User, otherwise obtained under the Freedom of Information Act or ot applicable New York State laws and regulations. This warranty sl survive termination of this Contract. Contractor further agrees to t appropriate steps as to its agents, Subcontractors, officers, distribut resellers or employees regarding the obligations arising under clause to insure such confidentiality.

15. RELEASE OF BID EVALUATION MATERIALS Requ concerning the evaluation of Bids may be submitted under the Freed of Information Law. Information, other than statistical or fact tabulations or data such as the Bid Tabulation, shall only be released required by law after Contract award. Bid Tabulations are maintained for all procurements. Names of Bidders may be disclo after Bid opening upon request. Written requests should be directe the Commissioner.

16. FREEDOM OF INFORMATION LAW During the evaluat process, the content of each Bid will be held in confidence and det of any Bid will not be revealed (except as may be required under Freedom of Information Law or other State law). The Freedom Information Law provides for an exemption from disclosure for tr secrets or information the disclosure of which would cause injury to competitive position of commercial enterprises. This exception wo be effective both during and after the evaluation process. If the E contains any such trade secret or other confidential or propriet information, it must be accompanied in the Bid with a written reques the Commissioner to not disclose such information. Such request m state with particularity the reasons why the information should not available for disclosure and must be provided at the time of submissi of the Bid. Notations in the header, footer or watermark of the E Document will not be considered sufficient to constitute a request non-disclosure of trade secret or other confidential or propriet information. Where a Freedom of Information request is made trademark or other confidential or proprietary information, Commissioner reserves the right to determine upon written notice to Bidder whether such information qualifies for the exemption disclosure under the law. Notwithstanding the above, where a E tabulation is prepared and Bids publicly opened, such Bid tabulati shall be available upon request.

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17. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS If any portion of work being Bid is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

a. "Public Works" and "Building Services" - Definitions

i. Public Works Labor Law Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a "public works" project (distinguished from public "procurement" or "service" contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the Contract. The wage and hours provision applies to any work performed by Contractor or Subcontractors.

ii. Building Services Labor Law Article 9 applies to Contracts for building service work over $1,500 with a public agency, that: (i) involve the care or maintenance of an existing building, or (ii) involve the transportation of office furniture or equipment to or from such building, or (iii) involve the transportation and delivery of fossil fuel to such building, and (iv) the principal purpose of which is to furnish services through use of building service employees.

b. Prevailing Wage Rate Applicable to Bid Submissions A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

c. Wage Rate Payments / Changes During Contract Term The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.

d. Public Posting & Certified Payroll Records In compliance with Article 8, Section 220 of the New York State Labor Law:

i. Posting The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.

ii. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over $25,000 where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and Subcontractors on public works projects must submit monthly payroll transcripts to the Authorized User that has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For Mini-Bid solicitations, the payroll records must be submitted to the entity preparing the agency Mini-Bid project specification. For "agency specific" Bids, the payroll records should be submitted to the entity issuing the purchase order. For all other OGS Centralized Contracts, such records should be submitted to individual agency issuing the purchase order(s) for the work. U mutual agreement of the Contractor and the Authorized User, the f of submission may be submitted in a specified disk format acceptab the Department of Labor provided: 1) the Contractor/Subcontra retains the original records; and, (2) an original signed letter by a authorized individual of the Contractor or Subcontractor attesting tc truth and accuracy of the records accompanies the disk. This provi does not apply to Article 9 of the Labor Law building services contr

iv. Records Retention Contractors and Subcontractors r preserve such certified transcripts for a period of three years from date of completion of work on the awarded contract.

Day's Labor Eight hours shall constitute a legal day's work fo classes of employees in this state except those engaged in farm domestic service unless otherwise provided by law.

No laborers, workmen or mechanics in the employ of the Contrac Subcontractor or other person doing or contracting to do all or par the work contemplated by the Contract shall be permitted or require work more than eight hours in any one calendar day or more than calendar days in any one week except in cases of extraordir emergency including fire, flood or danger to life or prope "Extraordinary emergency" shall be deemed to include situation which sufficient laborers, workers and mechanics cannot be emplo to carry on public work expeditiously as a result of such restricti upon the number of hours and days of labor and the immed commencement or prosecution or completion without undue delay the public work is necessary in the judgment of the NYS Commissio of Labor for the preservation of the Contract site or for the protectio the life and limb of the persons using the Contract site.

18. TAXES

a. Unless otherwise specified in the Bid Specifications or Contr the quoted Bid price includes all taxes applicable to the transaction.

b. Purchases made by the State of New York and certain non-S Authorized Users are exempt from New York State and local sales ta and, with certain exceptions, federal excise taxes. To satisfy requirements of the New York State Sales tax exemption, either Purchase Order issued by a State Agency or the invoice forwarded authorize payment for such purchases will be sufficient evidence t the sale by the Contractor was made to the State, an exempt organizat under Section 1116 (a) (1) of the Tax Law. Non-State Authorized Us must offer their own proof of exemption upon request. No person, fi or corporation is, however, exempt from paying the State Truck Mile and Unemployment Insurance or Federal Social Security taxes, wh remain the sole responsibility of the Bidder/Contractor.

c. Pursuant to Revised Tax Law 5-a, Contractor will be required furnish sales tax certification on its behalf and for its affiliates, a subcontractors for Contracts with a value greater than $100,000 accordance with provisions of the law.

d. Purchases by Authorized Users other than the State of New Yo taxes which were not included in the Bid price, and in those instance computed based on the Contract price and added to the invoice subm payment.

19. EXPENSES PRIOR TO CONTRACT EXECUTION T Commissioner and any Authorized User(s) are not liable for any co incurred by a Vendor, Bidder or Contractor in the preparation a production of a Bid, Mini-Bid or best and final offers or for any w performed prior to Contract execution.

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20. ADVERTISING RESULTS The prior written approval of the Commissioner is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor shall also obtain the prior written approval of the Commissioner relative to the Bid or Contract for press or other media releases.

21. PRODUCT REFERENCES

a. "Or Equal" In all Bid Specifications the words "or equal" are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Commissioner's decision as to acceptance of the Product as equal shall be final.

b. Discrepancies in References In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

22. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and unless such use is precluded due to health, welfare, safety requirements or by the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the "Warranties" set forth below.

Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

23. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS Bids offering Products that are manufactured or produced in public institutions will be rejected.

24. PRICING

a. Unit Pricing If required by the Bid Specifications, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item unless otherwise specified, in the Bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Commissioner, such unit pricing is obviously erroneous.

b. Net Pricing Unless otherwise required by the Bid Specifications, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.

c. "No Charge" Bid When Bids are requested on a number of Products as a Group or Lot, a Bidder desiring to Bid "no charge" on a Product in the Group or Lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.

d. Educational Pricing All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.

e. Third Party Financing If Product acquisitions are finan through any third party financing, Contractor may be required a condition of Contract Award to agree to the terms and conditions "Consent & Acknowledgment Agreement" in a form acceptable to Commissioner.

f. Best Pricing Offer During the Contract term, if substantially same or a smaller quantity of a Product is sold by the Contractor outs of this Contract upon the same or similar terms and conditions as tha this Contract at a lower price to a federal, state or local governme entity, the price under this Contract, at the discretion of Commissioner, shall be immediately reduced to the lower price.

Price decreases shall take effect automatically during the Contract t and apply to Purchase Orders submitted on or after:

(i) GSA Changes: Where NYS Net Prices are based on an appro GSA Schedule, the date the approved GSA Schedule pricing decrea during the Contract term; or

(ii) Commercial Price List Reductions: Where NYS Net Prices based on a discount from Contractor's list prices, the date Contrac lowers its pricing to its customers generally or to similarly situa government customers during the Contract term; or

(iii) Special Offers/Promotions Generally: Where Contrac generally offers more advantageous special price promotions or spe discount pricing to other customers during the Contract term fo similar quantity, and the maximum price or discount associated w such offer or promotion is better than the discount or Net Pr otherwise available under this Contract, such better price or disco shall apply for similar quantity transactions under this Contract for life of such general offer or promotion; and

(iv) Special Offers/Promotions to Authorized Users: Contrac may offer Authorized Users, under either this Contract or any ot Contracting vehicle, competitive pricing which is lower than the N Net Price set forth herein at any time during the Contract term and su lower pricing shall not be applied as a global price reduction under Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Bid Specifications, Contractor m offer lower prices or better terms (see Modification of Contract Ter on any specific Purchase Order(s) from any Authorized User with being in conflict with, or obligation to comply on a global basis, w the terms of this clause.

g. Best and Final Prices As specified in the Bid Documents a Contract, a Contractor may be solicited at the time of issuance o Purchase Order or Mini-Bid award for best and final pricing for Product or service to be delivered to the Authorized User. Contracto are encouraged to reduce their pricing upon receipt of such request.

25. DRAWINGS

a. Drawings Submitted With Bid When the Bid Specificatio require the Bidder to furnish drawings and/or plans, such drawin and/or plans shall conform to the mandates of the Bid Documents a shall, when approved by the Commissioner, be considered a part of t Bid and of any resulting Contract. All symbols and oth representations appearing on the drawings shall be considered a part the drawing.

b. Drawings Submitted During the Contract Term Where requi to develop, maintain and deliver diagrams or other technical schemat regarding the scope of work, Contractor shall do so on an ongoing ba at no additional charge, and must, as a condition of payment, upd drawings and plans during the Contract term to reflect additio alterations, and deletions. Such drawings and diagrams shall delivered to the Authorized User's representative.

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c. Accuracy of Drawings Submitted All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing product, services or installation, or carrying out any other requirements of the intended scope of work.

26. SITE INSPECTION Where a site inspection is required by the Bid Specifications or Project Definition, Bidder shall be required to inspect the site, including environmental or other conditions for pre-existing deficiencies that may affect the installed Product, equipment, or environment or services to be provided and, which may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly complete the delivery and installation of the required Product or provide the requested service.

27. PROCUREMENT CARD The State has entered into an agreement for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing a Purchase Orders or Purchase Authorizations. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased products have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty Product in accordance with other Contract requirements, the Contractor shall immediately credit a cardholder's account for products returned as defective or faulty.

28. SAMPLES

a. Standard Samples Bid Specifications may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by the Commissioner and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Specifications.

b. Bidder Supplied Samples The Commissioner reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Bid or Contract reference.

A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the Commissioner as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample s become the sole property of the receiving entity at the conclusion of holding period.

c. Enhanced Samples When an approved sample exceeds minimum specifications, all Product delivered must be of the sa enhanced quality and identity as the sample. Thereafter, in the even a Contractor's default, the Commissioner may procure a Proc substantially equal to the enhanced sample from other sources, charg the Contractor for any additional costs incurred.

d. Conformance with Sample(s) Submission of a sample (whe or not such sample is tested by, or for, the Commissioner) and appr thereof shall not relieve the Contractor from full compliance with terms and conditions, performance related and otherwise, specifie the Bid Specifications. If in the judgment of the Commissioner sample or product submitted is not in accordance with the specificati or testing requirements prescribed in the Bid Specifications, Commissioner may reject the Bid. If an award has been made, Commissioner may cancel the Contract at the expense of the Contrac

e. Testing All samples are subject to tests in the manner and pl designated by the Commissioner, either prior to or after Contract aw Unless otherwise stated in the Bid Specifications, Bidder samp consumed or rendered useless by testing will not be returned to Bidder. Testing costs for samples that fails to meet Conti requirements may be at the expense of the Contractor.

f. Requests For Samples By Authorized Users Requests samples by Authorized Users require the consent of the Contrac Where Contractor refuses to furnish a sample, Authorized User may its sole discretion, make a determination on the performance capabi of the Product or on the issue in question.

29. BID EVALUATION The Commissioner reserves the right accept or reject any and all Bids, or separable portions of offers, a waive technicalities, irregularities, and omissions if the Commissio determines the best interests of the State will be served. T Commissioner, in his/her sole discretion, may accept or reject illegil incomplete or vague Bids and his/her decision shall be final. conditional or revocable Bid which clearly communicates the terms limitations of acceptance may be considered, and Contract award n be made in compliance with the Bidder's conditional or revocable ter in the offer.

30. CONDITIONAL BID Unless the Bid Specifications provi otherwise, a Bid is not rendered non-responsive if the Bidder specif that the award will be accepted only on all or a specified group of ite or Product included in the specification. It is understood that noth herein shall be deemed to change or alter the method of award contair in the Bid Documents.

31. CLARIFICATIONS / REVISIONS Prior to award, Commissioner reserves the right to seek clarifications, request I revisions, or to request any information deemed necessary for pro evaluation of Bids from all Bidders deemed to be eligible for Contr award. Failure to provide requested information may result in rejecti of the Bid.

32. PROMPT PAYMENT DISCOUNTS While prompt paym discounts will not be considered in determining the low Bid, Commissioner may consider any prompt payment discount in resolvi Bids which are otherwise tied. However, any notation indicating t the price is net, (e.g., net 30 days), shall be understood to mean only t no prompt payment discount is offered by the Bidder. The impositi of service, interest, or other charges, except pursuant to the provisic of Article 11-A of the State Finance Law, which are applicable in any

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case, may render the Bid non-responsive and may be cause for its rejection.

33. EQUIVALENT OR IDENTICAL BIDS In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

34. PERFORMANCE AND RESPONSIBILITY QUALIFICATIONS The Commissioner reserves the right to investigate or inspect at any time whether or not the Product, services, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Specifications/Contract or as set forth during Contract negotiations. Contractor shall at all times during the Contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Commissioner, to present evidence of legal authority to do business in New York State, integrity, experience, ability, prior performance, organizational and financial capacity as well as where applicable, a statement as to supply, plant, machinery and capacity of the manufacturer or source for the production, distribution and servicing of the Product offered/Bid. If the Commissioner determines that the conditions and terms of the Bid Documents, Bid Specifications or Contract are not complied with, or that items, services or Product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, the Commissioner may reject such Bid or terminate the Contract.

35. DISQUALIFICATION FOR PAST PERFORMANCE AND FINDINGS OF NON-RESPONSIBILITY Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public Bidding or contracts or is deemed non-responsible.

36. QUANTITY CHANGES PRIOR TO AWARD The Commissioner reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Bid Specifications. In the event such right is exercised, the lowest responsible Bidder meeting Bid Specifications will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

37. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty (60) days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot e withdrawn. Pursuant to Section 163(9)(e) of the State Finance Law and Section 2-205 of the Uniform Commercial Code when applicable, where an award is not made within the sixty (60) day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its Bid. Any Bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Commissioner, be accepted or rejected.

38. CONTRACT CREATION / EXECUTION Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Bid Specifications a Contract shall be deemed executed and created with the successful Bidder(s), upon the Commissioner's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purcl Order authorized by the Commissioner.

39. PARTICIPATION IN CENTRALIZED CONTRACTS following shall not limit or inhibit the OGS Commissioner's autho under State Finance Law, Section 163 (10) (e) (Piggybacking):

a. Agencies All State Agencies may utilize and purchase under state Centralized Contract let by the Commissioner, unless the Documents limit purchases to specific State Agencies.

b. Non-State Agency Authorized Users Authorized Users o than State Agencies are permitted to make purchases through s Centralized Contracts where permitted by law, the Contract or Commissioner.

c. Voluntary Extension Purchase Orders issued against a S Centralized Contract by any Authorized User not provided for in the Specifications shall be honored by the Contractor at its discretion only with the approval of the OGS Commissioner and any ot approvals required by law. Contractors are encouraged to volunta extend service Contracts to those additional entities authorized to uti commodity Contracts under Section 163 (3) (iv) of the State Fina Law.

d. Responsibility for Performance Participation in s Centralized Contracts by Authorized Users is permitted upon following conditions: (i) the responsibility with regard to performa of any contractual obligation, covenant, condition or term thereunde any Authorized User other than State Agencies shall be borne an expressly assumed by such Authorized User and not by the State; (i breach of the Contract by any particular Authorized User shall neit constitute nor be deemed a breach of the Contract as a whole which sl remain in full force and effect, and shall not affect the validity of Contract nor the obligations of the Contractor thereunder respect non-breaching Authorized Users, whether State or otherwise; (iii) fc breach by an Authorized User other than a State Agency, the St specifically and expressly disclaims any and all liability for such brea and (iv) each non-state agency Authorized User and Contrac guarantees to save the State, its officers, agents and employees harml from any liability that may be or is imposed by their failure to perfo in accordance with its obligations under the Contract.

e. Contract Migration Authorized Users holding individ Contracts with a Contractor at the time that Contractor is awarde Centralized Contract for the same Products or services shall permitted to migrate to that Centralized Contract effective with commencement date. Such migration shall not operate to diminish, al or eliminate any right that the Authorized User otherwise had under terms and conditions of their individual Contract.

40. MODIFICATION OF CONTRACT TERMS The terms a conditions set forth in the Contract shall govern all transactions Authorized User(s) under this Contract. The Contract may only modified or amended upon mutual written agreement of t Commissioner and Contractor.

The Contractor may, however, offer Authorized User(s) m advantageous pricing, payment, or other terms and conditions than th set forth in the Contract. In such event, a copy of such terms shall furnished to the Authorized User(s) and Commissioner by t Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authoriz User(s) than those set forth in the Contract, no alteration or modificati of the terms of the Contract, including substitution of Product, shall valid or binding against Authorized User(s) unless authorized by the

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Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

41. SCOPE CHANGES The Commissioner reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. The Commissioner may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

42. ESTIMATED / SPECIFIC QUANTITY CONTRACTS Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity(s) is implied or given. Purchases by Authorized Users from Contracts for services and technology are voluntary.

With respect to any specific quantity stated in the contract, the Commissioner reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

43. EMERGENCY CONTRACTS In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or the Commissioner determines pursuant to his/her authority under Section 163 (10) (b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract(s), as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for Product procured from other sources pursuant to this paragraph. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

44. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All Purchase Orders issued pursuant to Contracts let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the vendor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favo the terms most favorable to the Authorized User. Should an Authori User add written terms and conditions to the Purchase Order conflict with the terms and conditions of the Contract, the Contra has the option of rejecting the Purchase Order within five business d of its receipt but shall first attempt to negotiate the additional wri terms and conditions in good faith with the Authorized User, or fu the Purchase Order. Notwithstanding the above, the Authorized U reserves the right to dispute any discrepancies arising from presentation of additional terms and conditions with the Contractor.

If, with respect to an Agency Specific Contract let by the O Commissioner, a Purchase Order is not received by the Contra within two weeks after the issuance of a Contract Award Notificati it is the responsibility of the Contractor to request in writing that appropriate Authorized User forward a Purchase Order. If, thereafte Purchase Order is not received within a reasonable period of time, Contractor shall promptly notify in writing the appropriate purchas officer in OGS. Failure to timely notify such officer may, in discretion of the OGS Commissioner and without cost to the State, re in the cancellation of such requirement by the OGS Commissioner w a corresponding reduction in the Contract quantity and price.

45. PRODUCT DELIVERY Delivery must be made as ordered the address specified on the Purchase Order and in accordance with terms of the Contract or Contract Award Notice. Unless otherw specified in the Bid Documents, delivery shall be made within thi calendar days after receipt of a Purchase Order by the Contractor. T decision of the Commissioner as to compliance with delivery terms sh be final. The burden of proof for delay in receipt of Purchase Or shall rest with the Contractor. In all instances of a potential or act delay in delivery, the Contractor shall immediately notify Commissioner and the Authorized User, and confirm in writing explanation of the delay, and take appropriate action to avoid a subsequent late deliveries. Any extension of time for delivery must requested in writing by the Contractor and approved in writing by Authorized User. Failure to meet such delivery time schedule may grounds for cancellation of the order or, in the Commissione discretion, the Contract.

46. WEEKEND AND HOLIDAY DELIVERIES Unless otherw specified in the Bid Specifications or by an Authorized User, deliver will be scheduled for ordinary business hours, Monday through Frid (excluding legal holidays observed by the State of New Yor Deliveries may be scheduled by mutual agreement for Saturda Sundays or legal holidays observed by the State of New York where t Product is for daily consumption, an emergency exists, the delivery i replacement, delivery is late, or other reasonable circumstance in whi event the convenience of the Authorized User shall govern.

47. SHIPPING/RECEIPT OF PRODUCT

a. Packaging Tangible Product shall be securely and prope packed for shipment, storage and stocking in appropriate, clearly label shipping containers and according to accepted commercial practi without any extra charges for packing materials, cases or other types containers. The container shall become and remain the property of t Authorized User unless otherwise specified in the Contract documen

b. Shipping Charges Unless otherwise stated in the E Specifications, all deliveries shall be deemed to be freight on boa (F.O.B.) destination tailgate delivery at the dock of the Authorized Us Unless otherwise agreed, items purchased at a price F.O.B. Shippi point plus transportation charges shall not relieve the Contractor fro responsibility for safe and proper delivery notwithstanding t Authorized User's payment of transportation charges. Contractor sh be responsible for ensuring that the Bill of Lading states "charg prepaid" for all shipments.

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c. Receipt of Product The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Authorized User. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

48. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

49. RE-WEIGHING PRODUCT Deliveries are subject to re-weighing at the point of destination by the Authorized User. If shrinkage occurs which exceeds that normally allowable in the trade, the Authorized User shall have the option to require delivery of the difference in quantity or to reduce the payment accordingly. Such option shall be exercised in writing by the Authorized User.

50. PRODUCT SUBSTITUTION In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause) a Product deemed in writing by the Commissioner to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Commissioner's written approval may be cause for cancellation of Contract.

51. REJECTED PRODUCT When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar day period.

52. INSTALLATION Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the Product or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

53. REPAIRED OR REPLACED PARTS / COMPONEI
Where the Contractor is required to repair, replace or substitute Proc or parts or components of the Product under the Contract, the repai replaced or substituted Products shall be subject to all terms conditions for new parts and components set forth in the Cont including Warranties, as set forth in the Additional Warranties Cla herein. Replaced or repaired Product or parts and components of s Product shall be new and shall, if available, be replaced by the orig manufacturer's component or part. Remanufactured parts or compon meeting new Product standards may be permitted by the Commissione Authorized User. Before installation, all proposed substitutes for original manufacturer's installed parts or components must be approve the Authorized User. The part or component shall be equal to or of be quality than the original part or component being replaced.

54. ON-SITE STORAGE With the written approval of Authorized User, materials, equipment or supplies may be stored at Authorized User's site at the Contractor's sole risk.

55. EMPLOYEES, SUBCONTRACTORS & AGENTS
employees, Subcontractors or agents performing work under the Cont must be trained staff or technicians who meet or exceed the professio technical and training qualifications set forth in the Bid Specification the Bid Documents, whichever is more restrictive, and must comply v all security and administrative requirements of the Authorized User. Commissioner reserves the right to conduct a security background ch or otherwise approve any employee, Subcontractor or agent furnished Contractor and to refuse access to or require replacement of any persor for cause based on, including but not limited to, professional, technica training qualifications, quality of work or change in security status or n compliance with Authorized User's security or other requirements. S approval shall not relieve the Contractor of the obligation to perform work in compliance with the Contract terms. The Commissioner reser the right to reject and/or bar from the facility for cause any employ Subcontractor, or agents of the Contractor.

56. ASSIGNMENT The Contractor shall not assign, transfer, conv sublet, or otherwise dispose of the contract or its right, title or inter therein, or its power to execute such contract to any other pers company, firm or corporation in performance of the contract without prior written consent of the Commissioner or Authorized User applicable). Failure to obtain consent to assignment from the Authori User shall revoke and annul such Contract. Notwithstanding foregoing, the State shall not hinder, prevent or affect assignment money by a Contractor for the benefit of its creditors. Prior to a cons to assignment of monies becoming effective, the Contractor shall fil written notice of such monies assignment(s) with the Comptroller. Pr to a consent to assignment of a Contract, or portion thereof, becomi effective, the Contractor shall submit the request to assignment to Commissioner and seek written agreement from the Commissio which will be filed with the Comptroller. The Commissioner reser the right to reject any proposed assignee in his/her discretion.

Upon notice to the Contractor, the Contract may be assigned without consent of the Contractor to another State Agency or subdivision of State pursuant to a governmental reorganization or assignment functions under which the functions are transferred to a succes Agency or to another Agency that assumes OGS responsibilities for Contract.

57. SUBCONTRACTORS AND SUPPLIERS The Commissio reserves the right to reject any proposed Subcontractor or supplier bona fide business reasons, which may include, but are not limited they are on the Department of Labor's list of companies with whi New York State cannot do business; the Commissioner determines that

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the company is not qualified; the Commissioner determines that the company is not responsible; the company has previously provided unsatisfactory work or services; the company failed to solicit minority and women's business enterprises (M/WBE) Bidders as required by prior Contracts.

58. PERFORMANCE / BID BOND The Commissioner reserves the right to require a Bidder or Contractor to furnish without additional cost, a performance, payment or Bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Commissioner.

59. SUSPENSION OF WORK The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the Authorized User. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction on State spending, declaration of emergency, contract compliance issues or other such circumstances. Upon issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of performance under the Contract.

An Authorized User may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice shall set forth the reason for such suspension and a copy of the written notice shall be provided to the Commissioner.

60. TERMINATION

a. For Cause: For a material breach that remains uncured for more than thirty (30) days or other specified period after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

b. For Convenience: By written notice, this Contract may be terminated at any time by the State for convenience upon sixty (60) days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.

c. For Violation of Executive Order Number 127 or any subsequent law or Executive Order that supersedes it: The Commissioner reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with New York State Executive Order Number 127 was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms in the Contract.

d. For Violation of the Sections 139-j and 139-k of the State Finance Law: The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law intentionally false or intentionally incomplete. Upon such finding, Commissioner may exercise its termination right by providing wri notification to the Contractor in accordance with the written notifica terms of the Contract.

e. For Violation of Revised Tax Law 5a: The Commissic reserves the right to terminate the contract in the event it is found the certification filed by the Contractor in accordance with §5-a of Tax Law is not timely filed during the term of the Contract or certification furnished was intentionally false or intention incomplete. Upon such finding, the Commissioner may exercise termination right by providing written notification to the Contractor

61. SAVINGS/FORCE MAJEURE A force majeure occurrenc an event or effect that cannot be reasonably anticipated or controll Force majeure includes, but is not limited to, acts of God, acts of v acts of public enemies, strikes, fires, explosions, actions of the eleme floods, or other similar causes beyond the control of the Contracto the Commissioner in the performance of the Contract which n performance, by exercise of reasonable diligence, cannot be prevent Contractor shall provide the Commissioner with written notice of force majeure occurrence as soon as the delay is known.

Neither the Contractor nor the Commissioner shall be liable to the ot for any delay in or failure of performance under the Contract due t force majeure occurrence. Any such delay in or failure of performa shall not constitute default or give rise to any liability for damages. existence of such causes of such delay or failure shall extend the per for performance to such extent as determined by the Contractor and Commissioner to be necessary to enable complete performance by Contractor if reasonable diligence is exercised after the cause of de or failure has been removed.

Notwithstanding the above, at the discretion of the Commissioner wh the delay or failure will significantly impair the value of the Contrac the State or to Authorized Users, the Commissioner may:

a. Accept allocated performance or deliveries from the Contract The Contractor, however, hereby agrees to grant preferential treatm to Authorized Users with respect to Product subjected to allocati and/or

b. Purchase from other sources (without recourse to and by Contractor for the costs and expenses thereof) to replace all or part the Products which are the subject of the delay, which purchases m be deducted from the Contract quantities without penalty or liability the State; or

c. Terminate the Contract or the portion thereof which is subject delays, and thereby discharge any unexecuted portion of the Contract the relative part thereof.

In addition, the Commissioner reserves the right, in his/her s discretion, to make an equitable adjustment in the Contract terms and pricing should extreme and unforeseen volatility in the marketpla affect pricing or the availability of supply. "Extreme and unforese volatility in the marketplace" is defined as market circumstances whi meet the following criteria: (i) the volatility is due to causes outside t control of Contractor; (ii) the volatility affects the marketplace industry, not just the particular Contract source of supply; (iii) the eff on pricing or availability of supply is substantial; and (iv) the volatil so affects Contractor's performance that continued performance of t Contract would result in a substantial loss.

62. CONTRACT BILLINGS Contractor and t distributors/resellers designated by the Contractor, if any, shall provide

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complete and accurate billing invoices to each Authorized User in order to receive payment. Billings for Authorized Users must contain all information required by the Contract and the State Comptroller. The State Comptroller shall render payment for Authorized User purchases, and such payment shall be made in accordance with ordinary State procedures and practices. Payment of Contract purchases made by Authorized Users, other than Agencies, shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User.

Submission of an invoice and payment thereof shall not preclude the Commissioner from reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

63. DEFAULT – AUTHORIZED USER

a. Breach of Authorized User Not Breach of Centralized Contract. An Authorized User's breach shall not be deemed a breach of the Centralized Contract, rather it shall be deemed a breach of the Authorized User's performance under the terms and conditions of the Centralized Contract.

b. Failure to Make Payment. In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. Notice of Breach. Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

d. It is understood, however, that if the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User shall constitute a breach of its Contract and the Authorized User may thereafter seek any remedy available at law or equity.

64. INTEREST ON LATE PAYMENTS

a. State Agencies The payment of interest on certain payments due and owed by Agency may be made in accordance with Article 11-A of the State Finance Law (SFL §179-d et. Seq.) and Title 2 of the New York Code of Rules and Regulations, Part 18 (Implementation of Prompt Payment Legislation -2 NYCRR §18.1 et seq.).

b. By Non-State Agencies The terms of Article 11-A apply only to procurements by and the consequent payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

c. By Contractor Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection charges will be determined and assessed pursuant to Section 18 of State Finance Law.

65. REMEDIES FOR BREACH It is understood and agreed tha rights and remedies afforded below shall be in addition to all reme or actions otherwise authorized or permitted by law:

a. Cover/Substitute Performance In the event of Contract material breach, the Commissioner may, with or without form Bidding: (i) Purchase from other sources; or (ii) If the Commissione unsuccessful after making reasonable attempts, under the circumstan then existing, to timely obtain acceptable service or acquire replacem Product of equal or comparable quality, the Commissioner may acq acceptable replacement Product of lesser or greater quality.

Such purchases may, in the discretion of the Commissioner, be deduc from the Contract quantity and payments due Contractor.

b. Withhold Payment In any case where a question of n performance by Contractor arises, payment may be withheld in wh or in part at the discretion of the Commissioner. Should the amo withheld be finally paid, a cash discount originally offered may be tal as if no delay in payment had occurred.

c. Bankruptcy In the event that the Contractor files a petition un the U.S. Bankruptcy Code during the term of this Centralized Contr Authorized Users may, at their discretion, make application to exerc its right to set-off against monies due the Debtor or, under the Doctr of Recoupment, credit the Authorized User the amounts owed by Contractor arising out of the same transactions.

d. Reimbursement of Costs Incurred The Contractor agrees reimburse the Authorized User promptly for any and all additional co and expenses incurred for acquiring acceptable services, and replacement Product. Should the cost of cover be less than the Contr price, the Contractor shall have no claim to the difference. T Contractor covenants and agrees that in the event suit is successfu prosecuted for any default on the part of the Contractor, all costs a expenses expended or incurred by the Authorized User in connecti therewith, including reasonable attorney's fees, shall be paid by Contractor.

Where the Contractor fails to timely deliver pursuant to the guarante delivery terms of the Contract, the ordering Authorized User may r substitute equipment temporarily. Any sums expended for such ren shall, upon demand, be reimbursed to the Authorized User promptly the Contractor or deducted by the Authorized User from payments d or to become due the Contractor on the same or another transaction.

e. Deduction/Credit Sums due as a result of these remedies may deducted or offset by the Authorized User from payments due, or become due, the Contractor on the same or another transaction. If deduction or only a partial deduction is made in such fashion t Contractor shall pay to the Authorized User the amount of such cla or portion of the claim still outstanding, on demand. The Commissior reserves the right to determine the disposition of any rebat settlements, restitution, liquidated damages, etc., which arise from t administration of the Contract.

66. ASSIGNMENT OF CLAIM Contractor hereby assigns to t State any and all its claims for overcharges associated with this Contr which may arise under the antitrust laws of the United States, 15 US Section 1, et. seq. and the antitrust laws of the State of New Yo General Business Law Section 340, et. seq.

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67. TOXIC SUBSTANCES Each Contractor furnishing a toxic substance as defined by Section 875 of the Labor Law, shall provide such Authorized User with not less than two copies of a material safety data sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Authorized User agency representative.

68. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

69. SECURITY Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authorized User(s) in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

70. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Authorized User, as necessary to ensure delivery of Product or coordination of performance of services.

71. CONTRACT TERM - RENEWAL In addition to any stated renewal periods in the Contract, any Contract or unit portion thereof let by the Commissioner may be extended by the Commissioner for an additional period(s) of up to one year with the written concurrence of the Contractor and Comptroller. Such extension may be exercised on a month to month basis or in other stated periods of time during the one year extension.

72. ADDITIONAL WARRANTIES Where Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users. Contractor hereby warrants and represents:

a. Product Performance Contractor warrants and represents that Products delivered pursuant to this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

b. Title and Ownership Warranty Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Products transferred to Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.

c. Contractor Compliance Contractor represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, tolls and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor r establish to the satisfaction of the Commissioner that it meets or exc all requirements of the Bid/Contract and any applicable laws, inclu but not limited to, permits, insurance coverage, licensing, proo coverage for worker's compensation, and shall provide such proo required by the Commissioner. Failure to do so may constitute grou for the Commissioner to cancel or suspend this Contract, in whole c part, or to take any other action deemed necessary by the Commissio

d. Product Warranty Unless recycled or recovered materials available in accordance with the "Recycled or Recovered Materi clause, Product offered shall be standard new equipment, current mo or most recent release of regular stock product with all parts regul used with the type of equipment offered; and no attachment or part been substituted or applied contrary to the manufactur recommendations and standard practice.

Contractor further warrants and represents that components deliverables specified and furnished by or through Contractor sl individually, and where specified and furnished as a system, substantially uninterrupted or error-free in operation and guarant against faulty material and workmanship for the warranty period, or a minimum of one (1) year from the date of acceptance, whichev longer ("Project warranty period"). During the Project warranty peri defects in the materials or workmanship of components or deliverab specified and furnished by or through Contractor shall be repaired replaced by Contractor at no cost or expense to the Authorized Us Contractor shall extend the Project warranty period for individ component(s), or for the System as a whole, as applicable, by cumulative period(s) of time, after notification, during which individual component or the System requires servicing or replacem (down time) or is in the possession of the Contractor, its age officers, Subcontractors, distributors, resellers or employees ("extenc warranty").

Where Contractor, the Independent Software Vendor "ISV," or otl third party manufacturer markets any Project Deliverable delivered or through Contractor with a standard commercial warranty, su standard warranty shall be in addition to, and not relieve the Contrac from, Contractor's warranty obligations during the project warranty a extended warranty period(s). Where such standard commerc warranty covers all or some of the Project warranty or extend warranty period(s), Contractor shall be responsible for the coordinati during the Project warranty or extended warranty period(s) with ISV other third party manufacturer(s) for warranty repair or replacement ISV or other third party manufacturer's Product.

Where Contractor, ISV or other third party manufacturer markets a Project Deliverable with a standard commercial warranty which g beyond the Project warranty or extended warranty period(s), Contrac shall notify the Authorized User and pass through the manufacture standard commercial warranty to Authorized User at no additio charge; provided, however, that Contractor shall not be responsible coordinating services under the third party extended warranty af expiration of the Project warranty and extended warranty period(s).

e. Replacement Parts Warranty If during the regular or exten warranty period's faults develop, the Contractor shall promptly rep or, upon demand, replace the defective unit or component part affect All costs for labor and material and transportation incurred to repair replace defective Product during the warranty period shall be bo solely by the Contractor, and the State or Authorized User shall in event be liable or responsible therefor.

Any part of component replaced by the Contractor under the Contr warranty shall be replaced at no cost to the Authorized User and guarant for the greater of: a) the warranty period under paragraph (d) above; or b)

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if a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

f. Virus Warranty The Contractor represents and warrants that Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

g. Date/Time Warranty Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

h. Workmanship Warranty Contract warrants that all components or deliverables specified and furnished by or through Contractor under the Project Definition/Work Order meet the completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.

i. Survival of Warranties All warranties contained in this Contract shall survive the termination of this Contract.

73. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Executive Order No. 127 and Sections 139-j and 139-k of the State Finance Law.

74. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of claim, loss or damage arising hereunder due to the negligent ac failure to act of the Authorized Users.

75. INDEMNIFICATION RELATING TO THIRD PAR RIGHTS The Contractor will also indemnify and hold the Author Users harmless from and against any and all damages, expe (including reasonable attorneys' fees), claims, judgments, liabilities costs that may be finally assessed against the Authorized Users in action for infringement of a United States Letter Patent, or of copyright, trademark, trade secret or other third party proprietary r except to the extent such claims arise from the Authorized Users g negligence or willful misconduct, provided that the State shall g Contractor: (i) prompt written notice of any action, claim or threa infringement suit, or other suit, (ii) the opportunity to take over, se or defend such action, claim or suit at Contractor's sole expense, (iii) assistance in the defense of any such action at the expense Contractor.

If usage shall be enjoined for any reason or if Contractor believes th may be enjoined, Contractor shall have the right, at its own expense sole discretion to take action in the following order of precedence: to procure for the Authorized User the right to continue Usage (ii modify the service or Product so that Usage becomes non-infringi and is of at least equal quality and performance; or (iii) to replace s service or Product or part(s) thereof, as applicable, with non-infring service or Product of at least equal quality and performance. If above remedies are not available, the parties shall terminate Contract, in whole or in part as necessary and applicable, provided Authorized User is given a refund for any amounts paid for the per during which Usage was not feasible.

The foregoing provisions as to protection from third party rights sl not apply to any infringement occasioned by modification by Authorized User of any Product without Contractor's approval.

In the event that an action at law or in equity is commenced against Authorized User arising out of a claim that the Authorized User's use the service or Product under the Contract infringes any patent, copyri or proprietary right, and Contractor is of the opinion that the allegati in such action in whole or in part are not covered by the indemnificat and defense provisions set forth in the Contract, Contractor sh immediately notify the Authorized User and the Office of the Attorn General in writing and shall specify to what extent Contractor belie it is obligated to defend and indemnify under the terms and conditi of the Contract. Contractor shall in such event protect the interests the Authorized User and secure a continuance to permit the Authori User to appear and defend its interests in cooperation with Contract as is appropriate, including any jurisdictional defenses the Authori User may have. This constitutes the Authorized User's sole a exclusive remedy for patent infringement, or for infringement of a other third party proprietary right.

76. LIMITATION OF LIABILITY Except as otherwise set forth the Indemnification Paragraphs above, the limit of liability shall be follows:

a. Contractor's liability for any claim, loss or liability arising out or connected with the Products and services provided, and whetl based upon default, or other liability such as breach of contra warranty, negligence, misrepresentation or otherwise, shall in no ca exceed direct damages in: (i) an amount equal to two (2) times t charges specified in the Purchase Order for the Products and servic or parts thereof forming the basis of the Authorized User's claim, (s amount not to exceed a total of twelve (12) months charges payal under the applicable Purchase Order) or (ii) one million doll ($1,000,000), whichever is greater.

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b. The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

77. INSURANCE Contractor shall secure and maintain insurance coverage as specified in the Bid Documents and shall promptly provide documentation of specified coverages to the Authorized User. If specified, the Contractor may be required to add the Authorized User as an additional insured.

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

78. SOFTWARE LICENSE GRANT Where Product is acquired on a licensed basis the following shall constitute the license grant:

a. License Scope Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

b. License Term The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the License Term shall be extended by the time period for testing, acceptance or trial.

c. Licensed Documentation If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually agreeable format; (ii) based on hard copy instructions for access by downloading from the Internet (iii) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License - one (1) copy per License
- Concurrent Users - 10 copies per site
- Processing Capacity - 10 copies per site

Software media must be in a format specified by the Authorized User, without requiring any type of conversion.

Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the terms of license.

d. Product Technical Support & Maintenance Licensee shall have the option of electing the Product technical support and maintena ("maintenance") set forth in the Contract by giving written notic Contractor any time during the Centralized Contract term. Maintena term(s) and any renewal(s) thereof are independent of the expiratio the Centralized Contract term and will not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of e corrections, updates, revisions, fixes, upgrade and new releases Licensee, and (ii) Help Desk assistance with locally accessible "800 toll free, local telephone service, or alternatively on-line Help D accessibility. Contractor shall maintain the Products so as to prov Licensee with the ability to utilize the Products in accordance with Product documentation without significant functional downtime to ongoing business operations during the maintenance term.

Authorized User shall not be required to purchase maintenance for of Product, and may discontinue maintenance at the end of any curr maintenance term upon notice to Contractor. In the event t Authorized User does not initially acquire or discontinues maintena of licensed Product, it may, at any time thereafter, reinstate maintena for Product without any additional penalties or other charges, by pay Contractor the amount which would have been due under the Conti for the period of time that such maintenance had lapsed, at then curr NYS net maintenance rates.

e. Permitted License Transfers As Licensee's business operati may be altered, expanded or diminished, licenses granted hereun may be transferred or combined for use at an alternative or consolida site not originally specified in the license, including transfers betw Agencies ("permitted license transfers"). Licensee(s) do not have obtain the approval of Contractor for permitted license transfers, must give thirty (30) days prior written notice to Contractor of su move(s) and certify in writing that the Product is not in use at the pr site. There shall be no additional license or other transfer fees Contractor, provided that: i) the maximum capacity of the consolida machine is equal to the combined individual license capacity of licenses running at the consolidated or transferred site (e.g., nan users, seats, or MIPS); or ii) if the maximum capacity of consolidated machine is greater than the individual license capac being transferred, a logical or physical partition or other means restricting access will be maintained within the computer system so to restrict use and access to the Product to that unit of licensed capac solely dedicated to beneficial use for Licensee. In the event that maximum capacity of the consolidated machine is greater than combined individual license capacity of all licenses running at consolidated or transferred site, and a logical or physical partition other means of restricting use is not available, the fees due Contrac shall not exceed the fees otherwise payable for a single license for upgrade capacity.

f. Restricted Use By Outsourcers / Facilities Manageme Service Bureaus / or Other Third Parties Outsourcers, facilit management or service bureaus retained by Licensee shall have the ri to use the Product to maintain Licensee's business operations, includi data processing, for the time period that they are engaged in su activities, provided that: 1) Licensee gives notice to Contractor of su party, site of intended use of the Product, and means of access; and such party has executed, or agrees to execute, the Prod manufacturer's standard nondisclosure or restricted use agreem which executed agreement shall be accepted by the Contractor ("N Disclosure Agreement"); and 3) if such party is engaged in the busin of facility management, outsourcing, service bureau or other servic such third party will maintain a logical or physical partition within computer system so as to restrict use and access to the program to t portion solely dedicated to beneficial use for Licensee. In no event sh Licensee assume any liability for third party's compliance with

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use Product (e.g., JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the function or business activity.

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Product and related Documentation in connection with: i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

h. Confidentiality Restrictions The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

i. Restricted Use by Licensee Except as expressly authorized by the terms of license, Licensee shall not:

(i) Copy the Product;

(ii) Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;

(iii) Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

79. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by User. Where using its own data or tests, Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional thirty (30) day increment. Authorized l shall notify Contractor of acceptance upon successful completion o documented installation test. Such cancellation shall not give rise to cause of action against the Authorized User for damages, loss of prc expenses, or other remuneration of any kind.

If the Authorized User elects to provide a deficiency stater specifying how the Product fails to meet the specifications within testing period, Contractor shall have thirty (30) days to correct deficiency, and the Authorized User shall have an additional sixty days to evaluate the Product as provided herein. If the Product does meet the specifications at the end of the extended testing per Authorized User, upon prior written notice to Contractor, may reject the Product and return all defective Product to Contractor, Contractor shall refund any monies paid by the Authorized Use Contractor therefor. Costs and liabilities associated with a failure o Product to perform in accordance with the functionality tests or pro specifications during the acceptance period shall be borne fully Contractor to the extent that said costs or liabilities shall not have b caused by negligent or willful acts or omissions of the Author User's agents or employees. Said costs shall be limited to the amo set forth in the Limitation of Liability Clause for any liability for c incurred at the direction or recommendation of Contractor.

80. AUDIT OF LICENSED PRODUCT USAGE Contractor s have the right to periodically audit, no more than annually, Contractor's expense, use of licensed Product at any site where a c of the Product resides provided that: (i) Contractor gives Licensee(least thirty (30) days advance written notice, (ii) such audit is condu during such party's normal business hours, (iii) the audit is condu by an independent auditor chosen on mutual agreement of the par Contractor shall recommend a minimum of three auditing/accounting firms from which the Licensee will select one In no case shall the Business Software Alliance (BSA), Softw Publishers Association (SPA), Software and Industry Informa Association (SIIA) or Federation Against Software Theft (FAST) used directly or indirectly to conduct audits, or be recommended Contractor; (iv) Contractor and Licensee are each entitled to desig a representative who shall be entitled to participate, and who s mutually agree on audit format, and simultaneously review information obtained by the audit. Such representatives also shall entitled to copies of all reports, data or information obtained from audit; and (v) if the audit shows that such party is not in compliar Licensee shall be required to purchase additional licenses or capaci necessary to bring it into compliance and shall pay for the unlicen capacity at the NYS Net Price in effect at time of audit, or if none, t at the Contractor's U.S. Commercial list price. Once such additic licenses or capacities are purchased, Licensee shall be deemed to h been in compliance retroactively, and Licensee shall have no furt liability of any kind for the unauthorized use of the software.

81. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

(i) For purposes of this paragraph, "Products." A delivera furnished under this Contract by or through Contractor, includ existing and custom Products, including, but not limited to: components of the hardware environment, b) printed mater (including but not limited to training manuals, system and u documentation, reports, drawings), whether printed in hard copy maintained on diskette, CD, DVD or other electronic media c) th party software, d) modifications, customizations, custom progra program listings, programming tools, data, modules, components, e) any properties embodied therein, whether in tangible or intangi form (including but not limited to utilities, interfaces, templa subroutines, algorithms, formulas, source code, object code).

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(ii) For purposes of this paragraph, "Existing Products." Tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the Project.

(iii) For purposes of this paragraph, "Custom Products." Products, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for Authorized User under the Contract.

b. Title to Project Deliverables Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the Bid or Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

1. Hardware - Title and ownership of Existing Hardware Product shall pass to Authorized User upon Acceptance.

2. Software - Title and ownership to Existing Software Product(s) delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

(ii.) Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

c. Transfers or Assignments to a Third Party Financing Agent understood and agreed by the parties that a condition precedent to consummation of the purchase (s) under the Contract may be obtaining of acceptable third party financing by the Authorized U The Authorized User shall make the sole determination of acceptability of any financing proposal. The Authorized User will m all reasonable efforts to obtain such financing, but makes representation that such financing has been obtained as of the dat Bid receipt. Where financing is used, Authorized User may assig transfer its rights in Licensed Products (existing or custom) to a third p financing entity or trustee ("Trustee") as collateral where required by terms of the financing agreement. Trustee's sole rights with respec transferability or use of Licensed Products shall be to exclusiv sublicense to Authorized User all of its Licensee's rights under the te and conditions of the License Agreement; provided, further, howeve the event of any termination or expiration of such sublicense by reaso payment in full, all of Trustee's rights in such Licensed Product s terminate immediately and Authorized User's prior rights to such Exis Licensed Product shall be revived.

d. Sale or License of Custom Products Involving Tax-Exe Financing (i.e., Certificates of Participation - COPS) The Authori User's sale or other transfer of Custom Products which were acquire the Authorized User using third party, tax-exempt financing may not oc until such Custom Products are, or become, useable. In the event that Contractor wishes to obtain ownership rights to Custom Product(s), the or other transfer shall be at fair market value determined at the time of s sale or other transfer, and must be pursuant to a separate written agreem in a form acceptable to the Authorized User which complies with the te of this paragraph.

e. Contractor's Obligation with Regard to ISV (Third Pa Product Where Contractor furnishes Existing Licensed Product(s) Project Deliverable, and sufficient rights necessary to effect the purpo of this section are not otherwise provided in the Contractor or IS standard license agreement, Contractor shall be responsible for obtain from the ISV third party proprietary owner/developer the rights set f herein to the benefit of the Authorized User at Contractor's sole cost expense.

82. PROOF OF LICENSE The Contractor must provide to e Licensee who places a Purchase Order either: (i) the Prod developer's certified License Confirmation Certificates in the name such Licensee; or (ii) a written confirmation from the Proprietary ow accepting Product invoice as proof of license. Contractor shall sub a sample certificate, or alternatively such written confirmation from proprietary developer. Such certificates must be in a form acceptabl the Licensee.

83. PRODUCT VERSION Purchase Orders shall be deemed reference Manufacturer's most recently released model or version of Product at time of order, unless an earlier model or version specifically requested in writing by Authorized User and Contracto willing to provide such version.

84. CHANGES TO PRODUCT OR SERVICE OFFERINGS

a. Product or Service Discontinuance Where Contractor is Product Manufacturer/Developer, and Contractor publicly announces all U.S. customers ("date of notice") that a Product is being withdra from the U.S. market or that maintenance service or technical supp provided by Contractor ("withdrawn support") is no longer going to offered, Contractor shall be required to: (i) notify the Commission each Licensee and each Authorized User then under contract maintenance or technical support in writing of the intend discontinuance; and (ii) continue to offer Product or withdrawn supp upon the Contract terms previously offered for the greater of: a) the b terms offered by Contractor to any other customer, or b) not less than

Attachment: CAT NYS-OGS (RES-2021-356 : Authorize the Purchase of One (1) CATERPILLAR CB1.7 03 a UT Compact Roller)

twelve (12) months from the date of notice; and (iii) at Authorized User's option, provided that the Authorized User is under contract for maintenance on the date of notice, either: provide the Authorized User with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable Authorized User to continue use and maintenance of the Product.

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to state approval, to an alternate Subcontractor.

b. **Product or Service Re-Bundling** In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the State and each Authorized User in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

85. NO HARDSTOP/PASSIVE LICENSE MONITORING Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

86. SOURCE CODE ESCROW FOR LICENSED PRODUCT If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall either: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) will certify to the State that the Product manufacturer/developer has named the State, acting by and through the Authorized User, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who s be directed to release the deposited Source Code in accordance with terms of escrow. Source Code, as well as any corrections enhancements to such source code, shall be updated for each release of the Product in the same manner as provided above and s updating of escrow shall be certified to the State in writing. Contra shall identify the escrow agent upon commencement of the Cont term and shall certify annually that the escrow remains in effec compliance with the terms of this paragraph.

The State may release the Source Code to Licensees under this Cont who have licensed Product or obtained services, who may use such c of the Source Code to maintain the Product.

FOR NEGOTIATED CONTRACTS THE FOLLOWI CLAUSES ARE RESERVED BECAUSE BIDDING DOES N APPLY:

Clauses: 7, 8, 9, 10, 11, 12, 13, 16, 15, 21, 25, 26, 28, 29, 30, 31, 33, 36, 49, 50, 52, 54 and 37

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Appendix C, Report of Contract Usage

DO NOT ADD, REMOVE OR REARRANGE ANY COLUMNS OR ROWS.

Please fill in the required supplier information below.

Required Information	Answer
Supplier Name	
Supplier Award areas (lots and items)	
Address Line 1	
Address Line 2	
City	
State	
Zip Code	
Contact Name	
Email Address	
Phone Number	
Contract Number	

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The chart below provided definitions for the columns listed in the data collection tabs. Please use this as a reference when populating these tabs.

Column	Definition	Comment/Ex
Invoice #	Invoice number	
Invoice Date	Date of invoice	
PO #	Purchase order number	
Contract #	New York State contract number	
Agency/State Entity/Municipality	New York State agency/entity or municipality	Ex: Dept of Transpiration, Dept o Rockland County, SUNY Buffalo
Region/Facility/Location Name	Region, facility, or location associated with the agency or entity	Ex: DOT District 2, Adirondack C
Manufacturer	Name of manufacturer of vehicle	Ex: Caterpillar, John Deere, Gra
Product Type	Vehicle make	Ex: Backhoe, Crawler Dozer, Mc
Model	Vehicle model	Ex: 930K, 321E, SR175
Model Year	Model year of vehicle purchased	Ex. 2012
Base Equipment Cost	Contract price for equipment excluding any options	
Options	List any options purchased for the equipment, please list all options in subsequent rows	
Net Options Cost	Total net cost for options purchased	
Non-OEM Equipment	List any non-OEM equipment installed	
Non-OEM Equipment Cost	Total cost for any non-OEM equipment purchased	
Unit Price	Price for entire piece of equipment including options	
Delivery Cost (Per Unit)	Delivery cost per unit	
Extended Cost	Total Cost	*Base Equipment Cost + Net Opt Equipment Cost + Delivery Cost*
County Ship To	County to which vehicle was delivered	
Ship To Street Address	Ship To Street Address	
Ship To Zip Code	Ship To Zip Code	

Spend Report Spreadsheet - Equipment Data

DO NOT ADD, REMOVE OR REARRAGE ANY COLUMNS OR ROWS.

Invoice #	Invoice Date	PO #	Contract #	State Agency/Entity	Region/Facility/Location Name	Manufacturer	Product Type	Model #	M
1234	12/1/2012	7891011	PC12345	Office of General Services	Albany	Gradall	Excavator	XL 4210 III	

Options Cost	Delivery Cost	Extended Cost	Ship To Street Address	Ship To County	Ship To Zip Code
$ 1,400.00		$ 23,800.00	1234 Park Ave	1	12242
		$ -			
		$ -			
		$ -			
		$ -			
		$ -			
		$ -			
		$ -			
		$ -			
		$ -			
		$ -			
		$ -			
		$ -			
		$ -			
		$ -			
		$ -			
		$ -			

Spend Report Spreadsheet - Option Data

Contract Number	Total Items Purchased	Manufacturer	Product Type	Model #	Model Year	Option Code	Option Description	Quantity of O Purchase
PC12345	1	Gradall	Excavator	XL 4210 III	2013	A51	Boom Extension	

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 23132 **RESOLUTION 2021-357** **ADOPTED**

Working Automotive Crew Chief/Police

Please appoint a Working Automotive Crew Chief to the Police Department, Permanent, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective April 20, 2021, at an hourly rate of $27.83 for Patrick Boyle.

This is a promotion for an employee currently serving as an Automotive Mechanic.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 23133 **RESOLUTION 2021-358** **ADOPTED**

Senior Electrical Inspector/Building Department

Please appoint a Senior Electrical Inspector to the Building Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective April 20, 2021 at an annual salary of $72,514, Grade 17, Step F for Joseph Hoehman, Jr.

This is a promotion for an employee who is currently serving as an Electrical Inspector and is replacing an employee who recently retired.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Amherst Town Board
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Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 23140 **RESOLUTION 2021-359** **ADOPTED**

Police Captain/Police Department

Please appoint a Police Captain to the Police Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective April 20, 2021 at an annual salary of $109,093 for Bruce Mann.

This is a promotion for a Police Lieutenant.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 23152 **RESOLUTION 2021-360** **ADOPTED AS AMENDED**

Chief of Police Appointment

WHEREAS, our current Police Chief, John C. Askey, has filed for his retirement effective April 3, 2021, creating the vacancy for a new Police Chief; and

WHEREAS, Captain Scott P. Chamberlin has satisfactorily completed the Erie County Civil Service exam for Police Chief;

NOW THEREFORE, BE IT RESOLVED that Scott Chamberlin be appointed as the Chief of the Amherst Police Department with a salary of $150,987.

4/19/2021
A motion to approve was made by Supervisor Kulpa and seconded by Councilmember Bucki. A motion was then made by Deputy Supervisor Berger to amend, seconded by Councilmember Lavin and unanimously approved 5-0. Amendment adds the salary to the resolution.

A motion to approve as amended was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0.

FINANCIAL IMPACT:

TBD

RESULT:	**ADOPTED AS AMENDED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Jacqualine Berger, Deputy Supervisor
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 23163 **RESOLUTION 2021-361** **ADOPTED**

Senior Account Clerk/Building Department

Please appoint a Senior Account Clerk to the Building Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective April 20, 2021 at an annual salary of $40,748, Grade 6, Step D for Gina Kimble.

This is a promotion for an employee currently serving as a Clerk Typist.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 23164 **RESOLUTION 2021-362** **ADOPTED**

Principal Clerk Typist/Court

Please appoint a Principal Clerk Typist to the Court. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective April 20, 2021 at an annual salary of $37,081, Grade 7, Step A for Michele Presutti.

This is a promotion for an employee currently serving as a Senior Clerk Typist.

4/19/2021
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 23148 **RESOLUTION 2021-363** **ADOPTED**

To Authorize the Town Supervisor to Sign an Extension of a Grant from the New York State Affordable Housing Corporation for the Housing Rehabilitation Program CRS #2542

WHEREAS, the New York State Affordable Housing Corporation awarded $300,000 in a matching grant for the housing rehabilitation program in June 2018, and

WHEREAS, said funds can be used in conjunction with Community Development Block Grant and HOME Investment Partnership Grant funds administered by the Town to assist low and moderate income homeowners, and

WHEREAS, the grant funds should have been spent by May 31, 2021; and

WHEREAS, due to the pandemic and the housing rehabilitation program being closed in 2020 for three months, there is still $60,000 left in funds remaining to spend; and

WHEREAS, the Affordable Housing Corporation has agreed to extend the grant agreement until August 31, 2021; now therefore, be it

RESOLVED, that the Town Board of the Town of Amherst authorizes the Supervisor to sign the extended agreement, which will expire on August 31, 2021.

4/19/2021
Consent

FINANCIAL IMPACT:

Adoption of the proposed resolution requires that up to $200,000 in Federal Community Development Block Grant and HOME Investment Partnership Funds be made available as a local match, but involves no other Town monetary contribution and will have no impact on the Town Budget or tax rate.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Amherst

Town of Amherst Planning Department — Erie County, New York

Brian J. Kulpa, Supervisor
Daniel C. Howard, AICP Planning Director
Ellen M. Kost, AICP Assistant Planning Directo

April 12, 2021

Agenda of April 19, 2021

Honorable Town Board
Town of Amherst
5583 Main Street
Williamsville, NY 14221

Subject: To Authorize the Supervisor to sign an extension of the NYS Affordable Housing Corporation grant agreement for housing rehabilitation loans.

Honorable Board Members:

The New York State Affordable Housing Corporation (AHC) offers grants to communities to make housing rehabilitation loans to low and moderate income homeowners in designated target areas. The Planning Department was awarded a grant on June 18, 2018 for $300,000. Under the grant agreement, the funds should be spent by May 31, 2021. Due to the pandemic and the housing rehabilitation program being closed for three months, there is still approximately $60,000 of unspent state funds. The State has agreed to extend the grant agreement until August 31, 2021.

Attached for your consideration is a resolution authorizing the Town Supervisor to sign the extended grant agreement with the Affordable Housing Corporation.

Very truly yours,

Daniel C. Howard, AICP
Planning Director

X:\Community Development\New Structure\HOUSING PROGRAMS\AHC Rehab\AHC.application\2017\Extension_TB_letter_4.19.21.doc

Attachment: signed-tb letter-04132021143407 (RES-2021-363 : Extension of the Housing Rehabilitation Matching Grant)

AMENDATORY AGREEMENT
with respect to the
GRANT AGREEMENT
between
NEW YORK STATE AFFORDABLE HOUSING CORPORATION
and the
TOWN OF AMHERST

This Amendatory Agreement ("Agreement") entered into as of this__day of _____, 2021, by and between the NEW YORK STATE AFFORDABLE HOUSING CORPORATION, a public benefit corporation created and existing as a subsidiary of the New York State Housing Finance Agency pursuant to Section 45-b of the Private Housing Finance law having its principal place of business at 641 Lexington Avenue, New York, New York 10022 ("Agency") and the TOWN OF AMHERST, having its offices at 5583 Main Street, Williamsville, New York, 14221 ("Municipality").

WITNESSETH

WHEREAS, pursuant to Section 1112 of the Private Housing Finance Law, the parties have hereto entered into a Grant Agreement dated as of June 18, 2018 identification number AHC #**1Q62**, ("Grant Agreement"), for the purpose of providing affordable homes for the families and individuals for whom there are no other reasonable affordable homeownership alternatives in the private market; and

WHEREAS, the parties hereto desire to amend and restate the Grant Agreement as hereinafter set forth:

NOW THEREFORE, the parties agree as follows:

1. Exhibit D: (Schedule of Activities) of the Grant Agreement is deleted and the revised Exhibit D: (Schedule of Activities) which is attached to this amendment is hereby substituted therefore.
2. Exhibit E: (Cash Drawdown Schedule) of the Grant Agreement is deleted and the revised Exhibit E: (Cash Drawdown Schedule) which is attached to this amendment is hereby substituted therefore.
3. Except as expressly amended in the Amendatory Agreement, all terms and conditions of the Grant Agreement remains in full force and effect.

Attachment: 1Q62 Amendatory Agreement_4.8.21 (RES-2021-363 : Extension of the Housing Rehabilitation Matching Grant)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective duly authorized representatives, as of the day and year first written above.

NEW YORK STATE AFFORDABLE HOUSING CORPORATION

BY: _____
NAME: Dominic A. Martello
TITLE: Vice President

TOWN OF AMHERST

BY: _____
NAME: _____
TITLE: _____ ACKNOWLEDGMENT BY AHC

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

On the _____ day of _____ in the year 2021 before me, the undersigned, a notary public in and for said state, personally appeared Dominic A. Martello personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

_____
Notary Public

ACKNOWLEDGMENT BY MUNICIPALITY

STATE OF NEW YORK)

Attachment: 1Q62 Amendatory Agreement_4.8.21 (RES-2021-363 : Extension of the Housing Rehabilitation Matching Grant)

) ss.:
COUNTY OF _____)

On the _____ day of _____ in the year 2021 before me, the undersigned, a notary public in and for said state, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

Attachment: 1Q62 Amendatory Agreement_4.8.21 (RES-2021-363 : Extension of the Housing Rehabilitation Matching Grant)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Senior Services
Initiated by: **Brian Bray**
Co-Sponsored by:

DOC ID: 23129 **RESOLUTION 2021-364** **ADOPTED**

Approval of the 2021-2022 CSE-EISEP Contract (CRS ID # 2524)

We request authorization for the Supervisor to sign the Community Services for the Elderly and Expanded In-Home Services for the Elderly Programs (CSE-EISEP) contract between the Town of Amherst and the Erie County Department of Senior Services, dated April 1, 2021 - March 31, 2022.

4/19/2021
Consent

FINANCIAL IMPACT:

Revenue: $117,614; $110,000 Expense

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

2021-22

ERIE COUNTY DEPARTMENT OF SENIOR SERVICES PROGRAM CONTRACT

1. TITLE OF PROGRAM: Case Management, Information & Assistance, Outreach

2. BUDGET CATEGORY DESIGNATION: CSE/EISEP

3. CONTRACT PERIOD: From 4/1/2021 to 3/31/2022

4. TOTAL AMOUNT OF CONTRACT: County Funds: $117,614; Agency Match: $122,465

5. ORGANIZATION:

Name:	**Town of Amherst by and through The Amherst Center for Senior Services**
Mailing Address: 5583 Main Street	Town Hall Williamsville, New York 14221
Office Phone:	(716) 631-7030
Federal I.D. No.:	16-6002157

Executive Director/Administrator: Brian Kulpa, Town Supervisor

Email:	bkulpa@amherst.ny.us

6. PROGRAM CONTACT:

Name, Title:	Brian C. Bray, Executive Director
Mailing Address:	370 John James Audobon Parkway Amherst, New York 14228
Office Phone:	(716) 636-3055 , x 3117
Email:	bbray@amherst.ny.us

Rev. 3/2021

Attachment: 2021-22 CSE/EISEP Contract (RES-2021-364 : Approval of the 2021-2022 CSE-EISEP Contract (CRS ID # 2524))

AGREEMENT

THIS AGREEMENT made on the 1st day of April, 2021 between the COUNTY OF ERIE (the "County"), a municipal corporation of the State of New York, having its principal office in Buffalo, Erie County, New York, acting by and through the Erie County Department of Senior Services, (the "Department"), and

Town of Amherst by and through The Amherst Center for Senior Services

(the "Agency"), a municipal corporation of the State of New York, by and through Town of Amherst Center for Senior Services, organized under the laws of the State of New York having an office and principal place of business at:

Amherst Town Hall
5583 Main Street, Williamsville, New York 14221

WITNESSETH:

WHEREAS, the County desires to make available to the residents of Erie County, services to the elderly as authorized by the New York State Office for the Aging and by the Erie County Legislature, the Erie County Department of Senior Services is hereby authorized to establish, operate and maintain programs and services for the elderly; and

WHEREAS, the County and the Agency in the spirit of mutuality and partnership, desire to provide the residents of the County the optimum quantity of geriatric services of the highest professional quality; and

WHEREAS, the Agency enjoys the use of facilities and has the capacity for the provision of certain services to the aging; and desires to provide a program to provide case management, information and assistance and outreach to residents, age 60 and over, in the service area defined in Schedule "A"; and

WHEREAS, the County desires to contract for such services and the Agency has agreed to furnish such services to the residents of the County;

NOW, THEREFORE, the County and the Agency agree as follows:

ARTICLE I.: THIS AGREEMENT

Section 1.1 Incorporations. The agreement between the parties shall consist of this Agreement and the following Schedules which are attached hereto and made part hereof:

Schedule "A": Statement of Services.
Schedule "B": County Standard Insurance Provisions. Classification E.
Schedule "C": Program Specific Standard Assurances. Agency may also be referred to as "Applicant" in Schedule C.
Schedule "D": Standard Assurances - New York State Office for the Aging.
Schedule “E”: Remuneration.

Attachment: 2021-22 CSE/EISEP Contract (RES-2021-364 : Approval of the 2021-2022 CSE-EISEP Contract (CRS ID # 2524))

Schedule "F": Business Associate Agreement.
Schedule "G": Erie County Executive Order #13 - Pay Equity.

Section 1.2 Agreement . The Agency agrees to provide the services set forth herein subject to all the terms and conditions set forth in this Agreement and Schedules hereof. Agency further agrees to all the representations, terms, and conditions set forth in the attached Schedules listed above as if fully set forth in this Agreement. This Agreement and the Schedules above shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. This Agreement shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

Section 1.3 Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

ARTICLE II: TERM OF THIS AGREEMENT

Section 2.1 Term of Agreement: The term of this Agreement shall commence on 4/1/2021 and shall terminate on 3/31/2022 unless terminated earlier pursuant to the provisions of this agreement.

Section 2.2 Termination.

A.) In the event that services under this agreement are not satisfactory to the County or to the New York State Office for the Aging, the County may terminate this agreement upon ten (10) days written notice to the Agency either by personal service or by certified or registered mail.

B.) The County may terminate this Agreement in the event the terms and conditions hereof are not fully complied with by the Agency by giving ten (10) days notice to the Agency, in writing, of its intention to terminate for that reason.

C.) Otherwise, either party may at any time during the term of this Agreement or any extension thereof terminate this Agreement by giving to the other party thirty (30) days written notice of its intention to terminate.

D.) The Agency agrees that in the event of termination of the agreement prior to the expiration date set forth in this Agreement, the Agency agrees to:

1) Account for and refund to the County, within thirty (30) calendar days, any funds that have been paid to the Agency pursuant to this agreement that are in excess of un-reimbursed expenses incurred prior to the notice of termination;
2) Not incur any further obligations pursuant to the agreement beyond the termination date;
3) Submit, within thirty (30) days of termination, a report listing each and every receipt, expenditure of funds, program activity, accomplishment, and obstacle encountered relating to this agreement.
4) Return all fixed assets belonging to the County of Erie, purchased under the terms of this or preceding contracts.

Section 2.3 County's Rights. In the event the County determines that there has been a material breach by the Agency of any of the terms of the Agreement and such breach remains uncured for forty-eight (48)

Attachment: 2021-22 CSE/EISEP Contract (RES-2021-364 : Approval of the 2021-2022 CSE-EISEP Contract (CRS ID # 2524))

hours after service on the Agency of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the services provided for in this Agreement, or contract for its completion, and any additional expense or cost of such completion shall be charged to and paid by the Agency . Without limiting the foregoing, upon written notice to the Agency, repeated breaches by the Agency of duties or obligations under this Agreement shall be deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure.

ARTICLE III: BASIC OBLIGATIONS OF AGENCY

Section 3.1 Contract Services. The Agency shall provide to the residents of Erie County the contract services set forth in Schedule "A" attached to this Agreement. The contract services shall be carried out by the Agency in accordance with current industry standards and trade practices.

Section 3.2 Duty to Report Progress. The Agency shall report to the County on its progress toward completing the contract services, as the Commissioner of Senior Services or his/her duly authorized designee (the "Commissioner") may request, and shall immediately inform the Commissioner in writing of any cause for delay in the performance of its obligations under this agreement.

Section 3.3 Insurance The Agency agrees to procure and maintain insurance naming the County as additional insured, as provided and described in Schedule "B", entitled "Standard Insurance Provisions", which is attached hereto and made a part hereof. All Certificates of Insurance shall be approved by the County of Erie Department of Law prior to the inception of work, and all payments will be delayed until the requirements are met. All entities which have elected to become self-insurers for liabilities formerly covered by policies of Automobile, General, Excess Umbrella Liability Insurance and Worker's Compensation are required to provide to the Department, proof of coverage equivalent to the limits required by this Section as specified in Schedule B. Evidence of Workers' Compensation must be on forms approved by the New York State Workers' Compensation Board.

In the event that a required insurance policy is cancelled, expires or lapses, the Agency shall submit to the County an updated Certificate of Insurance, which shall be reviewed for approval by the County of Erie Department of Law and all payments will be delayed until the requirements are met. In addition, the County reserves the right to terminate this Agreement should the Agency fail to provide the required insurance within 30 days of the policy's cancellation, expiration or lapse.

Section 3.4 Contract Expenses. The Agency shall be responsible for all costs involved in the delivery of contract services and shall incur only those expenses set forth in this Agreement on any Schedule attached hereto. Subcontracts for services as required under this agreement shall also be in accordance with this Agreement and any Schedule attached hereto.

Section 3.5 Professional Standards and Levels of Service. All contract services will be delivered in accordance with generally accepted standards of professional quality and quantity. The units of service as specified shall be periodically reviewed by the parties, and where appropriate, the units of service specification may be adjusted by the mutual agreement of the parties in writing. No reduction in the level of services shall be permitted if such reduction alters the basic nature or adversely affects the quality of the contract services. If the Agency is delivering service at a rate which, in the judgment of the Department will result in a level of service below that agreed upon, the Department may, after notifying the Agency, formally request that the rate of service be increased in general or by a specified amount up to the level

Attachment: 2021-22 CSE/EISEP Contract (RES-2021-364 : Approval of the 2021-2022 CSE-EISEP Contract (CRS ID # 2524))

agreed upon.

Section 3.6 Required Performance Agency agrees that, whether during the contract term or thereafter, it will do all necessary acts and sign any and all documents, contract amendments and/or supplemental agreements which may be required or necessary to maintain grant status and/or to satisfy requirements by federal, state, county and grant providers or which may be required to maintain or to obtain additional grant funds applicable to the term set forth in this Agreement.

Section 3.7. Indemnification. In addition to, and not in limitation of the insurance provisions contained in Schedule "B", Agency agrees that except for the amount, if any, of damage contributed to, caused by, or resulting from the negligence of the County: (a) the Agency shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Agency or third parties under the direction or control of the Agency; and (b) Agency shall provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto. Agency's obligation under this Section shall continue beyond the expiration or termination of this Agreement.

Section 3.8 Non-assignability and Subcontract Agreements. The Agency shall not assign, transfer, convey, subcontract or otherwise dispose of this Agreement or of its right, title, or interest herein or its power to execute this Agreement to any person or corporation without the previous consent, in writing, of the County. All agreements between the Agency and a subcontractor(s) shall be by written contract only. Any subcontract submitted for approval by the County must provide in writing that the Agency will retain ultimate control and responsibility for the service provided under the subcontract and that the subcontractor shall be bound by the provisions of the Agreement between the Agency and the County and any other requirement applicable to the Agency in the provision of contract services. Where required by New York State law, all subcontractors shall be licensed and certified to perform contract services by the Offices of New York State. All subcontracts entered into by the Agency shall be written in accordance with all local, New York State and Federal laws, rules and regulations and shall be available for review by the County and the Offices of New York State. No subcontract shall provide for the County to incur financial obligation. All subcontracts entered into by the Agency with a subcontractor shall be governed by applicable provisions of New York State law relating to conflict of interests. The Agency shall not be relieved of any responsibility under this Agreement by any subcontract. The Provider shall require by written agreement all subcontractors and their employees to observe all applicable local, New York State and Federal laws, rules and regulations relating to the confidentiality of client records and information.

Section 3.9 Agency Status Written notice to the County pursuant to the notice provisions above AND to the Erie County Department of Law, 95 Franklin Street, Rath Building-16th Floor, Buffalo, New York, 14202 shall be given by Agency should: (A) Agency's status be altered in any way; and/or (B) Agency be subject to investigation concerning acts or omissions which would affect Agency's status and/or licensure. Immediate notice under this section means postmarked First Class Mailing no later than 72 hours after any alteration of license status or knowledge of any investigation.

Section 3.10. Compliance with the Law. The Agency shall furnish the contract services in compliance with all applicable Federal, State, County, Local and Department laws, rules, regulations, and policies and procedure manuals. The Agency shall further comply, at its own expense, with all applicable rules, regulations and licensing requirements pertaining to its professional status and that of its employees,

Attachment: 2021-22 CSE/EISEP Contract (RES-2021-364 : Approval of the 2021-2022 CSE-EISEP Contract (CRS ID # 2524))

partners, associates, subcontractors and others employed to render the services hereunder.

ARTICLE IV: PAYMENTS FOR SERVICES

Section 4.1 Amount payable by the County. For the services to be performed pursuant to this Agreement, the Agency shall be paid an amount not to exceed $117,614.00 or the amount authorized for this Agreement by the Erie County Legislature, whichever is less as is further specified in Schedule E attached hereto.

Section 4.2 Availability of Funds. The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to annual appropriations by the Erie County Legislature. Therefore, this Agreement shall be deemed executory only to the extent of the monies appropriated and available. The County shall have no liability under this Agreement beyond funds appropriated and available for payment pursuant to this Agreement. The parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. The County shall retain the right, upon the occurrence of the adoption of any County Budget by the County Legislature during the term of this Agreement or any amendments thereto, and for a reasonable period of time after such adoption(s), to conduct an analysis of the impacts of any such County Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates set forth herein. If the County subsequently offers to pay a reduced amount to the Agency, then the Agency shall have the right to terminate this Agreement upon reasonable prior written notice.

This Agreement is also subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Agency, then the Agency shall have the right to terminate this Agreement upon reasonable prior written notice.

The parties further recognize and acknowledge that the obligations of the County under this Agreement may be subject to the County's receipt of funds from agencies of New York State, the United States of America, or other non-county sources. If, for any reason, the full amount of said funds is not paid over or made available to the County by New York State or the United States of America, or non-county source, the County may terminate this Agreement immediately or reduce the amount payable to the Agency, in the discretion of the County. The County shall give prompt notice of any such termination or reduction to the Agency. If the County subsequently offers to pay a reduced amount to the Agency, then the Agency shall have the right to terminate this Agreement upon reasonable prior written notice.

Section 4.3 Refund by the Agency. If, upon the expiration of this Agreement, the amount received by the Agency, including but not limited to any advance payments made by the County under this Agreement,

Attachment: 2021-22 CSE/EISEP Contract (RES-2021-364 : Approval of the 2021-2022 CSE-EISEP Contract (CRS ID # 2524))

exceeds the authorized expenditures pursuant to this Agreement, the Agency shall remit to the County the amount of such excess within ten (10) days upon separate request of the County. The Agency's obligation under this Section shall continue beyond the expiration or termination of this Agreement.

Section 4.4 Final Payment by the County. If, upon the expiration or termination of this agreement, the County owes the Agency for contract services, the Agency shall submit an invoice within thirty (30) days after the termination date, in such form and supported by such documentation and certification as the Department may require, and the County shall pay the Agency the appropriate amount. The County's obligation under this Section shall continue beyond the expiration or termination of this contract.

Section 4.5 Payment Conditional. All payments by the County under this agreement shall be subject to revision on the basis of an audit conducted by the Comptroller of Erie County, any appropriate state agency, or the Department. Furthermore, if the New York State Office for the Aging shall fail to approve full state and federal aid reimbursement for payments by the County to the Agency under this agreement by reason of any act or omission of the Agency, the County's obligation shall be reduced by the amount so not approved, and any County matching funds. The County may withhold from any payment due to the Agency on any agreement, or recover from the Agency, an amount equal to the sum so not approved and any County matching funds. The County may withhold payment to the Agency of the sum not in excess of ten (10) percent of the obligation of the County stated in this Agreement until after an audit satisfactory to the Department has been completed, provided an audit has been commenced within one (1) year from the date from which payment is withheld. The Department shall settle accounts with the Agency on the basis of that audit within a reasonable time, not to exceed three (3) months, after the audit is transmitted to the Agency.

ARTICLE V: RESPONSIBILITIES OF THE DEPARTMENT

Section 5.1 General Supervision and Evaluation. The Department shall provide, in a manner consistent with Federal, State and local laws and regulations, general supervision and evaluation over the contract services and facilities rendered, administered or coordinated by the Agency.

Section 5.2 Revision of Contract. The Department shall, during the term of this Agreement, review any proposals submitted by the Agency to change the contract services. The Department may authorize appropriate amendments to this contract upon the mutual agreement of both parties that such change or changes are desirable. All budget transfers for any approved changes in services pursuant to this Section must be in compliance with the requirements of this Agreement. In no event shall such change result in an increase in the obligation of the County without the authorization in writing of the County Executive of Erie County and, when necessary, the authorization of the Erie County Legislature.

ARTICLE VI: RECORDS, REPORTS, AUDITS.

Section 6.1 Records.

A.) The Agency shall keep records with respect to delivery of contract services performed under this agreement. Such records shall be kept separate or identifiable from those relating to other activities of the Agency. The Agency shall maintain adequate individual client service records which shall, subject to the provisions of this Agreement, be made available to the Department. Individual records or evaluations shall be transferred to the Department or other providers of services only upon the written authorization from the client.

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B.) Any information transferred to a provider of services to the aging is to be confidential and used solely for the benefit of the client. At the expiration or termination of this agreement, or any extension thereof, all plans and programs for providing services, all educational plans, programs and materials, all program records, and all program evaluation shall become the property of the Department on behalf of the County. Individual records and evaluations shall be transferred to the Department if the Agency is not adequately maintaining such records or if the Agency is dissolved. The Agency's obligation under this Section shall continue beyond the termination of this agreement and shall be in compliance with confidentiality requirements of applicable laws. The Agency shall implement appropriate privacy and security safeguards to protect the confidentiality, integrity and availability of protected health information, including but not limited to privacy and security policies, employee training, and access, use and disclosure restrictions.

Section 6.2 Record Retention. The Agency shall retain all books and records (including supporting documents) relating to its performance under this agreement for seven (7) years from the expiration or termination date of this agreement unless permission is given to the Agency in writing by the Department to destroy them prior to the expiration of the seven (7) year period.

Section 6.3 Audit, Inspection and Visitation.

A.) Subject to the confidentiality and privilege provisions of this Agreement, the Agency shall during regular business hours make available for reasonable audit, inspection and visitation by the Department, the Erie County Comptroller, the New York State Office for the Aging, and the New York State Department of Audit and Control, U.S. Administration on Aging or any persons retained by these agencies, its contract services, facilities, and all financial, statistical and client reports, records, memoranda and other data relating thereto. Further, the agency shall provide a copy of any audit, and/or management letter received from any independent auditor who has occasion to audit said agency's books and records and provide such audit and/or management letter to such agency, to the Erie County Comptroller's Office, 11th Floor - Rath Building, Buffalo, New York, 14202, and the Erie County Department of Senior Services, Attention: Fiscal Management Unit, Room 1329, Rath Building, 95 Franklin Street, Buffalo, New York 14202.

B.) In the event, this Agreement is funded in part by funds from the Federal government, the agency must meet the audit requirements of Office of Management and Budget Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards-Subpart F as currently named, numbered and/or amended, as well as any additional audit requirements contained in this Agreement and Schedules of this Agreement.

Section 6.4 Confidentiality and Privilege. All examinations, inspections, audits and visitations hereunder shall, in the absence of an effective waiver by the client, be conducted in accordance with client confidentiality requirements of applicable laws, on the Agency's premises, and at the discretion of the Agency, in the presence of an Agency representative.

ARTICLE VII: MISCELLANEOUS

Section 7.1 Relationship of Parties The Agency and the County agree that the Agency and its officers, employees, agents, contractors, subcontractors and/or consultants are independent contractors and not

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employees, agents or servants of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, the Agency covenants and agrees that neither the Agency nor any of its officers, employees, agents, contractors, subcontractors and/or consultants will act as, hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof.

Section 7.2 New York Law and Interpretation

A.) This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that for any cause of action arising out of this Agreement shall be brought in the County of Erie.

B.) If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

Section 7.3 No Third-Party Reliance Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, or by reason of this Contract, except in the event that specific third party rights are expressly granted herein.

Section 7.4 No Waiver of Right to Enforce Failure of County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of any work or the payment of any fee or reimbursement due hereunder with or without knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied.

Section 7.5 Conflicts of Interest The Agency shall use all reasonable means to avoid any conflict of interest with the County and shall immediately notify the County in the event of a conflict of interest. The Agency shall also use all reasonable means to avoid any appearance of impropriety.

Section 7.6 Authorized to Sign The person or persons signing this Contract on behalf of the Agency hereby represent that they are duly authorized to enter this Contract and to bind Agency to all terms and conditions set forth in this Contract and all attachments hereto.

Section 7.7 Mention of County/State Support. In any printed matter announcing or describing a service provided or supported by the Agency, or in any product such as a publication, book, catalog, films, videotape, exhibition, website, or similar product assisted under the terms of this agreement, the Agency shall prominently mention the Erie County Department of Senior Services, and the New York State Office for the Aging.

Section 7.8 Copyrightable Material. Where Agency projects supported in whole or in part by County and/or State assistance, produce original books, manuals, films, or other copyrightable material, the material cannot be copyrighted or sold without the written permission of the New York State Office for the Aging and the County of Erie. The Erie County Department of Senior Services reserves the royalty-

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free, non-exclusive and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to publish and use such materials. Any income received by the Agency as royalties or otherwise earned by such copyrightable material shall be considered as Agency income. Such income shall reduce the County's obligation under this Agreement in accordance with the provisions of Article IV. Creation of all such material must be consistent with this contract and forwarded to the Erie County Department of Senior Services.

Section 7.9 Labor Agreements.

A.) The Agency shall provide to the Department the details of any existing labor agreement or Agency commitment for the provision of increases in personnel salaries or benefits. The County shall not reimburse the Agency for any expenditures pursuant to such labor agreement or Agency plan which exceed the line item budget provisions of the contract.

B.) The Agency shall notify the Department in advance of any pending negotiations with any organizations representing employees covered by this agreement with respect to terms and conditions of employment or of any Agency plan regarding such matters. Prior to any final settlement with any such organization or the implementation of any Agency plan, the Agency shall notify the Department of the terms and conditions thereof. The Agency, in addition, shall provide the Department with copies of all collective bargaining agreements or Agency plan covering employees providing contract services.

Section 7.10 Limitation on Actions. No action shall lie or be maintained against the County upon any claim under this agreement or arising out of anything done in connection with this agreement, unless such actions shall be commenced within ninety (90) days from the termination date of this agreement.

Section 7.11 Headings. The headings in this agreement are inserted for convenience and reference only and shall not be used in any way to interpret this agreement.

Section 7.12 Mutual Cooperation. The Agency and the County recognize that in the performance of this contract, the greatest benefits will be derived by promoting the interest of both parties, and each of the parties does, therefore, enter into this contract with the intention of loyally cooperating with the other in carrying out the terms of this contract and in promoting the interests of the elderly.

Section 7.13 Other Services. The Agency shall report to the Department the receipt by the Agency of any grant or contract between the Agency and any other party which directly or indirectly affects the performance of the services in this contract. At no time shall the quantity or quality of services provided by the Agency under this agreement be adversely affected.

Section 7.14 Welfare to Work Initiative.
Erie County strongly encourages all not-for-profit agencies that contract with the County of Erie to participate in the community service component of the County's Welfare to Work Initiative. This program places qualified public assistance recipients in community service placements. Clients participating in this component must work in their respective community assignments as a condition for receipt of welfare benefits. An agency representative should contact: Erie County Department of Social Services, Employment and Training Programs, for additional information regarding this program.

Section 7.15 Notice Address. All notices to the County shall be addressed to the Commissioner, Erie County Department of Senior Services, Room 1329, Rath Building, 95 Franklin Street, Buffalo, New

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York 14202, and all notices to the Agency should be addressed to:

Town of Amherst
Supervisor Brian Kulpa
Town Hall
5583 Main Street
Williamsville, New York 14221

Section 7.16 Non-discrimination. The Agency: 1) shall not discriminate against any employee or applicant for employment because of race, creed, religion, color, national origin, gender, age, disability, marital status, sexual orientation or citizenship status or any other status protected by New York State or Federal laws with respect to all employment decisions including, but not limited to recruitment, hiring upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment; 2) shall not discriminate in the selection of subcontractors on the basis of the owner's partners or shareholders' race, religion, color, creed, national origin, gender, age, disability, marital status, sexual orientation or citizenship status or any other status protected by New York State or Federal laws; 3) shall state in all solicitations of advertisement for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without regard to race, religion, creed, color, national origin, gender, age, disability, marital status, sexual orientation or citizenship status or any other status protected by New York State or Federal laws or is an equal employment opportunity employer; and 4) shall not discriminate against any client or applicant for services rendered under this agreement because of race, creed, religion, color, national origin, gender, age, disability, marital status, sexual orientation or citizenship status or any other status protected by New York State or Federal laws.

Section 7.17 Emergency Preparedness Plan In order to secure the well-being of clients receiving County-funded services provided by the Agency, as well as the staff and property of the Agency itself, the Agency shall prepare and have available for review by County personnel a comprehensive Emergency Preparedness Plan that details what actions are to be taken in the event of a natural or man-made disaster or emergency of whatever kind. To the extent possible, this Plan shall be coordinated with the overall master plan for emergencies in effect in the city, town or other municipality in which the Agency is located, as well as with Erie County's plan(s) for such emergencies.

Section 7.18 New York Executive Order 38. Pursuant to New York State Executive Order 38, issued January 18, 2012, and as prescribed by State regulations promulgated thereunder, should the Agency be considered a covered provider thereunder, Agency shall comply with all reporting obligations contained in such regulations. Reporting obligations include, but shall not be limited to, the submission of a completed EO 38 Disclosure form for each reporting period. Such forms shall be submitted in the manner and form specified by the State agency(ies) providing funds through this Agreement. All such reporting shall be made directly to such funding State agency(ies). The County shall not be responsible for receiving or forwarding such reports to State agencies. In addition to compliance with State regulations applicable thereto Agency shall comply with all substantive requirements of Executive Order 38, including the cap on certain executive compensation and required minimum percentage payments for direct care services. Evidence of such compliance shall be submitted to the County on an annual basis.

Section 7.19 Erie County Executive Order 13. The Agency shall comply with Erie County Executive Order 13 (2014) and agrees to complete the Certificate collectively attached hereto as Schedule "G" and made a part hereof. The Agency shall make such records available, upon request, to the County's Division

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of Equal Employment Opportunity for review. The County shall have the right, upon reasonable notice and at reasonable times, to inspect the books and records of the Agency, its offices and facilities, for the purpose of verifying information supplied in the Erie County Equal Pay Certification and for any other purpose reasonably related to confirming the Agency's compliance with Erie County Executive Order 13 (2014). Notwithstanding the termination provisions contained herein, violation of the provisions of Executive Order 13 (2014), may constitute grounds for the immediate termination of this Agreement and may constitute grounds for determining that the Agency is not qualified to participate in future County contracts.

IN WITNESS WHEREOF, The County of Erie and the Agency have caused this Agreement to be executed.

THE COUNTY OF ERIE

By: _____
Mark Poloncarz / Maria Whyte
County Executive/Deputy County Executive
Date: _____

Town of Amherst

By: _____
Brian Kulpa
Town Supervisor
Date: _____

Program Title: Case Management, Information and Assistance, Outreach

Approved as to content:

By: (Electronically signed)
David J. Shenk
Commissioner, Department of Senior Services

Date: _____

Approved as to form:

By: (Electronically signed)
Martin Polowy
Assistant County Attorney

Date: _____

Document # 21 - ____ -SS

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SCHEDULE A
STATEMENT OF SERVICES
CSE/EISEP

Case Management, Information & Assistance, Outreach

2021-2022

To the fullest extent applicable, Agency hereby agrees to the terms and conditions set forth in this Schedule:

Part I - Services, Terms and Conditions:

I. Erie County Department of Senior Services (herein, "County") is contracting with the Agency to provide services to older persons with the objectives of addressing basic needs and maximizing independence. To address basic needs, Agency must identify older persons in need using multiple formal and informal channels, assess those needs, and link individuals with appropriate services. The goal is to ensure that older adults in our community have safe, affordable housing, enough food to eat, accessible transportation, quality medical care, accessible home support services, quality neighborhood life, and access to critical government services.

To facilitate maximized independence, services must foster independence and empowerment, enabling clients to learn the skills necessary to access appropriate resources that will help them to meet their basic needs and continue living in the community.

The estimated percentage of low-income minority older persons relative to total population of older persons residing in Agency service delivery area is 4.3%. Agency must satisfy the service needs of low-income minority older persons in at least the same proportion as they are represented in your service delivery area. **Exhibit A** outlines demographics of unduplicated elderly for your service area and minimum number to be served with Case Management services.

a. **Case Management:** Comprehensive process which helps older persons with diminished functioning capacity, and/or their caregivers, gain access to and coordinate appropriate services, benefits and entitlements. Case Management consists of assessment and reassessment, care planning, arranging for services, follow-up, monitoring, and discharge. These activities must be provided by or under the direction of the designated case manager or case manager supervisor with a goal of maintaining the individual in the community as independently as possible.
    i. Case Management criteria:
        1. Individuals 60 years of age or older;
        2. Must be functionally impaired, i.e., need the assistance of another person, in at least one Activity of Daily Living (ADL) (i.e., bathing, dressing, toileting, transferring, or eating) or two Instrumental Activities of Daily Living (i.e., shopping, housekeeping, preparing meals, laundry, using transportation, telephoning, getting out of the home);
        3. Must have unmet needs, i.e., not receiving necessary assistance;
        4. Must NOT be receiving the same or similar services under the following programs: Titles XVII (Medicare), XIX (Medicaid) XX of the federal Social

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Security Act, or any other program;

5. Only Case Management services funded by the County are countable for Case Management unit entry.
6. An assessment may be requested and provided without evidence of unmet needs to determine if unmet needs exist. The client is entitled to the assessment and a statement of problems.

ii. Case Management activities for clients receiving community-based long term care services:

1. A comprehensive MDS-compliant assessment is the collection of information about a person's situation and functioning, and that of his/her caregivers, which allows identification of the person's specific strengths and needs in the major functional areas.
2. Development of, and adherence to, a goal-oriented care plan which directs case management activities.
    a. The care plan must be personalized and represent client's values and preferences.
3. Referrals are made to available community services that support the client in meeting their goals including services not funded through the County, and are appropriately documented in PeerPlace.
4. Coordination of the care plan (arranging and monitoring services) includes contacting service providers, conducting case conferences and negotiating with providers for the delivery of needed services to the client as stated in the care plan.
5. Follow-up and monitoring is ongoing and includes specific time frames for activities. Regular contact with the client and service providers is required to ensure that the care plan is meeting the client's needs and services are being delivered at the appropriate levels and quality.
6. Reassessment is the formal re-examination of the client's situation and functioning and that of his/her caregivers to identify changes which occurred since the initial assessment/last reassessment and to measure progress toward goals outlined in the care plan. It is done at least annually and more frequently if needed. Changes are made to the care plan as necessary.
7. Discharge is the termination of case management services. Reasons for discharge may include the client requesting discharge, the attainment of goals described in the care plan, the client needing a type of service other than case management or ineligibility for the service.

b. **Information and Assistance**: Information and Assistance may include three components:

i. Providing information on services, benefits, entitlements and other areas of concern to consumers or their representatives which enables them to locate and obtain needed resources on their own.

ii. Assistance to consumers in obtaining access to the services and resources available within their community. An individual is provided with information on a one-to-one basis about available services and opportunities in the community, assisted in defining problems/needs and capacities, receives direction or guidance relative to those identified issues and is linked to services and opportunities to meet the problems/needs. When appropriate, case assistance may also involve worker intervention, negotiation and advocacy with providers on the client's behalf to ensure the delivery of needed

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services and benefits. Also included in this is follow-up, to the extent possible, that the consumer receives the service.

iii. Referral is a two-step process involving the initiation of a linkage between a client and a service provider, and follow-up to determine whether the service has been or is being provided.

iv. Case Managed clients may also receive Information and Assistance units of service in instances where a Case Managed client contacts Agency for information or assistance with an issue not relating to their case managed services. For example, if a client is Case Managed because they receive Home Delivered Meals and contacts Agency for HEAP application guidance, that interaction counts as an Information and Assistance unit.

c. **Outreach**: Activities initiated by the Agency for the purpose of identifying potential clients or their care givers and encouraging their use of services and benefits. Outreach is when the Agency finds an isolated older person who has no prior knowledge of the County/Agency, not when an older person finds the County/Agency. The contact is documented in PeerPlace event profile as an Outreach.

i. Example 1: Staff visits to a new senior housing building to locate isolated individuals who have never been clients of the AAA. This contact must be conducted one-on-one and not done as a group presentation.

ii. Example 2: The AAA or its subcontractors have a table at a health event where providers conduct face-to-face identification of isolated individuals by discussing the individual's needs and available programs one-on-one.

iii. Example 3: A third party such as a police officer contacts the AAA and says there is an older person they see when on patrol that appears to be in need of services and asks that OFA staff do an Outreach visit.

iv. Reporting Clarification: Outreach is when the AAA/subcontractor finds an isolated older person who has no prior knowledge of the AAA, not when an older person finds the AAA/subcontractor.

II. Contract Personnel:

a. Agency must employ a Project Coordinator and Senior Case Manager(s) and/or Case Manager(s) with the following Minimum Qualifications and Job Descriptions, to fulfill terms and service requirements set forth in this contract.

i. The minimum hourly salary for all Case Managers must be **$16.00**.

b. Agency may also fill additional position(s) to fulfill terms and service requirements set forth in this contract at their discretion.

c. **New Case Managers must,** within (5) months from start date of employment**,** complete the "Competency-based online certificate training program in case management" developed by The Center for Aging and Disability Education and Research (CADER) at Boston University.

i. Existing Case Managers must complete 16 hours of locally developed training per contract year.

d. Agency must provide all Case Managers and staff who conduct contract activities and interact with the public, with photo identification which includes Agency name, Agency address, employee name, employee picture, employee emergency contact information and language stating that Agency is a contract agency of Erie County Department of Senior Services.

e. Employee Minimum Qualifications and Job Descriptions

i. **Job Title:** Project Coordinator

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1. **Minimum Qualifications:** Bachelor's degree, valid NYS driver's license, and reliable transportation.
2. **Job Description & Expectations:**
    a. Responsible for the overall supervision and coordination of services provided under contract with the Erie County Department of Senior Services. These services include case management and information and assistance, and may include chore and/or transportation services.
    b. Establishes and maintains linkages with other service providers in the service area to foster relationships that facilitate service delivery.
    c. Seeks to identify and generate additional resources that promote, enhance and improve services to the elderly.
    d. Supervises case managers and other project personnel. Conducts regular case conferencing sessions with case managers to ensure EISEP standards are met and care plan goals are effective and appropriate. Participates in case conferencing meetings with the assigned Department Supervisor.
    e. Conducts case record reviews for case managers under supervision to ensure standards are met by the Agency. As these activities are reported in PeerPlace as case management units of service, they should equal approximately 100% of a full time equivalent.
    f. Is responsible for the completion of reviews of COMPASS re/assessments by agency Case Managers within the 10 day turnaround time standard.
    g. If the agency finds itself over capacity for whatever reason, it is the responsibility of the Project Coordinator to reach out to the Department of Senior Services for assistance to ensure that EISEP standards will continue to be met.
    h. Responsible for coordinating the onboarding/training of new agency case management staff in accordance with current Erie County Department of Senior Services and NYSOFA guidelines.
    i. Assesses individual staff training needs and facilitates training opportunities which address these needs. Participates in trainings and in-services as required by the Erie County Department of Senior Services. May supervise student interns from area colleges and universities.
    j. Ensures that Case Managers complete NYSOFA required CADER trainings as well as the minimum 16 hours per year of additional job related trainings.
    k. Plans and implements a variety of outreach activities (such as visiting senior housing buildings to locate isolated individuals) that are primarily targeted to reach underserved elderly who are frail, socially isolated, minority and/or low income. Submits a report on outreach activities completed.
    l. Maintains necessary record keeping systems, prepares and submits mandated reports on services using available information technology resources. Reports include but are not limited to Quarterly Reports, Performance Measures results, monthly voter registration report, etc.

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m. All case manager/senior case manager responsibilities in addition to the Project Coordinator responsibilities outlined above.

ii. **Job Title:** Senior Case Manager

1. **Minimum Qualifications:** Bachelor's degree, valid NYS driver's license, and reliable transportation.
2. **Job Description & Expectations:**
   a. Provides information and referral on services to the elderly, their families and other service providers on the telephone, in person and through community forums.
   b. Conducts thorough intakes of clients to determine the need for case management services.
   c. Is responsible for in-home assessments of clients and development of care plans to meet needs. Implements care plans and revises as necessary.
   d. Advocates on behalf of clients with formal and informal support systems.
   e. Provides linkages and referrals to agencies and programs providing assistance to seniors. Stays current with programs pertaining to the elderly.
   f. Attends meetings, trainings and in-services as required by the Erie County Department of Senior Services.
   g. Demonstrates the ability to successfully utilize computer software for assessments, reporting (including worker log) and correspondence.
   h. Participates in regular case conferencing sessions with supervision and consults with supervisor as needed on difficult cases.
   i. Intervenes in crisis situations, making appropriate referrals to medical, environmental, mental health and utility emergencies.
   j. Conduct case conferencing sessions in the absence of supervisor.
   k. In absence of supervisor, oversee case managers and other cluster project personnel.
   l. Conducts case conferencing sessions with case managers to ensure EISEP standards are met and care plan goals are effective and appropriate.
   m. Assist supervisor in assessing individual staff training needs and facilitating training opportunities which address these needs. Participate in trainings and in-services as required by the Erie County Department of Senior Services. May supervise student interns from area colleges and universities.
   n. Plans and implements a variety of outreach activities (such as visiting senior housing buildings to locate isolated individuals) that are primarily targeted to reach unserved elderly who are frail, socially isolated, minority and/or low income. Submits a quarterly report on outreach activities completed.
   o. The Senior Case Manager assumes responsibility for a case management and information and assistance case load.
   p. Other duties as directed.

iii. **Job Title:** Case Manager

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1. **Minimum Qualifications:** Bachelor's degree, valid NYS driver's license, and reliable transportation.
2. **Job Description & Expectations:**
    a. Provides information and referral on services to the elderly, their families and other service providers on the telephone, in person and through community forums.
    b. Conducts thorough intakes of clients to determine the need for case management services.
    c. Is responsible for in-home assessments of clients and development of care plans to meet needs. Implements care plans and revises as necessary.
    d. Advocates on behalf of clients with formal and informal support systems. Provides linkages and referrals to agencies and programs providing assistance to seniors. Stays current with programs pertaining to the elderly.
    e. Attends meetings, trainings and in-services as required by the Erie County Department of Senior Services.
    f. Demonstrates the ability to successfully utilize computer software for assessments, reporting (including worker log) and correspondence.
    g. Is responsible for maintaining client case records in an accurate and timely manner. These records will reflect understanding of and adherence to established EISEP standards.
    h. Participates in regular case conferencing sessions with supervision and consults with supervisor as needed on difficult cases.
    i. Intervenes in crisis situations, making appropriate referrals to agencies dealing with medical, environmental, mental health and utility emergencies.
    j. Maintains a working knowledge of community resources to meet the needs of clients.
    k. Other duties deemed as appropriate by Project/Assistant Coordinator

f. Agency will provide County detailed job descriptions of all staff positions upon request. In addition, the County shall have the right to review salaries of the staff detailed in this contract.
    i. The minimum hourly salary for all Case Managers must be **$16.00**.
g. County shall also have the right to review the credentials of any staff utilized to provide services under this Contract. However, it shall remain the duty of Agency to review and approve credentials and employ only persons who are qualified in all respects for the positions in which they are placed. Agency will not be reimbursed unless this requirement has been fulfilled.
h. Agency agrees, to the greatest extent feasible, to employ older persons in the implementation of this agreement.

III. Pay Per Client Model (PPCM):

a. Agency will be reimbursed for actual unduplicated clients served per service type (Case Management, Information & Assistance, Outreach), per the rates specified in Schedule E attached hereto.
b. The Peerplace Served Client Summary will be utilized to verify clients served and service type.
c. At the sole discretion of the County, an expenditure-based reimbursement policy may be enacted, with monthly payments to be based upon receipt, review, and approval of a monthly

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financial report based on expenditures of the previous month.

d. Agency unduplicated served client/I&A contact goal per service type is as follows:
   i. Case Management: **417**
   ii. Information and Assistance: **417**
   iii. Outreach: **29**
e. If agency is underperforming, Department may at its sole discretion reallocate goals of, and possible funding to, another agency in order to achieve Department objectives.
f. Agency is responsible for the following deliverables:
   i. Total annual case management hours: **2960 (417 * 7.1 average hours per client)**
   ii. Total annual Information & Assistance contacts: 1084 **(417 * 2.6 average contacts per I&A client)**
   iii. Total annual Outreach clients: **29**
   iv. Units of service are measured in 1-minute increments. Acceptable service activities include travel time, documentation, all client contact, and work done in support of the client care plan.

IV. Emergency Closure Preparedness Plan:

a. If Agency location is closed during normal operating hours for any reason, Project Coordinator must contact assigned department supervisor to advise of closure details and to develop a plan to ensure critical agency functions continue.

V. Geographic Area Served:

a. Amherst 14226, 14228; East Amherst 14051; Williamsville 14221; Getzville 14068; Clarence 14031, 14032; Akron 14001; Newstead 14001
b. Agency agrees to provide services to individuals in areas contiguous to the defined service area upon County request. County will exercise this option to regulate caseload sizes of the Agency's Case Managers. If client demand exceeds the Agency's capacity, the County will may assign excess cases elsewhere. Agency retains the responsibility to ensure their capacity is maintained.

VI. Performance Measures:

a. RBA Measure #1:
   i. Community referrals made for 10% of served Case Management clients each quarter.
      1. 3% of these community referrals must be Mental Health referrals.
   ii. Method of data-gathering: Contract agency specific report and PeerPlace Referral report
b. RBA Measure #2: 20% of Information & Assistance unduplicated clients to be provided a useful referral or linkage.
   i. Method of data-gathering: Information and Assistance Follow-up Survey will be completed by County annually with results provided to the Agency.
c. Annual Satisfaction Survey: The effectiveness and quality of case management services will be evaluated by the County with the results presented to the Agency during the annual assessment.

VII. Contract Property:

a. Purchases by the County are not subject to State and local sales or excise taxes. There is no exemption, however, for social security, unemployment insurance and like taxes. All equipment, purchased under this agreement with a unit cost of $500 (five hundred dollars) and/or with a useful life of more than two (2) years, shall be deemed to be the property of the County and shall be used as far as practicable by the Agency for the purpose of carrying out the extent of this agreement, and shall not be available for the general use of the Agency. A

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complete inventory of all such equipment shall be maintained by the Agency. The Agency is responsible for returning inventoried property to the County at the Agency's expense. All such equipment shall be identified as the property of the County. Disposition of the inventoried property shall be made in accordance with applicable provisions of law. The Agency shall reimburse the County for all loss or damage due to any cause other than normal wear and tear, and such reimbursement shall include damages for loss due to the following causes as well; fire, theft or mysterious disappearance.

VIII. Contribution Income:

a. Agency shall use its best effort to maximize applicable income.
b. Agency shall establish and maintain a contribution schedule subject to the approval of the County, as required by the New York State Office for the Aging.
c. Agency shall cooperate with the County in efforts to receive funds from those programs where appropriate.
d. Agency, consistent with the provisions of this Agreement relating to contract clients, and with a view toward increasing the funds available for contract services, shall use its best effort to maximize applicable income.
e. Participants must be informed of and provided with the opportunity to voluntarily contribute to the cost of services.
f. Participants may determine for themselves the contribution they are able to make.
g. **Under no circumstances will any individual be refused service because of inability to contribute.** All other income earned by the Agency with respect to contract funds or as a result of conduct of contract services must be included in the calculation of the amount of Agency income.
h. Pursuant to New York State Regulations, all Agency service personnel, both paid and volunteer, who handle contributions, must be bonded, with the exception of government employees and attorneys providing legal services. Agencies can obtain a "blanket bond" for all employees.

IX. Program Reports:

a. On or before the tenth (10) day of the month after the end of a quarter, Agency is to submit a Quarterly Program Report on the previous quarter's activities. The report and instructions will be provided by the County. All reports are to be submitted electronically to the Long Term Care Coordinator, Assistant Long Term Care Coordinator, Senior Case Manager, Senior Coordinator of Neighborhood Services and Contract Monitor, with a copy to the Executive Director of Agency. Delinquent reports may result in the County withholding payment to the Agency of (10) percent of the invoice claim submitted subsequent to the late report.
b. If the Agency utilizes the online support service contracted through the County, such users shall be subject to the approval of the County as deemed necessary by the responsibilities of the user's jobs. The Agency agrees not to allow user login accounts to be used by or shared with more than one individual user, except that the user login accounts may be reassigned from time to time, by the County, to new users who are replacing former users who have terminated employment with the Agency or otherwise changed job status or function and no longer require access to the service. Failure of the Agency to observe these restrictions may result in termination of the use of the service and therefore termination of this contract.

X. Assessments:

a. The County is responsible for evaluation of all services provided in connection with this Agreement. The Agency shall cooperate with the County in the conduct of such evaluations that are deemed appropriate. Under New York State Office for the Aging (NYSOFA)

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regulations, an annual assessment must be completed within 365 days of the previous assessment. In addition to the traditional items included on the annual assessment, the record of the following items will be considered:

b. Obtain and maintain documentation as required in this Agreement including but not limited to providing current liability and Workers' Compensation insurance certificates
c. Submit a monthly financial report to the County on or before the tenth (10) day of the month after the end of each monthly period of the program year, and an annual fiscal report to the County, within thirty (30) days after the end of each program on forms provided by the County
d. The Agency is required to work with the County on quality improvement efforts. Performance Measures will be reviewed internally and failure to report data on Performance Measures will be addressed in the annual assessment and may lead to a corrective action plan with the expectation of improvement over the next six months
e. To support compliance with these expectations, the County will provide the following notifications:
    i. 14 days past due - a reminder will be spent to the responsible party at the Agency
    ii. 30 days past due - the Executive Director of the Agency will be notified
    iii. 60 days past due - the Board President will be advised.

Part II – Agency Representations:

Agency Information:

Town of Amherst by and through the Amherst Center for Senior Services

Place of Performance:

370 John James Audubon Parkway, Amherst NY 14228

Organizational Chart showing all functional units of Applicant Agency and identifying which units will conduct Grant activities:

Attached

Board of Directors, if applicable, listing of current members of the Board with contact information for the President of the Board:

Attached

When was Applicant Agency established? (Month & Year):

June 1962

Agency's total operating budget for last fiscal year:

Attached

The basis of the Agency's authority to conduct the programs and services described in this application

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(license, board approval, etc.):

Approval of the Town of Amherst Town Board

Agency's overall programs and services identifying those which are available to older adults:

All Town of Amherst program and services are available.
Purpose of the Amherst Center for Senior Services:
The Town of Amherst Department of Senior Services is a Human Service agency serving the community's older adult residents. Its mission is to foster the physical and mental well-being of seniors by providing educational and recreational activites, health-related, social and supportive services, and opportunities for volunteerism.
Services Provided: Classes (75 various- exercise, Discussion, Computer, Chronic Disease Management, etc.): Clubs (Knitting, Bridge & Pinochle, Billiards, Travel,etc.): Congregate Nutrition Program: Home Delivered Meals; Support Groups; Outreach; Social Model Adult Day Services; Transportation and Volunteer opportunities.

Staffing Pattern:
Please identify each position by descriptive job title, the number of hours per week, number of staff at that title in the program, and if vacant, the anticipated fill date:

Job Title	**# hrs**	**# staff**	**fill date**
Project Coordinator	35	1	
Case Manager	35	2	
Social Case Worker (PT)	19	3 *(in kind)	
Clerk Typist (PT)	19	1	
Clerk Typist (Seasonal)	6	1	
Director of Senior Services	4	1	

Amendments to this Application:

The Agency must submit to the County necessary documentation of changes, additions, or deletions to the information provided in this Schedule.

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SCHEDULE B
COUNTY OF ERIE STANDARD INSURANCE REQUIREMENTS

1. The Agency shall obtain, at its own cost and expense the following insurance coverage with insurance companies licensed in the State of New York and shall provide a Certificate of Insurance as evidence of such coverages on the attached County of Erie Standard Insurance Certificate or its equivalent. It is also agreed that such insurance will be kept in full force during the life of the contract, and in default thereof, this contract shall be void and of no effect.

A. Comprehensive/Commercial General Liability -with a minimum combined single limit of bodily injury and property damage of $1,000,000 per occurrence and annual aggregate. The coverage shall include Premises and Operations; Products/Completed Operations; Independent Contractors; Contractual Liability (sufficient to cover all liability assumed under contracts with the County of Erie); -Personal Injury Liability (Coverages A, B & C)

B. Automobile Liability -with a minimum combined single limit of liability for Bodily Injury and Property Damage of $1,000,000 each occurrence. The coverage shall include Owned, Hired, and Non-Owned Autos (Symbol "1" should be designated for Liability Coverage on the Business Auto Policy).

C. Excess "Umbrella" Liability -with a minimum limit of $1,000,000.

D. If professional services are provided - Professional Liability -with a minimum limit of $1,000,000.

E. Worker's Compensation and Employers' Liability -provides statutory coverage in compliance with the Worker's Compensation Law of the State of New York. Evidence of Workers' Compensation must be on forms approved by the New York State Workers' Compensation Board.

2. Comprehensive/Commercial General Liability, Automobile Liability, and Excess "Umbrella" Liability shall name the County of Erie as additional insured. The Certificate Holder should be addressed as follows: County of Erie, **c/o** Department of Law, 95 Franklin St., Room 1634, Buffalo, New York 14202.

3. All policies in which the County of Erie is named as an additional insured shall provide that

A. The insurance company or companies issuing the policies shall have no recourse against the County of Erie for payment of any premiums or assessments under any form of policy.

B. The insurance shall apply separately to each insured (except with respect to the limit of liability).

4. All entities which have elected to become self-insurers for liabilities formerly covered by policies of Automobile, General, Excess Umbrella Professional Liability Insurance, Worker's Compensation and Disability Benefits are required to provide to the Department, proof of coverage equivalent to the limits required.

5. Prior to cancellation or non-renewal of the above policies, the insurer will endeavor to provide 30 (thirty) days advance written notice to the County of Erie, Department of Law, 95 Franklin Street, Room 1634, Buffalo, New York 14202 and the Agency requesting the certificate.

6. All Certificates of Insurance shall be approved by the County of Erie Department of Law prior to the inception of work, and all payments will be delayed until the requirements are met.

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SCHEDULE C
STANDARD ASSURANCES
for
TITLE III OF THE OLDER AMERICANS ACT OF 1965 AS AMENDED

To the fullest extent applicable, Agency hereby makes the representations and agrees to the terms and conditions set forth in this Schedule as if the Agency were the Applicant/ Applicant Agency:

1. Purpose of Program

The Applicant understands and agrees that it is the purpose of the Title III Program to foster the development of a comprehensive and coordinated service system for older persons within the planning and service area for the provision of supportive services, nutrition services and the establishment of multipurpose senior centers.

The primary objectives of this system are:

(a) To secure and maintain maximum independence and dignity in a home environment for older persons capable of self-care with appropriate supportive services; and

(b) To remove individual and social barriers to economic and personal independence for older persons, including the provisions of opportunities for employment and volunteer activities in the communities where older persons live.

2. Goals and Utilization of Resources

The Applicant further understands and agrees that in order to achieve the purpose of the Title III Program the resources made available by the State Agency and the Area Agency are designed to:

(a) Provide for the development and implementation by the Area Agency, in conjunction with other planners and service providers, and older consumers of services, of an Area Plan which sets forth specific program objectives and priorities for meeting the needs of the elderly with special attention being given to the needs of older persons with the greatest economic or social need. Applicant may use methods such as location of services and specialization in the types of services most needed by these groups to meet this requirement. However, applicant may not use a "means test" or other test whereby the income or resources of an older person are used to deny or limit that person's receipt of services.

"Greatest economic need" means the need resulting from an income level at or below the poverty threshold established by the Bureau of the Census. "Greatest social need" means the need caused by non-economic factors which include physical and mental disabilities, language barriers, cultural or social isolation including that caused by racial or ethnic status, which restrict an individual's ability to perform normal daily tasks or which threaten his or her capacity to live independently.

(b) Increase the capability of the Area Agency to develop and implement action programs designed to achieve the coordination of existing social service systems in order to make such systems more effective, efficient, and responsive in meeting the needs of the elderly;

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(c) Draw in increasing commitments from public and private agencies which have resources that can be utilized to serve older persons, and encourage such agencies to enter into cooperative arrangements to facilitate access to and utilization of all existing services and to develop social and nutrition services effectively and efficiently to meet the needs of older persons.

(d) Make existing social services more accessible to older persons in need through the development and support of services such as transportation, outreach, information and referral, and escort which can increase the ability of older persons, including the older physically and mentally disabled, to obtain other social services; and

(e) Promote comprehensive services for the elderly through the development and support of social services which are needed by older persons but which are not otherwise available such as congregate meals, continuing education, health and health screening programs, legal services, advocacy, informational and referral services, daycare, protective services, residential repair and renovation, physical fitness and recreation services, home health care and homemaker services.

3. Targeting

Contract services shall be available to the population 60 years of age *(Title III-E and Grandparenting assistance – age 55)* and over residing in the designated service area, unless otherwise provided in this agreement. However, priority for service shall be given to those older persons with greatest economic or social need; that is, those who, because of low income, physical or mental impairment, minority status, cultural or social isolation, are at greater need. The Agency agrees to cooperate with the Department of Senior Services and its specialized programs for the frail elderly, and in accord with this Agreement, to target its services to those persons identified as being at particularly high risk to institutionalization.

4. Authority and Capacity of Applicant Agency

The Applicant assures that it has the authority and capacity to develop this proposal and to carry out a program pursuant to it within the planning and service area.

5. Staffing of the Applicant Agency

Adequate numbers of qualified staff, including members of minority groups, will be assigned to assure the effective conduct of responsibilities under this proposal. Subject to the requirements of merit employment systems of local government, preference will be given to persons aged sixty (60) or over for any staff positions (full-time or part-time) for which such persons qualify. The proposed staffing plan for the Applicant which sets forth the number, type of personnel employed and the timetable for the hiring of staff for the project year is included in this application. The Applicant understands and agrees that, once the staffing plan has been approved by the Area Agency, such plan must be adhered to in all personnel actions taken by the Applicant, and that, if the Applicant determines it must deviate from such plan, it must obtain the prior approval of the Area Agency.

6. Standards of Personnel Administration

In cases where the Applicant is a public agency, it will establish and maintain methods of personnel administration which conform to the Standards for a Merit System of Personnel Administration, and any standards prescribed pursuant to 5 USC 3371 et. seq. and 42 USC 4701

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et. seq. (previously referenced in part as the Inter-governmental Personnel Act of 1970). Such methods shall be maintained in the files of the Applicant and shall be made available to the Area Agency and the State Agency upon request.

7. Contributions for Social Services

The Applicant assures that it shall afford older persons with a free and voluntary opportunity to contribute to all or part of the costs of the social services provided under this proposal. The applicant must protect the privacy of each older person with respect to his or her contribution and must establish appropriate procedures to safeguard and account for all contributions. Contributions made by older persons are considered program income and must be used by the Applicant to expand services. The Applicant shall consult with the Area Agency regarding proposed contributions. Each older recipient shall determine for himself, what he is able to contribute toward the cost of the social service. No older person shall be denied a social service because of his failure to contribute to all or part of the cost of such service.

8. Licensure Requirements

The Applicant assures that where State or local public jurisdictions require licensure for the provision of social services, it shall be licensed, or shall meet the requirements for licensure. All services provided must meet any existing state and local safety requirements for the provision of those services.

9. Evaluation

The Applicant assures that it will cooperate and assist in any efforts undertaken by the Area Agency, the State Agency, or the Administration on Aging to evaluate the effectiveness, feasibility, and costs of activities under the area proposal.

10. Public Information

The Applicant will provide for a continuing program of public information specifically designed to assure that information about the program and activities carried out under this proposal are effectively and appropriately promulgated throughout the geographic area.

11. Maintenance of Effort

The Applicant assures that there will be expended for the purposes for which payments are made for activities under this plan, for the year for which such payments are made and from funds from non-Federal resources, an amount not less than the amount expended for such purposes from such funds during the previous year.

12. Confidentiality

The Applicant must establish procedures in accordance with the client confidentiality requirements of applicable state and federal laws, rules and regulations, to protect the confidentiality of information about older persons collected in the delivery of services. The procedures must ensure that no information about an older person, or obtained from an older person by the applicant or the State or area agencies, is disclosed by the applicant or agency in a form that identifies the person without the informed consent of the person, unless the disclosure is required by court or order, or for program monitoring by authorized Federal, State, or local monitoring agencies.

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13. Drug-Free Workplace

The applicant will comply with the Drug-Free Workplace Acts of 1988, 45 CFR Part 76, Subpart F as amended, replaced, and/or renumbered. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than **FIVE** calendar days after such conviction;

(e) Notifying the agency in writing, within **TEN** calendar days after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within **30** calendar days of receiving notice under subparagraph (d) (2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a),(b),(c),(d),(e) and (f).

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New York State Office for the Aging

ATTACHMENT A

2020-24 FOUR YEAR PLAN

STANDARD ASSURANCES
For the Period:
April 1, 2020 - March 31, 2024

Applicable to the following:

Title Ill-B of the Older Americans Act

Titles Ill-C-1 and Ill-C-2 of the Older Americans Act

Title Ill-D of the Older Americans Act

Title Ill-E of the Older Americans Act

State Transportation Program

Caregiver Resource Center (CRC)

Wellness in Nutrition (WIN)

Community Services for The Elderly Program (CSE)

New York State Expanded In-Home Services for The Elderly Program (EISEP)

Congregate Services Initiative (CSI)

Emergency Preparedness Plans

Mental Health Services

Health Insurance Information, Counseling and Assistance Program (HIICAP)

Unmet Need

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The Standard Assurances applicable to, and included in, this 2020-24 Four Year Plan (hereafter collectively referred to as "Plan") shall be effective April 1, 2020.

Standard Assurances Applicable to All Programs

1. Statutes, Regulations, and Policies: The area agency on aging (AAA) assures that all its activities under this Plan shall conform with all applicable Federal, State, and local laws, and with Federal and State regulations, and program standards and Program Instructions of the New York State Office for the Aging (NYSOFA) that apply to such activities. Applicable laws include but are not limited to the following:

Federal Statutes, Regulations, and Policies

The Older Americans Act (OAA) of 1965, as amended (42 U.S.C. 3001, et. seq.)

2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards)

2 CFR Part 376 (Nonprocurement Debarment and Suspension)

2 CFR Part 382 (Requirements for Drug-Free Workplace (Financial Assistance) — implementing 2 CFR Part 182)

45 CFR Part 75 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards)

45 CFR Part 80 (Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964)

45 CFR Part 84 (Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance)

45 CFR Part 93 (New Restrictions on Lobbying, see 91-PI-05 [01/24/91])

45 CFR Part 1321 , Subparts A-D (Grants to State and Community Programs on Aging)

Age Discrimination in Employment Act of 1975, as amended (29 U.S.C. 621, et seq.)

Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101, et seq.) and implementing Federal regulations (28 CFR Parts 35 and 36) and 17-PI-21 [08/04/17].

Civil Rights Act of 1964, Title VI, as amended (42 U.S. C. 2000d, et seq.)

Equal Employment Opportunity Act of 1972, as amended (42 U.S. C. 2000e, et seq.)

Equal Pay Act of 1963, as amended (29 U.S.C. 206)

Hatch Act (5 U.S.C. 1501, et seq., Political Activity of Certain State and Local Employees)

Home Energy Assistance Act of 1981, as amended (42 U.S.C. 8621, et seq.)

Rehabilitation Act of 1973, Section 504 (29 U.S.C. 794, Nondiscrimination under federal grants and programs)

Single Audit Act Amendments of 1996 (31 U.S.C. 7501, et seq.)

Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §

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4601, et seq.)

Office of Management and Budget (OMB):

OMB Circular A-102 (Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments) codified at 2 CFR Part 200

OMB Circular A-133 (Audits of State and Local Government and Non-Profit Organizations) codified at 2 CFR Pan 200.500

Federal Executive Order 11246, as Amended by Executive Order 11375 (Affirmative Action), as Amended by Executive Order 12086 (Consolidation of Compliance Functions), and as Amended by Executive Order 13279 (Equal Protection for Faith-Based and Community Organizations).

Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency)

HHS Grants Policy Statement (U.S. Department of Health and Human Services) https://www.hhs.gov/sites/default/files/grants/grants/policiesregulations/hhsgpsl 07 .pdf

State Statutes, Regulations, and Policies

New York State Elder Law

New York State Office for the Aging Rules and Regulations (9 NYCRR Parts 6651, 6652, 6653, 6654, 6655, and 6656)

Executive Law, Article 15 (Human Rights Law)

Executive Law, Article 7-A (Solicitation and Collection of Funds for Charitable Purposes)

All NYSOFA Program Instructions (htt s://a in .n . ov/ProvidersandStaff//ssuances//ssuances.cfm

2. Program Implementation: The AAA identified in this Plan has the authority and the responsibility for effective implementation of Title Ill of the Older Americans Act (OAA), Community Services for the Elderly (CSE), Expanded In-Home Services for the Elderly Program (EISEP), Congregate Services Initiative (CSI), Wellness in Nutrition (WIN), State Transportation Program, Health Insurance Information Counseling and Assistance Program (HIICAP), Caregiver Resource Center (CRC) programs, and Unmet Need and to support Title VII and the State Long Term Care Ombudsman Program (LTCOP). This AAA agrees to carry out directly or through contractual or other agreements, programs in its planning and service area (PSA) as detailed in this Plan, and in its Title Ill-B, Title Ill-C, Title Ill-D, and Title Ill-E, EISEP, CSE, CSI, WIN, State Transportation Program, HIICAP, and CRC Applications for Funding (Applications).

3. Changes to this Plan: The AAA assures that it shall submit for approval to NYSOFA necessary documentation for changes, additions, or deletions to this approved Plan, and the Title Ill-B, Title Ill-c, Title Ill-D, Title Ill-E, EISEP, CSE, CSI, WIN, State Transportation Program, HIICAP, CRC Applications, and Unmet Need.

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4. Utilization of Funding: The AAA understands and agrees that it shall apply only for funds which are necessary to meet the specific needs of older adults within its PSA for the next year and understands that NYSOFA shall not award any funds which cannot be so utilized.

5. Approved Costs, Budget Modifications:

   A. Expenditures: The AAA agrees that expenditures shall be made only for authorized items of expense contained in the budget section of the approved Applications. Cost overruns up to $1 ,000 or 10% (whichever is greater) for an individual budget category for authorized items of expense will be allowed as long as the total costs do not exceed the total amount of the grant. If and when expenditures in excess of $1 ,000 for items not previously budgeted (e.g., equipment, personnel or contractor items) become necessary, the AAA shall submit a written request to NYSOFA and await NYSOFA approval before making such expenditures. Also, if costs for an individual budget category will exceed the budgeted amount by more than $1,000 or 10%, whichever is greater, a budget modification must be approved in writing by NYSOFA before these costs will be reimbursed. (See 05-Pl-09 [6/15/05]).

   B. Equipment Disposition: If equipment costing $1 ,000.00 or more is purchased with any Federal or State funds under this Plan, and the equipment is no longer needed for activities supported by such programs, NYSOFA reserves the right to select a recipient for and approve the transfer to such recipient of such equipment, which must be used for services to older adults.

6. Vouchering: The AAA agrees that State Vouchers submitted for reimbursement of expenses incurred in the conduct of this Agreement will not include any expenses which have been, or will be, reimbursed from other sources (e.g., other Federal or State funds). The AAA shall file claims for all payments on a timely basis in accordance with procedures promulgated by NYSOFA. The AAA agrees to accept payments electronically as required by New York State for expenses incurred and will enroll in the OSC (Office of the State Comptroller) electronic payment program, unless a request for Exemption from Electronic Payment is approved by NYSOFA.

7. Access to Records: The AAA agrees to maintain appropriate programmatic and fiscal records for the programs included under this Plan. Such records must be retained for six years after receipt of final payment. Authorized representatives of the Administration for Community Living (ACL), the New York State Comptroller or his authorized representatives and staff of NYSOFA shall have access to and right to examine all books, documents, and all pertinent materials of the AAA related to the programs included under this Plan. In addition, the AAA shall provide access to other Federal and State governmental agencies at the request of NYSOFA.

8. Indemnification: The AAA agrees to hold NYSOFA and the State of New York harmless and indemnify it from liability for actions the AAA takes under this Plan. In the event any claim is made or any action is brought against NYSOFA or the State of New York, arising out of negligent or careless acts or any neglect, fault or default of an employee, agent, independent contractor, trustee or volunteer of the AAA, either within or without the scope of his/her employment or scope of authority, or arising out of the AAA's negligent performance, NYSOFA shall have the right to withhold further payments for the purpose of set-off in sufficient sums to cover the claim or action and accompanying litigation costs. The rights and

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remedies of NYSOFA provided for in this Standard Assurance shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Plan.

9. Personal Client Information: The AAA agrees that personal information relating to individuals who apply for or receive services pursuant to this Plan Shall be kept confidential by the AAA and shared on a need-to-know basis only With AAA and contractor staff for purposes of providing programs and services. Such information can be shared with entities outside those involved in delivering programs and services only with the informed consent Of the individual served or pursuant to a court order or when there is deemed to be actual and immediate danger to the health or welfare of the individual,

10. Contracts:

10.1 AAA Responsibilities for Contract Administration,

A. Minority and Women Owned Business (WWBE) Contracts. The AAA assures that it will comply with all Federal, State, and local laws regarding opportunities for minority owned/operated and women owned/operated organizations.

B. Service-Disabled Veteran-Owned Businesses (SDVOB) Contracts: The AAA assures that it will comply with ail Federal, State, and local laws regarding opportunities for servicedisabled veteran-owned businesses (SDVOB) organizations.

C. Technical Assistance. The AAA shall provide technical assistance and information in a timely manner to all contractors.

D, Contract Approval: The AAA shall enter into formal contracts in accordance with the Contractor Roster contained in this Plan. All contracts shall be written in accordance with Federal, State and local standards and a copy Of the fully executed contract (including budgetary information) Shall be forwarded to NYSOFA no later than thirty (30) days after the execution date of the contract. The AAA shall maintain contracts for all contractors as well as supporting documentation for all vouchers from contractors in accordance with the Section 7, Access to Records. The AAA when contracting with a business entity (rather than a non-profit organization) for the delivery Of OAA and/or CSE services shall comply With the review process established by NYSOFA.

E. Contract Monitoring The AAA shall monitor its contractors to ensure that contractors perform in accordance With the requirements Of Federal, State and local laws, regulations and guidance documents (including AOA/ACL and NYSOFA Program Instructions, Technical Assistance Memoranda, and Informaticn Memoranda) and this Plan and make expenditures only for authorized items of expense contained in the approved budgets. The AAA shall further ensure that if and When other than authorized expenditures become necessary, the contractor shall request and await AAA approval before incurring such expenditures. The AAA shall make any necessary budget modifications and shall submit a copy to NYSOFA within 30 days Of its effective date,

F. Funding Limitations: The AAA may enter into a contract that extends beyond the renewal date of an Application, In entering into a contract beyond the renewal date Of an Application, the AAA should not make a commitment that may exceed the next year's

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annualized funding level, and the contract must state that it is contingent upon the provision of funding to the AAA in the subsequent year.

G. Data and Programming: The AAA assures that any service, product, repott or other information generated by a computer or otherwise supplied under this Plan provided by

the AAA to NYSOFA or other State or Federal agencies shall, when used in accordance with supplied documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations.

Any services or products purchased with funds under this Plan shall come with a warranty that those services shall be provided in an accurate and timely manner without interruption, failure or error due to inaccuracy of the service's or product's operations in processing date/time data (including but not limited to calculating, comparing, and sequencing) various date/time transitions including leap year calculations.

The supplier of such services shall be responsible for damages resulting from any delays, errors or untimely performances resulting therefrom, including but not limited to the failure or untimely performance of such services.

H. Conformance with This Plan: The AAA agrees that all contracts, including contractor's subcontracts, funded under this Plan shall contain a provision that the work will be performed in accordance with the terms of this Plan, and further agrees to make such Plan available to its contractor for such purposes.

I. Integrity and Public Purpose: The AAA shall maintain the integrity and public purpose of services provided, and service providers, under the OAA in all contractual and commercial relationships.

J. Disclosure of Contractors and No Diminishment of Services: The AAA shall:

1) disclose to the Assistant Secretary of the AoA/ACL and the Director of the State agency:

a) the identity of each non-governmental entity with which such agency has a contract or commercial relationship relating to providing any service to older adults; and

b) the nature of such contract or such relationship;

2) demonstrate that a loss or diminution in the quantity or quality of the services provided, or to be provided, under the OAA by the AAA has not resulted and will not result from such contract or such relationship; and

3) demonstrate that the quantity or quality of the services to be provided under the OAA by the AAA will be enhanced as a result of such contract or such relationship.

K. Use of OAA Funds: The AAA agrees that funds received under the OAA shall not be used to pay any part of a cost (including an administrative cost) incurred by it to carry out a contract or commercial relationship that is not carried out to implement the OAA.

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L. Receipt of OAA Services: The AAA agrees that preference in receiving services under the OAA shall not be given by such agency to particular older adults as a result of a contract or commercial relationship that is not carried out to implement the OAA.

M. Focal Points: The AAA shall specify, in grants, contracts or agreements implementing the Plan, the identity of each focal point so designated.

N. AAA Funding Liability: The AAA assures that its contracts with providers shall provide that all payments to be made thereunder are subject to the availability of Federal/State funds and the AAA shall have no liability under the contract beyond the amounts available under adopted Federal and State budgets.

O. Record Maintenance: The AAA will require all contractors to maintain records and make reports in such form and containing such information as may be required by the AAA and NYSOFA. The AAA will require all contractors (including contractor's subcontractors) to comply with the provisions of the above Section 7 Access to Records, to maintain such accounts and documents as will permit expeditious determination to be made at any time of the status of award funds, including the disposition of all monies received from the AAA and the nature of all expenditures claimed against such funds.

P. Targeting: The AAA shall undertake a leadership role in assisting communities throughout the planning and service area to target resources from all appropriate sources to meet the needs of older persons with greatest economic or social need, including low income minority individuals with limited English language proficiency and older adults residing in rural areas. Such activities may include location of services and specialization in the types of services most needed by these groups to meet this requirement. However, the area agency may not permit a grantee or contractor under this part to employ a means test for services funded under this part. For purposes of this assurance the term "means test" is defined as an eligibility determination for a program or for services based upon an individual's or family's income and/or assets.

10.2 AAA Contract Requirements.

A. AAA assures that its contracts with providers of services shall include, and that its contractors will include in any subcontracts, the following provisions in addition to the provisions specified in B below:

1) Targeting. The Contractor, to the extent it has discretion regarding to whom it will provide services, agrees to provide services to those unserved and underserved older adults in greatest social or economic need, particularly those who are low income, low income minorities, older adults with limited English proficiency, Native Americans, and frail/persons with disabilities and older adults residing in rural areas in accordance with their need for such services, and to meet specific objectives established by the AAA for providing services to the above groups within the PSA. The Contractor agrees to concentrate the services on older adults in the targeted populations identified by the AAA following the methods the AAA has established for complying with the targeting requirements under the OAA and the Equal Access to Services and Targeting Policy issued by the New York State Office for the Aging (See: 12-Pl-08 [07/17/20121).

2) Language Access. The Contractor shall inform persons with limited English proficiency of the availability of language assistance, free of charge, by providing

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written notice of such assistance in a manner designed to be understandable by limited English proficiency persons at service locations and, at a minimum, have a telephonic interpretation service contract or similar community arrangement with a language interpretation services provider of their choice. The Contractor shall train staff that have contact with the public in the timely and appropriate use of these and other available language services.

3) Contributions. The Contractor shall provide participants an opportunity to voluntarily contribute to the cost of the service received, as appropriate. The Contractor shall use all collected contributions to expand the service for which the contributions were given to supplement the funds received under the OAA.

4) Client Needs. The Contractor shall assist participants in taking advantage of benefits under other programs.

5) Non-duplication. The Contractor assures that the services it provides are coordinated and do not unnecessarily duplicate services provided by other sources.

B, AAA assures that its contracts, and its contractor's subcontracts shall include the following provisions:

1) Reporting. The Contractor Shali provide the AAA with timely information needed to satisfy reporting requirements as specified by NYSOFA;

2) Record Retention and Accessibility, The Contractor agrees to maintain appropriate records and to retain them for six years after final contract payment js made. The Contractor agrees to provide access to all books, documents, and all pertinent materials related to the contract for examination to authorized representatives of the AoA/ACL, the New York State Comptroller or his/her representatives, and staff of NYSOFA and/or of the AAA.

3) Confidentiality. The Contractor agrees that, to the extent it or its subcontractors, if any, maintains personal information relating to applicants or recipients Of services pursuant to the contract, such information will be kept confidential and shared with the AAA; or with other entities upon the informed consent of applicant, recipient or an authorized representative of the applicant or recipient; or as required by Federal or State laws,

4) AAA Funding Liability. Payment to the Contractor is subject to the availability of Federal/State funds and the AAA shall have no liability under the contract beyond the amounts available under adopted Federal and State budgets. To the extent that the contract extends beyond the renewal date of AAAs Application, it is contingent upon provision of funding to the AAA in the subsequent year.

5) Conformance with AAA Area Plan. The Contractor agrees that it and any subcontractors will perform such work in accordance with the terms of the Area Plan, The AAA agrees to make the Area Plan available to the Contractor.

6) Warranty for Data and Programming. The Contractor warranties that services shall be provided in an accurate and timely manner without interruption, failure or error due to inaccuracy of the service's or product's operations in processing date/time data (including but not limited to calculating, comparing, and sequencing) various time/date

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transitions including leap year calculations. The Contractor accepts responsibility for damages resulting from any delays, errors or untimely performances resulting therefromi including but not limited to the failure or untimely performance of such services.

7) Responsibility. The Contractor certifies that, to the best of its knowledge and belief, it is and will remain in compliance with 2 CFR Part 376 - Nonprocurement Debarment

and Suspension, concerning public (Federal, State or local) transactions. If necessary, the Contractor will submit an explanation of why it cannot provide this certification.

8) Subcontracts. If the Contractor enters into subcontracts for the performance of work pursuant to this contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors and subcontractor staff. Nothing in the subcontract shall impair the rights of the AAA under this contract or the Area Agency Plan as approved by New York State Office for the Aging. It shall be the responsibility of the Contractor to monitor and assess the activities performed under such subcontracts, and to ensure that these activities are provided in accordance with all applicable requirements contained in this contract and Federal and State law.

10.3 AAA Contract Requirements for OAA Title Ill Programs.

The AAA agrees to include the following provision in its contracts for OAA Title Ill programs and services:

The Contractor agrees that for programs established and funded in whole or in part pursuant to Title Ill of the Older Americans Act, Contractor shall: specify how it intends to satisfy the service needs of low-income minority individuals, older adults with limited English proficiency, and older adults residing in rural areas in the area served by it; to the maximum extent feasible, provide services to low-income minority individuals, older individuals with limited English proficiency, and older adults residing in rural areas in accordance with their need for such services; and meet specific objectives established by the AAA, for providing services to Iowincome minority individuals, older adults with limited English proficiency, and older adults residing in rural areas within the planning and service area..

1 1. Responsibility: The AAA certifies that, to the best of its knowledge and belief, it is and will be in compliance with 2 CFR Part 376, regarding non-procurement debarment and suspension concerning public (Federal, State, or local) transactions. If necessary, the AAA will submit an explanation of why it cannot provide this certification.

12. Due Recognition: The AAA agrees that any program, public information materials, or other printed or published materials on the work of or funded by these programs shall give due recognition to NYSOFA and as appropriate AoA/ACL.

13. Rights to Materials: AAAs agree that all materials developed by the AAA or its contractors in connection with programs funded under this Plan shall be the property of NYSOFA. NYSOFA also reserves the right to copyright all such materials, the exclusive right to reproduce, publish or otherwise use, and to authorize others to use these materials, subject to any restrictions in Federal Laws and Regulations.

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14. Public Information: The AAA shall provide for a continuing program of public information specifically designed to assure that information about programs and activities carried out under this Plan is effectively and appropriately disseminated throughout the PSA. The AAA shall provide information to the public upon request. The AAA shall make public information available in the primary languages of the client populations, where appropriate. Public information shall also be made accessible to persons with disabilities, including those with hearing and vision impairments.

15. Limited English Proficiency: The AAA agrees to comply with 12-PI-08 [7/1 7/12], and in each PSA in which a substantial number of older adults of limited English proficiency reside, the AAA sha

A utilize jn the delivery of outreach services under Section 306(a)(2)(A) of the OAA, the services of workers who are fluent in the language spoken by a predominant number of such Older adults who are Of limited English proficiency and

B. designate an individual employed by the AAA, or available to such AAA on a full-time basis, whose responsibilities will include:

1) taking such action as may be appropriate to assure that counseling assistance is made available to such older adults who are of limited English proficiency in order to assist such older adults in participating in programs and receiving assistance under the OAA; and

2) providing guidance to individuals engaged in the delivery of supportive services under this Plan to enable such individuals to be aware of cultural sensitivities and to effectively take into account linguistic and cultural differences,

16. Propriety of Services: With regard to any activitiesfservices it supports, sponsors or provides under this Plan, the AAA shall:

A, Refrain from using funds to advance any sectarian effort and ensure that any services to be provided under this Plan shall be secular in nature and scope and in no event shall there be any sectarian, partisan, or religious services, counseling, proselytizing, instruction or other sectarian, partisan, or religious influence undertaken in connection with the provision of such services;

B The AAA will provide equal participation, services, activities and informational sessions without regard to partisan affiliation;

C. Refrain from using funds to advance any partisan candidate or effort; however, the AAA shall ensure that its providers. including senior centers and facilities, grant equal access to candidates regardless of policy views or party affiliation, consistent with 02-PI-19 (9/24/02];

D. Refrain and prevent the use by others under its control of official authority, influence or coercion to interfere with or affect elections or nominations for political Office;

E. Refrain from and prohibit any others receiving funds under this Plan for services or activities for older adults from attempting to coerce or advise other persons to contribute

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anything of value to a party, committee organization, agency or person for political purposes, nor engage in any other partisan activities under its auspices;

F. Conduct periodic evaluations and public hearings on activities carried out under the Plan. jn addition, the AAA assures that it has held a public hearing on this Plan in an accessible location, as required by NYSOFA regulations and has submitted the Plan to its Advisory Council for review and comment prior to submission to NY SOFA;

G. Be an advocate for Older adults in its PSA and monitor. evaluate and comment on all policies, programs, hearings and other community actions which Will affect Older adults;

its efforts shall include planning information sharing, coordination, interagency linkages, monitoring and evaluation to achieve a comprehensive, community-based system for serving older adults;

H- Identify and support (i.e., provide technical assistance, counseling) public and private nonprofit entities involved in the prevention, intervention, and treatment Of elder abuse and determine the need for such services;

I. Conduct internal monitoring Of directly provided services and monitoring Of contracted services. At a minimum, the AAA must conduct at least one on-site monitoring of each contractor every year. Such monitoring shall include ensuring that contractors comply With all applicable Statutes, regulations, policies and standards, including the non-discrimination requirements, in their provision of services to the client population. (See 99-Pl-20, [8/5/991.) In the event that the contractor has subcontracted the provision of direct services to another entitiß the AAA will monitor such direct provider to assure compliance With applicable laws and standards.

17. Equal Access to Services and Targeting:

17.1 Equal Access.

A. AAA agrees to comply With requirements for equal access to programs and services funded under the OAA and New York State law. Equal access includes language accessibility, nondiscrimination and concentration of services on target populations as required in the OAA, NYS regulations, other relevant laws and NYSOFA policies. AAA agrees that it Will not. based on age, race, color, national origin, disability, sex (gender), or religion, exclude any person from participation in; deny the benefits Of; or subject any person to discrimination, under any program or activity receiving federal financial assistance,

B, With regard to any activities/services it supports, sponsors or provides under this Plan, the AAA Shall serve any Older adults and ensure equal access for participation, services, activities, and informational sessions without regard to Age, Race, Color, Creed, National Origin, Sex, Disability, Sexual Orientation, Marital Status, Familial Status, Military Status, Arrest or Conviction Record, Predisposing Genetic Characteristics or Victims of Domestic Violence,

C, AAA agrees to examine the services it provides, identify any need for services to those with limited English proficiency, and develop and implement a system to provide those services

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so persons With limited English proficiency can have meaningful access in compliance with Federal Executive Order 13166,

D. With regard to language accessibility, AAA agrees that it will.

1) Ensure that limited English proficiency persons are informed at service locations of the availability of language assistance, free of charge, by providing written notice of such assistance in a manner designed to be understandable by persons With limited English proficiency.

2) At a minimum, have telephonic interpretation service contract or Similar community arrangement with a language interpretation services provider Of their choice,

3) Ensure all aging services staff with public contact are aware and trained in the timely and appropriate use of these and other available language services,

4) Report on the telephonic interpretation service which it has established in this Annual Implementation Plan under the section entitled, "Demographic Data and Targeting Objectives" as required in 12-PI-08 107/17/12].

5) Make available vital documents, as defined in 12-Pl-08 [07/17/20121 translated into the languages spoken by a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program/activity, for individuals in need of services or information in a language other than English for effective communication.

E The AAA will comply with Section 504 of the Rehabilitation Act of 1973 (applicable to programs or activities that receive federal financial assistance) and Titles Il (covering all services, programs, activities conducted by public entities) and Ill (covering private entities, including non-profits, that are considered places of public accommodation including. but not limited to health related offices and senior centers) of the Americans with Disabilities Act (ADA), AAA shall not discriminate against persons with disabilities in the provision of benefits or services or the conduct of programs or activities. The AAA will require its contractors to likewise comply with Section 504 of the Rehabilitation Act of 1973 and Titles Il and Ill Of the ADA,

17.2 Targeting.

The AAA will set specific targeting objectives and the methods to achieve the objectives, consistent With NYSOFA policy, for:

A. providing services to older adults with greatest economic need need resulting from an income level at or below the poverty line), older adults with greatest social need (i.e., need caused by non-economic factors, including physical and mental disabilities, language barriers. and isolation that restricts the ability of an individual to perform normal daily tasks or threatens the capacity of the individual to live independently), or older adults at risk for institutional placement; and

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B. providing services to low-income minority older adults, older adults with limited English proficiency, and Older adults residing in rural areas.

1 8, Coordination Of Services with other Government Programs: The AAA assures that those to be served under this Plan are not eligible to receive the same or similar services under Titles XVIII, XIX or XX of the Federal Social Security Act or any other governmental program and are not residents Of adult residential care facilities Who are receiving or are entitled by law to receive the same or substantially similar services from that facility, unless the AAA has in effect an agreement providing for reimbursement from the appropriate funding source for such services,

19. Licensure and Certification: The AAA shall ensure that where the State or local public jurisdictions require licensure or certification for the provision of servicesi the AAA and its contractors, and contractor's subcontractors if any, providing such services under the approved Plan shall be so licensed or certified. Workers delivering services funded under this Plan must be appropriately qualified, selected, trained and supervised.

20. Educational Opportunities: The AAA shall compile information on institutions of higher education in the PSA regarding courses offered to older adults and policies on enrollment and tuition and such Other information as may be necessary to encourage such educational activities and make a summary of this information available to older adults at appropriate places.

21- Reporting: The AAA agrees to comply with the reporting requirements as set forth by NYSOFA

A, The AAA agrees to maintain any client information that is collected and maintained for purposes related to an organization's responsibilities as a designated Area Agency on Aging, orto programs and services provided under the auspices of NYSOFA, in the Client Data System designated for their use by NYSOFA.

B. The AAA and its contractors utilize a Minimum Data Set (MDS) compliant assessment tool for: 1) assessing or re-assessing older adults for personal care levels I and Il, case management, home health aide, home delivered meals, consumer directed in-home services, and adult day/adult day health services, and 2) for obtaining data on these Older adults for reporting purposes (See: 14-Pl-02 [2/4/14))

C. in conducting the MDS-compliant assessment for the above-listed services, the AAA and its contractors will make every effort to complete the assessment and develop an appropriate care plan that includes formal and informal supports, during the initial Visit with the older adult(s). If the assessment and care plan are not completed during the initial visit, these activities must be concluded within 6 working days of the initial visit

D. The AAA understands the necessity of submitting, through the mechanism provided by NYSOFAi timely and accurate CAARS and client-based data to NYSOFA for Federal and State reporting purposes. The AAA assures that it will submit CAARS reports and consumer-based data as specified by NYSOFA within twenty days following the end of each reporting period. Failure to provide data accurately detailing AAA program activity within the time frames in the NYSOFA reporting procedures may result in the withholding of payments,

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22, Contributions: The AAA agrees to comply With all NYSOFA policies and procedures related to contributions made by or on behalf of individuals, including procedures to safeguard and account for all contributions including 18-Pl-17 [07/27/18], NYSOFA Contributions and Other Program Income Policy. Individuals With self-declared incomes at or above 'f 85 percent of the Federal Poverty Level will be encouraged to contribute at levels based on the actual cost Of services,

23, Funding Availability The AAA agrees that all payments to be made under this Plan are subject to the availability of Federal/State funds and NYSOFA shall have no liability to the AAA beyond the amounts made available in the Federal and State Budgets.

24, Terminations:

A, Any programs and funding under this Plan may be terminated at any time upon mutual written consent of NYSOFA and the AAA,

B. NYSOFA may terminate in whole or in part any programs and funding included in this Plan immediately, upon written notice of termination to the AAA, if the AAA fails to comply with

the terms and conditions of this Plan as it pertains to such program or funding and/or with any laws, rules, regulations, policies or procedures applicable to such programs.

C. NYSOFA may also terminate in whole or in part any programs or funding included in this Plan for any reason in accordance with the following provisions:

I) NYSOFA shall have the right to terminate any or all programs or funding included in this Plan early for: (i) unavailability of funds; (ii) cause, (iii) convenience; or (iv) nonresponsibility,

2) NYSOFA retains the right to cancel any programs included in this Plan, in whole Of in part without reason provided that the AAA is given at least 60 days [i] notice of its intent to cancel, NYSOFA may only invoke its right to terminate for convenience provided that NYSOFA has given written notice to the AAA at least 60 days prior to the date of termination, unless NYSOFA has otherwise reserved the right to terminate at any time. This provision should not be understood as waiving NYSOFA's right to terminate the program for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision,

3) The AAA shall make a full and final accounting of all funds received under ali terminated program(s) within sixty (60) days Of the termination notice.

D, Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return recejpt requested, The termination shall be effective in accordance with the terms of the notice,

E. Upon receipt Of notice of termination, the AAA agrees to cancel, prior to the effective date Of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new Obligations after receipt Of the notice Without written approval by NYSOFA.

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F. NYSOFA shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to any specific terms set forth elsewhere in this Plan. In no event shall NYSOFA be liable for expenses and obligations arising from the program(s) after the termination date,

G. The procedures for termination as set forth in A through F are subject to the requirements under the OAA, other pertinent Federal and State laws.

25. Native American Access to Services. The AAA agrees to pursue activities to increase access by older adults who are Native Americans to all aging programs and benefits provided by the agency, including programs and benefits under the OAA, if applicable,

Standard Assurances Applicable to all Older Americans Act Funding

26. Title Ill Funding: In applying for and receiving funding under Title Ill-B, Title Ill-C Title Ill-D and Title Ill-E of the OAA, the AAA understands and agrees that:

A. Availability: The AAA shall apply only for funds based on the appropriate allocation schedules promulgated by NYSOFA as well as any unexpended (carry-over) funds previously awarded to the AAA by NYSOFA. The AAA understands and agrees that carry-over funds may be awarded to the extent that these funds are incorporated into an approved applicationi provided that the requirements of 88-Pl-17 [3/24/38] are met. If the AAA applies for more funds than a subsequent closeout shows as the final carry-over balance, the AAA must submit a budget modification requesting a level of program expenditures which corresponds to the reduced Federal funds,

B, Area Plan Administration: The AAA shall budget no more than 10% of the combined Federal allocations (including carry-over) for Titles 111-3, Ill-C-l, Ill-C-2, Ill-D and Ill-E for Area Plan Administration, The amount of Federal dollars expended on Area Plan Administration cannot exceed 10% of the combined Federal expenditures for Titles Ill-B, Ill-c-1/ Ill-c-2, Ill-D and Ill-E.

C. Matching Funds: The AAA agrees to provide a minimum 25% local matching funds for Area Plan Administration expenditures under Titles Ill-B, Ill-C-I , Ill-C-2 and Ill-E. The AAA agrees to provide a minimum 10% local matching funds for service expenditures under Titles Ill-B, Ill-C-1, Ill-C-2 and Ill-D. The AAA agrees to provide a minimum 25% local matching funds for services expenditures under Title Ill-E.

De Audit: The AAA shall comply with the Federal audit requirements per the 1996 amendments to the Single Audit Act, OMB Circular A-133 and the "Govemment Auditing Standards" and 2 CFR Part 200 — Subpart F Audit Requirements.

E. Directly Provided Services: In accordance with NYSOFA regulations (9 NYCRR S 6652.9), services can only be provided directly by an AAA where NYSOFA grants approval. This approval will be granted only if the AAA demonstrates that provision of such service by the AAA is necessary to ensure an adequate supply of the service, or that the service is directly related to the AAA's administrative functions or that service of comparable quality can be provided more economically by the AAA.

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F. Advisory Council: The AAA shall establish an Advisory Council consisting of older adults. including minorities, who are participants or eligible to participate in programs under the OAA. representatives of older adults, local elected officials, the general public and providers of health care and supportive services to advise the AAA in all matters relating to the development, administration and operation of the Plan, The AAA shall submit the Plan for review and comment to the advisory council before it is transmitted to NYSOFA for approval. Amendments that would result in major changes in organizational structure (e.g. mergers or consolidation) must be submitted to the AAA Advisory Council for review and comment prior to the submission to NYSOFA for approval.

G. Service Coordination: The AAA shall coordinate planning with other agencies and organizations, Native American Tribal organizations and Native Hawaiian organizations to promote new or expanded benefits and opportunities for older adults.

H. Intergenerational Day Care: If possible, the AAA shall arrange with organizations providing day care for children or adults and respite for families, so that older adults can assist in the delivery of such services to children, adults and families,

I. Outreach: The AAA shall conduct outreach efforts, and an annual evaluation of the effectiveness of these outreach activities, to identify older adults eligible for assistance under the OAA, with special emphasis on:

1) Older adults residing in rural areas;

2) older adults with greatest economic need (with particular attention to Iow- income, low income minority individuals including Native Americans and older individuals residing in rural areas);

3) older adults with greatest social need (with particular attention to low-income minority individuals including Native Americans and older individuals residing in rural areas);

4) older adults with limited English proficiency;

5) older individuals who are frail or with severe disabilities;

6) older adults with Alzheimer's disease or related disorders with neurological and organic brain dysfunction (and the caretakers of such individuals).

J. Information and Assistance: The AAA assures that it shall provide for the establishment and maintenance of information and assistance services in sufficient numbers to assure that all older adults within the PSA covered by the Plan shall have reasonably convenient access to such services.

K. Services to Native Americans: If there is a significant population of older Native Americans in the PSA of the AAA, the AAA shall conduct outreach activities to identify older Native Americans in such area and shall inform such older Native Americans of the availability of assistance.

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L. Grievances: The AAA shall establish grievance procedures for older adults who are dissatisfied with or denied services under the OAA. Such procedures shall be in accordance with applicable NYSOFA Program Instructions.

M. Disabled Individuals: The AAA assures that it will coordinate planning, identification, assessment of needs and provision of services for older adults with disabilities, with particular attention to individuals with severe disabilities, with agencies that develop or provide services for individuals with disabilities.

N. Transportation: The AAA shall identify the needs of older adults and describe the methods it will use to coordinate planning and delivery of accessible transportation services (including the purchase of vehicles) to assist older adults, including those with special needs, in the PSA.

O. Disclosure of Spending: The AAA shall, on the request of the Assistant Secretary of AoA/ACL or the Director of NYSOFA, for the purpose of monitoring compliance with the OAA (including conducting an audit), disclose all sources and expenditures of funds such agency receives or expends to provide services to older adults.

P. Title VI: The AAA shall, to the maximum extent practicable, coordinate the services it provides under Title Ill of the OAA with services provided under Title VI of the OAA (Grants to Native Americans).

Q. Case Management: TheAAA assures that case management services provided under Title Ill of the OAA and/or State funded programs:

1) not duplicate case management services provided through other Federal and State programs;

2) be coordinated with services provided through such other Federal and State programs, and

3) be provided by:

a) a public agency; or

b) a nonprofit private agency that:

(i) gives each older adult seeking services under this title a list of agencies that provide similar services within the jurisdiction of the AAA;

(ii) gives each older adult described in clause (i) a statement specifying that the individual has a right to make an independent choice of service providers and documents receipt by such individual of such statement;

(iii) has case managers acting as agents for the individuals receiving the services and not as promoters for the agency providing such services; or

iv) is located in a rural area and obtains a waiver of the requirements described in clauses (i) through (iii).

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Standard Assurances Applicable to OAA Title Ill-B

27. In applying for and receiving funding under Title Ill-B of the OAAi the AAA understands and agrees to the following:

A. Priority Services: The AAA will expend the required percentage of Title Ill-B funds, as established by NYSOFA for each Of the three priority services categories (access, in-home and legal assistance) in Program Instructlon 88-Pl-47 [7/22/881

Waiver: NYSOFA, in approving the Title Ill-B application or amendment to such application, may waive the assurance of the above paragraph for any category of service for which the AAA demonstrates to NYSOFA that services provided from other sources meet the needs of older adults in the PSA for that category of service. If the AAA receives a waiver for any category of service. it must continue to spend for the remaining categories Of services the percentage of AAA funds approved by NYSOFA.

B. Legal Assistance Program' The AAA assures that it Will enter into contracts With providers Of legal assistance Which can demonstrate the experience or capacity to deliver legal assistance and that it will attempt to involve the private bar in legal assistance activities authorized under Title ill-B, including groups within the private bar furnishing services to older adults on a pro bono and reduced fee basis. The AAA further assures that it will give priority to legal assistance related to income, health care, long-term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse (including financial exploitation), neglect and age discrimination; AAA will not require any provider Of legal assistance under Title Ill-B to reveal any information that is protected by the attorney-client priViIege.

C, Priority Service Reporting: The AAA Will report annually to NYSOFA, in detail, the amount of funds expended for each such category Of priority services during the fiscal year most recently concluded,

D, Service Coordination. The AAA will coordinate priority services with community

Alzheimer's programs, coordinate mental health services provided With Title Ill-B funds with mental health services provided by community health centers and Other organizations, and, if appropriate, conduct outreach to identify older Native Americans and inform them of availability of services.

E, Nursing Home Diversion: The AAA Will conduct efforts to facilitate coordination Of community-based, long-term care services to defer inappropriate institutionalization for Older adults Who are at home, patients jn hospitals, and patients in long term care facilities who could return home,

F. Multipurpose Senior Centers: In regard to any multipurpose senior centers acquired or constructed using OAA funds, the AAA will ensure compliance With Sections 306, 311 , and 312 of the OAA, NYSOFA regulations (9 NYCRR S 6654.9), and 90-Pl-36 (6/19/90].

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Standard Assurance Applicable to OAÅ Title Ill-C

CF_or additional Assurances applicable to Title Ill-C. see SA #27 & SA #30)

28. Title-ill-C Funding for Access and Supportive Services. In applying for and receiving funding under Title Ill-C of the OAA, the AAA understands and agrees that Title Ill-C expenditures for supportive and access services shall only be funded with Title Ill-C contributions and that such expenditures by a Title Ill-C provider are limited to the amount Of contributions generated by the provider,

Standard Assurances Applicable to Title Ill-C and WIN

(For additional Assurances applicable to WIN, see SA #36. For additional Assurances applicable to Title Ill-C, see SA #27 & SA #29)

29, In applying for and receiving funding under Title Ill-C Of the OAA and WIN, the AAA understands and agrees that:

A. Special Dietary Needs: The AAA assures that the nutrition program in the PSA shall reasonably accommodate participants who have particular dietary needs arising from the health requirements, religious requirements, or ethnic backgrounds Of such participants.

B. Outreach: It shall be the AAA'S responsibility to identify and reach out fo currently unserved and underserved individua's who would be eligible for home delivered meals.

C. Provider Organizations: The AAA, when selecting potential home delivered meal providers, shall give consideration where feasible to organizations which,

1) have demonstrated an ability to provide home delivered meals efficiently and reasonably; and

2) furnish assurances to the AAA that such an organization shall maintain efforts to solicit voluntary support and that the funds made available under Title Ill-C to the organization shall not be used to supplant funds from non-Federal sources.

D. Congregate Sites: Sites for congregate meals and comprehensive supportive services are located in as close proximity to the majority of eligible individuals' residences as feasible, with particular attention on a multipurpose senior center, a school, a church, or other appropriate community facility, preferably within walking distance, and where appropriate, transportation to such site is furnished.

E. Allowable Services: The AAA may only apply for and use Title Ill-C funds to provide meals and other services (i.e., nutrition counseling and nutrition education) directly related to nutrition services. The AAA may also use program income for supportive and access services to enhance the nutrition program. Such supportive and access services include outreach, transportation (Title Ill-C-1 only) Information and Assistance, In-Home Contact and Support (shopping assistance only), Senior Center/Recreation and Education (Title Ill-C-1 only), Assisted Transportation (Title Ill-C-1 only). Program income cannot be used for access and supportive services in amounts greater than what has been generated by program activity.

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Standard Assurances Applicable to Title Ill-D

30. Title Ill-D:

A. Area Plan Administration: No Title Ill-D funds shall be budgeted or expended for Area Plan Administration.

B. Evidence-based: In accordance with 15-Pl-18 [10/22/15], the AAA shall expend all Title Ill-D funding on evidence-based programs/interventions only.

Standard Assurances Applicable to Title Ill-E Careqiver Proqram

32. Title Ill-E Caregiver Program:

A. Comprehensive Support System: The AAA shall provide multifaceted systems of support services for family caregivers and older relative caregivers as these terms are defined in OAA SS 302 and 372, respectively.

B. Limitations: The AAA may budget up to 10% of its Title Ill-E funds (Federal funds plus local match), plus any income generated by older relative caregivers, to provide support

services to older relative caregivers. The AAA may expend a maximum of 10% of its final Title Ill-E expenditures (Federal funds plus local match), plus any income generated by older relative caregiver services, to provide support services to older relative caregivers.

C. Statutory Services: The caregiver program support services shall include each of five specific, statutory categories of caregiver services, with the amounts used to fund each service to be determined by the AAA, based on the needs of its particular caregivers. The AAA may meet this comprehensive service requirement by including services in its Title Ill-E Caregiver Program that meet Title Ill-E requirements, but that are funded from other sources. These required services are:

1) Information about available services;

2) Assistance in gaining access to the services;

3) individual counseling, organization of support groups, caregiver training to assist the caregivers in the areas of health, nutrition and financial literacy and to help caregivers make decisions and solve problems relating to their caregiver roles and responsibilities;

4) Respite services to temporarily relieve caregivers by providing a short-term break from their caregiving responsibilities; and

5) Supplemental services to complement the caregiver's efforts to provide care,,

D. Recipients of Respite and Supplemental Services: The AAA agrees that respite and supplemental services shall only be provided to the caregivers of "frail" older adults as "frail" is defined in OAA S 102(22), that is, an older adult (60 and older) who is

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functionally impaired because the person is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing or supervision; or, an older adult who has a cognitive or other mental impairment that requires substantial supervision because the person behaves in a manner that poses a serious health or safety hazard to the person or to another person; or to older relative caregivers 55 and older.

E. Supplemental Services: The AAA may budget up to 20% of its Title Ill-E funds (Federal funds plus locat match), Plus any income generated by supplemental services for the provision of supplemental services. The AAA may expend a maximum of 20% of its final Title Ill-E expenditures (Federal funds plus local match), plus any income generated by supplemental services for the provision of supplemental services,

F. Use of Volunteers: Each AAA shall make use of trained volunteers to expand the provision of the available services and, if possible, work in coordination with organizations that have experience in providing training, placement, and stipends for volunteers or participants (such as organizations carrying out federal service programs administered by the Corporation for National and Community Service), in community settings,

33. Service Priority: The AAA shall give priority to the following individuals,

A, Caregivers who are older adults with greatest sociäl need, and older ädults with greatest economic need, with particular attention to low-income older adults;

B, Older Relative Caregivers providing care to individuals with severe disabilities, including children with severe disabilities, as defined in OAA S 102(48) which means a severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that is likely to continue indefinitely and results in substantial functional limitation in 3 or more of the major life activities as specified in S 102(i3) which includes self-care, receptive and expressive language, learning, mobility. self-direction, capacity for independent living, economic self-sufficiencyr cognitive functioning, and emotional adjustment;

C For family caregivers who provide care for individuals withAlzheimer's disease and related disorders with neurological and organic brain dysfunction, the AAA shall give priority to caregivers who provide care for older individuals with such disease or disorder. .

34. Maintenance of Effort: The AAA agrees to meet its applicable maintenance of effort requirement for Title Ill-E funds under this Plan as determined by NYSOFA and to not supplant the use of other funds available for Caregiver Program services, with the funding available under Title Ill-E.

Standard Assurances Applicable to Careqiver Resource Centers

35. Caregiver Resource Centers

A. CRC Services: If the AAA has a Caregiver Resource Center (CRC) funded under NYS Elder Law S 206, AAA agrees to provide and enhance CRC services. CRC services are similar to the required services funded through the Title Ill-E Caregiver Program, except that CRC

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does not fund respite and supplemental services. The AAA's CRC services can supplement or be integrated, as appropriate, into the AAA's Caregiver Program, with the goal of using AAA expertise to achieve cost-effective, productive and creative "best practices" caregiver services that can serve as models for other AAAs.

B. Materials Developed Under CRC: If the AAA has a Caregiver Resource Center (CRC) funded under NYS Elder Law S 206, AAA agrees that all materials developed by the AAA in connection with the CRC program shall be the property of NYSOFA. NYSOFA also reserves the right to copyright all such materials, the exclusive right to reproduce, publish or otherwise use, and to authorize others to use these materials.

Standard Assurance Applicable to WIN

(For additional Assurances applicable to WIN, see also SA #30).

36. In applying for and receiving funding under WIN, the AAA understands and agrees that:

A. Separate Accounting: The funds provided under WIN shall be accounted for and reported separately from those received under other sources, including Title Ill-C.

B. WIN Services: The funds provided under WIN must be used to provide home delivered meals and/or services related to the provision of meals to eligible older adults whose nutritional needs have not or cannot be met under Title Ill-C or CSE. WIN funds may be used to provide congregate meals but only when the provision of the congregate meals will serve nutritionally at-risk older adults or result in an increased ability to provide home delivered meals.

C. Administration: No more than 5% of WIN funds awarded shall be budgeted for AAA administration. No more than 5% of WIN funds expended shall be for AAA administration.

D. No Supplanting Title Ill-C Services: No WIN funds shall be used to replace nutrition services provided or intended to be provided under Title Ill-C and CSE.

Standard Assurances Applicable to CSE and EISEP

(For additional Assurances applicable to CSE. see SA #39. For additional Assurances applicable EISEP. see SA #40)

37. In applying for and receiving CSE and/or EISEP funding, the AAA understands and agrees that:

AL Direct Provision of Services.' The AAA can provide EISEP and/or CSE case management services directly without requesting NYSOFA approval, However, it cannot provide other EISEP or CSE services directly unless it receives approval from NYSOFA NYSOFA approval is discretionary and shall only be given if the AAA can show that• the AAA provided this service directly prior to the approval of the AAA's first CSE Plan (this would usually be 1979); or if the AAA demonstrates that the direct provision of a service is necessary due to the absence of an existing suitable provider and so is necessary to assure an adequate supply of the service, or is necessary to ensure the quality of the service provided (See 9 NYCRR S 6652.9(c)).

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B, Consumer Directed in-Home Services: The AAA may elect to implement consumer directed services under CSE and EISEP in accordance with NYSOFA regulations. Prior to implementation, the AAA must submit their plans in the prescribed format to NYSOFA for review and approval.

C, Maintenance of Effort: The AAA must meet the following maintenance of effort requirements,

1) For CSE and EISEP: Maintenance of 'base year expenditures" made by the county or other funded service providers irrespective of the source of funds. "Base year expenditures" means the level of expenditures in the year prior to the first year for which a county plan for CSE was submitted or in the County's 1979 fiscal year, whichever is later.

2) For EISEP. Maintenance of total community service project expenditures under the CSE for the period April 1, 1985, through March 31, 1986, unless this requirement is waived or reduced by NYSOFA,

D. Contesting Eligibility and Cost Share Decisions: AAA shall provide applicants or recipients of EISEP or EISEP-Iike services funded under EISEP/CSE the opportunity to contest adverse decisions as to eligibility. levels of required cost sharing and involuntary terminations of services.

38. Matching Requirements: The AAA agrees to provide minimum local matching funds for service expenditures under EISEP and CSE as set forth by applicable State law and requirements.

Standard Assurance Applicable to CSE applicable to C_SE: see SA #37 & SA #38)

39. In applying for and receiving CSE funding, the AAA understands and agrees that Community Services Projects developed by the AAA shall not exceed three years, except NYSOFA may approve continuation of a project beyond three years if periodic evaluation shows that the project effectively improved the delivery of services to older adults.

Standard Assurance Applicable to EISEP (For additional Assurances applicable to EISEP, see SA #37 & SA #38)

40. In applying for and receiving EISEP funding, the AAA understands and agrees that

A, Coordination with LDSS• The AAA is required to coordinate with its local Social Services office to establish and maintain procedures which shall ensure that EISEP does not duplicate Medicaid and Title XX programs, and ensure that these procedures are set out in a Memorandum of Understanding with such local office.

B, 33% in-Home Services Requirement: At least 33% of the AAAs total expenditures of State EISEP services dollars and required local match for those dollars must be spent on in-home services (i.e., Personal Care Level I and Personal Care Level Il).

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C. 33% Ancillary Services Requirement: No more than 33% ofthe AAAs total expenditures of State EISEP services dollars and required local match for those dollars may be spent on ancillary services.

D, County Home Care Plans (CHCP): The first year EISEP County Home Care Plan, as amended by any subsequent plans and CHCP revisions, is incorporated by reference and made a part of this Plan, and the goals and procedures contained in it are reaffirmed.

Standard Assurance Applicable to CSI

41. In applying for CSI funds, the AAA understands and agrees that:

A. Congregate Services: 'Congregate services" shall mean services for older adults which are provided by a public or private non-profit agency in community settings at which older adults come together for services and activities that respond to their diverse needs and interests.

B, Direct Provision of CSI Services: The AAA may contract with public agencies, municipalities, not-for-profit agencies or such other entities that provide congregate services. The AAA may not directly provide a service under CSI unless granted a waiver by the Director of NYSOFA, Approval of direct service provision will only be given if the service was directly provided prior to approval of the 1994-95 Plan, or direct provision is necessary due to the absence of an existing suitable provider or to ensure the quality of the service provided.

c. Multi-County Partnerships: Two or more counties may join together for the purpose of implementing CSI through a written agreement between the cooperating AAAs,

D. Matching FundS: Under CSI the AAA Will provide matching funds equal to 25% Of its CSI costs. The allowable forms of match are the same as those permitted under CSE and EISEP, In-kind salaries and rent are allowable. State funds and local funds used to match other State or Federal funds are not allowable as match. The local match can be entirely new match or local funding formerly used to match the local Recreation Program for the Elderly.

E. Administration: The AAA shall budget no more than 5% of CSI funds (State Aid & Local Match) for AAA administration. The AAA agrees that it will expend no more than 5% of CSI funds for AAA administration.

F. Meal Costs: Meal costs are not allowable under the CSI program.

Standard Assurances Applicable to Emergency Preparedness P!anq,

42. Emergency Preparedness Plans: The AAA agrees to coordinate activities and develop longrange emergency preparedness plans with local and State emergency response agencies, relief organizations, local and State governments, and other institutions that have responsibility for disaster relief service delivery within the PSA.

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Standard Assurances Applicable to Mental Health Services

43. Mental Health Services. The AAA agrees to follow any poliCies developed by NYSOFA concerning mental health issues or services as they may pertain to older adults. AAA will coordinate with NYSOFA and entities providing mental health services in the PSA to: increase public awareness of mental health disorders affecting older adults; remove barriers to the diagnosis and treatment of such disorders; and coordinate mental health services available to older adults (including mental health screenings) provided With area aging funds or other funds for mental health services available to older adults residing in the PSA.

Standard Assurances applicable to the Health Insurance Information. Counselinq Assistance Program (HIICAP)

44. Health Insurance Information, Counseling and Assistance Program (HIICAP):

A, The AAA agrees that the Project Narrative and Budget included in the Pian may not be modified without the written consent of the NYSOFA.

E. The AAA agrees that it will not assign or transfer the rights or responsibilities it has with regard to the HIICAP program without the prior written consent of NYSOFA. If the AAA contracts the direct performance of the HIICAP program, including the HIICAP Coordinator, it retains primary responsibility for satisfying the responsibilities set forth in this Plan and the AAA will include the responsibilities in the agreement With such contractor.

C. The AAA agrees to provide counseling to individual Medicare beneficiaries unable to access other channels of information or needing and preferring locally based individual counseling services.

D. The AAA will make counseling resources and locations locally accessible to low-income, dual-eligible, and hard-to-reach beneficiaries and will equip its counselors to provide indepth, complex counseling and enrollment assistance on Medicare, Medicare Prescription Drug Coverage, Medicare Advantage Plans. EPIC enrollment and coordination with Medicare Prescription Drug Coverage.

E. The AAA will provide counseling information about original Medicare plan information and options and the AAA's HIICAP assigned staff must have knowledge and develop referral contacts for assistance in the following areas:

1) Medicare eligibility, benefits, preventive services and claims filing;

2) Medicare Prescription Drug Benefit;

3) EPIC and how it works with the Medicare prescription drug plans;

4) Medicaid eligibility, benefits and spousal protections (Local Department for Social Services), Medicaid Managed Long Term Care (Independent Consumer Advocacy Network);

5) Medicare Supplement insurance policy coverage, comparison information and claims filing;

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6) Long Term Care (LTC) insurance and planning (NYS Partnership for LTC); and

7) Other types of health insurance benefits (including employer, retiree, Medicare Savings Program benefits, "Extra Help", etc.).

F. The AAA acknowledges that HIICAP is a volunteer-based program and will be operated as such. AAAs must increase and enhance the counselor work force and equip them to be proficient in the areas noted above. A list of all trained HIICAP volunteers and staff must be submitted to NYSOFA as part of the AAA's application.

G. The AAA will not allow individuals who are currently licensed as health insurance agents/brokers, or have some other conflict of interest, to counsel, administer, or volunteer for HIICAP in any capacity even if the individual is willing to sign a disclaimer stating that he or she will provide unbiased insurance counseling information to beneficiaries. If the AAA believes there may be a conflict of interest, the AAA Director or HIICAP Coordinator will obtain direction from the NY SHIP Director as to whether the relationship, as described by the AAA, presents a conflict of interest.

H. The AAA will ask program volunteers whether or not they are licensed to sell health insurance products and the status of their current license.

I. The AAA agrees to designate a HIICAP Coordinator to be responsible for the AAA's performance under this Plan. The HIICAP Coordinator shall be the AAA's representative and contact person for all HIICAP related issues including program and reporting.

J. The HIICAP Coordinator(s) designated by the AAA will oversee the training and quality of service provided by all volunteers and staff. The Coordinator(s) annually will certify that volunteers have satisfied the annual training requirements. Significant training and support will be necessary to prepare counselors to help beneficiaries understand and enroll in new choices and benefits created by the MMA (Medicare Modernization Act) and subsequent Federal Laws such as the Affordable Care Act of 2010. The Coordinator will oversee and manage the inventory of training and consumer education supplies.

K. The AAA agrees that its designated HIICAP Coordinator(s) will attend at least one NYSOFA HIICAP training, use all NYSOFA-prescribed HIICAP training material, and encourage counselors to participate in NYSOFA sponsored monthly coordinator and other conference calls,

L. The AAA agrees that all HIICAP Coordinators and volunteers, who counsel Medicare beneficiaries, will participate in the HIICAP certification process, as often as is required by NYSOFA.

M, The AAA shall make certain that all information and documentation pertaining to Medicare beneficiaries be kept confidential. Beneficiary information will be kept in an area that is secure. All confidential documents will be stored in locked file cabinets or rooms accessible only to those who have authority, or, for digital versions, in a password protected electronic file. Whenever the AAA has in its custody confidential Medicare beneficiary information that the AAA does not need to keep on file any longer to be able to assist such beneficiary, the AAA will dispose of that confidential information in a

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complete and secure manner (such as shredding) to avoid unauthorized disclosure(s) of the information.

N. The AAA assumes responsibility for the accuracy and completeness Of the information contained in all technical documents and reports submitted.

O. The AAA agrees that it will submit monthly pefformance reports as specified by NYSOFA on all Beneficiary Contacts, Group Outreach, and Media Outreach Events via the STARS SHIP Tracking and Reporting System at: https://smpship.acl.gov/etk-hhs-acl-rod/lo in.re ues .

P. The AAA agrees to ensure the capacity to access Internet information via basic dial-up access at the minimum, with a high-speed connection preferred, including expanding and maintaining Internet capability at the local counseling levels. The AAA will have the capacity to send and receive a high volume of information (including training materials and Power Point presentations) through electronic mail (email) and through the Internet. The AAA assures that HIICAP counselors will have access to Internet-based information, training materials, counseling and enrollment tools.

Q. The AAA agrees to ensure adequate capacity to receive and properly answer and address all calls received through the NYS HIICAP Hotline (1-800-701-0501) as calls are automatically transmitted to the local AAA/HIICAP.

R. upon approval of this application and issuance of a Notification of Grant Award, the AAA is eligible to request an advance of up to twenty-five percent (25%) of its award. The AAA Shall submit appropriate Claim for Payment in Such form as required by NYSOFA. The final Claim for Payment will be submitted to NYSOFA within sixty (60) days after the ending date of the grant period.

S. Include the express acknowledgment on all SHIP public information materials, "This project was supported, in part by a grant from the U.S. Administration for Community Living, Department of Health and Human Services, Washington, DC. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of view or opinions do not, therefore necessarily represent official Administration for Community Living policy." (HHS Grants Policy Statement: https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html),
The grantee must use the SHIP Logo on all SHIP publications,

T. NYSOFA has approved the following disclaimers thet the AAA must use when disseminating HIICAP materials and/or advertising,

I) "The information provided by the Health Insurance Information, Counseling and Assistance Program is intended for the sole purpose of educating consumers in regard to the choices available for their health insurance needs. Particular emphasis is placed on understanding original Medicare, Nothing herein is intended nor should it be construed as an endorsement by the State of New YOfk Of any specific insurance product or insurer."

2) If the above disclaimer is too lengthy for certain media items (i.e. flyers, small brochures, etc.), the disclaimer below may be used as a substitute;

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"New York State does not endorse nor recommend any specific insurance product or insurer; this program is solely intended to educate consumers about their choices. "

U. Upon request by the State HIICAP Coordinator, the AAA Wili provide to NYSOFA program information and other reports as required, in the format and at the timing specified by NYSOFA, on activities provided under the current HIICAP grant,

V, The AAA shall not use SHIP Federal funds to purchase promotional giveaways or incentive items. unless such items are educational in nature as required by ACL and preapproved by NYSOFA.

W. The AAA agrees to implement Volunteer Risk and Program Management (VRPM) policies and procedures as required by ACL,

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SCHEDULE E

REMUNERATION SCHEDULE

Budget: Agency shall submit budgets (Schedule E- attachments) which will be reviewed and approved by the County before becoming a part of the executed contract. The Budgets will be reviewed for accuracy, and to confirm that expenses are allowable under the grant(s).

Payments: Any and all requests for payment to be made, including any request for partial payment if such is permitted hereunder, shall be submitted by the Agency on properly executed payment invoices of the County. Agency shall submit an invoice to the County no later than the 10th of each month for all prior month services. No payment shall be made by the County to the Agency for out-of-pocket expenses or disbursements made in connection with the contract services to be performed hereunder.

Reimbursement: Agency will be reimbursed for actual unduplicated clients served per service type (Case Management, Information & Assistance, Outreach) per the rates specified below and per the provisions of Schedule A. The PeerPlace served client summary will be utilized to verify services performed.

SOS	CI/Units	county funds	agency match	total	rate per CI/unit	total
CM	**417**	$87,987.00	$91,848.75	$179,835.75	**$211.00**	$87,987.00
IA	**417**	$23,769.00	$24,493.00	$48,262.00	**$57.00**	$23,769.00
OR	**29**	$5,858.00	$6,123.25	$11,981.25	**$202.00**	$5,858.00
		$117,614.00	$122,465.00	$240,079.00		**$117,614.00**

At the sole discretion of the County, an expenditure-based reimbursement policy may be enacted, with monthly payments to be based upon receipt, review, and approval of a monthly financial report based on expenditures of the previous month. If an expenditure-based reimbursement policy is enacted, the obligation of the County shall be limited to reimbursement to the Agency for expenditures by the Agency in accordance with the contract budget. The County shall not be responsible for payments to the Agency for any Agency expenditures in violation of this provision. All Agency purchases shall be in accordance with acceptable business practices.

Refund by the Agency. If, upon the expiration of this Agreement, the amount received by the Agency, including but not limited to any advance payments made by the County under this Agreement, exceeds the rate to be paid for verified services performed pursuant to this Agreement, the Agency shall remit to the County the amount of such excess within ten (10) days upon separate request of the County. The Agency's obligation under this Section shall continue beyond the expiration or termination of this Agreement.

Final Payment by the County. If, upon the expiration or termination of this agreement, the County owes the Agency for contract services, the Agency shall submit a financial report within thirty (30) days after the termination date, in such form and supported by such documentation and certification as the County may require, and the County shall pay the Agency the appropriate amount. The County's obligation under this Section shall continue beyond the expiration or termination of this contract.

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Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 23166 **RESOLUTION 2021-365** **ADOPTED**

User Agreement Between TOA and Boys on the Right Track CRS #2554

Authorize the Supervisor to sign a contract between the Town of Amherst (Youth & Recreation Department) and Boys on the Right Track for use of Saratoga Park for a weekly running program, pending successful completion of the contract routing process.

4/19/2021
Consent

FINANCIAL IMPACT:

A 7145.02075: up to -$240.00 (revenue)

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

USER AGREEMENT

This Agreement, by and between the Town of Amherst (TOWN), 5583 Main Street, Williamsville, NY 14221 and Boys on the Right Track, 1597 Evergreen Drive, Lakeview, NY 14085 is as follows:

The TOWN hereby grants permission for the Boys on the Right Track to utilize Saratoga Park for its program on the following dates:

Dates: Mondays and Thursdays, 4/29, 5/3, 5/6, 5/10, 5/13, 5/17, 5/20, 5/24, 5/27, 5/31, 6/3, 6/7, 6/10, 6/14, 6/17, and 6/21 or 6/24
Time: 3:30-5:00 pm
Cost: $15.00 per day

Boys on the Right Track hereby agrees to indemnify and hold the TOWN harmless from any and all bodily injury or property damage claims or incidents that are a direct result of Boys on the Right Track's use of the TOWN property.

Boys on the Right Track is required to sign and adhere to the terms and conditions of the addendum to contract attached hereto and made a part hereof.

Boys on the Right Track agrees to submit a Covid Safety Plan and abide by all state and local Covid restrictions.

This Agreement is subject to the state and local Covid regulations on the aforementioned and may be cancelled by the TOWN at any point for issues of public safety.

Town of Amherst

By: _____
Brian J. Kulpa
Supervisor

Date: _____

Boys on the Right Track

By: Juliet Meade
Signature

Juliet Meade
Printed Name

Executive Director
Title

Date: 4/9/2021

Attachment: Boys on the Right Track (RES-2021-365 : User Agreement)

Addendum to Contract VENDOR ON SITE Minor

1. Notwithstanding any other provision in this Agreement, the following clauses shall be controlling. Should any other provision of the Agreement conflict with the clauses in this Addendum then the provisions of this Addendum are to be enforceable and any conflicting provision shall be considered null and void.

2. No rules, requirements or customs of any society or association of professional Vendors or any similar association shall affect this Agreement in any way whatsoever or be binding upon the Town.

3. To the fullest extent permitted by law, Vendor shall indemnify and hold the Town, its officers, agents, and employees, harmless from any and all liability, demands, claims, or expenses, awards or judgments imposed upon the Town, its officers, agents, and/or employees, arising out of the work of the Vendor its officers, agents, sub-Vendors, and/or employees as well as the negligence, active or passive, of the Vendor, its officers, agents, sub-Vendors, and/or employees.

4. Vendor shall not commence work under this Agreement until it has obtained all insurance specified below, produced satisfactory proof of the same and such insurance has been approved by the Town.

(a) Workers' Compensation Insurance: Vendor shall take out and maintain during the life of this Agreement, Workers' Compensation Insurance (both Part A and Part B) for its employees to be assigned to the work hereto under.

(b) General Liability, Professional (if applicable) Liability and Property Damage Insurance: Vendor shall take out and maintain during the life of this Agreement, such general liability and property damage insurance as shall protect it and the Town of Amherst from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Agreement. The amounts of such insurance shall be as follows in an amount not less than $1,000,000.00 per occurrence for bodily injury and property damage including wrongful death, and $2,000,000.00 aggregate.

(c) Vendor shall furnish the above insurances, including sub-Vendors' insurances, to the Town and shall also assure that any policy procured by it shall name the Town as an additional insured on a primary and non-contributory basis.

(d) Vendor shall ensure all its sub-Vendors, if any, have obtained all the above insurances and shall also assure that any policy procured by any sub-Vendor or sub-sub-Vendor shall name the Town as an additional insured on a primary and non-contributory basis.

Attachment: Boys on the Right Track (RES-2021-365 : User Agreement)

5. Any accident shall be reported to the Office of the Town Attorney as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Town of Amherst as soon thereafter as possible as and no later than three (3) days after the date of such accident.

6. No Assignment: In accordance with the provisions of Section 109 of the General Municipal Law, the Vendor is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

7. Required Provisions of Law: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party this Agreement shall be physically amended forthwith to make such insertion. In particular, the Vendor shall, among other things, fully comply with:

(a) Article 8 of the NYS Labor Law for public work contracts and Article 9 of the Labor Law regarding prevailing wage for Building Service employees.
(b) Labor Law Section 220-e and Executive Law Sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.
(c) Affirmative action as required by the Labor Law.
(d) Prevention of dust hazard required by Labor Law Section 222-a.
(e) Preference in employment of persons required by Labor Law Section 222.
(f) Eight-hour workday as required by Labor Law Section 220(2).
(g) Chapter 32 of the Town of Amherst: Minority Women and Business Utilization Commitment.
(h) Chapter 163 of the Town of Amherst: Registration of Sex Offenders.

8. The Vendor, in accordance with its status as an independent Vendor, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

9. This Agreement shall be governed by, and interpreted according to the laws of the State of New York. If the contract between the parties refers to the laws, statutes, rules,

Attachment: Boys on the Right Track (RES-2021-365 : User Agreement)

regulations or ordinances for any state other than New York State, to the laws, statutes, rules, regulations or ordinances for any county other than Erie County, New York or to the laws, statutes, rules, regulations or ordinances for any municipality other than the Town of Amherst, then the laws, statutes, rules, regulations or ordinances for New York State, Erie county and/or the Town of Amherst shall apply as applicable. Any and all legal action necessary to enforce the Agreement will be venued in Supreme Court, Erie County, New York or in the United States District Court for the Western District of New York, Buffalo Division.

10. It is hereby acknowledged that performance of this Contract will be undertaken in accordance with the specifications and pricing on which the bid was submitted.

Authority for execution on behalf of Town: The Supervisor has executed this Agreement pursuant to a Resolution adopted by the Town Board of the Town, at a meeting thereof held on _____. Brian J. Kulpa, the Supervisor whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an Agreement on behalf of the Town as a result of that Resolution. This instrument shall be executed in triplicate. At least one (1) copy shall be permanently filed, after execution thereof, in the office of the Town Clerk of Town.

Agreed to and Accepted by:

Boys on the Right Track, Inc.
Print Name of Company

By: Juliet Meade
Signature

Juliet Meade
Printed name

Date: 4/9/2021

Agreed to and Accepted by:

Town of Amherst

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Attachment: Boys on the Right Track (RES-2021-365 : User Agreement)

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (M 04/12/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:
Zielinski Agency 3720 South Park Ave Blasdell NY 14219	PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Mount Vernon Fire Insurance Co.	26522
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Boys On The Right Track
1597 Evergreen Dr.
Lake View NY 14085

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:	Y		NPP2567003C	08/15/2020	08/15/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ INCLUDED
	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
THE CERTIFICATE HOLDER IS HEREBY NAMED AS ADDITIONAL INSURED PER FORM L-744 NPP NY 03/13

CERTIFICATE HOLDER

Town of Amherst
Municipal Building
5583 Main Street
Williamsville NY 14221

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Attachment: Boys on the Right Track (RES-2021-365 : User Agreement)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Town Clerk
DOC ID: 23167

COMMUNICATION 2021-44 **REFERRED**

Public Access to next Amherst Central Park Task Force Meeting

Email from Don Smith requesting public access to the next Amherst Central Park Task Force meeting.

4/19/2021
Referred to Planning, Town Attorney, Amherst Central Park Task Force, and IT.

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Cooper, Kathy

Subject: FW: Public access to next Amherst Central Park Task Force meeting Apruil 8, 2021 using Zoom

From: Don < >
Sent: Tuesday, April 13, 2021 4:18 PM
To: Spoth, Francina <fspoth@amherst.ny.us>; Kulpa, Brian J. <bkulpa@amherst.ny.us>; Bucki, Debbie <dbucki@amherst.ny.us>; Lavin, Shawn A. <slavin@amherst.ny.us>; Szukala, Michael <mszukala@amherst.ny.us>; Berger, Jacqualine <jberger@amherst.ny.us>
Cc: Cerra, Dawn <dcerra@amherst.ny.us>
Subject: Re: Public access to next Amherst Central Park Task Force meeting Apruil 8, 2021 using Zoom

Since I have ***not as yet received a reply to my previous email*** with little probability of ever getting an answer, please put THIS EMAIL in the COMMUNICATIONS of the next Town Board Meeting of April 19, 2021.

Thank you,

Don Smith

On 4/5/2021 10:01 PM, Don wrote:

> TO: Amherst Town Clerk, Fran Spoth
>
> TO: Amherst Town Board
>
> # Public access to next Amherst Central Park Task Force meeting Aprul 8, 2021 and beyond using Zoom
>
> I ***failed*** to find the ***Zoom meeting Id/Passcode of the next Amherst Central Park Task Force meeting Aprul 8, 2021*** after an complete search for of both the Town of Amherst website (http://www.amherst.ny.us/) and the town clerk's meeting portal website (http://amherstny.iqm2.com/citizens/).
>
> I also reviewed ALL posted ***Amherst Central Park Task Force*** minutes and agendas from July 30, 2020 to Mar4ch 15, 2021 without finding any mention of the Zoom information needed for the meeting.
>
> ***Question***: Is the public allowed to connect via Zoom and observe the proceedings of the ***Amherst Central Park Task Force***? If not please indicate why.
>
> ***Question***: ***If the public is allowed to to connect via Zoom*** and observe the proceedings of the ***Amherst Central Park Task Force***, where can I find the Zoom meeting ID / Passcode to do so?
>
> ***Please reference ...***

Attachment: Don Smith Communication (COM-2021-44 : Public access to next Amherst Central Park Task Force meeting)

In the minutes of the July 30, 2020 ***Amherst Central Park Task Force*** (http://amherstny.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=3204&Inline=True)

IV. Legal framework for Task Force

"e. S. Sliwa, Town Attorney, indicated Task Force meetings are required to be open to the public via recording (if virtual) or in person, and are subject to Open Meetings law"

Don Smith

Attachment: Don Smith Communication (COM-2021-44 : Public access to next Amherst Central Park Task Force meeting)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Councilmembers
DOC ID: 23156

COMMUNICATION 2021-45 **REFERRED**

Rezoning of Property at 468 Harding Road / Forbes Capretto Homes

Resident expresses concern of safety and traffic congestion.

4/19/2021
Referred to Planning, Town Attorney and Traffic Safety.

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Attachment: COMMUNICATION 468 Harding Rd Fischer redacted 20210419 (COM-2021-45 : Rezoning of Property at 468 Harding Road / Forbes

-------- Original message --------
From: Lisa Fischer [redacted]
Date: 4/14/21 8:17 AM (GMT-05:00)
To: "Berger, Jacqualine" <jberger@amherst.ny.us>, "Bucki, Debbie" <dbucki@amherst.ny.us>, "Lavin, Shawn A." <slavin@amherst.ny.us>, "Szukala, Michael" <mszukala@amherst.ny.us>, accarrato@amherst.ny.us, "Kost, Ellen" <EKost@amherst.ny.us>, planning@amherst.ny.com, "Kulpa, Brian J." <bkulpa@amherst.ny.us>
Subject: Re: Request to REZONE Property at 468 Harding Road / Forbes Capretto Homes

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

TO:

Town of Amherst Supervisor Kulpa, Brian Kulpa bkulpa@amherst.ny.us

Amherst Town Board –

Jacqualine Berger – jberger@amherst.ny.us

Deborah Bucki - dbucki@amherst.ny.us

Shawn Lavin – slavin@amherst.ny.us

Michael Szukala mszukala@amherst.ny.us

Town of Amherst Zoning & Planning – Acarrato@amherst.ny.us

Asst. planning director Ellen Kost EKOST@amherst.ny.us

Daniel Howard planning@amherst.ny.com

RE: Request to Rezone 144 Acres of Land / 468 Harding Road

I am writing to express my strong opposition and concern over the potential rezoning of the property at 468 Harding to MFR-4A. I am extremely concerned about how this would affect our neighborhood which is zoned R-3. Our properties in this neighborhood are Zoned R-3 for a reason. We have single family homes that are the makeup of our neighborhood. I am concerned for the safety of our families, most with either small children and / or pets who use our neighborhood daily for exercise - walking /biking. We also have seniors that use their scooters in the street. Dropping multifamily units in our neighborhood will only make the traffic and congestion this much worse, causing additional concern for the safety of our families.

I am a resident of this community for 34 years and have fought to keep our neighborhood single family homes. It is why we purchased this property in the first place - a safe and congestion free neighborhood with little to no traffic to raise our family. Dropping Apartments / multifamily units on tiny lots are not in support of our neighborhood community and would look totally out of character.

I cannot imaging how noisy it will be when Big Ditch is in full swing. The airport / thruway and transit road noise are alot to handle as it is. More cars, more lights, more Noise which will in no doubt be enhanced by multi family units.

This zoning seems one step closer to allowing commercial to encroach the neighborhood. Please support my request by OPPOSING this rezoning and mulit family dwellings on postage sized lots which look nothing like the properties in our neighborhood.

Respectfully,

Lisa Fischer

[redacted]

Williamsville, NY 14221

[redacted]

Attachment: COMMUNICATION 468 Harding Rd Fischer redacted 20210419 (COM-2021-45 : Rezoning of Property at 468 Harding Road / Forbes

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Councilmembers
DOC ID: 23114

COMMUNICATION 2021-46 **REFERRED**

Youngs Road Extension

Residents concerns about the Youngs Road extension project.

4/19/2021
Referred to Planning, Town Attorney and Traffic Safety.

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

From: Stonebridge Estates HOA <stonebridgeestateshoaamherst@gmail.com>
Sent: Friday, April 2, 2021 6:37 PM
To: Kulpa, Brian J. <bkulpa@amherst.ny.us>; Berger, Jacqualine <jberger@amherst.ny.us>; Bucki, Debbie <dbucki@amherst.ny.us>; Lavin, Shawn A. <slavin@amherst.ny.us>; Szukala, Michael <mszukala@amherst.ny.us>
Cc: countyexecutive@erie.gov; Biju & Salini Mannazhath [redacted] Jason & Michelle Gant [redacted] Felicia Williamson [redacted] Eskinder Tefera Maaza Hailu [redacted] Jeff & Tracey Peterson [redacted] contact@dec.ny.gov
Subject: Youngs Road Extention- Opposition Letter from Stonebridge Estates HOA

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

Via Email and US Mail
Stonebridge Estates HOA
Realty Performance Group, Prop. Mngr.
52 South Union Road
Williamsville, NY 14221

April 1, 2021

Dear Town of Amherst Council members: Mr Kulpa, Mrs. Berger, Mrs. Bucki, Mr. Lavin & Mr. Szukala and Mark Poloncarz, Erie County Executive:

We are the Board of Directors for the Stonebridge Estates HOA in East Amherst (the new development at the Casey & Youngs Rd intersection). We are writing today to express our concern and opposition to the Youngs Road extension. We have heard that this potential extension has been "on the books for over 30 years" and we as a community of 25 single family homes would like to formally oppose any such extension of Youngs Road. We, as a community, would like to see this empty lot / paper street with an final house to complete our development for the safety of our children and the esthetics of our community.

The Stonebridge Estates community is filled with over 25 families and 30 children that are frequently seen playing outside, running, biking and scootering all over our small neighborhood. They enjoy a sense of freedom to run through the streets and sidewalks and between each of our two cul de sacs due to the low frequency of outside traffic. We, as the parents of these children, truly love this freedom and sense of security our development provides to us. We do not want the Town to create a main road through the center of our small neighborhood that would increase car volume and hence an immediate danger for our children.

Also, the five homes that are on Youngs Road are extremely close to the road, as are all our homes, and to extend Youngs Road, which is a heavily trafficked road through our community would cause serious safety concerns for our homes and for our families. The speed alone, in which traffic seems to flow on Youngs Road, would be detrimental to our families safety and quiet enjoyment of our small close-knit neighborhood.

In addition, this area is backed by wetlands that we were told would not be developed upon and the majority of us that have lots that back up to these wetlands chose this area for this

Attachment: COMMUNICATION Stonebridge Est HOA Youngs Rd Ext redacted 20210419 (COM-2021-46 : Youngs Road Extension)

specific reason. We do not want any type of development behind our homes and we want to protect and preserve the wetlands that are there now.

Finally, we as paying taxpayers vehemently oppose any such extension of Youngs Road. Please kindly advise us of any upcoming town / board meetings that we can specifically address our concerns to all council members. You can speak directly to our board President, Tracey Peterson at 1(619)994-5856 or contact us via this email (stonebridgeestateshoaamherst@gmail.com)

Thank you for your time and service to our community.

Kind regards,

Stonebridge Estate HOA
Tracey Peterson, President [redacted]
Jason Gant, Vice President [redacted]
Biju Mannazhath, Secretary [redacted]
Felicia Williamson, Treasurer [redacted]
Eskinder Tefera, Member at Large [redacted]

Members of the community:
Cheryl Divita, [redacted]
RUTAO YAO & JING L. KANG, [redacted]
Dale & Angela Menzies , [redacted]
Hasanul Islam & F. Hossain, [redacted]
GEON KIM, [redacted]
Vinicius A. Vasconcellos, [redacted]
Surendra Mohan & A. Gupta, [redacted]
REBECCA GERMROTH, [redacted]
Chris & Elizabeth LaFleur, [redacted]
KEVIN & ELIZABETH BRZEZINSKI, [redacted]
Eric Masasu & Liu Yan, [redacted]
M. Kathiravelu & R. Rajkumaran, [redacted]
SUDHAKAR KURA, [redacted]
Richard L & Kristin Hilton, [redacted]
Erickson & Jessica Neilans, [redacted]
MALVINDER S. CHEEMA, [redacted]
Earl R. Good & Loreen Rae Good, [redacted]
Aravind & Kirtana Yeluripat, [redacted]
ALI & QURATUL RAJA, [redacted]
Srinivasa Rao Bhagavatula, [redacted]

Attachment: COMMUNICATION Stonebridge Est HOA Youngs Rd Ext redacted 20210419 (COM-2021-46 : Youngs Road Extension)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Town Clerk
DOC ID: 23111

COMMUNICATION 2021-47 **REFERRED**

Notice of Verified Petition/Complaint: Christopher Grover, Kelly Lecastre, Marlene Dashkoff, Neil Dashkoff and Albert Vexler Vs. Zoning Board of Appeals of the Town Amherst Et Al.

4/19/2021
Referred to Town Attorney and Chairman of ZBA.

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

14.4.a

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of

CHRISTOPHER GROVER, KELLY LECASTRE, MARLENE DASHKOFF, NEIL DASHKOFF and ALBERT VEXLER

Petitioners-Plaintiffs,

For a Judgment Pursuant to CPLR Art. 78 and § 3001

—against—

ZONING BOARD OF APPEALS OF THE TOWN OF AMHERST, TOWN OF AMHERST, NEW YORK DAVID GAU DE LIN and SHERRY LIN

Respondents-Defendants.

NOTICE OF VERIFIED PETITION/ COMPLAINT

Index No.: 804146/2020
Hon. Paul B. Wojtaszek
Oral Argument Requested

TO THE ABOVE-NAMED RESPONDENTS:

PLEASE TAKE NOTICE that upon the Verified Petition/Complaint of Petitioners-Plaintiffs, dated March 29, 2021, an application will be made to the Supreme Court of the State of New York, County of Erie, at a Special Term thereof, to be held at 25 Delaware Avenue, Part 16 on June 2, 2020 at 2:30 PM or as soon thereafter as counsel can be heard, for a Judgment against Respondents:

A. Annulling and declaring null and void the Zoning Board's February 23, 2021 Approval;

B. Awarding costs and disbursements to Petitioners, including reasonable attorney's fees; and

C. Granting such other and further relief, as this Court shall deem just, proper or equitable.

MAR31 '21 PM12:03 RCVD

Attachment: DOC033121-03312021150714 (COM-2021-47 : Verified Petition: Grover Vs TOA)

No prior requests for this relief have been made to this or any other court.

Pursuant to CPLR 7804, Respondents' answer and supporting affidavits, if any, and/or motion to dismiss the petition/complaint, and the certified transcript of the record of proceedings under consideration by the respondent, shall be served at least five days before the time the petition is noticed to be heard.

Erie County is designated as the place of trial, in accordance with CPLR 7804(b) and 506(b), because it is the county where the Respondent body made the determination complained of.

Dated: March 29, 2021
Buffalo, New York

RUPP BAASE PFALZGRAF CUNNINGHAM LLC
Attorneys for Petitioners

By: _____
Elizabeth A. Holmes, Esq.
1600 Liberty Building
Buffalo, New York 14202
(716) 854-3400

Attachment: DOC033121-03312021150714 (COM-2021-47 : Verified Petition: Grover Vs TOA)

14.4.a

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of

CHRISTOPHER GROVER, KELLY LECASTRE, MARLENE DASHKOFF, NEIL DASHKOFF and ALBERT VEXLER

Petitioners-Plaintiffs,

For a Judgment Pursuant to CPLR Art. 78 and § 3001

—against—

ZONING BOARD OF APPEALS OF THE TOWN OF AMHERST, TOWN OF AMHERST, NEW YORK, DAVID GAU DE LIN and SHERRY LIN

Respondents-Defendants.

VERIFIED PETITION/ COMPLAINT

Index No.: 804146/2021

Petitioners/Plaintiffs, by their attorneys, RUPP BAASE PFALZGRAF CUNNINGHAM LLC, ELIZABETH A. HOLMES, of counsel, for their Verified Petition and Complaint in this hybrid CPLR Article 78 proceeding/Declaratory Judgment action against the Respondent-Defendants, respectfully allege and state:

Introduction

1. Petitioners commence this combined CPLR Article 78 proceeding and Declaratory Judgment action pursuant to Section 267-c of the Town Law for a judgment reversing, annulling and setting aside the decision of Respondent Zoning Board of Appeals of the Town of Amherst issued on February 23, 2021, granting an area variance from residential lot width requirements resulting in a 75% lot width deficiency for construction of a single-family home on a wooded, one acre lot located at 200 Paradise Road in the Town of Amherst, New York. The Zoning Board's approval was in violation of lawful procedure, effected by error of law, arbitrary and capricious, an abuse of discretion and unsupported by substantial evidence in the record.

Attachment: DOC033121-033120211507l4 (COM-2021-47 : Verified Petition: Grover Vs TOA)

14.4.a

Parties

2. Petitioner Christopher Grover resides in and owns the real property located at [redacted] in the Town of [redacted], County of [redacted] and State of [redacted].

3. Petitioner Kelly LeCastre resides in and owns the real property located at [redacted] Regents Park in the Town of [redacted] County of [redacted] and State of [redacted].

4. Petitioner Marlene Dashkoff resides in and owns the real property located at [redacted] in the Town of [redacted] County of [redacted] and State of [redacted]

5. Petitioner Neil Dashkoff resides in and owns the real property located at [redacted] in the Town of [redacted] County of [redacted] and State of [redacted]

6. Petitioner Albert Vexler resides in and owns the real property located at [redacted] in the Town of [redacted] County of [redacted] and State of [redacted].

7. Respondent Zoning Board of Appeals of the Town of Amherst (hereinafter "ZBA"), is the Zoning Board of the Town of Amherst, Erie County, New York; possessing the powers and duties of a town zoning board of appeals pursuant to the laws of the State of New York, and having an office for the conducting of business in the County of Erie at 5583 Main Street, Williamsville, New York 14221.

8. Respondent David Gau De Lin owns the real property located at 200 Paradise Road in the Town of Amherst, County of Erie and State of New York.

9. Respondent Sherry Lin owns the real property located at 200 Paradise Road in the Town of Amherst, County of Erie and State of New York.

10. Petitioners are aggrieved by the arbitrary and irrational determination of the ZBA, rendered on February 23, 2021, which approved the 75% area variance sought by respondents ("Approval").

Attachment: DOC033121-033120211507l4 (COM-2021-47 : Verified Petition: Grover Vs TOA)

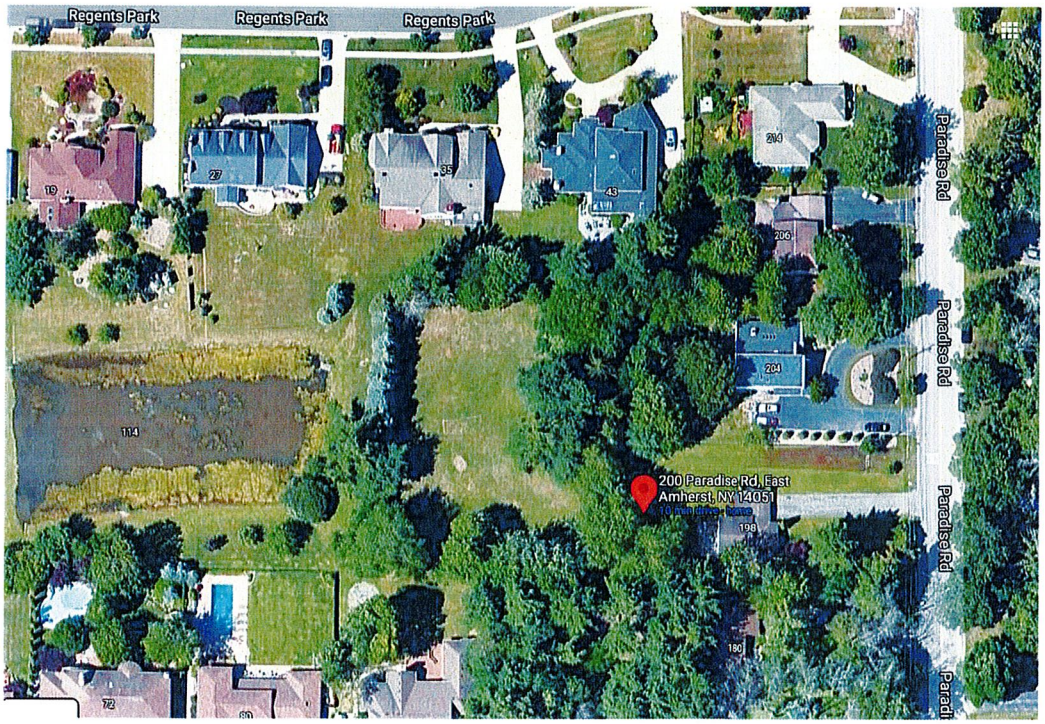
11. Petitioners have standing to pursue the claims asserted herein and this hybrid action/special proceeding was timely commenced.

Venue

12. Venue for this Article 78 proceeding and declaratory judgment action to review the determinations of the ZBA is proper in Erie County because the determinations complained of were made in Erie and the Property is located in Erie County.

Factual Background

13. The real property located at 200 Paradise Road is zoned R-2 (Residential District Two) and consists of approximately one acre of partially wooded and partially vacant land ("Property"). Adjacent to Rocksbury Lake (located to the west), it has existed in its natural state for thirty years; and with multiple mature trees along its perimeter, currently provides a significant vegetative buffer between the surrounding homes along Regents Park, Paradise Road and Aspenwood Drive:



Attachment: DOC033121-033120211507l4 (COM-2021-47 : Verified Petition: Grover Vs TOA)

14. The Property is a flag-shaped lot created by a parcel division in 1986 and purchased by Respondents David and Sherry Lin (collectively referred to as "Owners") five years later in 1991.

15. On or about January 25, 2021, an application was submitted to the ZBA seeking a variance from the residential lot width requirements for the Property. The application describes the proposed project as "[s]ale of lot to potential buyer who wants to build a home on it" (the "Project"). The application is attached hereto as Exhibit A.[1]

16. The application sought a 75% reduction in the lot width requirement set forth in section 3-5-2B of the Town of Amherst Zoning Code, which requires a minimum of 80 feet of lot width to build a single-family home in a R-2 District. The application requested approval from the ZBA to build with only 20 feet of lot width, or, "frontage".

17. Pursuant to Town procedure, an applicant seeking an area variance is required to submit the following information to the ZBA:

- Property Survey;
- Part I of a Short Environmental Assessment Form (SEAF);
- A detailed site plan showing the location of the existing/proposed structure(s) and distances to property lines. For minor residential requests, a second copy of the survey may be used as the site plan with the proposed structure highlighted in red and proposed distances to the property line;
- Building elevation drawing showing height of the proposed structure(s), if applicable;
- Photos of existing conditions to support your request;
- Letter of permission from the land owner if the applicant is not the land owner.[2]

18. An applicant is also required to demonstrate compliance with Town Law §267-b(3)(b).

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[1] During the February 23, 2021 public hearing, Attorney Christopher Galasso represented that he was the "attorney and agent for the seller" and that it was the "seller" that applied for the variance, not the potential buyer. See, Exhibit B at 1:41:10.

[2] http://www.amherst.ny.us/pdf/planning/applications/zba/191213_area_variance_app.pdf

Attachment: DOC033121-033120211507l4 (COM-2021-47 : Verified Petition: Grover Vs TOA)

19. An area variance is defined by Town Law §267(1)(B) as "the authorization by the zoning board of appeals for the use of the land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulation."

20. In granting an area variance, a zoning board is required to take into consideration the benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community. Town Law §267-b(3)(b).

21. To complete the mandatory balancing test, a zoning board must consider five factors:

i. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

ii. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance.

iii. Whether the requested area variance is substantial.

iv. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zone.

v. Whether the alleged difficulty was self-created, which consideration must be relevant to the decision of the Zoning Board of Appeals, but does not necessarily preclude the granting of the variance.

22. Town Law §267-b(4) also bestows on a zoning board the authority to "impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property...for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community."

23. The variance application submitted by the Owners was deficient in both substance and procedure.

Attachment: DOC033121-033120211507l4 (COM-2021-47 : Verified Petition: Grover Vs TOA)

24. The application included a rudimentary drawing as a "detailed site plan" which failed to include any dimensions for the residential home, pool and tennis court proposed. See, Exhibit A, p. 11.

25. It also failed to identify the location of the proposed building and accessory structures, as well as the distances from those structures to property lines, i.e. "setbacks".

26. In fact, the "site plan" includes a tennis court in the side yard of the Property, an accessory use that is not even permitted in a R-2 district.[3] Id.

27. Without this information, the ZBA was ill-equipped from the start to properly evaluate the magnitude of the effect of the Project on the surrounding properties.

28. Further, the application failed to sufficiently address the Town Law §267- b(3)(b) criteria through any meaningful analysis. Instead, the applicant's responses largely parrot back the criteria the ZBA is required to analyze:

(1) **Character of Neighborhood**. No undesirable change will be produced nor detriment created. Addition of a new home would be an improvement.

(2) **Other Alternatives**. There is no other alternative.

(3) **Substantial**. Not considered substantial based on attached letter indicating this is a buildable lot since there was a house on it before.

(4) **Physical or Environmental Conditions**. No impact.

(5) **Not self-created.** No – there was a house there before.

See, Exhibit A, p. 2.

29. The variance request was scheduled for a public hearing before the ZBA on February 23, 2021.

[3] See, Town of Amherst Zoning Code Section 3-5-3 "Accessory Uses and Structures" (https://ecode360.com/15500613).

Attachment: DOC033121-033120211507l4 (COM-2021-47 : Verified Petition: Grover Vs TOA)

14.4.a

30. Attorney Christopher Galasso presented the application on behalf of the Owners at the public hearing and with respect to compliance with the statutory criteria, relied entirely on the written submission in his presentation to the board:

> "We have to show five items that comply with the law, and we feel through our application that we've demonstrated that we've met those requirements."

See, Exhibit B attached hereto, complete recording of the February 23, 2021 Zoning Board of Appeals meeting at 1:16:15.

31. Five neighborhood residents then testified in unanimous opposition to the variance request; all providing specific examples of the Project's negative impact on community character and detriment to nearby properties, impact on environmental conditions and existing feasible alternatives to the area variance sought.

32. Testimony was received from owners of the four lots directly adjacent to the Property and highlighted below:



33. Petitioner Grover provided testimony that due to the uniform size and shape of the subdivision lots and the 35 foot rear setback requirement, the existing neighborhood, which is

Attachment: DOC033121-033120211507l4 (COM-2021-47 : Verified Petition: Grover Vs TOA)

characterized by houses with large floor-to-ceiling windows and living spaces in the rear of the homes, provides for no less than seventy (70) feet of distance between the rear windows.

34. In stark contrast, the irregular shape and location of the Property will allow construction of a dwelling within 43 feet of the rear of his home, which overlooks the buildable—and currently wooded—portion of the Property:




35. As a result, petitioner Grover testified that the Project will result in an irreversible adverse visual impact on his property and destroy the privacy he and his family enjoy.

36. To his point, the Town Planner confirmed through his testimony that in light of the irregular shape of the Property and existing setback requirements, the proposed dwelling could sit as close as eight feet to the property lines of the five adjacent lots with existing single-family homes (petitioners included), the rear of which currently provide views of the wooded Property.

37. The Town Planner also confirmed that only administrative site plan approval would be required for the Project, leaving the ZBA as the sole line of defense to protect the community—and particularly the adjacent property owners—against these demonstrated adverse impacts.

38. Petitioner Grover also testified that he was willing to purchase the Property to maintain its existing natural state and at a minimum urged the ZBA to consider a modification to

Attachment: DOC033121-033120211507l4 (COM-2021-47 : Verified Petition: Grover Vs TOA)

the applicable setback requirements as a reasonable condition of any approval to address the negative impacts to which he and his neighbors testified.

39. Professor Albert Vexler's home at 198 Paradise is located directly adjacent to the proposed driveway on the Property. In addition to his written submission, he testified about the adverse impacts that would result from destruction of multiple mature trees currently providing privacy and a wildlife habitat on the Property. He also objected to the 200-foot driveway proposed directly adjacent to his Property, citing safety concerns for his children:

View of 200 Paradise from rear of 198 Paradise



Location of Proposed 200 foot Driveway



Attachment: DOC033121-03312021150714 (COM-2021-47 : Verified Petition: Grover Vs TOA)

40. After the public hearing was closed, respondents had an opportunity to respond to the numerous objections of the impacted property owners.

41. However, the Owner's counsel made no effort to refute any of the testimony provided and in fact offered to double the existing setback requirements from eight (8) to sixteen (16) feet to minimize the adverse effects of the Project on the adjacent property owners.

42. Further, prior to its vote, the ZBA chairman noted on the record that Petitioner Grover's offer to purchase the Property was "an alternative that was not explored." In response, the Owner's counsel conceded it was a feasible alternative that "could be explored." Id at 1:40:25.

43. The ZBA ended its inquiry there and despite substantial evidence in the record that the Owners failed to meet their burden under Town Law §267- b(3)(b), granted the variance without any meaningful consideration of the statutory balancing test or the five factors it was mandated to analyze.

44. The ZBA's approval was unconditional, despite its authority to impose reasonable conditions and restrictions such as increased setbacks due to ample evidence in the record that the Project would result in adverse impacts on the neighborhood and community.

AS AND FOR A FIRST CAUSE OF ACTION:
RESPONDENT ZBA'S APPROVAL WAS AFFECTED BY ERROR OF LAW, ARBITRARY AND CAPRICIOUS, AN ABUSE OF DISCRETION AND NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

45. Petitioners repeat, reallege and incorporate each paragraph hereinbefore mentioned.

46. In granting the area variance, the ZBA abdicated its duty to consider the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

47. In granting the area variance, the ZBA abdicated its duty to consider the statutory five-factor test set forth in §267- b(3)(b).

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48. The ZBA granted the variance despite ample evidence in the record that it would result in an undesirable change in the character of the neighborhood and a detriment to nearby properties.

49. The ZBA granted the variance despite ample evidence in the record that a feasible alternative to the variance exists.

50. The ZBA failed to evaluate or even acknowledge the substantial nature of the variance, requiring a 75% deviation from the Code.

51. The ZBA granted the variance even though the hardship was self-imposed as the Owners purchased the Property after the deficient lot was created.

52. The ZBA granted the variance despite ample evidence in the record that the Project will result in an adverse effect and impact on the environmental conditions in the neighborhood through the destruction of many mature trees and vegetative and wildlife habitats.

53. The ZBA granted the variance despite ample evidence in the record that the potential detriment to the health, safety and welfare to the community far outweighs the benefit to the applicant by the granting of the application, which is not to allow the Owner to build a home on the Property, but to allow the Owner to sell the Property for fair market value.

54. Finally, in granting the area variance, the ZBA abdicated its duty to impose reasonable conditions and restrictions directly related and incidental to the proposed use of the Property to minimize the demonstrated adverse impact the variance will have on the neighboring property owners.

55. Courts may set aside a zoning board determination where the record reveals that the board acted illegally or arbitrarily; or abused its discretion.

Attachment: DOC033121-033120211507l4 (COM-2021-47 : Verified Petition: Grover Vs TOA)

56. Based on the substantial evidence in the record set forth and discussed above, the ZBA's Approval was affected by error of law, arbitrary and capricious, an abuse of discretion and not supported by substantial evidence.

57. As a result, the Approval should be annulled.

58. Petitioners have no adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION:
RESPONDENT ZBA FAILED TO COMPLY WITH THE PUBLICATION AND NOTICE REQUIREMENTS OF THE TOWN CODE

59. Petitioners repeat, reallege and incorporate each paragraph hereinbefore mentioned.

60. Sections 8-2-3 and 8-13-3 of the Town of Amherst Zoning Code ("Code") require that a public hearing for an area variance be properly noticed and published prior to.

61. Under section 8-2-3(A), for the purpose of notifying the public of all public hearing agenda items which may be considered or reviewed by the ZBA, "notice shall be published at least once in a newspaper having general circulation in the Town for a time period as required under SEQR."

62. Under section 8-2-3(B), at least 10 days prior to the first public hearing, the Town Clerk shall give written notice by mail of the date, time and place of the public hearing and the street address or other identification of the property involved and a brief description of the action under consideration to the "owners of property located within 600 feet of the subject property, as shown by the records of the Town Assessor..."

63. Upon information and belief, Respondents failed to comply with the notice and publication requirements of the Code.

Attachment: DOC033121-033120211507l4 (COM-2021-47 : Verified Petition: Grover Vs TOA)

64. On March 2, 2021, the Town of Amherst Town Clerk provided a response to Petitioner Grover's March 1, 2021 request pursuant to the NY Freedom of Information Law ("FOIL") seeking "Records related to the ZBA Area Variance decision for 200 Paradise Rd", which stated as follows:

Please find at the link the files that the Town Clerk's office has on 200 Paradise Road.

The entire FOIL response is attached hereto as Exhibit C.

65. A review of the response reveals neither a notice nor an affidavit of publication demonstrating compliance with section 8-2-3(A).

66. Nor does it provide proof that all property owners within 600 feet of the Property were provided with notice of the public hearing in accordance with section 8-2-3(B).

67. Due to Respondents' failure to comply with the notice and publication requirements of the Code, the Approval should be annulled.

68. Petitioners have no adequate remedy at law.

PRELIMINARY INJUNCTION

69. Petitioners are unaware if and when Respondents intend to transfer ownership of the Property.

70. Issuance of a building permit based on the ZBA's unlawful and illegal Approval will cause irreparable harm to Petitioners absent injunctive relief enjoining and restraining Respondents from issuing a building permit and/or commencing construction on the Property.

71. Petitioners respectfully reserve the right to promptly file an application for a temporary restraining order and/or preliminary injunction to maintain the status quo if and when it appears Respondents intend to proceed with development pursuant to the illegal Approval.

Attachment: DOC033121-033120211507l4 (COM-2021-47 : Verified Petition: Grover Vs TOA)

72. Petitioners have no adequate remedy at law.

WHEREFORE, Petitioners respectfully request that this Court enter Judgment granting the Verified Petition/Complaint in its entirety and awarding Judgment to the Petitioners as follows:

A. Annulling and declaring null and void the Zoning Board's February 23, 2021 Approval;

B. Awarding costs and disbursements to Petitioners, including reasonable attorney's fees; and

C. Granting such other and further relief, as this Court shall deem just, proper or equitable.

No prior requests for this relief have been made to this or any other court.

Dated: March 29, 2021
Buffalo, New York

RUPP BAASE PFALZGRAF CUNNINGHAM LLC
Attorneys for Petitioners

By: _____
Elizabeth A. Holmes, Esq.
1600 Liberty Building
Buffalo, New York 14202
(716) 854-3400

Attachment: DOC033121-03312021150714 (COM-2021-47 : Verified Petition: Grover Vs TOA)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Town Clerk
DOC ID: 23142

COMMUNICATION 2021-48 **REFERRED**

Summons and Complaint: BCMB1 Trust Vs. Town of Amherst Et Al.

4/19/2021
Referred to Town Attorney.

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

----------X

BCMB1 TRUST,

Plaintiff,

-against-

ALICIA QUINN AKA ALICIA D. QUINN AKA ALICIA LOMBARDO, DAVID LOMBARDO, ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION, CAPITAL ONE BANK (USA) N.A., UNIFUND CCR, LLC, CREDIT ACCEPTANCE CORPORATION, PEOPLE OF THE STATE OF NEW YORK C/O KENMORE VILLAGE COURT, NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE, BUFFALO & ERIE COUNTY REGIONAL DEVELOPMENT CORP., TOWN OF AMHERST and "JOHN DOE No. 1 through JOHN DOE No. 99", said names being fictitious, parties intended being possible tenants or occupants of premises, and corporations, other entities or persons who claim, or may claim, a lien against the premises,

Defendants.

----------X

Index No.: _____

SUMMONS

Mortgaged Premises:
204 Sherbrooke Avenue
Buffalo, NY 14221

TO THE ABOVE-NAMED DEFENDANTS(S):

YOU ARE HEREBY SUMMONED and required to appear by serving an answer to the annexed Complaint upon Plaintiff's attorney, at the address stated below, within twenty (20) days after service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment will be taken against you for the relief demanded in the Complaint, together with the costs of this action.

Dated: February 9, 2021
Astoria, New York

Richland & Falkowski, PLLC

Michal Falkowski, Esq.
35-37 36th Street, 2nd Floor
Astoria, NY 11106
Phone: 212-390-8872
Email: mfalkowski@rflegal.net
Attorneys for Plaintiff

Attachment: DOC041321-041321144414 (COM-2021-48 : Summons and Complaint: BCMB1 Trust Vs. Town of Amherst Et Al.)

NOTICE YOU ARE IN DANGER OF LOSING YOUR HOME

If you do not respond to this summons and complaint by serving a copy of the answer on the attorney for the mortgage company who filed this foreclosure proceeding against you and filing the answer with the court, a default judgment may be entered and you can lose your home.

Speak to an attorney or go to the court where your case is pending for further information on how to answer the summons and protect your property.

Sending a payment to your mortgage company will not stop this foreclosure action.

YOU MUST RESPOND BY SERVING A COPY OF THE ANSWER ON THE ATTORNEY FOR THE PLAINTIFF (MORTGAGE COMPANY) AND FILING THE ANSWER WITH THE COURT.

Attachment: DOC041321-041321144414 (COM-2021-48 : Summons and Complaint: BCMB1 Trust Vs. Town of Amherst Et Al.)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

----------X

BCMB1 TRUST,

Plaintiff,

-against-

ALICIA QUINN AKA ALICIA D. QUINN AKA ALICIA LOMBARDO, DAVID LOMBARDO, ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION, CAPITAL ONE BANK (USA) N.A., UNIFUND CCR, LLC, CREDIT ACCEPTANCE CORPORATION, PEOPLE OF THE STATE OF NEW YORK C/O KENMORE VILLAGE COURT, NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE, BUFFALO & ERIE COUNTY REGIONAL DEVELOPMENT CORP., TOWN OF AMHERST and "JOHN DOE No. 1 through JOHN DOE No. 99", said names being fictitious, parties intended being possible tenants or occupants of premises, and corporations, other entities or persons who claim, or may claim, a lien against the premises,

Defendants.

----------X

Index No.: _____

COMPLAINT

Mortgaged Premises:
204 Sherbrooke Avenue
Buffalo, NY 14221

Plaintiff BCMB1 TRUST ("Plaintiff") by its attorney, Richland & Falkowski, PLLC complaining of the defendants, alleges, upon information and belief as follows:

FIRST: Plaintiff is a trust having a principal place of business at 2001 Biscayne Blvd., Suite 117-262, Miami, Florida 33137, authorized to transact business in the State of New York.

SECOND: Upon information and belief, at all times hereinafter mentioned, the defendant(s) reside or conduct business at the address set forth in "Schedule A" annexed hereto (any that are corporations being organized and existing under the laws of the State set forth herein), and are made defendants in this action in the capacities and for the reasons alleged therein.

Attachment: DOC041321-041321144414 (COM-2021-48 : Summons and Complaint: BCMB1 Trust Vs. Town of Amherst Et Al.)

THIRD: That the Internal Revenue Service United States of America, New York State Department of Taxation and Finance and all other agencies or instrumentalities of the Federal, State or local government, however designated, if named as defendants, are made parties solely by reason of the facts set forth in the annexed "Schedule B."

FOURTH: That heretofore, to secure a sum of money to the stated Lender, its successor and assigns, the defendant duly executed, acknowledged and delivered to the stated Lender, a certain bond(s) or note(s) whereby he bound his successors or heirs, executors, administrators and assigns, jointly and severally, in the amount of said sum, as more fully described in the annexed "Schedule C," said schedule being a copy of the bond(s) or note(s), or accurate reference to the assumption agreement(s) evidencing indebtedness to plaintiff, together with the terms of repayment of said sum and rights of the plaintiff.

FIFTH: Plaintiff is the holder of the Note referenced in paragraph FOURTH and entitled to enforce the Note. The Note was payable to Plaintiff or indorsed (specifically or in blank) and negotiated to Plaintiff. A copy of the Note with the indorsement(s) and/or allonge(s) is annexed hereto as Schedule "C".

SIXTH: That as security for the payment of said indebtedness, a Mortgage(s) was executed as annexed hereto in "Schedule D," acknowledged and delivered to the stated Lender/Mortgagee, its successors and assigns, wherein the named mortgagor or mortgagors bargained, granted and sold to the mortgagee named therein, its successors and assigns, the premises more particularly described therein (hereinafter, the "Mortgaged Premises") under certain conditions with rights, duties and privileges between the parties as described therein.

SEVENTH: The Mortgage is currently held by Plaintiff. As such, Plaintiff is the current beneficiary of the Mortgage securing the Note, the originals of which are in Plaintiff's

Attachment: DOC041321-041320211444414 (COM-2021-48 : Summons and Complaint: BCMB1 Trust Vs. Town of Amherst Et Al.)

possession and control, and Plaintiff is otherwise entitled to enforce the subject Mortgage and Note pursuant to law.

EIGHTH: That said mortgage(s) was duly recorded and the mortgage tax(es) due thereon was duly paid in the County Clerk's Office at the place and time that appears therein.

NINTH: That Plaintiff has complied with all applicable provisions of the RPAPL § 1304, § 1306 and Banking Law, and specifically with Banking Law § 595-a and 6-1 and 6-m if applicable, in securing the aforementioned indebtedness and at all times thereafter. The NYS DFS tracking number is NYS5326594.

TENTH: That the defendant(s), ALICIA QUINN AKA ALICIA D. QUINN AKA ALICIA LOMBARDO has failed to comply with the conditions of the mortgage(s) or bond(s) by failing to pay portions of principal, interest or taxes, assessments, water rates, insurance premiums, escrow and/or other charges, all as more fully described in "Schedule E".

ELEVENTH: That plaintiff elects herein to call due the entire amount secured by the mortgage(s) as more than thirty (30) days have elapsed since the date of default.

TWELFTH: That "Schedule E" sets forth the principal balance due and the date and rate from which interest accrued and is owing from the defendant(s) default.

THIRTEENTH: That in order to protect its security, the plaintiff has paid, if set forth in "Schedule E", or may be compelled to pay during the pendency of this action, local taxes, assessments, water rates, insurance premiums and other charges assessed to the Mortgaged Premises, and hereby requests that any sums paid by it for said purposes, with interest thereon, be added to the sum otherwise due, be deemed secured by the mortgage(s) and be adjudged a valid lien on the Mortgaged Premises.

Attachment: DOC041321-041321144414 (COM-2021-48 : Summons and Complaint: BCMB1 Trust Vs. Town of Amherst Et Al.)

FOURTEENTH: That the defendants herein have or claim to have some interest in, or lien upon, the Mortgaged Premises or some part thereof, which interest or lien, if any, accrued subsequent to the lien of the plaintiff's mortgage(s).

FIFTEENTH: That the plaintiff is now the true and lawful holder of the said bond(s)/note(s) and is mortgagee of record or has been delegated the authority to institute a mortgage foreclosure action by the owner and holder of the subject mortgage and note; and that there have been no other prior proceedings, at law or otherwise, to collect or enforce the bond(s)/note(s) or mortgage(s) and no such proceedings are currently pending.

SIXTEENTH: That Schedules "A", "B", "C", "D", and "E", be incorporated and made part of the Complaint with the same force and effect as if they were completely and fully set forth wherever reference is made to them herein.

SEVENTEENTH: The plaintiff shall not be deemed to have waived, altered, released or changed its election herein by reason of any payment after the commencement of this action of any or all of the defaults mentioned herein and such election shall continue to be effective.

WHEREFORE, plaintiff demands judgment adjudging and decreeing the amounts due it for principal, interest, costs and reasonable attorneys', fees if provided for in the bond(s), note(s) or mortgage(s), and that the defendants, and any persons claiming by, through or under them subsequent to the commencement of this action, and every other person or corporation whose right, title, conveyance, or encumbrance of the Mortgaged Premises is subsequent or recorded subsequent to the plaintiff's interest, be forever barred and foreclosed of all right, claim, lien, interest or equity of redemption in and to the Mortgaged Premises; that the Mortgaged Premises, or part thereof, be decreed to be sold according to law as may be necessary to raise the amounts

Attachment: DOC041321-04132021144414 (COM-2021-48 : Summons and Complaint: BCMB1 Trust Vs. Town of Amherst Et Al.)

due for principal, interest, costs, allowances and disbursements, together with any monies advanced and paid by the plaintiff; that the plaintiff be paid the amounts due on said bond(s), note(s) and-mortgage(s), and any sums paid by the plaintiff to protect the lien of its mortgage(s) out of the proceeds from the sale thereof, with interest thereon from the respective dates of payment thereof, costs and expenses of this action and reasonable attorneys' fees, if provided for in the bond(s), note(s) or mortgage(s), provided the amount of the sale proceeds permits said payment; that any of the parties hereto may purchase the Mortgaged Premises at sale; that this Court, if requested, forthwith appoint a Receiver of the rents and profits of the Mortgaged Premises with the usual powers and duties associated therewith; that the defendant(s) referred to in paragraph "TENTH" be adjudged to pay any remaining deficiency; and such other or further relief as may be just and equitable, unless the defendant(s) obtained a bankruptcy discharge and such other or further relief as may be just and equitable. The plaintiff hereby reserves its right to share in surplus monies from the sale by virtue of its position as a judgment or other lien creditor, excluding the mortgage(s) foreclosed herein.

Dated: February 9, 2021
Astoria, New York

Richland & Falkowski, PLLC

Michal Falkowski, Esq.
35-37 36th Street, 2nd Floor
Astoria, NY 11106
Phone: 212-390-8872
Email: mfalkowski@rflegal.net
Attorneys for Plaintiff

Attachment: DOC041321-041321144414 (COM-2021-48 : Summons and Complaint: BCMB1 Trust Vs. Town of Amherst Et Al.)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Engineering
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 23154 A **RESOLUTION 2021-366** **ADOPTED**

PIP 3079 - Geselwoods Subdivision - Sanitary Sewer

Attached please find an application for a Sanitary Sewer Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $9,115.00.00.

Three (3) checks will be sent to the Town Clerk, one (1) for $150.00 to be retained as a Permit Fee and one (1) in the amount of $8,390.00 which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost, and one (1) in the amount of $575.00 to cover the televising cost and to be deposited in the SS District 16 account G9000-02377, also to be forwarded to the Comptrollers Office. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3079.

4/19/2021
Consent

FINANCIAL IMPACT:

$9,115.00

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

APPLICATION FOR PERMIT TO CONSTRUCT A PUBLIC/PRIVATE IMPROVEMENT

Date APRIL 13 20 21

TO THE HONORABLE TOWN BOARD:

Gentlemen: **Town of Amherst, Erie County, N.Y.**

Application is Hereby Made for Permission to Construct

	Public	Private
Pavement and Curbs	☐	☐
Water Line	☐	☐
Sanitary Sewer	☑	☐
Storm Sewer	☐	☐
Backyard Drainage	☐	☐

Estimated Cost of Improvement $ 83,900

DESCRIPTION OF PROPOSED PUBLIC/PRIVATE IMPROVEMENT

Subdivision Name, Street Name(s), Quantity, Description and Location of Improvement: Town of Amherst Job 2018.010

GESELWOODS SUBDIVISION, 150 AYER ROAD

Supporting Data:

Consulting Engineer's Name METZGER CIVIL ENGINEERING, PLLC

Contractor's Name VISONE CO SITE DEVELOPMENT Phone 759-1715

Contractor's Address 9829 MAIN ST. CLARENCE NY 14031

Maintenance (2 yr.) bond by LAWLY INSURANCE

This application must be submitted in quadruplicate along with 4 copies of construction drawings showing the extent of the improvements which will be incorporated into and made a part of this application. In the event the drawing submitted contains other facilities not covered by this permit, then those covered by this permit must be designated by coloring so that a clear-cut picture of the work under this permit is easily determined.

Work under this permit shall be started within 60 days from the date of approval thereof. Work under this permit shall be completed within 1 year from the date of approval thereof. Any request for extension shall be addressed in writing to the Town Board of the Town of Amherst.

Fees from this permit and cost of inspection shall be covered by separate checks made payable to the Town of Amherst at amounts set forth by the Town Board. The inspection fee is to cover all work under this permit and shall be at no additional cost to the Town of Amherst. The inspection fee may be increased by a commercially reasonable amount during or after implementation of the improvement at the discretion of the Town Engineer due to unforeseen field conditions or complexity of design. All construction work is to be carried on during normal and usual working hours. Any deviation from this must be compensated by the payment of additional fees.

In consideration of the granting of the permit hereby petitioned for, the undersigned hereby agrees that if such a permit is granted he/she will comply with the terms thereof, the Laws off the State of New York, the Ordinances of the Town of Amherst and Regulations of the various departments of the Town and the State of New York, and that he/she shall notify the Engineering Department forty-eight (48) hours in advance of commencing any work under this permit.

The undersigned hereby certifies that all of the information contained in this petition is correct and true.

CK #

ITEM		FEE
1390 PERMIT		$150.00
1393 INSPECTION	10% of Estimated Cost of Construction	8390,00
VIDEO INSPECTION SANITARY		1,150 Feet
1394 $0.50/Linear Foot		575,00
TOTAL FEE		9115,00

Jeanne C. Conklin
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01CO6398147
Qualified in Erie County
Commission Expires September 23, 20

Owner Sign Here

JAMES W GESER
Please Print Name

61 SHETLAND WILLIAMSVILLE NY
Address

14221 Phone 716-316-2735
Zip

Subscribed and sworn to before me this 9th day of April 2021

Notary Public, Erie County, New York

I do certify that I have examined the foregoing petition and Survey Sketch and certify that they conform to Ordinances of the Town of Amherst.

Town Engineer

Receipt is hereby acknowledged of the sum of $ ..... , being the required fees established by the Town Board of the Town of Amherst, N.Y.

Town Clerk

Public/Private Improvement Permit No. 39[illegible]

Attachment: PIP 3079 (RES-2021-366 : PIP 3079 - Geselwoods Subdivision - Sanitary Sewer)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Engineering
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 23155 **RESOLUTION 2021-367** **ADOPTED**

PIP 3080 - Geselwoods Subdivision - Waterline

Attached please find an application for a Waterline Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $5,450.00.

Two (2) checks will be sent to the Town Clerk, one (1) for $150.00 to be retained as a Permit Fee, and one (1) in the amount of $5,300.00, which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3080.

4/19/2021
Consent

FINANCIAL IMPACT:

$5,450.00

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

APPLICATION FOR PERMIT TO CONSTRUCT A PUBLIC/PRIVATE IMPROVEMENT

Date April 13 2021

TO THE HONORABLE TOWN BOARD:

Gentlemen: ***Town of Amherst, Erie County, N.Y.***

Application is Hereby Made for Permission to Construct

	Public	Private
Pavement and Curbs	☐	☐
Water Line	☒	☐
Sanitary Sewer	☐	☐
Storm Sewer	☐	☐
Backyard Drainage	☐	☐

Estimated Cost of Improvement $ 53,000

DESCRIPTION OF PROPOSED PUBLIC/PRIVATE IMPROVEMENT

Subdivision Name, Street Name(s), Quantity, Description and Location of Improvement: Town of Amherst Job 208.010

GESEL WOOD SUBDIVISION, 150 AYER ROAD

Supporting Data:

Consulting Engineer's Name METZGER CIVIL ENGINEERING, PLLC

Contractor's Name VISONE CO SITE DEVELOPMENT Phone 759-1715

Contractor's Address 9829 MAIN ST, CLARENCE NY 14031

Maintenance (2 yr.) bond by LAWLY INSURANCE

This application must be submitted in quadruplicate along with 4 copies of construction drawings showing the extent of the improvements which will be incorporated into and made a part of this application. In the event the drawing submitted contains other facilities not covered by this permit, then those covered by this permit must be designated by coloring so that a clear-cut picture of the work under this permit is easily determined.

Work under this permit shall be started within 60 days from the date of approval thereof. Work under this permit shall be completed within 1 year from the date of approval thereof. Any request for extension shall be addressed in writing to the Town Board of the Town of Amherst.

Fees from this permit and cost of inspection shall be covered by separate checks made payable to the Town of Amherst at amounts set forth by the Town Board. The inspection fee is to cover all work under this permit and shall be at no additional cost to the Town of Amherst. The inspection fee may be increased by a commercially reasonable amount during or after implementation of the improvement at the discretion of the Town Engineer due to unforeseen field conditions or complexity of design. All construction work is to be carried on during normal and usual working hours. Any deviation from this must be compensated by the payment of additional fees.

In consideration of the granting of the permit hereby petitioned for, the undersigned hereby agrees that if such a permit is granted he/she will comply with the terms thereof, the Laws off the State of New York, the Ordinances of the Town of Amherst and Regulations of the various departments of the Town and the State of New York, and that he/she shall notify the Engineering Department ~~forty-eight~~ (48) hours in advance of commencing any work under this permit.

The undersigned hereby certifies that all of the information contained in this petition is correct and true.

CK#
1388
1389

ITEM	FEE
PERMIT	$150.00
INSPECTION 10% of Estimated Cost of Construction	5300.00
VIDEO INSPECTION SANITARY	—
$0.50/Linear Foot	—
TOTAL FEE	5450.00

Jeanne C. Conklin
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01CO6398147
Qualified in Erie County
Commission Expires September 23, 2021

Owner Sign Here

JAMES W. GESEL
Please Print Name

61 SHETLAND WILLIAMSVILLE NY
Address

14221 Phone 716-316-273
Zip

Subscribed and sworn to before me this 9th day of April 20 21

Notary Public, Erie County, New York

I do certify that I have examined the foregoing petition and Survey Sketch and certify that they conform to Ordinances of the Town of Amherst.

Town Engineer

Receipt is hereby acknowledged of the sum of $ ....., being the required fees established by the Town Board of the Town of Amherst, N.Y.

Public/Private Improvement Permit No. 309

Attachment: PIP 3080 (RES-2021-367 : PIP 3080 - Geselwoods Subdivision - Waterline)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Engineering
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 23157 **RESOLUTION 2021-368** **ADOPTED**

PIP 3081 - Geselwoods Subdivision - Storm Sewer

Attached please find an application for a Storm Sewer Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $9,570.00.

We are sending two (2) checks to the Town Clerk, one for $150.00 to be retained as a Permit Fee and one in the amount of $9,420.00 which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3081.

4/19/2021
Consent

FINANCIAL IMPACT:

$9,570.00

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

APPLICATION FOR PERMIT TO CONSTRUCT A PUBLIC/PRIVATE IMPROVEMENT

Date APRIL 13 20 21

TO THE HONORABLE TOWN BOARD:

Gentlemen: ***Town of Amherst, Erie County, N.Y.***

Application is Hereby Made for Permission to Construct

	Public	Private
Pavement and Curbs	☐	☐
Water Line	☐	☐
Sanitary Sewer	☐	☐
Storm Sewer	☒	☐
Backyard Drainage	☐	☐

Estimated Cost of Improvement $ 94,200

DESCRIPTION OF PROPOSED PUBLIC/PRIVATE IMPROVEMENT

Subdivision Name, Street Name(s), Quantity, Description and Location of Improvement: Town of Amherst Job

GESELWOODS SUBDIVISION, 150 AYER ROAD

Supporting Data:

Consulting Engineer's Name METZGER CIVIL ENGINEERING, PLLC

Contractor's Name VISONE CO SITE DEVELOPMENT Phone 759-1715

Contractor's Address 9829 MAIN ST, CLARENCE NY 14031

Maintenance (2 yr.) bond by LANDY INSURANCE

This application must be submitted in quadruplicate along with 4 copies of construction drawings showing the extent of the improvements which will be incorporated into and made a part of this application. In the event the drawing submitted contains other facilities not covered by this permit, then those covered by this permit must be designated by coloring so that a clear-cut picture of the work under this permit is easily determined.

Work under this permit shall be started within 60 days from the date of approval thereof. Work under this permit shall be completed within 1 year from the date of approval thereof. Any request for extension shall be addressed in writing to the Town Board of the Town of Amherst.

Fees from this permit and cost of inspection shall be covered by separate checks made payable to the Town of Amherst at amounts set forth by the Town Board. The inspection fee is to cover all work under this permit and shall be at no additional cost to the Town of Amherst. The inspection fee may be increased by a commercially reasonable amount during or after implementation of the improvement at the discretion of the Town Engineer due to unforeseen field conditions or complexity of design. All construction work is to be carried on during normal and usual working hours. Any deviation from this must be compensated by the payment of additional fees.

In consideration of the granting of the permit hereby petitioned for, the undersigned hereby agrees that if such a permit is granted he/she will comply with the terms thereof, the Laws off the State of New York, the Ordinances of the Town of Amherst and Regulations of the various departments of the Town and the State of New York, and that he/she shall notify the Engineering Department forty-eight (48) hours in advance of commencing any work under this permit.

The undersigned hereby certifies that all of the information contained in this petition is correct and true.

CK# 1387 1386

ITEM		FEE
PERMIT		$150.00
INSPECTION	10% of Estimated Cost of Construction	9420.00
VIDEO INSPECTION SANITARY		—
$0.50/Linear Foot		—
TOTAL FEE		9570

Jeanne C. Conklin
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01CO6398147
Qualified in Erie County
Commission Expires September 23, 20

Owner Sign Here

JAMES W GESEL
Please Print Name

101 SHETLAND WILLIAMSVILLE NY
Address

14221 Phone 716-316-2736
Zip

Subscribed and sworn to before me this 9th day of April 20 21

Notary Public, Erie County, New York

I do certify that I have examined the foregoing petition and Survey Sketch and certify that they conform to Ordinances of the Town of Amherst.

Town Engineer

Receipt is hereby acknowledged of the sum of $ ..... , being the required fees established by the Town Board of the Town of Amherst, N.Y.

Town Clerk

Public/Private Improvement Permit No. ...

Attachment: PIP 3081 (RES-2021-368 : PIP 3081 - Geselwoods Subdivision - Storm Sewer)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Engineering
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 23158 **RESOLUTION 2021-369** **ADOPTED**

PIP 3082 - Geselwoods Subdivision - Paving & Curbing

Attached please find an application for a Pavement and Curbs Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $18,790.00.

We are sending two (2) checks to the Town Clerk, one for $150.00 to be retained as a Permit Fee and one in the amount of $18,640.00 which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3082.

4/19/2021
Consent

FINANCIAL IMPACT:

$18,790.00

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

APPLICATION FOR PERMIT TO CONSTRUCT A PUBLIC/PRIVATE IMPROVEMENT

Date April 13 20 21

TO THE HONORABLE TOWN BOARD:

Gentlemen: ***Town of Amherst, Erie County, N.Y.***

Application is Hereby Made for Permission to Construct

	Public	Private
Pavement and Curbs	☒	☐
Water Line	☐	☐
Sanitary Sewer	☐	☐
Storm Sewer	☐	☐
Backyard Drainage	☐	☐

Estimated Cost of Improvement $ 186,400

DESCRIPTION OF PROPOSED PUBLIC/PRIVATE IMPROVEMENT

Subdivision Name, Street Name(s), Quantity, Description and Location of Improvement: Town of Amherst Job 2018.010

Gesel Wood Subdivision, 150 Ayer Road

Supporting Data:

Consulting Engineer's Name Metzger Civil Engineering, PLLC

Contractor's Name Visone Co Site Development Phone 759-1715

Contractor's Address 9829 Main St, Clarence NY 14031

Maintenance (2 yr.) bond by Surety Insurance

This application must be submitted in quadruplicate along with 4 copies of construction drawings showing the extent of the improvements which will be incorporated into and made a part of this application. In the event the drawing submitted contains other facilities not covered by this permit, then those covered by this permit must be designated by coloring so that a clear-cut picture of the work under this permit is easily determined.

Work under this permit shall be started within 60 days from the date of approval thereof. Work under this permit shall be completed within 1 year from the date of approval thereof. Any request for extension shall be addressed in writing to the Town Board of the Town of Amherst.

Fees from this permit and cost of inspection shall be covered by separate checks made payable to the Town of Amherst at amounts set forth by the Town Board. The inspection fee is to cover all work under this permit and shall be at no additional cost to the Town of Amherst. The inspection fee may be increased by a commercially reasonable amount during or after implementation of the improvement at the discretion of the Town Engineer due to unforeseen field conditions or complexity of design. All construction work is to be carried on during normal and usual working hours. Any deviation from this must be compensated by the payment of additional fees.

In consideration of the granting of the permit hereby petitioned for, the undersigned hereby agrees that if such a permit is granted he/she will comply with the terms thereof, the Laws off the State of New York, the Ordinances of the Town of Amherst and Regulations of the various departments of the Town and the State of New York, and that he/she shall notify the Engineering Department forty-eight (48) hours in advance of commencing any work under this permit.

The undersigned hereby certifies that all of the information contained in this petition is correct and true.

CK# 1385 1384

ITEM		FEE
PERMIT		$150.00
INSPECTION	10% of Estimated Cost of Construction	18,640
VIDEO INSPECTION SANITARY		—
$0.50/Linear Foot		—
TOTAL FEE		18,790

Jeanne C. Conklin
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01CO6398144
Qualified in Erie County
Commission Expires September 23, 2021

Owner Sign Here

JAMES D GESEL
Please Print Name

61 Shetland Williamsville NY
Address

14221 Phone 716-316-2773
Zip

Subscribed and sworn to before me this 9th day of April 20 21

Notary Public, Erie County, New York

I do certify that I have examined the foregoing petition and Survey Sketch and certify that they conform to Ordinances of the Town of Amherst.

Town Engineer

Receipt is hereby acknowledged of the sum of $ ..... , being the required fees established by the Town Board of the Town of Amherst, N.Y.

Town Clerk

Public/Private Improvement Permit No. 3082

Attachment: PIP 3082 (RES-2021-369 : PIP 3082 - Geselwoods Subdivision - Paving & Curbing)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Engineering
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 23159 **RESOLUTION 2021-370** **ADOPTED**

PIP 3083 - Miller's Crossing Phase 1A - Sanitary Sewer

Attached please find an application for a Sanitary Sewer Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $18,609.40.

Three (3) checks will be sent to the Town Clerk, one for $150.00 to be retained as a Permit Fee and one (1) in the amount of $17,081.40 which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost, and one in the amount of $1,378.00 to cover the televising cost and to be deposited in the SS District 16 account G9000-02377, also to be forwarded to the Comptrollers Office. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3083.

4/19/2021
Consent

FINANCIAL IMPACT:

$18,609.40

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

APPLICATION FOR PERMIT TO CONSTRUCT A PUBLIC IMPROVEMENT

Date April 12 20 21

TO THE HONORABLE TOWN BOARD:

Gentlemen: *Town of Amherst, Erie County, N.Y.*

Application is Hereby Made for Permission to Construct

- Pavement and Curbs ..... ( )
- Water Line .....
- Sanitary Sewer .....
- Storm Sewer .....

Estimated Cost of Improvement $ 170,814.00

DESCRIPTION OF PROPOSED PUBLIC IMPROVEMENT

Subdivision Name, Street Name(s), Quantity, Description and Location of Improvement: **Town of Amherst Job** 2018-043

Miller's Crossing Subdivision, Ph 1A; Streamsong Ct, River Oak Ln, and Autumn Meadows Ln.

Installation of 458+/- LF of 10" PVC pipe, 2298+/- LF of 8" PVC Pipe, 15 Sanitary Manholes and 2 cleanouts.

Supporting Data:

Consulting Engineer's Name Greenman-Pedersen, Inc.

Contractor's Name Cimato Brothers Construction Phone 716-688-3536

Contractor's Address 9220 Transit Road, East Amherst, NY 14051

Maintenance (2 yr.) bond by .....

This application must be submitted in quadruplicate along with 5 copies of construction drawings for sewers, 4 copies for paving, 7 copies for water lines, showing the extent of the improvements which will be incorporated into and made a part of this application. In the event the drawing submitted contains other facilities not covered by this permit, then those covered by this permit must be designated by coloring so that a clear-cut picture of the work under this permit is easily determined.

Work under this permit shall be started within 60 days from the date of approval thereof. Work under this permit shall be completed within 1 year from the date of approval thereof. Any request for extension shall be addressed in writing to the Town Board of the Town of Amherst.

Fees for this permit shall be covered by two (2) checks both made payable to the Town of Amherst; one in the amount of $150.00 and the other to cover cost of inspection as set forth by the Town Board. The latter amount contemplates construction work to be carried on during normal and usual working hours. Any deviation from this must be compensated by the payment of additional fees.

In consideration of the granting of the permit hereby petitioned for, the undersigned hereby agrees that if such permit is granted he will comply with the terms thereof, the Laws of the State of New York, the Ordinances of the Town of Amherst and Regulations of the various departments of the Town and the State of New York, and that he shall notify the Engineering Department forty-eight (48) hours in advance of commencing any work under this permit.

The undersigned hereby certifies that all of the information contained in this petition is correct and true.

ITEM		FEE
PERMIT		$150.00
INSPECTION	10% of Estimated Cost of Improvement	$ 17,081.40
VIDEO INSPECTION-SANITARY		$ 1,378.00
SEWERS $ 0.50/Ft.		
TOTAL FEE		$ 18,609.40

..... Owner Sign Here

Natale Development Please Print Name

9159 Main Street Address

Clarence, NY 14031 Zip Phone 580-3318

Subscribed and sworn to before me this 13th day of April, 2021

BETH ANN GULAKIW
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES NOVEMBER 12, 20 22

..... Notary Public, Erie County, New York

I do certify that I have examined the foregoing petition and Survey Sketch and certify that they conform to Ordinances of Town of Amherst.

..... Town Engineer

Receipt is hereby acknowledged of the sum of $ ....., being the required fees established by the Town Board of Town of Amherst, N. Y.

..... Town Clerk

Public Improvement Permit No. 3083

Attachment: PIP 3083 (RES-2021-370 : PIP 3083 - Miller's Crossing Phase 1A - Sanitary Sewer)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Engineering
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 23160 **RESOLUTION 2021-371** **ADOPTED**

PIP 3084 - Miller's Crossing Phase 1A - Waterline

Attached please find an application for a Waterline Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $12,146.40.

Two (2) checks will be sent to the Town Clerk, one for $150.00 to be retained as a Permit Fee, and one (1) in the amount of $11,996.40, which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3084.

4/19/2021
Consent

FINANCIAL IMPACT:

$12,146.40

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

APPLICATION FOR PERMIT TO CONSTRUCT A PUBLIC IMPROVEMENT

Date April 12 20 21

TO THE HONORABLE TOWN BOARD:

Gentlemen: *Town of Amherst, Erie County, N.Y.*

Application is Hereby Made for Permission to Construct

- Pavement and Curbs ( )
- Water Line (circled)
- Sanitary Sewer
- Storm Sewer

Estimated Cost of Improvement $ 119,964.00

DESCRIPTION OF PROPOSED PUBLIC IMPROVEMENT

Subdivision Name, Street Name(s), Quantity, Description and Location of Improvement: **Town of Amherst Job** 2018.043

Miller's Crossing Subdivision, Ph 1A; Streamsong Ct, River Oak Ln, Autumn Meadows Ln. Installation of approx. 1,732 +/- LF of 8" PVC, 166 +/- LF of 8" DIP, Hydrant Assemblies - 4ea., and Tees, Valves, Service Connections and all other appurtenances for a complete installation.

Supporting Data:

Consulting Engineer's Name Greenman-Pedersen, Inc.

Contractor's Name Cimato Brothers Construction Phone 716-688-3536

Contractor's Address 9220 Transit Road, East Amherst, NY 14051

Maintenance (2 yr.) bond by

This application must be submitted in quadruplicate along with 5 copies of construction drawings for sewers, 4 copies for paving, 7 copies for water lines, showing the extent of the improvements which will be incorporated into and made a part of this application. In the event the drawing submitted contains other facilities not covered by this permit, then those covered by this permit must be designated by coloring so that a clear-cut picture of the work under this permit is easily determined.

Work under this permit shall be started within 60 days from the date of approval thereof. Work under this permit shall be completed within 1 year from the date of approval thereof. Any request for extension shall be addressed in writing to the Town Board of the Town of Amherst.

Fees for this permit shall be covered by two (2) checks both made payable to the Town of Amherst; one in the amount of $150.00 and the other to cover cost of inspection as set forth by the Town Board. The latter amount contemplates construction work to be carried on during normal and usual working hours. Any deviation from this must be compensated by the payment of additional fees.

In consideration of the granting of the permit hereby petitioned for, the undersigned hereby agrees that if such permit is granted he will comply with the terms thereof, the Laws of the State of New York, the Ordinances of the Town of Amherst and Regulations of the various departments of the Town and the State of New York, and that he shall notify the Engineering Department forty-eight (48) hours in advance of commencing any work under this permit.

The undersigned hereby certifies that all of the information contained in this petition is correct and true.

ITEM		FEE
PERMIT		$150.00
INSPECTION	10% of Estimated Cost of Improvement	$ 11,996.40
VIDEO INSPECTION-SANITARY		
SEWERS $ 0.50/Ft.		
TOTAL FEE		$ 12,146.40

Owner Sign Here

Natale Development
Please Print Name

9159 Main Street
Address

Clarence, NY 14031 Phone 580-3318
Zip

Subscribed and sworn to before me this 13th day of April, 2021

BETH ANN GULAKIW
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES NOVEMBER 12, 2022

Notary Public, Erie County, New York

I do certify that I have examined the foregoing petition and Survey Sketch and certify that they conform to Ordinances of Town of Amherst.

Town Engineer

Receipt is hereby acknowledged of the sum of $, being the required fees established by the Town Board of Town of Amherst, N. Y.

Town Clerk

Public Improvement Permit No. 3084

Attachment: PIP 3084 (RES-2021-371 : PIP 3084 - Miller's Crossing Phase 1A - Waterline)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Engineering
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 23161 **RESOLUTION 2021-372** **ADOPTED**

PIP 3085 - Miller's Crossing Phase 1A - Storm Sewer

Attached please find an application for a Storm Sewer Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $30,215.60.

We are sending two (2) checks to the Town Clerk, one for $150.00 to be retained as a Permit Fee and one in the amount of $30,065.60 which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3085.

4/19/2021
Consent

FINANCIAL IMPACT:

$30,215.60

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

APPLICATION FOR PERMIT TO CONSTRUCT A PUBLIC IMPROVEMENT

Date April 12 2021

TO THE HONORABLE TOWN BOARD:

Gentlemen: *Town of Amherst, Erie County, N.Y.*

Application is Hereby Made for Permission to Construct

- Pavement and Curbs ( )
- Water Line
- Sanitary Sewer
- Storm Sewer

Estimated Cost of Improvement $ 300,656.00

DESCRIPTION OF PROPOSED PUBLIC IMPROVEMENT

Subdivision Name, Street Name(s), Quantity, Description and Location of Improvement: Town of Amherst Job 2018.043

Miller's Crossing Subdivision, Ph 1A; Streamsong Ct, River Oak Ln & Autumn Meadows Ln. Installation c approx. 1758+/- LF of 8" HDPE, 503+/- LF of 12" HDPE, 1024+/- LF of 15" HDPE, 1047+/- LF of 18" HDPE, 592+/- LF of 24" HDPE, Pre-treatment Chamber - 2ea., Standard RCVRs - 14ea., LD RCVR - 14e Back Yard RCVRs - 20ea., Standard Manholes - 10ea., Standard Manhole RCVR - 2ea., Outfall structure

Supporting Data:

Consulting Engineer's Name Greenman-Pedersen, Inc.

Contractor's Name Cimato Brothers Construction Phone 716-688-3536

Contractor's Address 9220 Transit Road, East Amherst, NY 14051

Maintenance (2 yr.) bond by

This application must be submitted in quadruplicate along with 5 copies of construction drawings for sewers, 4 copies for paving, 7 copies for water lines, showing the extent of the improvements which will be incorporated into and made a part of this application. In the event the drawing submitted contains other facilities not covered by this permit, then those covered by this permit must be designated by coloring so that a clear-cut picture of the work under this permit is easily determined.

Work under this permit shall be started within 60 days from the date of approval thereof. Work under this permit shall be completed within 1 year from the date of approval thereof. Any request for extension shall be addressed in writing to the Town Board of the Town of Amherst.

Fees for this permit shall be covered by two (2) checks both made payable to the Town of Amherst; one in the amount of $150.00 and the other to cover cost of inspection as set forth by the Town Board. The latter amount contemplates construction work to be carried on during normal and usual working hours. Any deviation from this must be compensated by the payment of additional fees.

In consideration of the granting of the permit hereby petitioned for, the undersigned hereby agrees that if such permit is granted he will comply with the terms thereof, the Laws of the State of New York, the Ordinances of the Town of Amherst and Regulations of the various departments of the Town and the State of New York, and that he shall notify the Engineering Department forty-eight (48) hours in advance of commencing any work under this permit.

The undersigned hereby certifies that all of the information contained in this petition is correct and true.

ITEM		FEE
PERMIT		$150.00
INSPECTION	10% of Estimated Cost of Improvement	$ 30,065.60
VIDEO INSPECTION-SANITARY		
SEWERS $ 0.50/Ft.		
TOTAL FEE		$ 30,215.60

Owner Sign Here

Natale Development
Please Print Name

9159 Main Street
Address

Clarence, NY 14031 Phone 580-3318
Zip

Subscribed and sworn to before me this 13th day of April 2021

BETH ANN GULAKOW
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES NOVEMBER 12, 20 22

Notary Public, Erie County, New York

I do certify that I have examined the foregoing petition and Survey Sketch and certify that they conform to Ordinances of Town of Amherst.

Town Engineer

Receipt is hereby acknowledged of the sum of $, being the required fees established by the Town Board of Town of Amherst, N. Y.

Town Clerk

Public Improvement Permit No. 3085

Attachment: PIP 3085 (RES-2021-372 : PIP 3085 - Miller's Crossing Phase 1A - Storm Sewer)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Engineering
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 23162 **RESOLUTION 2021-373** **ADOPTED**

PIP 3086 - Miller's Crossing Phase 1A - Paving & Curbing

Attached please find an application for a Pavement and Curbs Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $61,707.00.

We are sending two (2) checks to the Town Clerk, one for $150.00 to be retained as a Permit Fee and one in the amount of $61,557.00 which will be sent to the Comptrollers Office by the Town Clerk to be held in escrow to cover the inspection cost. The commencement of work under the above referenced permit is contingent upon final plat approval.

At this time we are asking for your approval of the application for PIP No. 3086.

4/19/2021
Consent

FINANCIAL IMPACT:

$61,707.00

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

APPLICATION FOR PERMIT TO CONSTRUCT A PUBLIC IMPROVEMENT

Date April 12 20 21

TO THE HONORABLE TOWN BOARD:

Gentlemen: *Town of Amherst, Erie County, N.Y.*

Application is Hereby Made for Permission to Construct

- (Pavement and Curbs) ( )
- Water Line
- Sanitary Sewer
- Storm Sewer

Estimated Cost of Improvement $ 615,570.00

DESCRIPTION OF PROPOSED PUBLIC IMPROVEMENT

Subdivision Name, Street Name(s), Quantity, Description and Location of Improvement: **Town of Amherst Job** 2018.043

Millers Crossing Subdivision, Ph 1A: Streamsong Ct. & Autumn Meadows Ln (Public) Installation of 1530+/- LF of 26' wide asphaltic conc. pavement, 1-1/2" Top (NYSDOT 403.18) Type 7, 2-1/2" AC Binder (NYSDOT 403.13) Type 3, 4" AC Base (NYSDOT 403.12) Type 2, 11" compacted ROC stone base; River Oak Ln (Private) Installation of 380+/- LF of 24' wide asphaltic conc. pavement, 1" Top (NYSDOT 403.18) Type 7, 2" Binder (NYSDOT 403.13) Type 3, 4" Base (NYSDOT 403.11) 8" compacted ROC stone base, and 3,605+/- LF of Type C Curbing

Supporting Data:

Consulting Engineer's Name Greenman-Pedersen, Inc.

Contractor's Name Cimato Brothers Construction Phone 716-688-3536

Contractor's Address 9220 Transit Road, East Amherst, NY 14051

Maintenance (2 yr.) bond by .....

This application must be submitted in quadruplicate along with 5 copies of construction drawings for sewers, 4 copies for paving, 7 copies for water lines, showing the extent of the improvements which will be incorporated into and made a part of this application. In the event the drawing submitted contains other facilities not covered by this permit, then those covered by this permit must be designated by coloring so that a clear-cut picture of the work under this permit is easily determined.

Work under this permit shall be started within 60 days from the date of approval thereof. Work under this permit shall be completed within 1 year from the date of approval thereof. Any request for extension shall be addressed in writing to the Town Board of the Town of Amherst.

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In consideration of the granting of the permit hereby petitioned for, the undersigned hereby agrees that if such permit is granted he will comply with the terms thereof, the Laws of the State of New York, the Ordinances of the Town of Amherst and Regulations of the various departments of the Town and the State of New York, and that he shall notify the Engineering Department forty-eight (48) hours in advance of commencing any work under this permit.

The undersigned hereby certifies that all of the information contained in this petition is correct and true.

ITEM		FEE
PERMIT		$150.00
INSPECTION	10% of Estimated Cost of Improvement	$ 61,557.00
VIDEO INSPECTION-SANITARY		
SEWERS $ 0.50/Ft.		
TOTAL FEE		$ 61,707.00

BETH ANN GULAKIW
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES NOVEMBER 12, 2022

Owner Sign Here

Natale Development
Please Print Name

9159 Main Street
Address

Clarence, NY 14031 Phone 580-3318
Zip

Subscribed and sworn to before me this 13th day of April 2021

Notary Public, Erie County, New York

I do certify that I have examined the foregoing petition and Survey Sketch and certify that they conform to Ordinances of Town of Amherst.

Town Engineer

Receipt is hereby acknowledged of the sum of $ ....., being the required fees established by the Town Board of Town of Amherst, N. Y.

Town Clerk

Public Improvement Permit No. 3086

Attachment: PIP 3086 (RES-2021-373 : PIP 3086 - Miller's Crossing Phase 1A - Paving & Curbing)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 23165 **RESOLUTION 2021-374** **ADOPTED**

To Authorize the Supervisor to Sign the Angela's House HOME Loan Agreement with Angela's House, LLC CRS #2553

Suspension to Town Board Agenda Item April 19, 2021

TO: **Amherst Town Board**

FROM: **Laurie Stillwell, Planning Department, Community Development Director**

DATE: **April 19, 2021**

RE: **Angela's House HOME Loan Agreement**

To authorize the Supervisor to sign the Angela's House HOME Loan Agreement with Angela's House, LLC.

WHEREAS, the Town of Cheektowaga is a recipient of HUD HOME Investment Partnerships Program (HOME) funds as part of the Amherst-Cheektowaga-Tonawanda HOME Consortium; and

WHEREAS, the 5-year Consolidated Plan for the Amherst-Cheektowaga-Tonawanda HOME Consortium includes a program goal to support the creation of new affordable senior/disabled rental housing; and

WHEREAS, the Town of Cheektowaga approved a proposal for HOME funding assistance for Angela's House, a 67-unit affordable senior/disabled rental housing complex to be converted at 600 Doat Street, Cheektowaga NY 14211 (Villa Maria Campus); and

WHEREAS, the Angela's House project has satisfactorily completed final underwriting and the loan agreement meets the required HUD affordability period regulations; and

WHEREAS, a Loan Commitment letter was issued by the Town of Cheektowaga and the HUD Request for Release of Funds was completed on October 9, 2020, following the expiration of the FONSI public comment period; now therefore, be it

RESOLVED, that the Town Board of the Town of Amherst authorizes the Supervisor, subject to the satisfactory completion of the contract routing process, to enter into a HOME Loan Agreement with Angela's House, LLC, as the Lead Agency of the Amherst-Cheektowaga-Tonawanda HOME Consortium, with the loan agreement funded by Cheektowaga's share of HOME Investment Partnerships Program funds received as program income in 2020.

4/19/2021

A motion to approve was made by Deputy Supervisor Berger, seconded by Councilmember Szukala and unanimously approved 5-0.

FINANCIAL IMPACT:

The funds necessary to enter into a contract with the Angela's House, LLC. have been budgeted in the FY 2020 Cheektowaga HOME budget as program income and are currently available on-hand for use (N20-48). The resolution will, therefore, have no impact on the Town's current budget or tax rate.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Jacqualine Berger, Deputy Supervisor
SECONDER:	Michael Szukala, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa, Supervisor
Daniel C. Howard, A Planning Director
Ellen M. Kost, AIC Assistant Planning Dir

April 14, 2021

Agenda of April 19, 2021

Honorable Town Board
Town of Amherst
5583 Main Street
Williamsville, NY 14221

Subject: Authorize the Supervisor to sign the Angela's House – Amherst-Cheektowaga-Tonawanda HOME Consortium Loan Agreement

Honorable Board Members:

Amherst Community Development is requesting the Supervisor execute the Angela's House HOME Loan Agreement together with the Town of Cheektowaga for $300,000 in HUD HOME Investment Partnerships Program (HOME) funds to develop/rehab 67-affordable rental units on Villa Maria Campus as senior/disabled housing. The Project is located at 600 Doat Street in Cheektowaga, NY 14211. The loan agreement is attached and includes an introductory one-page synopsis of the terms of the agreement, which meet HOME Investment Partnership Program regulations per 24 CFR Part 92.

This project fulfills a program goal to support new affordable senior/disabled rental housing as outlined in the 5-year Consolidated Plan for the Amherst-Cheektowaga-Tonawanda HOME Consortium. As Lead Agency of the Amherst-Cheektowaga-Tonawanda HOME Consortium, the Town of Amherst is responsible to ensure HUD's long-term affordability requirements are met on all Consortium projects. Therefore, the Town Supervisor is a co-signor on the HOME agreements between the Town of Cheektowaga/Amherst-Cheektowaga-Tonawanda HOME Consortium and Angela's House LLC.

Please authorize the Supervisor to execute the Angela's House HOME Loan Agreement, pending successful contract routing. Thank you for your assistance with this matter.

Very truly yours,

Daniel C. Howard, AICP
Assistant Planning Director

Enc.

Attachment: TB Letter signed (RES-2021-374 : To Authorize the Supervisor to Sign Angela's House HOME Loan Agreement)

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

LOAN AGREEMENT
between the Amherst-Cheektowaga-Tonawanda HOME Consortium and Angela's House LLC for Angela's House HOME Investment Partnerships Program MC20-DC360511

SYNOPSIS*

This Loan Agreement is between the Town of Amherst (Consortium), Town of Cheektowaga (Town), and Angela's House LLC (Angela's House), for the construction stage and permanent stage loan financing to assist the construction of 3 of the housing units of Angela's House, a 67-unit affordable rental housing project (including 1 and 2 bedroom units) located at 600 Doat Street, Cheektowaga, NY 14211.

The project includes rehabilitation and reuse of the westerly wing of a historically significant building located on the edge of the Villa Maria College campus. The wing is comprised of six stories with approximately 75,615 sf and is currently vacant. The westerly wing will be converted to 67 apartments (65 one-bedroom units and 2 two-bedroom units) for age 55+ seniors. Twenty-one (21) of the apartments will be set aside for homeless frail elderly/seniors and targeted to households with income at or below 30% of AMI (or other AMI required by the applicable funding sources). Twenty-nine (29) units will be targeted to households with income at or below 50% of AMI and seventeen (17) units will be targeted to households with income at or below 60% of AMI.

The Loan of $300,000.00 is funded from the 2020 Program Year of the HOME Investment Partnerships Program (HOME). The loan has a 50-year term at a simple interest rate of 1% for the term of the loan commencing at permanent conversion. Annual payments of interest only during the duration of the term. No principal repayment until maturity; at maturity, principal of the loan is expected to be repaid or may be re-negotiated at the discretion of the Town of Cheektowaga.

The Project is subject to a HOME mandated affordability period of the greater of 20 years or the repayment of the loan, but in no event greater than 50 years. Compliance with HOME regulations will be secured by way of a Restrictive Covenant, Promissory Note, and Leasehold Mortgage.

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* This Synopsis highlights major provisions of this Agreement in a summary format for convenience only. The Summary shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions of this Agreement.

TABLE OF CONTENTS

LOAN AGREEMENT

Section 1	Definitions
Section 2.	Loan, Security and Conditions
Section 3.	Representations and Warranties
Section 4.	Conditions of Lending
Section 5.	Affirmative Covenants
Section 6.	Sale of Project Property
Section 7.	Default
Section 8.	Miscellaneous

Signatures/Notary Public

Exhibit A	Planning Board Resolution
	Loan Commitment Letter
Exhibit B	Planning Board's Site Plan Approval
	NYS Housing Trust Fund Environmental Clearance Letter
	Site Alteration Letter
Exhibit C	Corporate Resolutions
	Organization Documents
	Ownership Structure
	Operating Agreement
	Management Plan
	Memorandum of Ground
	Lease
Exhibit D	Promissory Note
Exhibit E	Leasehold Mortgage
Exhibit F	Building Loan Contract, Lien Law Section 22 Affidavit, Recording Receipt
Exhibit G	Restrictive Covenant
Exhibit H	Survey
Exhibit I	Budget (Sources & Uses)
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Exhibit K	Affirmative Marketing Guidelines
	Minority & Women's Business Outreach Guidelines
Exhibit L	HOME Rent Limits
	HOME Income Thresholds
Exhibit M	Federal Regulations
Exhibit N	Section 3
Exhibit O	Tax Searches and Receipts
Exhibit P	Opinion of Borrower's
Exhibit Q	Settlement Statement
Exhibit R	Iran Divestment Act Certification
Exhibit S	Intercreditor Agreement

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

LOAN AGREEMENT
between the Town of
Cheektowaga and Angela's
House LLC

RE: "Angela's House"

2020 HOME #M20-DC360511

This LOAN AGREEMENT is entered into this _____ day of March, 2021 by and between the TOWN OF CHEEKTOWAGA, a municipal corporation of the State of New York as a member of the Amherst-Cheektowaga-Tonawanda HOME Consortium, having an office located at Cheektowaga Town Hall, 3301 Broadway Street, Cheektowaga, New York 14227 and the TOWN OF AMHERST, as a municipal corporation of the State of New York as lead Authorizing Official for the Amherst-Cheektowaga-Tonawanda HOME Consortium, with principal offices located at 5583 Main Street, Williamsville, New York 14221 (herein after referred to as "Lender"), and ANGELA'S HOUSE LLC, the beneficial ground lessee, and a limited liability company formed and existing under and by virtue of the laws of the State of New York, having its principal place of business at 221-10 Jamaica Avenue LL1, Queens Village, New York 11428 (hereinafter referred to as "Borrower").

WITNESSETH THAT:

WHEREAS, the Consortium receives an Entitlement HOME Investment Partnership Grant (herein referred to as the "Grant") from the Department of Housing and Urban Development (herein referred to as "HUD"); and

WHEREAS, rules and regulations of HUD which govern the Grant encourages the creation of and improved access to quality affordable housing opportunities for low and moderate income persons; and

WHEREAS, the 2020 Action Plan includes a HOME Rental Subsidy Program to encourage development of affordable rental housing in Cheektowaga, to be assisted with HOME Investment Partnership funds; and

WHEREAS, Delta Development of Western New York, Inc. submitted a proposal to the Town of Cheektowaga on October 24, 2018 to construct Angela's House, a 67-unit affordable senior apartment complex for seniors age 55 and older at 600 Doat Street, Cheektowaga, NY 14211 (SBL #: 101.52-1-1./A); and

WHEREAS, on May 6, 2019 the Town of Cheektowaga Office of Community Development approved the submitted proposal and issued a Reservation of Funding Notification letter; and

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

WHEREAS, Angela's House LLC, is the beneficial ground lessee of Angela's House, and Angela's House MM LLC, a New York limited liability company (majority owned and controlled by a wholly owned subsidiary of Delta Development of Western New York, Inc., and minority owned and controlled by a wholly owned subsidiary of CB-Emmanuel Realty, LLC), is the managing member; and

WHEREAS, Delta Development of Western New York, Inc. and CB-Emmanuel Realty, LLC (See Exhibit C) represent that they are an experienced owner-developer with capacity and will comply with all associated HOME regulations;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

SECTION 1. KEY DEFINITIONS

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

1.01 "Affirmative Marketing Plan" means NYS HCR approved plan in effect for this Project.

1.02 "Affordability Period" means the period of time, beginning at the time of Project Completion, that HOME-assisted Units must meet the requirements of 24 CFR 92. 252 regarding such matters as property standards, occupancy, rent limits and tenant income.

1.03 "Agreement" or "Loan Agreement" means this Loan Agreement in its entirety together with its Exhibits, which are an integral part of this Agreement.

1.04 Reserved.

1.05 "Annual Income" means the gross amount of income defined at Section 1.06, projected to be received by all individuals in a household **during the 12 months following the effective date of determination,** except income earned by individuals less than 18 years old.

1.06 "Annual Income Definition" means the definition selected for this Project to calculate annual household income. Borrower's Income Determination Method shall be the use of the Section 8 annual income definition.

1.07 "Borrower" means Angela's House LLC.

1.08 "Commitment Date" means the date that HOME funds are first committed to the Project/Activity in IDIS. This date coincides with receipt of the Project's first voucher submission.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

1.09 "Disabled Person" means pursuant to 24 CFR 5.403, an individual who is under a disability as defined in Section 223 of the Social Security Act or in Section 102 (b)(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970. Generally speaking such an individual has a physical, mental, or emotional impairment which is expected to be of long, continued and indefinite duration, and substantially impedes his or her ability to live independently, and of such a nature that such ability could be improved by more suitable housing conditions.

1.10 "Elderly Person" means a household composed of one or more persons at least one of whom is 55 years of age or more at the time of initial occupancy.

1.11 "HOME" means the Home Investment Partnership Program as described in 24 CFR part 92, under the authority of 42 U.S.C. 3535(d) and 12701-12839.

1.12 "HOME-assisted Units" means the three (3) housing units in the Project that were constructed with HOME assistance and for which rent, occupancy and/or resale restrictions apply and that must be occupied by households with incomes described in this Section at initial occupancy and through the affordability period.

1.13 "HOME Funds" means all appropriations for the HOME Investment Partnership Program, including all repayments and interest or other returns on the investment of these funds.

1.14 "HOME Rent Limits" means the Low HOME Rent and High HOME Rent Limits for Buffalo-Cheektowaga-Niagara Falls, NY MSA, determined by HUD regulations, updated on an annual basis, in effect for this Project and attached at Exhibit L.

1.15 "Household" means all persons occupying a housing unit. The occupants may be a family, as defined in 24 CFR 5.403; two or more families living together; or any group of related or unrelated persons who share living arrangements, regardless of actual or perceived, sexual orientation, gender identity, or marital status.

1.16 "HUD" means the United States Department of Housing and Urban Development.

1.17 "IDIS" means HUD's electronic Integrated Disbursement and Information System used to record funding, expenditures and accomplishments of the Project.

1.18 "Lender" means the Town of Cheektowaga.

1.19 "Loan" means the aggregate total principal amount of up to, but not exceeding, Three Hundred Thousand United States Dollars ($300,000.00) from 2020 HOME funds, subject to compliance with the provisions of Section 5.05(a).

1.20 "Loan Documents" means the Agreement, the Note, the Mortgage, the Building Loan Contract, attached Exhibits and any other documents which evidence and secure the loan and

which are an integral part of this Loan Agreement.

1.21 "Low Income" status is determined by HUD regulations which are updated on an annual basis and found at http://www.huduser.org/datasets/il.html.

1.22 "NYS HCR" means New York State Homes and Community Renewal.

1.23 "Owner" means the Felician Sisters of North America Real Estate Trust, a Pennsylvania not-for-profit trust.

1.24 "Proceeds" means the proceeds resulting from the investment of HOME funds in this Project, except funds recaptured pursuant to 24 CFR 92.254(a)(5)(ii), such as the permanent financing of a HOME project which is used to pay off a HOME financed construction loan or the sale of sponsored rental housing to a second non-profit. Such proceeds are not subject to HOME requirements such as the Davis-Bacon Act, National Environmental Policies & Uniform Relocation Assistance & Real Property Acquisition Policies Act and once reused no longer subject to HOME requirements. Proceeds for HOME eligible activities may be reused by Borrower, provided this use is in compliance with the terms of this Agreement. Rental income generated by a HOME project is not subject to these requirements.

1.25 "Program Income" means gross income directly generated either from the use of HOME funds (24CFR 92.2, HOME Final Rule). See also "Repayments" below.

1.26 "Project" means a site together with any buildings located on the site that are under common ownership, management and financing to be assisted with HOME funds as a single undertaking by Borrower pursuant to this Agreement and includes all activities associated with the site and building, which are collectively known as "Angela's House", and which are further described in this Agreement.

1.27 "Project Completion" means the point in time when all HOME and matching funds have been disbursed, all HOME-assisted units are first occupied, and the Final Report has been accepted and verified by the Town of Cheektowaga for compliance with HOME regulations.

1.28 "Project Property" means the property described in the Project, located at 600 Doat Street, Cheektowaga, NY 14211 (SBL #: 101.52-1-1./A), which will benefit from HOME funds pursuant to this Agreement.

1.29 "Repayments" means the repayment to the Town of Cheektowaga of any HOME funds invested in a Project that either is terminated before its completion or that fails to meet the Affordability Period requirements, pursuant to 24 CFR 92.252 or 24 CFR 92.254.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

SECTION 2. LOAN, SECURITY, AND CONDITIONS

2.01 The Commitment.

Subject to the terms and conditions of this Agreement, Lender agrees to make a Loan to Borrower in an aggregate principal amount up to and including, but not exceeding, Three Hundred Thousand United States Dollars ($300,000.00).

The Loan is to be evidenced by the Promissory Note ("Note"), found at Exhibit D, and secured by the Leasehold Mortgage found at Exhibit E ("Mortgage").

Borrower shall also execute the Building Loan Contract found at Exhibit E (the "Building Contract").

Borrower shall be responsible for any cost overruns necessary to complete the Project.

2.02 Use of Proceeds.

(a) The Loan proceeds shall be used to assist three (3) ("HOME-assisted Units") of the 67 housing units of the Angela's House project, an affordable rental housing construction project (including 1 and 2 bedroom units) located at 600 Doat Street, Cheektowaga, NY 14211 (SBL #: 101.52-1-1./A), targeted to serve low-income seniors aged 55+.

(b) The HOME-assisted Units shall be rented to Eligible Households at rents subject to HOME Rents Limits, consistent with the terms of this Agreement and in particular the regulations found at Exhibit L.

(c) With the exception of "Permitted Transfers" as that term is defined in this Agreement, at all times during the Affordability Period, unless transferred to another not-for-profit housing entity with the written approval of the Town of Cheektowaga, Angela's House LLC shall remain the beneficial ground lessee of Angela's House, and Angela's House MM LLC shall remain the managing member of Angela's House LLC, and Angela's House CBE LLC (a wholly-owned subsidiary of CB-Emmanuel Realty, LLC) and Angela's House DD LLC (a wholly-owned subsidiary of Delta Development of Western New York, Inc.) shall remain the sole members of Angela's House MM LLC. This shall remain a continuing obligation, the violation of which will constitute a default under the Note and Mortgage.

2.03 Scope of Work and Operational Requirements.

(a) Borrower shall utilize the Project in a manner that meets the eligibility and statutory requirements at the time of initial occupancy and during the Affordability Period of the HOME program as set forth in:

(i) 24 CFR 92.252, "Qualification as Affordable Housing: Rental Housing";
(ii) 24 CFR 92.253, "Tenant and Participant Protection";
(iii) 24 CFR 92.351, "Affirmative Marketing; Minority Outreach Program";

(b) Borrower shall comply with the conditions of Site Plan approval by the Planning Board's Resolution of February 13, 2020, the First Amended and Restated Operating Agreement at Exhibit C (the "Operating Agreement"), the Affirmative Marketing Plan, Rehabilitation Standards, Tenant Selection Policies, Section 3 regulations found at Exhibit N, and other requirements found at 24 CFR 92.252;

(c) The Project's Affordability Period is the greater of 20 years or the repayment of the loan, but in no event greater than 50 years from the date of Project Completion.

Throughout the Affordability Period, Borrower shall cause the three HOME-assisted Units to be utilized for no other purpose than as a rental property, with the HOME- assisted Units occupied by households with incomes not exceeding 60% of the Area Median Income (AMI) for the Buffalo-Cheektowaga-Niagara Falls, NY Metropolitan Statistical Area (MSA), at rents that do not exceed High HOME rents;

(d) Borrower shall verify income eligibility with source documentation of all renters of the three HOME-assisted Units at the time of intake, to be followed up with annual recertification of income and with an examination of source documents annually.

(e) The obligations of Borrower set forth in this Section are material obligations the breach of which shall constitute an Event of Default under Section 7 of this Agreement.

(f) Borrower's Annual Income Definition, pursuant to Section 1.06 of this Agreement, shall be the use of the Section 8 annual income definition.

(g) All three of the HOME-assisted Units shall be "floating" HOME-assisted Units, to be leased subject to HOME rent and occupancy requirements. The three units shall be identified no later than the date of the initial occupancy, and each shall be comparable to non-HOME-assisted units. Borrower commits that any substituted HOME-assisted Units shall remain comparable over the Affordability Period in terms of size, features and number of bedrooms to the originally designated HOME-assisted units.

(h) If the income of a tenant in a HOME-assisted Unit increases above the

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eligible income threshold as described at Sections 2.03 (c)(i) and (ii), Borrower must rent the next available comparable non-HOME-assisted Unit in the Project to a household that meets the income eligibility requirements as described in those Sections. At that time the unit of the over-income tenant is no longer considered HOME-assisted and the rent can be adjusted as appropriate. While in the fixed unit, the over-income tenant must pay 30% of their adjusted income for rent and utilities as long as comparable market rents are not exceeded.

(i) Borrower shall follow the annually established maximum HOME rents and allowances for utilities for HOME-assisted rental projects. However, Borrower may increase rents only when a tenant's lease expires and must give a minimum of 30 days' notice before changes are implemented.

U) The Project's housing units shall comply with state and local code requirements, the Model Energy code, handicapped accessibility requirements, and the Site and Neighborhood Standards of 24CFR 891.125 throughout the Affordability Period.

(k) Borrower shall establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner. When procuring for services to be provided under this Agreement, Borrower shall comply at a minimum with the nonprofit procurement standards described at 24 CFR 84.40 - 84.48.

2.04 Loan Terms and Conditions.

The terms and conditions of the Loan are described in the Note at Exhibit D.

2.05 Source of Loan Funds.

Loan funds shall derive from 2020 HOME MC20-DC360511

2.06 Leveraging of HOME Funds.

(a) Borrower shall contribute non-HOME funds to the Project consistent with the Agreement's budget found at Exhibit I, as the same may be adjusted post-closing to account for an anticipated sales tax exemption.

(b) These matching funds, to the extent identified as Construction Financing Sources in Exhibit I, must be committed to the Project on a pro-rata basis with HOME funds. For the avoidance of doubt, HOME funds will be disbursed pro-rata with payments of matching funds for construction costs, determined by the ratio of the total HOME funds award to the Total Construction Costs shown in Exhibit I, as the same may be amended. Proof of expenditures of matching funds pursuant to this Section must be reported to Lender as requested.

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(c) None of the matching funds may be, nor may the Project receive during the Affordability Period, Operating Fund or Capital Fund assistance under section 9 of the 1937 Act (as defined at 24 C.F.R. 5.100), except in the following two cases.

(i) This prohibition shall not apply to public housing units developed under Section 24 of the 1937 Act (HOPE VI) and for which no Capital Fund assistance under section 9(d) of the Act is used. Units developed with both HOME and HOPE VI may receive operating assistance under Section 9 of the 1937 Act and may subsequently receive Capital Funds for rehabilitation or modernization.

(ii) Consistent with 24 C.F.R. 92.205(d), the Project may have public housing units provided that the HOME funds are not used for the public housing units, except as provided above in subparagraph (i) and HOME funds are used only for eligible costs in accordance with HUD HOME regulations.

2.07 Disbursement of Proceeds.

The Loan shall be disbursed in the following manner:

(a) The Loan proceeds shall be disbursed upon receipt of a voucher for eligible expenses incurred or paid (each a "Voucher"). The Voucher shall describe the expense and include proper documentation such as executed application and certificate for payment forms, canceled original invoices, copies of canceled checks, contracts, and any other documentary evidence satisfactory to Lender. Every effort shall be made by Lender to ensure that payment be made within 30 days of the receipt of any such Voucher for eligible costs submitted in proper form.

(b) Borrower shall maintain the obligation to ensure that such disbursements of Loan proceeds are actually paid to its contractors, subcontractors, vendors, or employees as applicable.

(c) Borrower shall be responsible for all applicable administrative and program delivery activities associated with Project implementation including, but not limited to, compliance with all applicable Federal requirements, preparation of reports and maintenance of records as required by HUD, and review and approval of all third-party invoices.

(d) Lender shall have the right, at its sole option after a default or event of default shall have occurred and be continuing under any of the Loan Documents, to disburse all or any portion of the Loan proceeds by making payment directly to a contractor, subcontractor, or vendor to pay accrued expenses of Borrower which represent eligible Project costs.

(e) Lender shall not be obligated to disburse any Loan proceeds for activities carried out in violation of the requirements of 24 CFR 92.206.

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(f) Lender shall not be obligated to disburse any Loan proceeds until Borrower shall have complied with the terms and conditions of this Agreement.

(g) Matching funds must be committed to the Project on a pro-rata basis with HOME funds as described in Section 2.06(b) above.

2.08 Program Income.

Program income derived from the investment of HOME funds is considered Proceeds, as defined at Section 1, and may be retained and re-used by Borrower subject to the requirements stated below:

(a) Proceeds shall be used for additional activities to benefit low-income families as required by 24 CFR 92.300(a)(2), subject to the terms of this Agreement;

(b) Borrower shall report the receipt of Proceeds, whether generated during or after the Affordability Period, annually, and follow up with reports on its use until the Proceeds are fully expended;

(c) Borrower shall maintain records to document that its use of Proceeds is in full compliance with the eligibility, affordability and all other requirements of the HOME program;

(d) Until Project Completion, Proceeds must be used first before requesting additional HOME funds for the Project;

(e) Angela's House MM LLC shall remain the sole managing member of Angela's House LLC except if an additional managing member is added to Angela's House LLC, in accordance with the Operating Agreement;

(f) Angela's House MM LLC shall continue to be owned by Angela's House CBE LLC and Angela's House DD LLC;

(g) Angela's House CBE LLC shall remain the wholly-owned subsidiary of CB-Emmanuel Realty, LLC and Angela's House DD LLC shall remain the wholly-owned subsidiary of Delta Development of Western New York, Inc.;

(h) The obligations of Borrower set forth in this Section 2.09 are material obligations the breach of which shall constitute an Event of Default under Section 7 of this Agreement.

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2.09 Collateral.

The Loan shall be secured by the Mortgage. During the construction phase, the Mortgage shall be subordinate to the mortgage or mortgages held by Evans Bank, National Association, a national banking association (the "Evan's Senior Lender") in the aggregate amount of up to $12,100,000.00 and to all mortgages, liens and terms and conditions of a construction and permanent loan to Borrower from New York State Homeless Housing and Assistance Corporation (the "Secondary Mortgage Holder") in the aggregate amount of $3,692,030.00. Lender shall not pursue any remedies against Borrower or accept a prepayment of principal hereunder without the express written consent of Senior Lender, Secondary Mortgage Holder or HTF (collectively, the "Senior Lender" or "Senior Lenders"). This provision is intended to benefit the Senior Lenders, their permitted successors and assigns, as stated above and below, and may not be modified or removed without the express written consent of the Senior Lenders only, for so long as any obligations of Borrower to the Senior Lenders remain outstanding.

After the completion of construction, the Mortgage shall also become subordinate to a Permanent Mortgage held by the Housing Trust Fund Corporation ("HTF") in the amount not to exceed $3,420,167.00 (the "HTF Loan").

2.10 Authorization to Perfect Security Interest.

Lender is authorized, if permitted by applicable law, to execute and file any instruments, including one or more Uniform Commercial Code financing statements necessary to perfect its security interest in the collateral described in Section 2.10 of this Agreement disclosing any security interest in the Project and this Agreement and the sums due under this Agreement with the signature of Borrower or of Lender as attorney in fact for Borrower.

Borrower will pay all actual, reasonable costs of filing financing, continuation, or termination statements with respect to the Project and this Agreement. Borrower shall execute and deliver the instruments and assurances as Lender deems necessary or advisable for the implementation, effectuation, confirmation, or perfection of this Agreement and any rights of Lender hereunder.

Borrower hereby appoints Lender or any of Lender's representatives as Borrower's attorney and agent, with full power of substitution, to sign or endorse Borrower's name on any such financing statement or other documents and authorizes Lender to file such a financing statement in all places where necessary to perfect Lender's security interest in the collateral.

2.11 Restrictive Covenant, Promissory, Note & Mortgage.

A Restrictive Covenant, dated as of the date hereof and the Mortgage shall be executed and recorded, in addition to the execution of the Note to ensure compliance with the

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affordability requirements of 24 CFR Part 92.252(e).

2.12 Other Liens.

Borrower and Owner shall suffer no other lien senior to this loan other than referred to in Section 2.09 and the Permitted Exceptions referred to in the Mortgage to attach to the Collateral which secures repayment of the Loan without the written approval of Lender.

2.13 Project's Implementation Schedule.

(a) Borrower shall implement the Project in such a manner that construction on the Project shall begin no later than one year from the date and year first written above and it is anticipated that the entire Project will be completed and all units of the Project Property will be occupied no later than twenty- four months from the date hereof as described at Exhibit J.

(b) If not all of the Project's HOME-assisted units are occupied by Eligible Households within six months of Project Completion, then Borrower shall cooperate with Lender in providing any requested materials to HUD in accordance with 24 C.F.R. Sec. 92.252.

(c) If not all of the Project's HOME-assisted units are occupied by Eligible Households within eighteen months of Project Completion, then the Lender may in its sole discretion determine that the Project is considered terminated and the Borrower must repay all HOME funds invested in the Project to the Town of Cheektowaga in accordance with 24 CFR 92.503(b)

(d) If the Borrower does not complete the Project within 4 years of the Commitment Date, the Project is considered terminated and the Borrower must repay all HOME funds invested in the Project to the Town of Cheektowaga in accordance with 24 CFR 92.503(b). The Borrower may request a one-year extension of this deadline in writing to Lender, by submitting information about the status of the Project, steps being taken to overcome any obstacles to completion, proof of adequate funding to complete the Project, and a schedule with milestones for completion of the Project for Lender's review and approval. Lender's grant of such extension is in the sole discretion of the Lender.

Appropriate provisions shall be inserted in all subcontracts awarded by Borrower relative to this Project, to ensure compliance with the Project's schedule.

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SECTION 3. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

3.01 Legal Existence.

Borrower is a duly organized and a validly existing limited liability company under the laws of New York State, and is in good standing with all such relevant laws.

3.02 Power of Legal Entity.

Borrower, has the legal right to make and perform this Agreement, and have taken all necessary action to authorize the borrowing under the terms and conditions of this Agreement. No consent of any other party, including a governmental body, that has not been obtained is required by Borrower prior to entering into this Agreement.

3.03 No Legal Bar to Loans.

By entering into this Agreement, Borrower will not, to the best of Borrower's knowledge, violate any provision of any existing law or regulation or decree of a court or other governmental body, or Borrower's operating agreement, or any other agreement that Borrower has entered into.

3.04 No Material Litigation.

There is no pending or present litigation or to the best of Borrower's knowledge, threatened litigation, which to the knowledge of Borrower would call into question or would affect the legality and enforceability of this Agreement.

3.05 Financial Condition.

There have been no material adverse changes in the financial condition or operations of Borrower, since its last financial statement, nor has Borrower acted as an endorser or guarantor of any debt or obligations of another of which Lender has not been informed.

3.06 No Default or Pledge of Assets.

Borrower is not in default in the payment of any taxes, federal, state or local, and no assets of Borrower have been pledged for payment of any debts except as shown on the latest financial statement furnished to Lender and the Permitted Exceptions defined in the Mortgage.

3.07 Ownership of Properties, Liens.

Borrower together with the Owner has a 75-year leasehold interest by way of an Amended and Restated Ground Lease Agreement, dated as of the date hereof (the "Ground Lease") to all of its property and assets, and none of these properties and assets are subject to any liens, mortgages or other encumbrances or arrangements of any nature except as disclosed in the title policy no 2013-4742EC issued by Chicago Title Insurance Company dated

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April ___, 2021 and the Permitted Exceptions set forth in the Mortgage. Said title insurance policy indicates Felician Sisters of North America Real Estate Trust "Lessor" has good and insurable fee title to the Project Property except as disclosed in the title insurance policy.

3.08 Filling of Statements and Reports.

Borrower has filed all statements and reports which, to the knowledge of the Borrower, are required to be filed with any governmental entity, agency, commission, board or bureau.

3.09 Control.

Angela's House MM LLC is the managing member of Angela's House LLC and is jointly controlled by its 51% member, Angela's House DD LLC, which is a wholly-owned subsidiary of Delta Development of Western New York, Inc and its 49% member, Angela's House CBE LLC, which is a wholly-owned subsidiary of CB-Emmanuel Realty, LLC. A complete outline of the ownership structure is provided in Exhibit C.

SECTION 4. CONDITIONS OF LENDING

The obligation of Lender to make disbursements of the Loan is subject to the following conditions, unless waived:

4.01 Compliance with this Agreement.

The Borrower shall be in compliance, at the time of entering into this Agreement, with all terms, conditions and warranties in the Agreement.

The Owner shall be in compliance, at the time of entering into this Agreement, with all terms, conditions and warranties in the Agreement that apply to the Owner.

4.02 Action by Legal Entity.

Lender shall, at the time of execution of this Agreement, have received all papers evidencing all necessary action taken by Borrower and Owner, and all legal requirements incident to the Loan shall have been met in a form and manner satisfactory to the counsel for Lender.

4.03 Certifications.

Lender shall, at the time of the making of the Loan, have received a certification by a duly authorized officer of Borrower that no material change in the financial condition or operations of Borrower has occurred since the closing date of the latest financial statement furnished by Borrower to Lender; and that no suits or proceedings have been instituted against Borrower which in the opinion of Borrower will adversely affect the financial condition or operations of Borrower.

4.04 Opinion of Borrower's Counsel.

Counsel for Borrower and Owner shall have delivered to Lender, in form and substance

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satisfactory to Lender and its counsel, an opinion that Borrower has the power to execute and deliver the documents required under this Agreement, that all action of Borrower has been properly authorized and that no restriction or agreement to which Borrower is a party prevents such agency action.

4.05 Loan Documents.

All documents required by this Agreement and Lender's counsel which evidence and secure the loan shall have been executed and delivered to Lender.

Borrower shall provide a Survey dated within six months of closing and certified to the "Town of Cheektowaga, its successors and/or assigns", or a title insurance policy with a survey coverage endorsement.

4.06 Title Insurance.

Borrower shall provide a mortgagee leasehold title insurance policy on the current ALTA form insuring Lender's lien on the Collateral subject to those exceptions satisfactory to it and naming the "Amherst-Cheektowaga-Tonawanda HOME Consortium, its successors and/or assigns" as insured. The title insurance company must be acceptable to Lender, for this purpose Chicago Title Insurance Company is acknowledged by Lender as being acceptable.

4.07 Municipal Compliance.

Borrower attests that the construction, equipping, and occupancy of the Project Property at the time of closing, with the exception of improvements to be undertaken with loan proceeds, pursuant to this Agreement, is in compliance, and shall remain in compliance for as long as the Loan remains outstanding, with all applicable Federal, State, and local laws and regulations including, but not limited to, all regulations pertaining to zoning, building construction and occupation, fire protection, water and sewers and garbage, rubbish and refuse.

4.08 National Flood Insurance.

Borrower shall, where applicable, ensure that flood insurance under the National Flood Insurance program will be maintained for the term of the Loan for all Project Properties located within a Federal Emergency Management Agency (FEMA)-designated flood hazard area.

4.09 Insurance.

Evidence satisfactory to Lender and its counsel that Borrower has obtained:

(a) Insurance covering the mortgaged premises, in the amount and for the periods of time required by Lender, which amount shall in no event be less than the full value of the mortgaged property. The insurance policy shall name the "Amherst-Cheektowaga-Tonawanda HOME Consortium, its successors and/or assigns" as mortgagee.

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(b) Evidence satisfactory to Lender and its counsel that Borrower has obtained a Builder's Risk and Fire Insurance policy duly endorsed to indicate Lender as an insured mortgagee.

(c) reserved.

4.10 Availability of Funds to Complete Project.

Borrower shall have provided to Lender satisfactory evidence that the Project's funding is available to complete the project, and that non-HOME funds committed to the Project are available.

4.11 Closing Costs.

Borrower shall be responsible for payment of all closing costs, including, but not limited to Lender's reasonable legal fees, if any, abstract fees, title insurance costs, survey costs, and recording costs.

4.12 Compliance with Federal Requirements.

Borrower acknowledges that the Loan evidenced by this Agreement is subject to the requirements of Federal statute and regulation relative to the use of Home Investment Partnerships Program (HOME) funds, and that Borrower's agreement to accept the loan funds pursuant to this Agreement requires Borrower's compliance with regulations set forth in 24 CFR Part 92, and policies and procedures implemented thereunder by the United States Department of Housing and Urban Development, the United States Department of Labor and such other Federal and State agencies as are or may in the future be charged with the responsibility of monitoring both Borrower's and Lender's compliance with low and moderate income benefit requirements.

4.13 Additional Documents.

Borrower shall also have provided to Lender the following documents:

(a) A resolution of The Owner's governing body, authorizing the execution and delivery of the Loan Documents to which it is a party. Attached at Exhibit P.

(b) Program Guidelines for the Project's design showing compliance with HOME regulations at 24 CFR 92.252-253.

(c) An updated Sources and Uses Table showing all secured funding sources and their uses for the Project. Attached at Exhibit I.

(d) Tenant Selection Policies and Procedures pursuant to 24 CFR 92. Attached at Exhibit C.

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(e) Rent schedule and tenant-furnished utility allowance documenting compliance with HOME regulations for the three (3) HOME-assisted units.

(f) A true and complete copy of Borrower's organization document, including, if Borrower is a Limited Liability Company, its Articles of Organization, Operating Agreement and Certificate of Good Standing. Attached at Exhibit C.

(g) The Operating Agreement. Attached at Exhibit C.

4.14 Uniform Relocation Act Requirements.

Borrower attests that the property at 600 Doat Street, Cheektowaga, NY 14211(SBL #: 101.52-1-1./A) was not listed for sale by the owner, that the owner has agreed to lease the Project Property to the Borrower and Owner pursuant to the Ground Lease, and that there are no tenants on the Project Property.

4.15 Affirmative Marketing Plan.

Lender certifies that it will implement the Project pursuant to the NYS Homes and Community Renewal's approved Affirmative Marketing Plan.

4.16 Monitoring of Borrower's Financial Management.

Pursuant to 24 CFR 85.20 (c), Lender may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time subsequent to award.

4.17 Other.

With the exception of "Permitted Transfers" as that term is defined in this Agreement, at all times during the Affordability Period, Angela's House MM LLC shall be the managing member of Angela's House LLC and shall have as its majority member (51%) Angela's House DD LLC (a wholly-owned subsidiary of Delta Development of Western New York, Inc.) and as its minority member (49%) Angela's House CBE LLC (a wholly-owned subsidiary of CB-Emmanuel Realty, LLC), unless another approved entity is substituted, but only then with the express prior written consent of Lender. Notwithstanding, anything contained herein to the contrary, it shall be deemed to be a Permitted Transfer if Angela's House MM LLC is removed as managing member of the Borrower pursuant to the terms of the First Amended and Restated Operating Agreement of the Borrower dated as of the date hereof.

4.18 Other.

Such other information and documentation as Lender may reasonably require.

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SECTION 5. AFFIRMATIVE COVENANTS

Borrower hereby covenants that so long as the Loan remains outstanding and unless otherwise waived by Lender, Borrower will:

5.01 Financial Statements.

Furnish on an annual basis to Lender, Borrower's audited financial statements, including a balance sheet showing income and retained earnings and Profit and Loss Statement and the corresponding figure from the previous fiscal year. Such financial statements shall be submitted to Lender as soon as available, but in no event later than sixty (60) days after the end of each fiscal year in draft form and not later than ninety (90) days after the end of each year in final form, for which the Loan is in effect. If expenditures by Lender of federal funding from all sources is more than $500,000.00 per year, HUD regulations mandate submission of audited financial statements.

5.02 Payment of Obligations.

Pay and discharge at or before maturity all obligations and liabilities, including tax liabilities, as applicable, except where the same may be contested in good faith, and Borrower will, in accordance with generally accepted accounting principles, maintain appropriate reserves for the accrual of any of the same as needed.

5.03 Payment of Taxes.

Pay and discharge all taxes and governmental charges or levies imposed upon it or on its income or profits or on any of its property prior to the date on which any penalties attach thereto, provided that Borrower shall not be required by this to pay any such tax, assessment, charge or levy, the payment of which is being contested in good faith and by proper proceedings.

5.04 Maintenance of Properties and Insurance.

Keep the Project Property in good working order and condition, and maintain with financially sound and reputable insurance companies insurance on the Project Property in an amount the Borrower deems proper in accordance with sound business practices, and provide, upon written request, full information as to the insurance carried and list the "Town of Cheektowaga, its successors and/or assigns" as described at Section 4.09 above.

5.05 Reporting.

(a) Borrower shall submit reports to Lender on a schedule as described below:

(i) Quarterly Reports during the construction phase until the Project Property is fully occupied. These reports are due no later than thirty (30) days after the close of the calendar quarters ending March 31, June 30, and September 30, respectively;

(ii) A final report at the conclusion of the construction phase that includes a copy of the Certificate of Occupancy;

(iii) Annual Financial Statements as described at Section 5.01, except that for purpose of s financial statements, said financial statements shall be unaudited;

(iv) Proof of Insurance as described at Section 4.09;

(v) Following the close of the construction phase and for the duration of the term of the Loan, Annual Reports to show compliance with HOME regulations and the terms of the Loan, to be submitted in a format to be provided by Lender and in accordance with the timeframes set forth is Section 5.01 hereof;

(vi) Upon request, any other statements, records, reports, data and information pertaining to matters and services covered by this Agreement in a format and at a schedule as directed by HUD or the IURA.

(b) Borrower is expected to develop a system to meet these reporting deadlines without additional notification. All deadlines are firm.

5.06 Legal Existence.

Maintain its corporate or other legal existence and authority to do business in New York State.

5.07 Inspection of Property and Records.

Permit Lender, the Comptroller General of the United States or any of their duly authorized Agents access to any books, documents, papers, records and accounts which are directly pertinent to the Loan and its terms and conditions for the purpose of making audits, examinations, excerpts and transcriptions as well as to inspect the Loan's collateral.

5.08 Litigation.

Give prompt written notice to Lender of any litigation or proceedings against Borrower that could materially affect the financial condition of Borrower. The term "prompt notice" shall constitute a time period not to exceed 15 days from date of receipt by Borrower of notice of litigation or proceedings.

5.09 Notices.

(a) Keep Lender fully informed as to all matters that may affect Lender's security interests in the property securing repayment of the Loan or the ability of Borrower to perform the obligations under the Loan Documents.

(b) Furnish to Lender as soon as possible, and in any event within five days after

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the occurrence of any Event of Default, or of any condition anticipated to lead to a default under this Agreement, a statement in writing by any authorized representative of Borrower setting forth the details of such Event of Default or condition, and the action which the Borrower proposes to take with respect thereto.

(c) Furnish to Lender such other information respecting the condition or operations, financial or otherwise, of Borrower as Lender may from time to time reasonably request.

(d) All notices, requests and demands to or upon the respective parties hereto shall be deemed to have been given or made when deposited in the mail, postage prepaid, addressed as set forth below or to such other address as may be hereafter designated in writing by the respective parties hereto:

The Borrower:	Angela's House LLC 221-10 Jamaica Avenue, LL1 Queens Village, NY 11428-2047 Attention: Benathan Upshaw
With a copy to:	Delta Development of Western New York, Inc. 525 Washington Street, Buffalo, NY 14203 Attention: CEO Cannon Heyman & Weiss, LLP 726 Exchange Street, Suite 500 Buffalo, New York 14210 Attention: Timmon M. Favaro, Esq.
The Lender:	Amherst-Cheektowaga-Tonawanda HOME Consortium c/o Town of Cheektowaga Office of Community Development 275 Alexander Avenue Cheektowaga, New York 14211
The Investor Member:	Wincopin Circle LLLP c/o Enterprise Community Asset Management, Inc. 70 Corporate Center 11000 Broken Land Parkway, Suite 700 Columbia, Maryland 21044 Attention: Asset Management & General Counsel

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With a copies to:

Gallagher Evenlius & Jones LLP
218 North Charles Street, Suite 400
Baltimore, Maryland 21201
Attention: Kenneth S. Gross, Esq.

5.10 Compliance with Local and Federal Statutes.

Borrower shall comply with all applicable Federal, State and local laws and regulations, including, but not limited to 24 CFR parts J (subpart A), 85, 92, and 570 and all of the following requirements if applicable:

(a) Public law 88-352, which is Title VI of the Civil Rights Act of 1964 {42 U.S.C. 2000d et seq.} and the implementing regulations at 24 CFR part 1, which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or Project receiving Federal financial assistance.

(b) Public law 90-284, which is Title VIII of the Civil Rights Act of 1986 {42 U.S.C. 3601 et seq.}, also known as the Fair Housing Act, which provides that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including making unavailable or denying a dwelling to any person, because of race, color, religion, sex, or national origin. The implementing regulations at 24 CFR 100.205 further require that multi-family dwellings meet the design and construction requirements therein described.

(c) The Housing and Community Development Act of 1974, (the "Act"), as amended, and the implementing regulations at 24 CFR 570, which includes Section 109, requiring that no person in the United States shall on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or Project funded in whole or in part with community development funds made available pursuant to the Act. Section 109 of the Act, and the implementing regulations at 24 CFR Part 146 and 24 CFR Part 8 further provide for the prohibition of discrimination on the basis of age under the Age Discrimination Act of 1975 {42 U.S.C. 6101 *et seq.}*, or with respect to an otherwise qualified handicapped person as provided in Section 504 of the Rehabilitation Act of 1973 {29 U.S.C. 794}.

(d) Executive Orders 12549 and 12689 "Debarment and Suspension" prohibit awarding contracts to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-Procurement Programs, which lists the names of parties debarred, suspended, or otherwise excluded by

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agencies, and contractors declared ineligible under statutory authority other than EO 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its principal employees.

(e) Section 3 of the Housing and Urban Development Act of 1966, as amended { 12 U.S.C.1701(u)} which requires that to the greatest extent feasible opportunities for training and employment arising from HOME be provided to low and moderate income persons residing in the area in which the project is located, and that contracts for work (all types) to be performed in connection with HOME be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the same area as the project.

(f) The Clean Air Act {42 U.S.C. 7401 et seq.} and the Federal Water Pollution Control Act {33 U.S.C. 1251 et seq.} as amended requires that all recipients of contracts over $100,000.00 comply with all applicable standards, orders, or regulations issued pursuant to these Acts. Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(g) All construction contracts in excess of $10,000.00 are subject to Executive Order 11246, "Equal Employment Opportunity", as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Opportunity, Department of Labor". E. 0. 11246 prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin.

(h) The Lead Based Paint Poisoning Prevention Act {42 U.S.C. 48021 - 4846}, the Residential Lead-Based Paint Hazard Reduction Act of 1992 {42 U.S.C. 4851 - 4856}, and implementing regulations at 24 CFR Part 35, Subparts A, B, J, K, M, and R, respecting prohibition against the use of lead-based paint, notification of hazards of lead-based paint poisoning, and elimination of lead-based paint hazards.

(i) The Americans with Disabilities Act {42 U.S.C. 12131; 47 U.S.C. 155,210,218, and 225), which provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services and telecommunications. The ACT, also referred to as the ADA, also states that discrimination includes the failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communication barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable

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and able to be carried out without much difficulty or expense.

(k) The flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 {42 U.S.C. 4012a}.

(l) The Acquisition and Relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

(m) 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements" and any implementing regulations issued by the awarding agency, requires that contracts or agreements for the performance of experimental, developmental, or research work provide for the rights of the Federal Government and the Recipient regarding any resulting invention.

(n) Anti-Lobbying - The Subrecipient hereby certifies that:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(o) The provisions on Conflict of Interest found at 24CFR parts 84.41 and 85.36 and, in cases not covered by these provisions, the HOME regulations at 24CFR 92.356, which state that no person covered who exercises or has exercised any functions or responsibilities with respect to HOME activities or who is in position to participate in decisions or gain inside information may obtain a financial interest or benefit from a HOME Project or have an interest in any contract, subcontract, or agreement for themselves or for persons with business or family ties, said requirements apply to covered persons during their tenure and for one year after leaving the described
entity.

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(p) Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259), which prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing, or other disposition or residential property, or in the use or occupancy of housing assisted with Federal funds. Equal Opportunity in Housing regulations may be found in 24 CFR Part 107.

(q) The Fair Labor Standards Act of 1938 as amended with 29 U.S.C. 201, et. seq. which establishes child labor standards and the basic minimum wage for all work and requires the payment of overtime at the rate of at least time and one-half as well as the payment of wages for the entire time that an employee is required or permitted to work.

(r) The New York Non-Profit Revitalization Act of 2013.

5.11 Section 3.

a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assed projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, attached hereto at Exhibit N, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The Borrower agrees that it will require its contractor to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representatives of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The Borrower agrees that it will require its contractor to include the Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of

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the subcontract or in the Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulation in 24 CFR part 135.

(e) The Borrower will require its contractor to certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom regulation of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

(t) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(g) With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (1) preference and opportunities for training and employment shall be given to Indians, and (2) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

5.12 Records to be Maintained.

Borrower shall maintain records pursuant to the requirements of 24 CFR 92.252, to document its operation of the Project as defined in Section 1, until the close of the Affordability Period and the term of Loan as well as its receipt and re-use of Proceeds until their final disbursement. These records shall include, at a minimum:

(a) Information pertaining to household size, racial characteristics, occupancy by female headed households and handicapped persons;

(b) Tenant's application, initial income verification documents and subsequent annual income recertification and the tenant's lease;

(c) Records to document rent and utility allowance calculations;

(d) Financial records on the use of HOME and matching funds;

(e) Records supporting information reported to Borrower;

(t) Records showing that Borrower's process for procurement of services by sub-contractors was performed pursuant to HOME's guidelines;

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(g) Compliance with the Program Guidelines, Property Standards and Housing Quality Standards (HQS) of 24 CFR 92.251, Accessibility Standards of 24 CFR 92.25l(a)(3) and Lead Based Paint Requirements of 24 CFR 92.355 and 24 CFR Part 35, Minority Outreach described at 92.351(b) and the Tenant Selection Policy;

(h) Implementation of Lender-approved affirmative marketing procedures as required by 24 CFR 92.351.

(i) Rental logs showing that as units were vacated or tenants became over-income, HOME-assisted Units were properly replaced;

(j) Tenants Files documenting that each HOME-assisted unit is occupied by an Eligible Household, including tenant's application, lease, initial income verification and subsequent annual recertification documents, including certification from source documents annually;

Borrower shall retain these records for six (6) years after the close of the Affordability Period or the Term of the Loan whichever is later.

Lender and any duly authorized representative of HUD shall, at all reasonable times, have access to and the right to inspect and copy all such documentation.

The obligations of Borrower set forth in this Section are material obligations the breach of which shall constitute an Event of Default under Section 7of this Agreement.

SECTION 6. SALE OF PROJECT PROPERTY

6.01 Sale of HOME-Assisted Units.

Upon the sale of the Project's HOME-assisted Units during the Affordability Period, HOME regulations require the full repayment to Lender of all HOME funds invested in the Project. In this context, "sale" would also include the assignment of Borrower's interest in the long term lease on the Project.

6.02 Conversion of Rental Units to Owner-Occupied Units.

Notwithstanding the provisions above, Lender may agree to the sale of the HOME-assisted Units during the Affordability Period, provided that it complies with the HOME regulations described at 24 CFR 92.255, that include the requirement that such units may only be sold to Eligible Household already residing in those units.

6.03 Loan Assignment.

Notwithstanding the provisions of Section 6 of this Agreement, upon receipt of Borrower's written petition, Lender may agree to authorize Borrower to assign any or all of its rights, interests, and obligations hereunder (including its obligation to repay the

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Loan) respecting the sale of the Project Property subject to the following conditions:

(a) Borrower shall be responsible for preparing all agreements and documents necessary to complete the assignment transaction, and shall pay all costs associated with the assignment transaction including reasonable attorney fees.

(b) Borrower shall not be relieved of any of its obligations under this Agreement which are not expressly assigned to another party pursuant to this Section 6.02.

(c) The assignee shall agree to assume all of Borrower's obligations under this Agreement respecting the transferred HOME-assisted Units including, but not limited to, the obligations with respect to low-income benefit as set forth in this Agreement.

(d) Notwithstanding any other provision of this Section, Lender shall have the right to prohibit any such assignment where Lender determines that the prospective assignee represents an unacceptable credit risk or is otherwise determined to be an inappropriate recipient of HOME funding based on any of the rules, regulations, or policies of HUD. For the purposes of assisting Lender in making its evaluation pursuant to this Subsection, Borrower shall provide Lender with customary background and credit information respecting the prospective assignee.

6.04 Changes in Borrower's Investor Member.

Notwithstanding anything to the contrary contained in this Loan Agreement or in the Loan Documents, the respective interests of Borrower's Investor Member shall be transferable as permitted in Article 10 of Borrower's operating agreement without the consent of Lender and shall not constitute an Event of Default (the "Permitted Transfer").

SECTION 7. DEFAULT

7.01 Events of Default.

The occurrence of any one or more of the following events shall constitute an "Event of Default" under the terms of this Agreement:

(a) if any material representation or warranty made by Borrower in this Agreement, or any certificate, financial or other statement is untrue or misleading in any material respect;

(b) if Borrower fails in the observance or performance of any other covenant or agreement contained in this Agreement or accompanying loan documentation, and the continuance of this failure for thirty (30) days after a notice of default is given to Borrower by Lender provided that if any such failure concerning a non-monetary covenant or condition is susceptible to cure and cannot reasonably be cured within said thirty (30) day period, then Borrower shall have an additional thirty (30) day

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period to cure such failure and no Event of Default shall be deemed to exist hereunder so long as (x) Borrower commences such cure within the initial thirty (30) day period and diligently and in good faith pursues such cure to completion within such resulting sixty (60) day period from the date of Lender's notice;

(c) if, during the Applicable Period, Angela's House CBE LLC ceases to be the wholly- owned subsidiary of CB-Emmanuel Realty, LLC, Angela's House DD LLC ceases to be the wholly- owned subsidiary of Delta Development of Western New York, Inc., or either cease to be the sole members of Angela's House MM, LLC, unless replaced with the consent of lender;

(d) if Borrower fails to submit reports pursuant to Section 5;

(e) if Borrower fails to complete the Project on time in accordance with the Loan Documer fails to have the HOME- assisted units occupied with Eligible Households in accordance the Loan Documents; provided however, there shall be no default for constructic rehabilitation delays beyond the reasonable control of the Borrower, provided that such d do not exceed one hundred eighty(180) days;

(f) if Borrower shall:

(i) apply for or consent to the appointment of or the taking of possession by a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property;

(ii) admit in writing its inability to pay its debts as such debts become due;

(iii) make a general assignment for the benefit of its creditors;

(iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect);

(v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts;

(vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code; or,

(vii) take any action for the purpose of effecting the foregoing.

(g) A proceeding or case shall be commenced against Borrower in any court of competent jurisdiction which is not dismissed, discharged or stayed for a period of sixty (60) days, seeking:

(i) the liquidation, reorganization, dissolution, winding-up, or composition or

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readjustment of debts of Borrower;

(ii) the appointment of a trustee, receiver, custodian, liquidator or the like of Borrower or of all or any substantial part of its assets; or

(iii) similar relief in respect of Borrower under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment, or decree approving or ordering any of the foregoing shall be entered and continued unstayed and in effect, for a period of sixty (60) days, or any order for relief against Borrower shall be entered in an involuntary case under the Federal Bankruptcy Code.

(h) There shall be a default or event of default that continues beyond any applicable notice or cure periods under any of the Senior Loans (as defined in the Mortgage).

(i) An "Event of Default" under any of the Loan Documents shall occur and be continuing beyond any applicable notice and cure periods.

7.02 In the Event of Default.

In the Event of Default or anticipated default:

(a) Borrower shall notify Lender of any condition likely to lead to default, or an event of default no later than five days after Borrower becomes aware of the condition or the default occurs, and provide a description of the condition or default;

(b) Borrower shall present Lender with a proposal for prevention or remedy of the default at the time the notice referred to in paragraph (a) is provided.

(c) If an Event of Default continues beyond any applicable notice and cure periods, Lender may call the full outstanding principal balance and any accrued interest on the Loan due and payable upon ten (10) days' written notice to Borrower and undertake appropriate legal action in a court of competent jurisdiction to collect the amounts due, or to enforce the performance or observance of any obligations, agreements or covenants of Borrower under this Agreement, provided however, that Lender shall have given Borrower and Borrower's Investor Member notice of such default hereunder and at least 15 days within which to cure such default before Lender shall have the remedies described herein.

7.03 Agreement to Pay Attorney's Fees.

In the Event of Default, Borrower agrees to pay the reasonable attorney's and related legal fees of Lender resulting from the default.

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7.04 No Additional Waiver Implied.

In the event any covenant or warranty contained in this Agreement should be breached by either party and thereafter waived by the other party, the waiver shall be limited to the particular breach and shall not be deemed to waive any other breach occurring. A waiver must be in writing.

7.05 Setoff.

In addition to any rights of Lender provided by law, in the Event of Default that continues beyond any applicable notice and cure periods, Lender is authorized to setoff and to appropriate and apply all deposits and other indebtedness at any time held or owing to Lender to or for the credit or the account of Borrower against all outstanding obligations, claims and liabilities of Borrower to Lender and in such amounts as Lender may elect.

7.06 Remedies Cumulative.

The rights and remedies of Lender under this Agreement are cumulative, and do not exclude any other rights and remedies of Lender allowed by law with respect to default under this Agreement. Failure by Lender to insist upon the strict performance of any of the covenants and agreements in the Agreement or to exercise any rights or remedies upon default by Borrower is not to be understood as a waiver of those rights or remedies by Lender.

7.07 Effect of Discontinuance of Proceedings.

In case any proceeding undertaken by Lender in an Event of Default is discontinued for any reason, or is decided adversely to Lender, then Lender shall be restored to its former position and all rights, remedies, powers and duties of Lender shall continue as before the proceedings.

SECTION 8. MISCELLANEOUS

8.01 Exhibits.

The Exhibits shall constitute an integral part of this Agreement.

8.02 Amendments.

This Agreement may be amended only with the written consent of both parties, executed with the same formality as this Agreement. Lender shall be responsible for reasonable costs associated with any amendments requested by Lender, including, but not limited to legal fees and administrative costs.

8.03 Construction.

This Agreement, including the Note and all other attached Exhibits and the rights and obligations of the parties hereunder and thereunder shall be governed by, and construed and interpreted in accordance with the laws of the State of New York. If any of the provisions

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of this Agreement shall be or become illegal or unenforceable under any law, the other provisions shall remain in full forth and effect.

8.04 Prior Agreement Superseded.

This Agreement shall completely supersede all other prior understandings or agreements both written and oral between Lender and Borrower relating to the Loan.

8.05 Further Assurances.

Borrower will cooperate with Lender for the purpose of protecting Lender's interest in the Project and the sums due under this Agreement.

8.06 Captions.

The captions of the various sections and subsections of this Agreement have been inserted only for the purpose of convenience, and shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions of this Agreement.

8.07 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns.

8.08 Project Promotion.

Promotion materials, media announcements, or marketing efforts undertaken by Borrower to increase public awareness of this project should include the phrase:

> "This project is funded in part through the Town of Cheektowaga's Home Investment Partnerships (HOME) Program".

8.09 Effective Date.

The effective date of this Agreement will be the date and year first written above.

8.10 Indemnification.

Borrower shall indemnify HUD, the Town of Cheektowaga, its agents and employees from and against any and all claims arising from Borrower's performance of work, pursuant to this Agreement and/or any gross negligence or willful misconduct of Borrower. HUD, the Town of Cheektowaga, its agents and employees shall not be entitled to be indemnified against their own gross negligence or willful misconduct.

8.11 Penalties.

In the event of non-compliance with the terms of this Agreement, specifically, if in the course of implementing the Project, Borrower causes the Town of Cheektowaga to be negligent in its obligations towards HUD or if Borrower otherwise causes costs and

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hardships to the Town of Cheektowaga by failing to submit in a timely manner reports and documents due to the Town of Cheektowaga pursuant to this Agreement, , the Town of Cheektowaga reserves the right to charge direct costs and penalties assessed against the Town of Cheektowaga to the Project in place of costs Borrower could otherwise have charged in the course of implementing the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this this Agreement to be executed on the day and year first written above.

LENDER: Amherst-Cheektowaga-Tonawanda HOME Consortium

_____ _____

Diane Benczkowski, Supervisor Date

_____ _____

Brian J. Kulpa, Supervisor Date
Town of Amherst as Lead Agency
Of the Amherst-Cheektowaga-Tonawanda
HOME Consortium

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STATE OF NEW YORK)
COUNTY OF ERIE)

On this _____ day of_____,Two Thousand and Twenty, before me, the undersigned, a Notary Public in and for said State, personally appeared **Diane Benczkowski**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

STATE OF NEW YORK
COUNTY OF ERIE)

On this _____ day of _____,Two Thousand and Twenty, before me, the undersigned, a Notary Public in and for said State, personally appeared **Brian J. Kulpa**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

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Approved for Legal Form and Content:

Name, Title Date

BORROWER (Beneficial Lessee):

ANGELA'S HOUSE LLC
a New York limited liability company

By: _____
Name: Benathan Upshaw
Title: Authorized Signatory

STATE OF NEW YORK
COUNTY OF ERIE)

On this ____ day of _____, Two Thousand and Twenty, before me, the undersigned, a Notary Public in and for said State, personally appeared **Benathan Upshaw**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

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EXHIBIT A

PLANNING BOARD RESOLUTION

LOAN COMMITMENT LETTER

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Town of Cheektowaga
3301 Broadway
Cheektowaga, NY 14227

Meeting: 11/06/06 06:45 PM

ADOPTED

Sponsors: Councilmember Johnson Jr., Councilmember Magierski

RESOLUTION 2006-545

Negative SEQR Declaration - 600 Doat Street

WHEREAS, pursuant to the Environmental Impact Review Ordinance of the Town of Cheektowaga, the Environmental Advisory Committee ("EAC") reviews various applications for site plans, rezonings, special permits, etc. and renders its recommendation concerning the environmental significance of such application, AND

WHEREAS, the Town Board, pursuant to the Environmental Impact Review Ordinance of the Town of Cheektowaga, is designated the Lead Agency in most instances, AND

WHEREAS, since the Town Board is the Lead Agency, it must affirm, modify or reject any recommendations submitted to it by the Advisory Committee, AND

WHEREAS, an application was submitted by The Order of the Felician Sisters of St. Francis for the rezoning of a part of 600 Doat Street from CF- Community Facilities to RSC- Senior Citizen Housing District for the conversion of and existing multi-story school building to an apartment complex for senior citizens and additional site improvements elsewhere on the Villa Maria Campus , AND

WHEREAS, the Environmental Advisory Committee at its meetings held on November 1, 2006 recommended a determination of non-significance, AND

WHEREAS, the Town of Cheektowaga Planning Board recommended approval of the rezoning and the site plan at their meetings of September 14, 2006 and October 12, 2006 respectively, AND

WHEREAS, this Town Board has reviewed the application submitted and the recommendations made by the Environmental Advisory Committee and the Planning Board NOW, THEREFORE, BE IT

RESOLVED, that this Town Board determines that the project will not have a significant effect on the environment and therefore issues a Negative Declaration for purposes of SEQRA, AND BE IT

FURTHER RESOLVED, the proposed site plan is found to be acceptable subject to :

1. The Town Engineer approving the drainage and grading plan.

2. The Zoning Board of Appeals granting the necessary area variances to permit the division of the parcel.

3. The Deputy Town Attorney receives evidence of perpetual access easements necessary for parking, fire access, and any shared infrastructure to facilitate the parcel division.

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4. The applicant meeting the regulatory requirements of the NYS Office of Historic Preservation as a site listed on the National Registry of Historic Places.

AND BE IT FURTHER RESOLVED, that the requirement to provide replacement trees on a one to one basis pursuant to section 229-5 of the Town Code will not be required due to lack of on site opportunities; and the monies offered to the Town by the applicant in lieu of such trees are hereby gratefully declined.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Thomas M. Johnson Jr., Councilmember
SECONDER:	Alice Magierski, Councilmember
AYES:	Gabryszak, Jaworowicz, Johnson Jr., Swiatek, Jankowiak, Magierski, Rogowski

State Of New York
Erie County **ss:**
Office Of The Clerk Of The
Town of Cheektowaga

(Seal)

This is to certify that I, *Kimberly Bieret*, Clerk of the *Town of Cheektowaga, in the said County of Erie,* have compared the foregoing copy of resolution with the original resolution now on file at this office, and which was passed by the Town Board of the *Town of Cheektowaga*

in said *County of Erie,* on Monday, November, 6, 2006,
and that the same is a correct and true transcript of such original resolution and the whole thereof.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Town on Tuesday, February, 23, 2021.

CLERK OF THE TOWN BOARD, TOWN OF CHEEKTOWAGA, NY

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Town of Cheektowaga
3301 Broadway
Cheektowaga, NY 14227

Meeting: 11/06/06 06:45 PM

ADOPTED

Sponsors: Councilmember Magierski, Councilmember Swiatek

RESOLUTION 2006-547

Decision on Rezoning - Part of 600 Doat Street

WHEREAS, The Order of Felician Sisters of St. Francis petitioned for a rezoning from CF-Community Facilities District to RSC-Senior Citizen Housing District for the conversion of a former high school building to senior apartments for property owned by Villa Maria Senior Living Community, L.P. and located at 600 Doat Street, Cheektowaga, New York, which property is described in the attached legal description, and

WHEREAS, a public hearing on such petition was held before this Town Board on the 16th day of October, 2006 at 6:30 o'clock P.M., after publication and service of the notices required by the provisions of the Code of the Town of Cheektowaga ("Zoning Law"), and the Town Law; and all interested parties were given an opportunity to be heard at such hearing, and

WHEREAS, the Cheektowaga Planning Board has reviewed such application and has recommended approval thereof, and

WHEREAS, this Town Board previously issued a Negative Declaration under SEQRA and the Town Environmental Impact Review Ordinance for this rezoning, NOW, THEREFORE BE IT

RESOLVED, that the application of The Order of Felician Sisters of St. Francis for the rezoning from CF-Community Facilities District to RSC-Senior Citizen Housing District of the property described in the attached legal description be and the same is hereby approved, and BE IT FURTHER

RESOLVED, that the Zoning Map and Law of the Town of Cheektowaga be amended in accordance with the above.

LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Cheektowaga, County of Erie and State of New York, being part of Lot 33, Township 11, Range 7 of the Holland Land Company Survey (so-called), bounded and described as follows:

COMMENCING AT THE INTERSECTION of the north line of Doat Street and the west line of the Town of Cheektowaga (said west line of the Town of Cheektowaga being also the east line of the City of Buffalo);

RUNNING THENCE: Northerly, along the division line between the Town of Cheektowaga on the east and the City of Buffalo on the west, a distance of 47.10 feet to a point;

RUNNING THENCE: Easterly, at right angles to the last described line, a distance of 77.88 feet to the Point or Place of Beginning of the parcel herein described;

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RUNNING THENCE: Northerly, at an exterior angle of 89E-05'-21" with the last described line, a distance of 230.19 feet to a point;

RUNNING THENCE: Easterly, at right angles to the last described line, a distance of 144.0 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 44.36 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 63.26 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 53.0 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 5.0 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 24.0 feet to a point;

RUNNING THENCE: Easterly, at right angles to the last described line, a distance of 5.0 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 41.81 feet to a point;

RUNNING THENCE: Easterly, at right angles to the last described line, a distance of 13.29 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 67.01 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 94.02 feet to the POINT OR PLACE OF BEGINNING, containing 0.51 acre, be the same, more or less. SUBJECT to easements, rights of way and restrictions or record.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Alice Magierski, Councilmember
SECONDER:	Jeff Swiatek, Councilmember
AYES:	Gabryszak, Jaworowicz, Johnson Jr., Swiatek, Jankowiak, Magierski, Rogowski

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Resolution 2006-547

Meeting of November 6, 2006

State Of New York
Erie County ss:
Office Of The Clerk Of The
Town of Cheektowaga

(Seal)

This is to certify that I, *Kimberly Burst*, Clerk of the *Town of Cheektowaga, in the said County of Erie,* have compared the foregoing copy of resolution with the original resolution now on file at this office, and which was passed by the Town Board of the *Town of Cheektowaga*

in said *County of Erie,* on Monday, November, 6, 2006,
and that the same is a correct and true transcript of such original resolution and the whole thereof.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Town on Tuesday, February, 23, 2021.

CLERK OF THE TOWN BOARD, TOWN OF CHEEKTOWAGA, NY

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

TOWN OF CHEEKTOWAGA

ZONING BOARD OF APPEALS
DECISION

Whereas, **Timothy M. Rider / Sisters of St. Francis** has made application for a(n) **Area Variance ,** under

ARTICLE(S): V **SECTION(S):** 260-40 (B)(2)
ARTICLE(S): II **SECTION(S):** 260-28 (I)(1)
ARTICLE(S): II **SECTION(S):** 260-25(B)(1)(B)
ARTICLE(S): II **SECTION(S):** 260-25(B)(2)(A)

of the zoning law for property located at:

600 Doat Street

The applicant's proposed parking complex will have sixty-six (66) apartments and eighty-six (86) parking spots, whereas, Zoning Law requires two (2) spaces per unit and five (5%) percent of the total units, which would require one hundred thirty-six (136) parking spaces.

(The campus currently has eighty (80) parking spaces. With the new proposed apartment complex plan, there will be eighty-six (86) new parking spots created.

The Building and Planning Department recommends that eighty-six (86) parking spots will be more than sufficient for the proposed intended use. The single mothers with children will most likely have one (1) vehicle per apartment.)

The applicant proposed an additional driveway access to the public right-of-way, whereas, Zoning Law permits only one (1) driveway access per dwelling.

(Building and Planning Department recommends an additional access road to incorporate more parking as well as a designated entrance for the new proposed apartment complex.)

The applicant's proposed driveway access is twenty-six (26) feet, whereas, Zoning Law requires a driveway access of twenty-eight (28) feet within a RA District.

The applicant's proposed sixty-six (66) unit apartment complex will have a total lot area of twenty five thousand (25,000) square feet, whereas, Zoning Law would require a total of (232,500) square feet of lot area.

(Building and Planning recommend the total lot area for the new apartment complex to be suitable at (25,000) square feet because it is just a zoning district within a parcel and the parcel far exceeds the (232,500) square feet.)

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Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Italicized information is from Jesse Jesonowski, Town Planner

Whereas, a public hearing was held on **4/17/2019** after proper notice,

Whereas, this Board, after reviewing the application, and conducting a public hearing and after due deliberation and vote of the Board,

Be it resolved, by virtue of the power vested in the Zoning Board of Appeals, this **Area Variance** is hereby **Granted**.

The Code Enforcement Officer, citing **Article V, Section 260-40 (B) (2)** denied a request for approval for a **"parking complex"** from **Timothy M. Rider** representing **Sisters of St. Francis** for a certain locus in the Town of Cheektowaga known as **600 Doat Street, Cheektowaga, NY** based on the following representation that **"the applicant's proposed parking complex will have sixty-six (66) apartments and eighty-six (86) parking spots, whereas, Zoning Law requires two (2) spaces per unit and five percent (5%) of the total units, which would require one hundred thirty-six (136) parking spaces. (*The campus currently has eighty (80) parking spaces. With the new proposed apartment complex plan, there will be eighty-six (86) new parking spots created, The Building and Planning Department recommends that eighty-six (86) parking spots will be more than sufficient for the proposed intended use. The single mothers with children will most likely have one (1) vehicle per apartment)"** and citing **Article II 260-28 (I) (1)** denied a request for approval for an **"additional driveway access to the public right-of-way"** from **Timothy M. Rider** representing **Sisters of St. Francis** for a certain locus in the Town of Cheektowaga known as **600 Doat Street, Cheektowaga, NY** based on the following representation that **"the applicant proposed an additional driveway access to the public right-of-way, whereas zoning law permits only one (1) driveway access per dwelling" (*Building and Planning Department recommends an additional access road to incorporate more parking as well as a designated entrance for the new proposed apartment complex)"** and citing **Article II 260-25 (B) (1) (B)** denied a request for approval for a **"proposed driveway access"** from **Timothy M. Rider** representing **Sisters of St. Francis** for a certain locus in the Town of Cheektowaga known as **600 Doat Street, Cheektowaga, NY** based on the following representation that **" the applicant's proposed driveway access is 26ft, whereas, zoning law requires a driveway access of 28 feet within an RA district"** and citing **Article II 260-25 (B) (2) (A)** denied a request for approval for a **"66 unit apartment complex having a lot area of $25,000 square feet"** from **Timothy M. Rider** representing **Sisters of St. Francis** for a certain locus in the Town of Cheektowaga known as **600 Doat Street, Cheektowaga, NY** based on the following representation that **" the applicant's proposed 66 unit apartment complex will have a total lot area of 25,000 square feet, whereas, the Zoning Law would require a total of 232,500square feet of lot area" *(Building and Planning recommend the total lot area for the new apartment complex to be suitable at 25,000 square feet because it is just a zoning district within a parcel and the parcel far exceeds the 232,500 square feet).*** Appellant appealed the Code Enforcement Officer's denial of said permit by filing "Town Of Cheektowaga Zoning Board Of Appeals Request" with the Zoning Board of Appeals on or about **April 1, 2019**.

"'Area variance' shall mean the authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations. In making its determination the Zoning Board of Appeals shall take into consideration the benefit of the applicant if the variance is granted, as weighted against the detriment to the health, safety and welfare of the neighborhood or community by such grant

(a) In making such determination the Board shall also consider:

[1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance

[2] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance

[3] Whether the requested area variance is substantial

[4] Whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

[5] Whether the alleged difficulty was self-created.

(b) The Board of Appeals in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community. ". **(Town of Cheektowaga Code, Chapter 260 Zoning, Article IX, 260-76, Appeals For Variance)**

Timothy M. Rider representing **Sisters of St. Francis** made the following representations in the Application for Area Variance:

1. The character of the neighborhood will not change, and/or there will not be a detriment to nearby properties as **"The building as well as the property under consideration are pre-existing".**
2. A variance is needed rather than modifying my project to meet zoning requirements as **"Access and available area is limited by the confines of its surrounds".**
3. The need for a variance is **not** a result of his own actions.

On **April 17, 2019, Timothy M. Rider** representing **Sisters of St. Francis'** appeal was considered by the Zoning Board of Appeals. **Mr. Rider** gave a presentation as to layout of the plans for the former Villa Maria H.S. complex and how the various six stories would be utilized by the various groups, Women Veterans with P.S.D., homeless, battered women, some with children and how they would be housed and the highest floor will have market rents. The type of security was also discussed. They will also have a courtyard and play area. An existing garage will be demolished.

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Catholic Charities will service the program as well as those necessary for persons of special needs.

In 2006, this parcel was rezoned RSC for a senior housing project which was never started. This parcel will now be rezoned to RA. The variances are generated from the RA zoning.

The applicants parking complex will have sixty-six (66) apartments and eighty-six (86) parking spots, whereas the zoning law requires two (2) spaces per unit and five (5%) percent of total units which would require one hundred thirty-six (136) parking spaces.

The Building and Planning Department recommends that eighty-six (86) parking spaces will be more than sufficient for the proposed intended use. The single mothers with children will most likely have (1) vehicle per apartment.

The proposed sixty-six (66) unit apartment complex will have a total lot area of twenty- five thousand (25,000) square feet, but since it is just a zoning district within a parcel and the parcel far exceeds the (232,500) square feet and the twenty- five thousand (25.000) square feet is sufficient.

The applicant proposed an additional driveway access to the public right-of-way, whereas the zoning law permits only one (1) driveway access per dwelling .This will lead to new parking area in rear. It will also be 26 ft. wide whereas, 28 ft. is code

The proposed 66 unit apartment complex will have a total lot area of 25,000 sq. feet, whereas the zoning law requires a total of 232,500 sq. feet. It was felt because the 25,000 foot parcel is part of a larger 232,500 sq. foot parcel, the size is suitable. There will be little difference when the project is completed.

CONCLUSION: Therefore, it was determined by Motion of Robert Brandon & 2nd by Jane Wiercioch to approve the 4 variances as requested.

Roll call: Justin Young, naye, Kenneth Young naye, John Marriott, aye, Jane Wiercioch, aye, Robert Brandon aye, 3 ayes 2 nayes

RESULT:	**GRANTED [3 TO 2]**
MOVER:	Robert J. Brandon, Chairman
SECONDER:	Jane Wiercioch, Board Member
AYES:	Robert J. Brandon, Jane Wiercioch, John Marriott
NAYS:	Kenneth L. Young, Justin Young

*Note – Construction cannot begin until a building permit is applied for and approved. This decision will be automatically revoked unless a building permit is obtained within six (6) months of the date hereof and unless construction commences within one (1) year of the date hereof.

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TOWN OF CHEEKTOWAGA

ZONING BOARD OF APPEALS
DECISION

Whereas, **Marc A. Romanowski, Esq.** has made application for a(n) **Use Variance ,** under

ARTICLE(S): II **SECTION(S):** 260-26 A (1) (a)

of the zoning law for property located at:

600 Doat Street

The applicant wishes to use the senior housing building for residents below 62 years of age, whereas, Zoning Code states the principal uses are the housing of persons 62 years of age and older or in a domestic relationship where one or two person is 62 years of age or more.

Whereas, a public hearing was held on **2/19/2020** after proper notice,

Whereas, this Board, after reviewing the application, and conducting a public hearing and after due deliberation and vote of the Board,

Be it resolved, by virtue of the power vested in the Zoning Board of Appeals, this **Use Variance** is hereby **Granted**.

The Code Enforcement Officer, citing **Article II, Section 260-26A (1)(a)** denied a request for approval for a Use Variance regarding the **"use of a Senior Housing building for residents below 62 years of age"** from **Marc A. Romanowski, Esq**. representing **The Felician Sisters of North America, R.E. Trust, et.al** for a certain locus in the Town of Cheektowaga known as **600 Doat Street, Cheektowaga, NY** based on the following representation: **"the applicant wishes to use the senior housing building for residents below 62 years of age, whereas, Zoning Code states the principal uses are the housing of persons 62 years of age and older or in a domestic relationship where one or two person is 62 years of age or more""**. Appellant appealed the Code Enforcement Officer's decision by filing "Town Of Cheektowaga Zoning Board Of Appeals Request" with the Zoning Board of Appeals on or about **January 13, 2020**.

In any district, whenever a nonconforming use of land, building or other structure, or any part or portion thereof, has been discontinued for a period of one year, such nonconforming use shall not thereafter be reestablished, and all future use shall be in conformity with the provisions of this chapter. Such discontinuance of the active and continuous operation of such nonconforming use, or a part or portion thereof, for such period of one year is hereby construed and considered to be an abandonment of such nonconforming use regardless of any reservation of an intent not to abandon same or of an intent to resume active operations. If actual abandonment in fact is evidenced by the removal of buildings, other structures, machinery, equipment or other evidences of such nonconforming use of the land and

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premises, the abandonment shall be construed and considered to be completed within a period of less than one year, and all rights to reestablish or continue such nonconforming use shall thereupon terminate. **(Article VII: Non-Conforming Uses, Section 260-65, Discontinuance and abandonment of use).**

A USE VARIANCE IS REQUESTED BECAUSE THE APPLICABLE REGULATIONS AND RESTRICTIONS HAVE CAUSED UNNECESSARY HARDSHIP.

In support thereof **Marc A. Romanowski, Esq**. representing **The Felician Sisters of North America, R.E. Trust** made the following representations in his Application for a Use Variance:

1. **"By opening up the potential tenant pool to 55 and above, the Project provides a modest return on investment necessary to support the required financing. Absent an expanded target audience, the portion of the Provincial House would remain vacant and potentially fall into disrepair due to maintenance costs without a supporting revenue stream. Critically, the Applicants are not looking to change a permitted use, just expand the group of potential tenants".**

2. The alleged hardship relating to the subject property is unique and does not apply to other properties in the zoning district or neighborhood in that **"It is without questions that the historic Provincial House is a unique structure within the district and neighborhood. The requirement of this criteria is that this does not apply to a substantial portion of the District of the neighborhood. Even a cursory review of surrounding properties and uses indicates that such a large, historic structure is unique within the District and the neighborhood".**

3. The essential character of the neighborhood/community will not change if the Zoning Board of Appeals grants a use variance because **"the proposed use is similar to other existing housing on the Villa Maria campus. Further, the project is residential and similar to the surrounding residential uses".**

4. The need of a use variance is not a result of my own actions as **"The Felician Sisters have occupied the campus for over eighty (80) years and the zoning change to RSC was imposed on the property well after it was developed. CB Emmanuel and Delta Development are the developers of the Project and cannot move forward without the requested Use Variance. If the Project Site does not expand the potential tenant pool, the Project cannot move forward and the Felician Sisters will be unable to redevelop the Provincial House. The Felician Sisters are the current owner of the property who has struggled for several years to redevelop the property because of the costs of redeveloping and maintain a historic structure and limited uses for an older institutional building. Here, the Felician Sisters are seeking the use variance to facilitate the lease of the property to CB Emmanuel and Delta Development ".**

On **February 19, 2020, Marc A. Romanowski, Esq**. representing **The Felician Sisters of North America, R.E. Trust et.al** 's appeal was considered by the Zoning Board of Appeals. The applicant wishes to use the senior housing building for residents below 62 years of age, whereas, Zoning Code states the principal uses area the housing of persons 62 years of age and more. Use Variance is requested to

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change the age of residents from 62 years to 55 years of age and up in order to proceed with the project as it is not possible to fill the sixty six (66) apartments with that type of age configuration and make the project financially feasible.

Marc Romanowski the attorney for the applicant, the Felician Sisters, stated that the project under the current zoning regulation was not economically feasible. The available pool of people over 62 is not large enough to fill the 67 apartments that are being planned. The pool of people needs to be enlarged to encompass people under the age of 62, namely, people 55 and over.

In order for the Zoning Board of Appeals to grant the applicant a Use Variance to use the property for a purpose which is not allowed by applicable zoning regulations, unnecessary hardship has to be demonstrated for every permitted use in the zoning district. The applicant must prove unnecessary hardship under 4 conditions.

Mr. Romanowski discussed the first condition, "that the applicant cannot realize a reasonable return, provided that a lack of return is substantial as demonstrated by competent financial evidence".

There is only one use in this district, so there is no need to demonstrate that every use allowed in the district was considered. Mr. Romanowski went on to state that according to a study by CB Emmanuel Realty, LLC, a real estate development company, the pool of people in the area 62 years if age and older and having moderate or low income, is not large enough to rent the 67 apartments that are planned for the building. A market analysis presented showed that there is a market for only 27 income restricted apartments for residents 62 years of age or over in the immediate area for residents 62 years of age or over in the immediate area. No financial institution will finance the project with these numbers. Financing for 55 and over is available and in place.

Mr. Romanowski provided data that compared the expenses and income of both groups of potential residents. There would not be a reasonable return with the numbers presented. The developer is not asking to change the permitted use, just expand the potential group of tenants.

Mr. Romanowski addressed the second condition relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. The building is historical and unique to the neighborhood. The hardship would not apply to any of the properties in the neighborhood.

The third condition to be addressed is that the requested Use Variance, if granted will not alter the essential character of the neighborhood. There will be only one small change to the building. A small addition in the rear of the building that will serve as an entrance. Otherwise, it will look the same as it is now and similar to the rest of the Villa Maria Campus. The building will be residential in a residential area. Heavy traffic will not be generated since not all residents will have a vehicle and if they do, not more than one per apartment. The building once housed Villa Maria, a high school, so no more traffic or people density will be created.

The fourth condition is that hardship has not been self-created. Mr. Romanowski stated that the Felician Sisters have occupied the campus for (80) years and the zoning change to RSC was imposed well after it was developed. CB Emmanuel and Delta Development are the developers and cannot move forward without the requested Use Variance. We need to expand the tenant pool, the project cannot move forward. Here the Felician Sisters are seeking the Use Variance to facilitate the lease of the property to CB Emmanuel and Delta Development.

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After considerable discussion, the Board was satisfied that unnecessary hardship was demonstrated and that the Use Variance conditions were met.

CONCLUSION: Therefore it was determined by Motion of Robert Brandon & 2nd by Justin Young to grant the Use Variance as requested.

Roll call: Justin Young aye, Kenneth Young aye, Jane Wiercioch, aye Robert Brandon, aye, 4 ayes 0 nayes.

Mr. Romanowski asked the Board to extend the time period for filing a permit for the area variance that were granted in April 2019. He stated that a lack of direction from the Town of Cheektowaga in obtaining final approvals for the project which resulted in unforeseen delays. After consulting with the ZBA attorney, Jennifer Runfola, the Board was advised that the time frames for submitting a building permit and the start of construction was a ZBA requirement and that the Board could act on extending the time frames

CONCLUSION: Therefore it was determined by Motion of Robert Brandon & 2nd by Justin Young to grant renewal of the area variances for 86 parking spaces and the secondary drive to be 26' wide and the lot area be 25,000 sq. feet and to extend the time frames to October 31, 2020 for obtaining a permit and April 30, 2021 to begin construction.

Roll call: Justin Young aye, Kenneth Young aye, Jane Wiercioch, aye Robert Brandon, aye, 4 ayes 0 nayes.

RESULT:	**GRANTED [UNANIMOUS]**
MOVER:	Robert J. Brandon, Chairman
SECONDER:	Justin Young, Board Member
AYES:	Robert J. Brandon, Jane Wiercioch, Kenneth L. Young, Justin Young
ABSENT:	Ralph Miranda

*Note – Construction cannot begin until a building permit is applied for and approved. This decision will be automatically revoked unless a building permit is obtained within six (6) months of the date hereof and unless construction commences within one (1) year of the date hereof.

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TOWN OF CHEEKTOWAGA

ZONING BOARD OF APPEALS
DECISION

Whereas, **Marc A. Romanowski, Esq./Felician Sisters of North America** has made application for a(n) **Use Variance** , under

ARTICLE(S): V **SECTION(S):** 260-40(B)(2)
ARTICLE(S): V **SECTION(S):** 260-28(1)(1)
ARTICLE(S): V **SECTION(S):** 260-25(B)(1)(B)
ARTICLE(S): V **SECTION(S):** 260-25(B)(2)(A)

of the zoning law for property located at:

600 Doat Street

Eight-six (86) parking spaces, one-hundred thirty-six (136) required.
One (1) additional driveway access, one (1) driveway allowed.
Proposed driveway is twenty-six (26) feet wide, twenty-eight (28) feet required.
Lot area of twenty-five thousand (25,000) square feet, two-hundred thirty-two thousand, five-hundred (232,500) square feet required.

Whereas, a public hearing was held on **3/10/2020** after proper notice,

Whereas, this Board, after reviewing the application, and conducting a public hearing and after due deliberation and vote of the Board,

Be it resolved, by virtue of the power vested in the Zoning Board of Appeals, this **Use Variance** is hereby **Granted**.

The Code Enforcement Officer, citing **Article V, Section 260-40 (B)(2)** denied a request for approval for a Use Variance regarding **"Eighty-six (86) parking spaces"** from **Marc A. Romanowski, Esq**. representing **The Felician Sisters of North America, R.E. Trust, et.al** for a certain locus in the Town of Cheektowaga known as **600 Doat Street, Cheektowaga, NY** based on the following representation: **"One-Hundred thirty-six (136) are required" and** citing **Article V, Section 260-28 (1)(1)** denied a request for approval for a Use Variance regarding **"One (1) additional driveway access"** from **Marc A. Romanowski, Esq**. representing **The Felician Sisters of North America, R.E. Trust, et.al** for a certain locus in the Town of Cheektowaga known as **600 Doat Street, Cheektowaga, NY** based on the following representation: **"One (1) driveway allowed" and** citing **Article V, Section 260-25 (B)(1)(B)** denied a request for approval for a Use Variance regarding a **"Proposed driveway is twenty-six (26) feet wide"** from **Marc A. Romanowski, Esq**. representing **The Felician Sisters of North America, R.E. Trust, et.al** for a certain locus in the Town of Cheektowaga known as **600 Doat Street, Cheektowaga, NY** based on the following representation: **"Twenty-Eight (28) feet required"** and citing **Article V, Section 260-25 (B)(2)(A)** denied a request for approval for a Use Variance regarding a **"Lot area of twenty-five thousand (25,000) square feet"** from

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Marc A. Romanowski, Esq. representing **The Felician Sisters of North America, R.E. Trust, et.al** for a certain locus in the Town of Cheektowaga known as **600 Doat Street, Cheektowaga, NY** based on the following representation: **"Two-hundred thirty-two thousand, five-hundred (232,500) square feet required"**. Appellant appealed the Code Enforcement Officer's decision by filing "Town Of Cheektowaga Zoning Board Of Appeals Request" with the Zoning Board of Appeals on or about **March 9, 2020.**

In any district, whenever a nonconforming use of land, building or other structure, or any part or portion thereof, has been discontinued for a period of one year, such nonconforming use shall not thereafter be reestablished, and all future use shall be in conformity with the provisions of this chapter. Such discontinuance of the active and continuous operation of such nonconforming use, or a part or portion thereof, for such period of one year is hereby construed and considered to be an abandonment of such nonconforming use regardless of any reservation of an intent not to abandon same or of an intent to resume active operations. If actual abandonment in fact is evidenced by the removal of buildings, other structures, machinery, equipment or other evidences of such nonconforming use of the land and premises, the abandonment shall be construed and considered to be completed within a period of less than one year, and all rights to reestablish or continue such nonconforming use shall thereupon terminate. **(Article VII: Non-Conforming Uses, Section 260-65, Discontinuance and abandonment of use).**

A USE VARIANCE IS REQUESTED BECAUSE THE APPLICABLE REGULATIONS AND RESTRICTIONS HAVE CAUSED UNNECESSARY HARDSHIP.

In support thereof **Marc A. Romanowski, Esq.** representing **The Felician Sisters of North America, R.E. Trust** made the following representations in his Application for a Use Variance:

1. **"I as applicant cannot realize a reasonable return on my property for each and every permitted use allowed in the current zoning classification as demonstrated by the accompanying financial evidence provided".**

2. The alleged hardship relating to the subject property is unique and does not apply to other properties in the zoning district or neighborhood in that **"It is without question that the historic Provincial House is a unique structure within the district and neighborhood. The Requirement of this criteria is that this does not apply to a substantial portion of the District of the neighborhood. Even a cursory review of surrounding properties and uses indicates that such a large, historic structure is unique within the District and neighborhood".**

3. The essential character of the neighborhood/community will not change if the Zoning Board of Appeals grants a use variance because **"The third element requires that the Applicant show that its proposed use of the Property will alter the character of the neighborhood. Here, the proposed use is similar to other existing housing on the Villa Maria campus. Further, the Project is residential and similar to the surrounding residential uses".**

4. The alleged hardship has **not** been self-created.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

On **March 10, 2020, Marc A. Romanowski, Esq.** representing **The Felician Sisters of North America, R.E. Trust et.al 's** appeal was considered by the Zoning Board of Appeals at a Special Meeting. An application was submitted by Marc A. Romanowski of Rupp Baase Pfalzgraf Cunningham Attorneys, Felician Sisters of St. Francis, to redevelop the existing 80,000 Sq. Ft. of building to become 67 apartments and will also include the site development of new parking spaces and design of storm water facilities at 600 Doat St.

Use Variance(s) - 600 Doat Street

The variances are to allow 86 parking spaces for 67 units where 136 are required under the code, a driveway variance for an additional access road to Doat Street whereas only one access driveway is allowed under the code, a 26 foot wide driveway instead of 28 foot driveway as required by code, a proposed lot size of 25,000 square feet whereas the minimum lot size for a 67 apartment complex is 232,500 square feet.

The Zoning Board of Appeal held a public hearing on April 17, 2019 for the same 4 variance request and granted all for variances as requested. Mr. Marc Romanowski, representing the Felician Sisters, explained that the 6 month time frame for obtaining a building permit and the one year time frame for starting construction, as required by the Cheektowaga Town code, Chapter 260, Article IX, section 260-80, was not met because of unforeseen delays by the Town of Cheektowaga in obtaining final approvals for the Project.

Mr. Romanowski stated that the same variances are being requested and that they were needed in order for the Project to proceed.

The Board had no questions and there was no one in the audience present to offer any testimony.

CONCLUSION: Therefore, it was determined by Motion of Robert Brandon & 2nd by Jane Wiercioch to grant all 4 variances as requested.

Roll call: Justin Young aye, Kenneth Young aye, Jane Wiercioch, aye Ralph Miranda ayeRobert Brandon, aye, 5 ayes 0 nayes.

Negative SEQR Declaration - 600 Doat Street

Pursuant to the Environmental Impact Review Ordinance of the Town of Cheektowaga, the Environmental Advisory Committee ("EAC") reviews various applications for site plans, rezonings, special permits, etc. and renders its recommendation concerning the environmental significance of such application, AND

The Zoning Board of Appeals, pursuant to the Environmental Impact Review Ordinance of the Town of Cheektowaga, was designated the Lead Agency, AND

Since the Zoning Board of Appeals is the Lead Agency, it must affirm, modify or reject any recommendations submitted to it by the Advisory Committee, AND

An application was submitted by Marc A. Romanowski of Rupp Baase Pfalzgraf Cunningham Attorneys, Felician Sisters of St. Francis, to redevelop the existing 80,000 Sq. Ft. of building to become 67 apartments and will also include the site development of new parking spaces and design of storm water facilities at 600 Doat St., AND

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

The Environmental Advisory Committee at its meeting held on January 30th, 2020 recommended a determination of non-significance, AND

The Town of Cheektowaga Planning Board recommended approval of the site plan at their meeting of February 13th, 2020, AND

This Zoning Board of Appeals has reviewed the application submitted and the recommendations made by the Environmental Advisory Committee and the Planning Board.

CONCLUSION: Therefore it was determined by Motion of Robert Brandon, 2nd by Jane Wiercioch: Based upon a thorough review and examination of the known facts relating to the Project and its careful review of all potentially adverse environmental impacts, and the entire record and proceedings relating to the Project, the Zoning Board of Appeals finds that the Project will not have a significant adverse impact on the environment.

Roll call: Justin Young aye, Kenneth Young aye, Jane Wiercioch, aye, Ralph Miranda aye, Robert Brandon, aye. 5 ayes, 0 nayes.

RESULT:	**GRANTED [UNANIMOUS]**
MOVER:	Robert J. Brandon, Chairman
SECONDER:	Jane Wiercioch, Board Member
AYES:	Brandon, Wiercioch, Young, Miranda, Young

*Note – Construction cannot begin until a building permit is applied for and approved. This decision will be automatically revoked unless a building permit is obtained within six (6) months of the date hereof and unless construction commences within one (1) year of the date hereof.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Town of Cheektowaga
Office of Community & Economic Development

Director
Rachel Straker

Community Development Aide
Lynn Koszuta

Program Secretary
Jacqueline Hearst

Planner
Dale Marie Parks

Housing Inspector
Chris Krajewski

November 12, 2020

Mr. James Lonergan
Interim Executive Director & Chief Operations Officer
Delta Development of Western New York, Inc.
525 Washington Street
Buffalo, NY 14203

RE: Angela's House – Amended Loan Commitment Letter

Dear Mr. Lonergan:

The Town of Cheektowaga Office of Community and Economic Development has completed its initial underwriting for the Angela's House Project, to be constructed at 600 Doat Street, Cheektowaga, NY 14211. Underwriting has determined that the project's outlined funding and loan terms are considered satisfactory for the Town to lend HUD HOME Investment Partnership Funds (HOME) to the project.

The Town of Cheektowaga commits to loaning a sum of $300,000 in HUD HOME funds to the Angela's House Project. The funding will be provided as outlined in the enclosed "Loan Agreement Summary Document".

In addition, the Town of Cheektowaga Office of Community and Economic Development has completed the HUD required Environmental Assessment for Angela's House and issued a Finding of No Significant Impact (FONSI) on September 3, 2020. The FONSI was published/posted for 15 days with no public comments received. On September 23, 2020 the HUD Request for Release of Funds (RROF) was initiated with HUD's Buffalo Field Office. Upon expiration of the RROF comment period, HUD released the funds on October 9, 2020.

This Loan Commitment will be in effect until June 30, 2021, by which time the Town expects the loan agreement to have been executed and construction to have been initiated.

Should you have any questions feel free to contact me at (716) 897-7200 ext. 3 or rstraker@tocny.org.

Sincerely,

Rachel Straker
Director of Community Development

Encl.
Cc: Ben Upshaw, CB-Emmanuel Realty LLC

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

LOAN AGREEMENT SUMMARY
between the Town of Cheektowaga
and Angela's House LLC
for the Angela's House Project
HOME Investment Partnerships Program
M20-DC360511

SYNOPSIS*

This Loan Agreement is between the Town of Cheektowaga (Town) and Angela's House LLC (Angela's House), for the construction stage and permanent stage loan financing to assist the construction of 3 of the housing units of Angela's House, a 67-unit affordable rental housing project (including 1 and 2 bedroom units) located at 600 Doat Street, Cheektowaga, NY 14211.

The project includes rehabilitation and reuse of the westerly wing of a historically significant building located on the edge of the Villa Maria College campus. The wing is comprised of six stories with approximately 75,615 sf and is currently vacant. The westerly wing will be converted to 67 apartments (65 one-bedroom units and 2 two-bedroom units) for age 55+ seniors. Twenty-one (21) of the apartments will be set aside for homeless frail elderly/seniors and targeted to households with income at or below 30% of AMI (or other AMI required by the applicable funding sources). Twenty-nine (29) units will be targeted to households with income at or below 50% of AMI and seventeen (17) units will be targeted to households with income at or below 60% of AMI.

The Loan of $300,000.00 is funded from the 2020 Program Year of the HOME Investment Partnerships Program (HOME). The loan has a 50-year term at a simple interest rate of 1% for the term of the loan. Annual payments of interest only during the duration of the term. No principal repayment until maturity; at maturity, principal of the loan is expected to be repaid or may be re-negotiated at the discretion of the Town of Cheektowaga.

The Project is subject to a HOME mandated affordability period of 20 years. Compliance with HOME regulations will be secured by way of a Promissory Note and Mortgage.

---

* This Synopsis highlights major provisions of this Agreement in a summary format for convenience only. The Summary shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions of this Agreement.

EXHIBIT B

PLANNING DEPARTMENT'S SITE PLAN APPROVAL
NYS HTF ENVIRONMENTAL CLEARANCE LETTER
SITE ALTERATION LETTER

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

CHEEKTOWAGA PLANNING BOARD

MINUTES FROM FEBRUARY 13, 2020 MEETING

PRESENT: Chairman Stanley J. Kaznowski III, Member Ruth Casacci, Member Walter Burgett and Member Kevin Schenk

EXCUSED: Secretary Joan Meyers

At 6:30 P.M., a Work Session was held. The Chairman and Members present discussed the items on the agenda

At 7:00 P.M., the formal Meeting commenced.

The Chairman led us in the Pledge to the Flag

A Motion was made by Chairman Kaznowski, Seconded by Member Burgett to suspend the reading of the minutes from the January 9, 2020 meeting. ALL IN FAVOR

OLD BUSINESS: None

NEW BUSINESS:

1. **600 DOAT STREET**
   APPLICANTS: Felician Sisters, CB Emmanuel and Delta Development of WNY

Applicants are proposing to redevelop the west wing of the Villa Maria Provincial House into senior housing (55 and older) with 67 apartments.
They are requesting site plan approval from the Planning Board,
They are also requesting a use variance from the Zoning Board because the RSC-Senior Housing District limits senior housing to only ages 62 and above.
The proposed site plan for this project is identical to the site plan presented to the Planning Board in April and May of 2019.
Marc Romanowski, Esq., and Tim Rider representing CB Emmanuel were present.
Marc Romanowski gave a brief presentation of the project. He said that the applicants had several meetings with the neighbors near the project site.
The Zoning Board Chairman and Members asked questions.

Motion was made by Member Schenk, seconded by Member Casacci to **recommend approval of the site plan contingent upon the Town Engineer approving drainage; and the Zoning Board approving the necessary variances.**
ALL IN FAVOR

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

ETC.

The owner of Louie's Texas Hots on Transit Road approached the Planning Board at the end of the meeting. She wanted to know who she needs to see to obtain a curb cut and entrance/exit onto the side street (Madeira Drive). She said traffic on Transit Road is really bad at times. She needs another access point for her restaurant. The Board referred her to the Town Planner and Town Superintendent of Highways. Traffic Safety and Town Board would eventually need to approve it.

At 7:25 P.M., a Motion was made by Chairman Kaznowski, seconded by Member Casacci to adjourn the meeting.
ALL IN FAVOR
MEETING ADJOURNED

Respectfully Submitted,

Kevin Schenk

Kevin Schenk
Acting Secretary

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Town of Cheektowaga
3301 Broadway
Cheektowaga, NY 14227

Meeting: 03/24/20 07:00 PM

ADOPTED

Sponsors: Councilmember Pilarski, Supervisor Benczkowski

RESOLUTION 2020-169

Accept Site Plan - 600 Doat Street Felician Sisters

WHEREAS, pursuant to the Zoning Law of the Town of Cheektowaga, the Planning Board reviews various development review applications for site plans, rezonings, special permits and realty subdivisions and renders its recommendation concerning the compatibility of such application with the zoning regulations, the Town Master Plan and neighborhood character, AND

WHEREAS, the Town Board, pursuant to section 260-47.1C of the Zoning Law of the Town of Cheektowaga is vested with the authority to approve site plans and modify or reject any recommendation submitted to it by its advisory committees, AND

WHEREAS, Marc A. Romanowski of Rupp Baase Pfalzgraf Cunningham Attorneys, submitted a development review application for the re-development project of the Felician Sisters of St. Francis campus. The Felician Sisters of North America Real Estate Trust ("Trust"), Delta Development of Western New York, Inc. and CB-Emmanuel Realty, LLC (collectively the "Applicants") are proposing the renovation of an 80,000 Sq. Ft. of building space located inside of the western 1/3 of the provincial House at 600 Doat Street Cheektowaga, NY for 55+ senior housing ("Project"), AND

WHEREAS, the Town of Cheektowaga Planning Board, reviewed and commented on the Development Review Application and site plan at their meeting of February 13th, 2020, and have recommended approval thereof, AND

WHEREAS, on March 10th, 2020 the Town of Cheektowaga Zoning Board of Appeals ('ZBA"), granted a Use Variance for the Project , AND

WHEREAS, the subject project is an Unlisted action subject to 617.20 of Chapter VI of the General State Environmental Quality review Act ("SEQRA") regulations, and therefore subject to a SEQR review, AND

WHEREAS, also on March 10, 2020, the ZBA, acting as Lead Agency in a Coordinated review under SEQRA, determined that the Project would not have any significant adverse environmental impacts and issued a Negative Declaration for the Project.

NOW THEREFORE BE IT, RESOLVED, that pursuant to Section 260-47-1 of the Code of the Town of Cheektowaga and Section 274-a of New York State Town Law that this Town Board approves the proposed site plan.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian Pilarski, Councilmember
SECONDER:	Diane Benczkowski, Supervisor
AYES:	Adamczyk, Hammer, Kaminski, Nowak, Pilarski, Rusiniak, Benczkowski

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Resolution 2020-169 Meeting of March 24, 2020

State Of New York
Erie County **ss:**
Office Of The Clerk Of The
Town of Cheektowaga

(Seal)

This is to certify that I, *Kimberly Bunst*, Clerk of the *Town of Cheektowaga, in the said County of Erie,* have compared the foregoing copy of resolution with the original resolution now on file at this office, and which was passed by the Town Board of the *Town of Cheektowaga*

In said *County of Erie,* on Tuesday, March, 24, 2020,
and that the same is a correct and true transcript of such original resolution and the whole thereof.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Town on Tuesday, February, 23, 2021.

_____
CLERK OF THE TOWN BOARD, TOWN OF CHEEKTOWAGA, NY

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

NEW YORK STATE OF OPPORTUNITY. | Homes and Community Renewal

ANDREW M. CUOMO
Governor

RUTHANNE VISNAUSKAS
Commissioner/CEO

September 30, 2020

VIA ELECTRONIC MAIL
James Lonergan, Interim Executive Director
Delta Development of Western New York
525 Washington Avenue
Buffalo, New York 14203
j.lonergan@ccwny.org

Re: Angela's House Environmental Clearance Letter
20190373

Dear Mr. Lonergan:

New York State Homes & Community Renewal (HCR), through the Housing Trust Fund Corporation (HTFC), has concurred with the Negative Declaration prepared for this project by the Town of Cheektowaga Zoning Board of Appeals on March 10, 2020, pursuant to State Environmental Quality Review Act (SEQRA) regulations at 6 NYCRR 617.

This letter constitutes the HTFC environmental clearance of this project, subject to completion of the close-out items listed in the accompanying Site Alteration Letter (SAL). If you have any questions or concerns regarding this environmental review, please contact the HTFC Project Manager, Daniel Peters, at (716) 847-7132, or the me, at (518) 474-0755.

Sincerely,

Lori A. Shirley
HTFC SEQR Officer

cc: Daniel Peters, Project Manager

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NEW YORK STATE OF OPPORTUNITY. | Homes and Community Renewal

ANDREW M. CUOMO
Governor

RUTHANNE VISNAUSKAS
Commissioner/CEO

September 30, 2020

VIA ELECTRONIC MAIL
James Lonergan, Interim Executive Director
Delta Development of Western New York
525 Washington Avenue
Buffalo, New York 14203
j.lonergan@ccwny.org

Re: Angela's House - Site Alteration Letter (SAL)
20190373

Dear Mr. Lonergan:

Congratulations on completing the environmental review of this project. Please be aware that the following items must be submitted for this project at the times required below:

1. **For your information**:

   a. Dust suppression measures must be employed during construction and the project must comply with NYSDEC's Idling Prohibition for Heavy Duty Vehicles at 6 NYCRR 217-3.

   b. Asbestos-containing material and Lead Based Paint worksite clearance reports prepared by a qualified third-party must be **submitted** to the Construction Monitor (CM) prior to the CM entering the work site.

2. **Submit prior to site altering activities:**

   a. I have received the Stormwater Pollution Prevention Plan (SWPPP) dated September 4, 2020. The Notice of Intent (NOI) and DEC Letter of Acknowledgement must be **submitted prior to site altering activities**.

   b. This project site is located in an area with a high potential for radon levels to exceed the EPA action level for residential construction. A "passive" soil depressurization system has been incorporated into the building design. **The HCR Architect must review and accept the radon system design prior to site altering activities**.

3. **Submit prior to occupancy:**

   a. **Prior to occupancy,** a final ACM clearance report must be submitted to the Environmental Analyst that provides a written confirmation that all ACM was properly removed from or enclosed in the project work areas. The clearance must be conducted by a qualified entity that

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

is independent from the entity conducting the ACM work. The entity is usually the same entity that conducts required air monitoring. The clearance report does not need to contain air monitoring results. It is the owner's responsibility to ensure that an appropriate clearance entity is retained.

b. A final lead clearance report, including lead dust swipe results, must be submitted to the Environmental Analyst **prior to occupancy**. The clearance examination and report must be conducted and prepared by a qualified entity other than the entity that performs or oversees the lead work. It is the owner's responsibility to ensure that an appropriate clearance entity is retained.

c. The final mold clearance report must be submitted to the Environmental Analyst **prior to occupancy**.

d. Radon testing must be conducted when the rehabilitation is complete, with test results forwarded to the Environmental Analyst, **prior to occupancy**. A third-party air-monitoring contractor must complete the final testing/clearance with certified results by an authorized testing laboratory. If testing indicates that the radon level exceeds the EPA action level, an active fan, complete with alarm system, will be started and the building re-tested prior to occupancy to determine that radon levels are being maintained below recommended limits.

4. **Submit prior to permanent loan closing:**

a. The project is applying for historic tax credits and is seeking acceptance of Parts I, II & III from the National Park Service (NPS). The final approved Part III must be submitted to the Environmental Analyst **prior to permanent loan closing**.

b. In the event that ACM is not fully removed (even if enclosed or encapsulated) an ACM O&M Plan must be prepared and submitted to the Environmental Analyst **prior to permanent loan closing**. The O&M Plan must include a description of the locations of ACM and any enclosure or encapsulation methods that were employed.

c. In the event that LBP is assumed or not fully removed a LBP O&M Plan that complies with Chapters 5 and 6 of the HUD Guidelines, including reinspection and reevaluation schedules, must be **prepared and submitted** to the Environmental Analyst **prior to permanent loan closing**. The O&M Plan must include a description of the locations of LBP and any enclosure or encapsulation methods that were employed.

d. At the end of the project **prior to permanent loan closing**, the sponsor must submit to the Environmental Analyst, a certification, including waste manifests, stating that all fluorescent lights and all waste debris was properly removed and disposed.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Please forward the requested environmental reports to me when they become available. If you have any questions regarding the environmental review, please contact me at (518) 474-0755 or Lori.Shirley@nyshcr.org. Thank you and good luck.

Sincerely,

Lori A. Shirley
Environmental Unit

cc: Daniel Peters, Project Manager
Christine Carrera, HCR Architect

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT C

COPORATE RESOLUTION
ORGANIZATION DOCUMENTS
OWNERSHIP STRUCTURE
OPERATING AGREEMENT
MANAGEMENT PLAN
MEMORANDUM OF GROUND LEASE

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

CERTIFICATE

OF

ANGELA'S HOUSE LLC

The undersigned, being an authorized signatory of CB-Emmanuel Realty, LLC ("CB Emmanuel"), the sole member of Angela's House CBE LLC ("Manager"), the co-managing member of Angela's House MM LLC (the "Managing Member"), the managing member of Angela's House LLC (the "Company") hereby certifies as follows:

1. The managing member of the Company is Angela's House MM LLC.

2. The Company has been duly formed under the laws of the State of New York, is validly existing and is in good standing as a limited liability company under the laws of the State of New York with full power and authority to own its property and conduct its business and is lawfully qualified to do business in each jurisdiction where the ownership of its property requires such qualification.

3. Attached hereto as Exhibit "A" is a true, correct and complete copy of the Articles of Organization of the Company filed with the New York State Department of State, Corporations Unit on June 24, 2020, and the same has not been further amended and is in full force and effect on and as of the date of this certificate;

4. Attached hereto as Exhibit "B" are true, complete and accurate copies of the Affidavits of Publication of the Company, as filed with the offices of the New York State Department of State, Corporations Unit on September 14, 2020.

5. Attached hereto as Exhibit "C" is a true, correct and complete copy of the amended and restated operating agreement (the "Operating Agreement") of the Company, dated as of March 31, 2021, and the same has not been further amended and is in full force and effect on and as of the date of this certificate.

6. Attached hereto as Exhibit "D" is a true, correct and complete and accurate copy of the Certificate of Good Standing of the Company, as issued by the New York State Department of State, Corporations Unit on March 9, 2021.

7. Attached hereto as Exhibit "E" is a true, complete and accurate copy of the consent and resolutions of the Company, and such resolutions are in full force and effect on and as of this date and have not been revoked, modified or amended in any respect.

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the 31st day of March, 2021.

CB-EMMANUEL REALTY, LLC,
a New York limited liability company

By: _____
Name: Benathan Upshaw
Title: Authorized Signatory

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT "A"

ARTICLES OF ORGANIZATION

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

N.Y.S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

ONLINE FILING RECEIPT

ENTITY NAME: ANGELA'S HOUSE LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM. LLC) COUNTY: QUEE

FILED:06/24/2020 DURATION:********** CASH#:200624010409 FILE#:200624010409
DOS ID:5773976

FILER:

STEVEN J. WEISS, ESQ.
CANNON HEYMAN & WEISS, LLP
54 STATE STREET, 5TH FLOOR
ALBANY, NY 12207

EXIST DATE
06/24/2020

ADDRESS FOR PROCESS:

ANGELA'S HOUSE LLC
221-10 JAMAICA AVENUE
LL1
QUEENS VILLAGE, NY 11428

REGISTERED AGENT:

The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the Biennial Statement is due will only be made via email. Please go to www.email.ebiennial.dos.ny.gov to provide an email address to receive an email notification when the Biennial Statement is due.

SERVICE COMPANY: ** NO SERVICE COMPANY **
SERVICE CODE: 00

FEE:	210.00
FILING:	200.00
TAX:	0.00
PLAIN COPY:	0.00
CERT COPY:	10.00
CERT OF EXIST:	0.00

PAYMENTS	210.00
CHARGE	210.00
DRAWDOWN	0.00

DOS-1025 (04/2007)

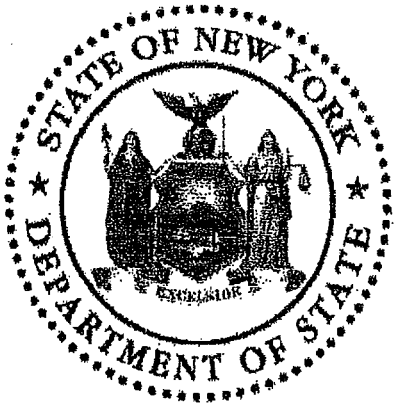
Authentication Number: 2006240555 To verify the authenticity of this document you may access the Division of Corporation's Document Authentication Website at http://ecorp.dos.ny.gov

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on June 24, 2020.

Brendan C. Hughes
Executive Deputy Secretary of State

Rev. 06/19

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

ARTICLES OF ORGANIZATION
OF
Angela's House LLC

Under Section 203 of the Limited Liability Company Law

THE UNDERSIGNED, being a natural person of at least eighteen (18) years of age, and acting as the organizer of the limited liability company hereby being formed under Section 203 of the Limited Liability Company Law of the State of New York certifies that:

FIRST: The name of the limited liability company is:

Angela's House LLC

SECOND: To engage in any lawful act or activity within the purposes for which limited liability companies may be organized pursuant to Limited Liability Company Law provided that the limited liability company is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency, or other body without such consent or approval first being obtained.

THIRD: The county, within this state, in which the office of the limited liability company is to be located is QUEENS.

FOURTH: The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is:

Angela's House LLC
221-10 Jamaica Avenue
LLI
Queens Village, NY 11428

I certify that I have read the above statements, I am authorized to sign these Articles of Organization, that the above statements are true and correct to the best of my knowledge and belief and that my signature typed below constitutes my signature.

Alan M. Jezierski (signature)

Alan M. Jezierski , ORGANIZER

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Filed by:
Steven J. Weiss, Esq.
CANNON HEYMAN & WEISS, LLP
54 STATE STREET, 5TH FLOOR
ALBANY, NY 12207

FILED WITH THE NYS DEPARTMENT OF STATE ON: 06/24/2020
FILE NUMBER: 200624010409; DOS ID: 5773976

EXHIBIT "B"

AFFIDAVITS OF PUBLICATION

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: ANGELA'S HOUSE LLC

DOCUMENT TYPE: CERTIFICATE OF PUBLICATION (DOM LLC) COUNTY: QUEE

FILED:09/14/2020 DURATION:********* CASH#:200914000463 FILM #:200914000416

FILER:

CANNON HEYMAN & WEISS, LLP
STEVEN J. WEISS, ESQ.
54 STATE STREET 5TH FLOOR
ALBANY, NY 12207

ADDRESS FOR PROCESS:

REGISTERED AGENT:

SERVICE COMPANY: CANNON HEYMAN & WEISS, LLP SERVICE CODE: HN

FEES	85.00	PAYMENTS	85.00
FILING	50.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	85.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

DOS-1025 (04/2007)

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on September 15, 2020.

Brendan C. Hughes
Executive Deputy Secretary of State

Rev. 06/13

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

200914000416

DRAWDOWN ACCOUNT HN

CERTIFICATE OF PUBLICATION

OF

ANGELA'S HOUSE LLC

Under Section 206 of the
Limited Liability Company Law
of the State of New York

The undersigned is the Authorized Person of Angela's House LLC.

The published notices described in the annexed affidavits of publication contain all of the information required by Section 206 of the Limited Liability Company Law.

The newspapers described in such affidavits of publication satisfy the requirements set forth in the Limited Liability Company Law and the designation made by the county clerk.

I certify the foregoing statements to be true under penalties of perjury.

Dated: September 14, 2020

Name: Alan M. Jezierski

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Queens Daily Eagle
16 Court Street, 30th Floor
Brooklyn, NY 11241
P: (718) 643-9099 F: (718) 643-9485
E: legals@brooklyneagle.com

Affidavit of Publication Under Section 206 of the Limited Liability Company Law

To: Cannon Heyman & Weiss, LLP
Cannon Heyman & Weiss, LLP 726
Exchange Street, Suite 500
Buffalo, NY 14210

Re: Legal notice # 180777, ANGELA'S HOUSE LLC

State of New York }
} SS:
County of Queens }

The undersigned is the publisher of Queens Daily Eagle, a daily newspaper published in Queens, New York. A notice regarding ANGELA'S HOUSE LLC was published in said newspaper once in each week for 6 consecutive weeks, commencing on Mon 8/3/2020 and ending on Tue 9/8/2020. The text of the notice as published in said newspaper is as set forth below. This newspaper has been designated by the Clerk of Queens County for this purpose.

John Dozier Hasty, Publisher

Sworn to before me this 8th day of September, 2020

Louis J. Peters

NOTARY PUBLIC, STATE OF NEW YORK
No. 01PE6173264
Qualified in Kings County
My commission expires on 08/27/2023

-- Text of Notice --

ANGELA'S HOUSE LLC

Notice of formation of Limited Liability Company. Name: Angela's House LLC ("LLC"). Articles of Organization filed with the Secretary of State of the State of New York ("SSNY") on June 24, 2020. NY office location: Queens County. The SSNY has been designated as agent of the LLC upon whom process against it may be served. The SSNY shall mail a copy of any process to Angela's House LLC, 221-10 Jamaica Avenue, LL1, Queens Village, NY 11428. Purpose/character of LLC is to engage in any lawful act or activity.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

The Wave

TIMES & DISPATCH FOUNDED JANUARY 30, 1879

ROCKAWAY'S NEWSPAPER SINCE 1879

LLP AFFIDAVIT OF PUBLICATION
Pursuant to Section 206 of the Limited Liability Company Law

State of New York,

County of Queens, ss.:

The undersigned is the authorized designee of the Wave of Queens, the publisher of The Wave, a weekly newspaper published in Queens, New York. A notice regarding ANGELA'S HOUSE LLC was published in said newspaper once in each week, for six successive weeks, commencing on 7/31/2020 and ending on 9/4/2020. The text of the notice as published in said newspaper is as set forth below, or in the annexed exhibit. This newspaper has been designated by the County Clerk of Queens County as a newspaper of record in this county, and as such, is eligible to publish such notices.

By: Bernadette Luna

Subscribed and sworn to before me
This 7th day of September 2020

Notary Signature

CAROL KEENAN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01KE6088357
QUALIFIED IN QUEENS COUNTY
MY COMMISSION EXPIRES NOV. 12, 2022

The Wave
P.O. Box 930097, 88-08 Rockaway Beach Boulevard, Rockaway Beach, New York 11693-0097
Telephone: (718) 634-4000 • Fax: (718) 945-0913 • www.rockawave.com

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

4/16

CERTIFICATE OF PUBLICATION

OF

ANGELA'S HOUSE LLC

Under Section 206 of the
Limited Liability Company Law
of the State of New York

2020 SEP 14 PM 2:37

FILED

1 CC

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED SEP 14 2020

TAX $

BY:

DRAWDOWN ACCOUNT HN

CANNON HEYMAN & WEISS, LLP
54 STATE STREET
5TH FLOOR
ALBANY, NEW YORK 12207

Steven J. Weiss, Esq.

463

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT "C"

AMENDED AND RESTATED OPERATING AGREEMENT

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT "D"

CERTIFICATE OF GOOD STANDING

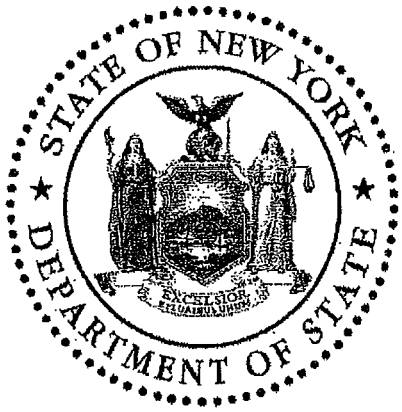
Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

State of New York
Department of State } ss:

I hereby certify, that ANGELA'S HOUSE LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 06/24/2020, and that the Limited Liability Company is existing so far as shown by the records of the Department. I further certify the following:

A Certificate of Publication of ANGELA'S HOUSE LLC was filed on 09/14/2020.

I further certify, that no other documents have been filed by such Limited Liability Company.



***

Witness my hand and the official seal of the Department of State at the City of Albany, this 09th day of March two thousand and twenty-one.

Brendan C. Hughes
Executive Deputy Secretary of State

202103100382 * HN

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT "E"

CONSENT AND RESOLUTIONS

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

WRITTEN CONSENT

OF THE

MANAGING MEMBER

OF

ANGELA'S HOUSE LLC

Reference is hereby made to Exhibit A attached hereto and made a part hereof (the "Transactions Description"). All definitions not otherwise defined herein shall have the meaning set forth on the Transaction Description.

The undersigned, being the managing member of Angela's House LLC (the "Company"), hereby consents to the adoption of the following resolutions, such action to have the same force and effect as if taken at a meeting duly called and held for such purpose:

RESOLVED, that (i) Company and (ii) all affiliates of which Company holds a direct or indirect interest are hereby authorized and empowered to enter into the applicable transactions more particularly described in the Transactions Description, including Original Ground Lease, the A&R Ground Lease, the Development Activities, the Construction Loan, the HOME Loan , the HHAP Loan, the HHAC Accounts, the SHOP Loan, the NYSERDA Grant, the NYSERDA Loan, the Tax Credit Documents, the IM Admission, the PILOT Agreement, the Regulatory Agreement, the Property Management Services, the Construction Services, the Architectural Services (collectively, the "Transactions"); and it is

FURTHER RESOLVED, that (i) Company (ii) all affiliates of which Company holds a direct or indirect interest are hereby authorized and empowered to execute and deliver any and all documents necessary to consummate the Transactions (collectively, the "Transaction Documents"), which documents may contain such terms, provisions, conditions, stipulations and agreements as Company may deem proper and advisable, and that Benathan Upshaw, Steven Timmel, or their designee (each an "Authorized Signatory"), is authorized to act on behalf of Company to execute and deliver such Transaction Documents as such Authorized Signatory may deem proper and advisable in order to effectuate the Transactions; and it is

FURTHER RESOLVED, that (i) Company and (ii) all affiliates of which Company holds a direct or indirect interest are hereby authorized and empowered to enter into any additional subordinate financing with respect to the development of the Project ("Subordinate Financing"), which additional Subordinate Financing may contain such terms, provisions, conditions, stipulations and agreements as Company may deem proper and advisable and that such Authorized Signatory is authorized to act on behalf of Company to execute and deliver such Subordinate Financing documents as such Authorized Signatory may deem proper and advisable in order to effectuate the Transactions; and it is

FURTHER RESOLVED, that in addition to and without limiting the generality of the foregoing resolutions with respect to the foregoing transactions, the Authorized Signatory, be, and is, authorized and directed to take such further action in connection with said transactions and to execute and deliver such instruments as such Authorized Signatory, with advice of counsel may deem appropriate to carry out the foregoing resolutions; and the taking of such action or execution of such instruments shall be deemed conclusive evidence of the determination of such Authorized Signatory that such action or execution was appropriate and in the best interest of Company; and it is

FURTHER RESOLVED, that all action taken and all instruments executed by authorized persons on behalf of Company prior to the adoption of these resolutions with respect to the financing of the Project and all matters related thereto, are hereby ratified, confirmed and approved.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

IN WITNESS WHEREOF, the undersigned has executed this instrument on the 22 day of March, 2021.

MANAGING MEMBER:

ANGELA'S HOUSE MM LLC,
a New York limited liability company

By: _____
Name: Benathan Upshaw
Title: Authorized Signatory

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

AUTHORIZED TRANSACTIONS FOR THE DEVELOPMENT OF

ANGELA'S HOUSE

Factual Description: Delta Development of Western New York, Inc., a New York not-for-profit corporation ("Delta") and CB-Emmanuel Realty, LLC ("CBE") are co-sponsors of a sixty-seven (67) unit affordable housing project for seniors ages 55+, which involves the adaptive reuse of the west wing portion of a building commonly known as Villa Maria Provincial House located at 600 Doat Street in the Town of Cheektowaga, Erie County, State of New York and which will be commonly known as Angela's House (the "Project"). Delta is the sole member and sponsor of Angela's House Housing Development Fund Corporation, a New York not-for-profit corporation (the "HDFC"), which was formed for the purpose of being a leaseholder, as nominee for and on behalf of Angela's House LLC, a New York limited liability company (the "Company"), for the development and rehabilitation of the Project. Angela's House MM LLC, a New York limited liability company (the "Managing Member"), is the managing member of the Company. Angela's House CBE LLC, a New York limited liability company ("AHCBE"), is the co-managing member of the Managing Member and the managing member of the Developer (as defined herein). Angela's House DD LLC, a New York limited liability company ("AHDD"), is also the co-managing member of the Managing Member. Delta Development Master Developer LLC, a New York limited liability company ("DDMD") and AHCBE are the two members of Angela's House Master Developer LLC, a New York limited liability company (the "Developer"), which is the developer of the Project. Delta is the sole member of AHDD and DDMD and CBE is the sole member of AHCBE. In connection with the development of the Project, it is anticipated that Delta, CBE, the Company, the HDFC, the Managing Member, AHCBE, AHDD and the Developer (collectively, the "Participants"), as applicable, will enter into a series of transactions described as follows:

Transaction 1 – The Felician Sisters of North America Real Estate Trust (the "Lessor") has entered into a ground lease with Delta dated June 26, 2019 (the "Original Ground Lease") and shall subsequently enter into an amended and restated ground lease agreement (the "A&R Ground Lease") wherein Delta shall be removed as a party thereto and replaced by the Company and the HDFC, collectively, as Lessee in order to facilitate the development of the Project.

Transaction 2 – One or more of the Participants, including the Developer, will be required to engage in various development activities and enter into various transaction documents, including a Development Services Agreement, in connection with the Development of the Project (the "Development Activities").

Transaction 3 – The Company shall borrow proceeds of a construction loan in a principal amount up to Twelve Million One Hundred Thousand and No/100 Dollars ($12,100,000.00), inclusive, (the "Construction Loan") made by Evans Bank, N.A., a national banking association ("Evans"). The Construction Loan shall be secured by, among other security instruments, a building loan and project loan leasehold mortgage on the Project given by both the Company and the HDFC and may be further memorialized and secured by building loan and project loan notes, building loan and project loan agreement, UCC financing statements, guaranty agreements, indemnities,

assignment of managing member interest from Managing Member in favor of Evans; an assignment of development fee from Developer in favor of Evans; an assignment of capital contributions from Company in favor of Evans; guarantees in favor of Evans and any and all other documents to be entered into by the Participants in order to induce Evans to make the Construction Loan.

Transaction 4 - The Company shall borrow proceeds of a construction and permanent HOME loan in the principal amount of approximately Three Hundred Thousand and No/100 Dollars ($300,000.00) made by the Town of Cheektowaga (the "Town") from proceeds allocated thereto by the HUD HOME Program (the "HOME Loan"). The HOME Loan shall be secured by, among other security instruments, a subordinate leasehold mortgage on the Project given by both the Company and the HDFC and may be further secured and memorialized by a note, a loan agreement, subordination agreements, assignments, indemnities, guarantees, and any and all other documents to be entered into by the Participants in order to induce the Town to make the HOME Loan.

Transaction 5 – The Company shall borrow proceeds of a construction and permanent loan from New York State Homeless Housing and Assistance Corporation ("HHAC") in the aggregate principal amount of approximately Three Million Six Hundred Ninety-Two Thousand Thirty and No/100 Dollars ($3,692,030.00) with funds provided by HHAC through its Homeless Housing Assistance Program ("HHAP") (the "HHAP Loan"). The HHAP Loan shall be secured by, among other security instruments, a leasehold mortgage on the Project given by both the Company and the HDFC and will be further memorialized by a Final Loan Agreement with HHAC, a guaranty of performance given by one or more of the Participants to HHAC, a promissory note given by the Company, affidavits and such other assignments, indemnities, guarantees, agreements and any and all other documents to be entered into in order to induce HHAC to make the HHAP Loan.

Transaction 6 – In connection with the HHAP Loan, the Company hereby approves, authorizes, ratifies and consents to the opening of an interest-bearing checking account, requiring the signatures of two individuals, at least one of whom shall be an officer of the Company, at a Federally insured bank, to be used solely for the purpose of receiving and expending funds provided by HHAC (the "HHAC Accounts"). The above-referenced interest-bearing checking account shall be opened at a Federally insured bank satisfactory to HHAC, and the signatures of an officer of the Company shall be required for any and all transactions on said account, which account shall be used solely for the purpose of receiving and expending funds provided by HHAC; and it is

Transaction 7 – The Company shall borrow proceeds of a permanent loan in a principal amount not to exceed Three Million Four Hundred Twenty Thousand One Hundred Sixty-Seven and No/100 Dollars $3,420,167.00 from the New York State Housing Trust Fund Corporation ("HTFC") consisting of funds from the Supportive Housing Opportunity Program (the "SHOP Loan"). The SHOP Loan shall be secured by, among other security instruments, a leasehold mortgage on the Project given by both the Company and the HDFC and may be further memorialized by assignments, indemnities, guarantees, a regulatory agreement and any and all other documents to be entered into in order to induce HTFC to make the SHOP Loan.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Transaction 8 – Delta shall be the recipient of a certain grant from NYSERDA in the principal amount not to exceed Sixty Thousand Two Hundred and No/100 Dollars ($60,200.00) (the "NYSERDA Grant"), the proceeds of which shall be used to fund the NYSERDA loan.

Transaction 9 – The Company shall borrow proceeds of a permanent loan in the principal amount not to exceed Sixty Thousand Two Hundred and No/100 Dollars ($60,200.00) from Delta (the "NYSERDA Loan"), which loan shall be secured by a leasehold mortgage on the Project given by both the Company and the HDFC and may be further memorialized by a promissory note and any and all other documents to be entered into in order to induce Delta to make the NYSERDA Loan.

Transaction 10 - The Participants shall execute and deliver any and all documents in connection with low-income housing tax credits, federal historic tax credits and state historic tax credits (collectively, the "Tax Credit Documents").

Transaction 11 – To facilitate the syndication of low income housing tax credits, and historic tax credits the Company shall admit Winthrop Circle LLLP, an affiliate of Enterprise Housing Credit Investments LLC, as an investor member with a 99.99% membership interest (the "Investor Member") in accordance with a certain First Amended and Restated Operating Agreement of the Company between the Managing Member and Investor Member, and the Participants shall enter into any and all documents necessary to be entered into in connection with such admission including the Guaranty Agreement, Company Administration Agreement, Investor Services Agreement, Right of First Refusal Agreement, any and all other documents that may be required by the Investor Member (the "IM Admission").

Transaction 12 – The HDFC shall apply to New York State for a sales tax exemption in connection with the construction of the Project (the "Sales Tax Exemption").

Transaction 13 – The Company and the HDFC shall enter into a payment in lieu of taxes agreement with the Town of Cheektowaga, County of Erie and the Cheektowaga School District relating to the Project (the "PILOT Agreement").

Transaction 14 - The Company and the HDFC shall execute and deliver to the New York State Division of Housing and Community Renewal ("DHCR") a regulatory agreement in connection with federal low-income housing tax credits (the "Regulatory Agreement").

Transaction 15 – The Company shall enter into a property management agreement and any other related documents including a management agreement addendum, if applicable, with Delta for services related to the operation and management of the Project (the "Property Management Services").

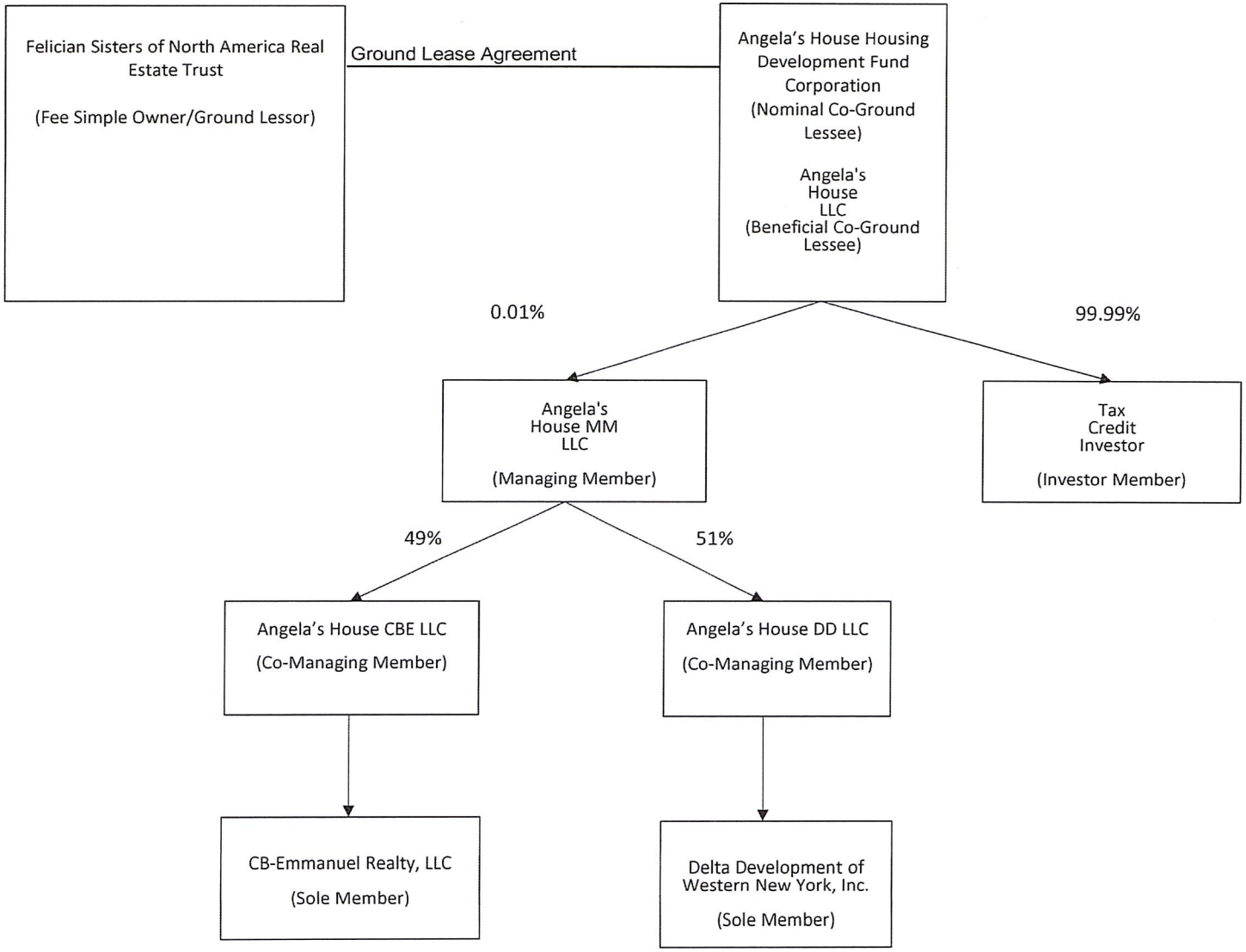
Transaction 16 – The Company and the HDFC shall enter into a general contractor agreement and any other related documents with RP Oak Hill Building Company Inc. for general contracting services for the construction of the Project (the "Construction Services").

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Transaction 17 – The Company shall enter into an architect's agreement and/or any assignment thereof and any other related documents with Trautman Associates for architectural services for the construction of the Project (the "Architectural Services").

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Ownership and Leasehold Estate



EXECUTION COPY

FIRST AMENDED AND RESTATED

OPERATING AGREEMENT

OF

ANGELA'S HOUSE LLC

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

FIRST AMENDED AND RESTATED

OPERATING AGREEMENT

OF

ANGELA'S HOUSE LLC

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K Construction Report

L Insurance Requirements Checklist

M Transfer Agreement

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

FIRST AMENDED AND RESTATED

OPERATING AGREEMENT

OF

ANGELA'S HOUSE LLC

This First Amended and Restated Operating Agreement of Angela's House LLC, dated and effective as of the 31st day of March, 2021, is made by and between:

Angela's House MM LLC,
a New York limited liability company,
as the Managing Member;

and

Wincopin Circle LLLP,
a Maryland limited liability limited partnership,
as the Investor Member.

RECITALS

Angela's House LLC (the "***Company***") was formed as a limited liability company under the New York Limited Liability Company Law pursuant to Articles of Organization filed with the New York Department of State on June 24, 2020, having Angela's House MM LLC, a New York limited liability company, as the Managing Member. The Company has been operating pursuant to an operating agreement dated June 24, 2020.

The parties hereto desire to amend and restate the original operating agreement in order to cause the admission of the Investor Member as an investor member, and to set forth more fully the rights, obligations, and duties of the Managing Member and Investor Member.

Accordingly, in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby agree as follows:

ARTICLE I

Continuation and Business Purpose

1.01 Restatement and Continuation of Company

The Investor Member is hereby admitted as an investor member of the Company. The Managing Member and the Investor Member, constituting all of the Members of the Company, hereby amend and restate the original agreement of Angela's House LLC in its entirety and continue the Company under the Act. The federal employer identification numbers of the Company and the Investor Member are shown on Exhibit A-8.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

1.02 Company Name

The name of the Company is "Angela's House LLC."

1.03 Principal Place of Business

The principal office of the Company and the office to be maintained pursuant to the Act shall be located at 221-10 Jamaica Avenue, LL1, Queens Village, New York 11428. The principal place of business of the Company shall be located at 221-10 Jamaica Avenue, LL1, Queens Village, New York 11428.

1.04 Registered or Resident Agent

The name and address of the registered or resident agent of the Company for service of process are Angela's House LLC, 221-10 Jamaica Avenue, LL1, Queens Village, New York 11428.

1.05 Title to Company Property

Legal title to the Company Property shall be in the name of Angela's House Housing Development Fund Corporation, as nominee for the Company, and beneficial title to the Company Property shall be in the name of the Company, pursuant to the Ground Lease, as defined below. No Member, individually, shall have any ownership of such Company Property.

1.06 Purposes of the Company

The purposes, nature, and general character of the business of the Company shall consist of:

(a) Acquiring, owning, developing, constructing and/or rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of the Company Property or any substantial part thereof;

(b) During the Compliance Period, operating the Credit Units in compliance with the provisions of Section 42 of the Code; and

(c) Carrying on any and all activities related to the foregoing in accordance with this Agreement.

The purposes of this Company and the nature and character of its business shall not be extended, by implication or otherwise, except by written consent of the Members.

The Investor Member acknowledges that Delta Development of Western New York, Inc. ("***Delta***") is an exempt organization under Section 501(c)(3) of the Internal Revenue Code, engaged in providing low-income housing. The Investor Member acknowledges that the Company will operate housing that it owns in a manner that furthers the charitable purpose of Delta by providing decent, safe, sanitary and affordable housing for low income persons and families. In the event of a conflict between (i) the obligations of the Managing Member under this Agreement to operate the

Company in a manner consistent with the charitable purpose set forth above, and (ii) any duty to maximize profits for the Investor Member, the conflict shall be resolved in a manner consistent with Delta's charitable purpose as set forth above, provided that in resolving any such conflict, the Managing Member will comply with all Section 42 requirements, will maintain the Project in a safe and sanitary condition, will use Project funds to meet project obligations and in accordance with the Regulatory Agreement, and will otherwise comply with the terms of this Agreement which do not so conflict.

1.07 Company Term

The term of the Company commenced on June 24, 2020 and shall continue in perpetuity, unless sooner terminated in accordance with Article XII. Upon termination of the Company, the Managing Member shall take all actions necessary to terminate the Company in accordance with requirements of the Act.

1.08 Filing of Certificate

Immediately after the execution of this Agreement by the Members, the Managing Member shall, if required, cause the Certificate (defined below) to be amended and filed in accordance with the Act. If an amendment is required, the Managing Member shall immediately cause a copy of such amended Certificate, with evidence that the amended Certificate was filed in accordance with the Act, to be furnished to the Investor Member.

ARTICLE II

Certain Definitions

2.01 General Terms

The following defined terms used in this Agreement shall have the meanings specified below:

Accountants: Flaherty Salmin CPAs of Rochester, New York or such other firm of independent certified public accountants that is acceptable to the Investor Member.

Act: The Limited Liability Company Law of New York or any corresponding provision or provisions of succeeding law, as it or they may be amended from time to time.

Additional Advance: An advance to the Company pursuant to Section 3.05 by the Managing Member which shall not affect its Interest or Percentage Interest but shall be treated as a Capital Contribution of the Managing Member.

Additional Capital Contribution: An Installment, or any portion thereof, of the Investor Member's Capital Contribution to the Company, the due date of which is subsequent to the Admission Date.

Additional Capital Contribution Due Date: The later of:

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(i) The scheduled due date of such Additional Capital Contribution in accordance with the schedule of payments listed on Exhibit A-1; or

(ii) Twenty (20) days (ten (10) days for Additional Capital Contributions made prior to the Completion Date) after receipt and approval by the Investor Member of the Additional Capital Contribution Notice.

Additional Capital Contribution Notice: The Notice to be delivered to the Investor Member by the Managing Member stating the date on which any Additional Capital Contribution is due, the amount of the Additional Capital Contribution and, in reasonable detail, the manner of calculation thereof and including the Notice Certifications, together with all other items required to be delivered for such Additional Capital Contribution in accordance with Exhibit A-1.

Adjusted Capital Account Deficit: With respect to the Investor Member, the deficit balance, if any, in the Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts that such Member is obligated to restore pursuant to any provision of this Agreement, is otherwise treated as being obligated to restore under Treasury Regulation Section 1.704-1(b)(2)(ii)(c), or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) Debit to such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(*4*), (*5*), and (*6*).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

Admission Date: The date on which all parties have unconditionally released their signature pages for attachment to this Agreement.

Affiliate: As to any Member: (i) any such Member or member of his Immediate Family; (ii) the legal representative, successor or assignee of, or any trustee of a trust for the benefit of, any such Member or member of his Immediate Family; (iii) any entity of which a majority of the voting interests is owned by any one or more of the Persons referred to in the preceding clauses (i) and (ii); (iv) any officer, director, trustee, employee, stockholder (ten percent (10%) or more), or partner or member of any Person referred to in the preceding clauses (i), (ii) and (iii); and (v) any Person directly or indirectly controlling (ten percent (10%) or more), or under direct or indirect common control with, any Person referred to in the preceding clauses (i), (ii), (iii), or (iv).

After-Tax Basis: With respect to any payment to be received by a Person (or, in the case of a pass-through entity, the partners or members of such Person), the amount of such payment supplemented by a further payment or payments so that, after deducting from such payments the amount of all taxes (net of any current credits, deductions or other tax benefits arising from the payment by such Person (or its partners or members) of any amount, including taxes, for which the payment to be received is made) imposed currently on such Person by any Governmental

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Agency or other taxing authority with respect to such payments, the balance of such payments shall be equal to the original payment received; provided, however, for the purposes of this definition, and for purposes of any payment to be made to a Person (or its partners or members) on an After-Tax Basis, it shall be assumed that federal, state and local taxes are payable at the highest marginal rate.

Agreement: This First Amended and Restated Operating Agreement of Angela's House LLC, including all of the exhibits attached hereto and made a part hereof, as amended and in effect from time to time.

AIA: American Institute of Architects.

Angela's House DD LLC: Angela's House DD LLC, a New York limited liability company, and for-profit subsidiary of Delta.

Architect: Trautman Associates of Buffalo, New York.

Authority: The New York State Division of Housing and Community Renewal.

Average Income Test: The Minimum Set-Aside Test as set forth in Section 42(g)(1)(C) of the Code (and including any guidance provided by the IRS or the Agency with respect to such provision at any time prior to the date of this Agreement or hereafter) whereby (i) at least forty percent (40%) of the Units in the Project are both rent restricted Units and occupied by tenants whose incomes do not exceed the imputed income limitations designated as applicable to the respective units, (ii) the average of the imputed income limitations designated for all Units in the Project is not more than sixty percent (60%) of area median income, and (iii) the imputed income limitation designated for any unit in the Project is an increment of 10% and ranging between 20% and 80% of area median income.

Break-even: As to any specified period of time (the "***Period***"), the operation of the Project such that the Operating Revenue for the Period exceeds the greater of (i) the total Project Expenses for the Period or (ii) the total Project Expenses shown on the Projections (or the current approved Budget for the Project) (prorated for the Period).

Budget: A budget prepared in accordance with Section 5.19 for the ownership and operation of the Project, reflecting the reasonably projected income and expenses for the following calendar year, which has been reviewed and accepted by the Investor Member and, if applicable, the Authority.

Capital Account: The capital account maintained by the Company for each Member, determined in accordance with Section 7.01.

Capital Contribution: The total amount of cash or any cash equivalents contributed or agreed to be contributed to the Company by each Member, including all adjustments thereto, as provided in this Agreement and Exhibit A. Any reference in this Agreement to the Capital Contribution of a substituted Member shall include all Capital Contributions previously made by any predecessor or former Member in respect of the Interest acquired by the substituted Member, subject to all adjustments thereto pursuant to this Agreement.

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Capital Proceeds: Sale Proceeds and Refinancing Proceeds.

Cash Flow: The amount, determined for any Fiscal Year or portion thereof, equal to the excess, if any, of

(i) Operating Revenue plus any amounts no longer deemed necessary for the efficient operations of the Company by the Managing Member, in the reasonable exercise of its discretion (with the Consent of the Investor Member), which are released from Company reserves which are deposited into the Company's general accounts, over

(ii) Project Expenses.

Cash Flow shall not be reduced by payments of any items described in the preceding clause (ii) made from the proceeds of any loans, from condemnation or insurance proceeds (other than proceeds from rental interruption insurance or from temporary condemnation in the nature of a lease) or directly from any reserve, or by depreciation and amortization taken into account for federal income tax purposes.

Certificate: The articles of organization for the Company that is prepared and filed in accordance with the Act, as such Certificate may be amended from time to time.

Code: The Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of succeeding law.

Company: Angela's House LLC, a limited liability company formed under and pursuant to the Act.

Company Administration Fee: The fee payable to the Administrator pursuant to the Company Administration Agreement attached hereto as Exhibit E.

Company Property: The Company's beneficial leasehold interest in the land and improvements comprising a project known as Angela's House, which contains sixty-seven (67) Units in one (1) building, located on one (1) site in Cheektowaga, New York, the legal description and street address of which are set forth on Exhibit B attached and made a part hereof, together with such additions or improvements thereto as may hereafter be acquired by the Company in accordance with this Agreement.

Completion Date: The later of:

(i) The date on which the Company has completed the construction and/or rehabilitation of the building in accordance with the relevant Project Documents, approved by the Investor Member and any construction consultant engaged by the Investor Member and evidenced by a certificate prepared and executed by the Architect indicating that the construction and/or rehabilitation of the building has been completed substantially in accordance with the relevant Project Documents, except for punch list items that are not material and do not impede occupancy on a full rent paying basis, and that the Project is ready for occupancy, provided the Company has furnished funds or cash equivalents in escrow to provide for the completion of such punch list items, in an amount and manner reasonably satisfactory to the Investor Member; and

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(ii) The receipt of a temporary certificate of occupancy (or local equivalent) permitting full occupancy of the Project for all of the buildings comprising the Company Property, including one hundred percent (100%) of the Units in the Project.

The intended Completion Date (the "***Target Completion Date***") is August 31, 2022.

Compliance Period: The period specified in Section 42(i)(1) of the Code, as applicable to the Project.

Consent of the Investor Member: The written consent or approval of the Investor Member, which shall be obtained prior to the taking of any action for which it is required hereunder which, unless otherwise provided in this Agreement, may be withheld in the Investor Member's sole and absolute discretion. If there is more than one Investor Member, Consent of the Investor Member shall require the affirmative consent of Investor Members holding at least a majority of the aggregate Percentage Interests of the Investor Members.

Consent of the Managing Member: The written consent or approval of the Managing Member, which shall be obtained prior to the taking of any action for which such consent or approval is required hereunder which, unless otherwise provided in this Agreement, may be withheld in the Managing Member's sole, but reasonable, discretion. If there is more than one Managing Member, Consent of the Managing Member shall require the affirmative consent of Managing Members holding at least a majority of the aggregate Percentage Interests of the Managing Members.

Construction Contract: The construction contract between the Company, as beneficial leasehold owner, the HDFC, as bare leasehold holder and nominee for the Company, and the General Contractor, as contractor, dated as of the date hereof.

Construction Loan: The loan in the amount of up to Twelve Million One Hundred Thousand Dollars ($12,100,000), inclusive, to be provided to the Company by Evans Bank, N.A., as further described in Exhibits A-3 and H.

Cost Certification: Certification by the Accountants, as delivered by the Managing Member and approved by the Investor Member, in accordance with Section 13.03(a)(ix), of the costs of the Project, including eligible basis, matching sources and uses, calculation of annual Credits, Historic Investment Tax Credits, and State Historic Investment Tax Credits based on the Company's accounting records and any other documentation deemed appropriate by the Accountants.

Credit: The Low-Income Housing Tax Credit provided for under Section 42 of the Code, including the seventy percent (70%) present value rehabilitation credit and/or the thirty percent (30%) present value acquisition credit, as applicable.

Credit Adjuster Advance: An advance to the Company pursuant to Sections 3.03, 3.04, or 3.10, by the Managing Member, on an After-Tax Basis unless otherwise agreed to by the Investor Member in its sole discretion, which shall not affect its Interest or Percentage Interest but shall be considered a Capital Contribution to the Company.

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Credit Deficiency: The amount by which the Credits received by the Investor Member is less than the Projected Credits as adjusted by any reductions in Capital Contributions and any Credit Adjuster Advances pursuant to the provisions of Section 3.03. For this purpose, the Investor Member shall be considered to have received Credits in the amount allocated to the Investor Member on the Company's federal income tax returns reduced by: (i) any adjustment of the Credits reported on the Company's tax return that is made by the Company, or by the IRS or a court in a Final Determination; and (ii) the amount of any recapture of such Credits other than recapture caused by the action of the Investor Member.

Credit Period: The period specified in Section 42(f)(1) of the Code as applicable to the Project. For all purposes of this Agreement, any subsequent year in which Credits are available by reason of Section 42(f)(2)(B) of the Code shall be deemed to be included in the Credit Period.

Credit Units: The sixty-seven (67) Units that will be operated in a manner so as to qualify as low-income units within the definition of Section 42(i)(3) of the Code.

Designated Proceeds: The sum of: (i) proceeds of the Loans and any grants included in the Projections or otherwise approved by the Investor Member; (ii) insurance proceeds arising out of casualties as available from time to time, to the extent not used for restoration of the damage caused by such casualty; (iii) net rental income prior to the later of (y) the Stabilization Date, or (z) Loan Conversion; and (iv) Capital Contributions due by the later of (y) the Stabilization Date, or (z) Loan Conversion which are to be used for construction and/or rehabilitation of the Project pursuant to the Projections.

Developer: Angela's House Master Developer LLC, which is a joint venture between CB-Emmanuel Realty, LLC, a New York limited liability company ("***CB-Emmanuel***") and Delta.

Development Advance: The advances to be made by the Managing Member in the amounts and under the circumstances provided in Section 5.13(b).

Development Fee: The fees pursuant to Section 4 of the Development Services Agreement attached hereto as Exhibit C and payable to the Person indicated on Exhibit A-4.

Enterprise: Enterprise Community Asset Management, Inc., a Maryland corporation, which is the parent organization of the general partner of the Investor Member.

Environmental Hazard: Any hazardous or toxic substance, waste or material, or any other substance, pollutant, or condition that poses a risk to human health or the environment, including, but not limited to: (i) any "hazardous substance" as that term is defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, *et seq*. as amended; (ii) petroleum in any form, lead-based paint, asbestos, urea formaldehyde insulation, methane gas, polychlorinated biphenyls ("***PCBs***"), radon, mold, or lead in drinking water, except for ordinary and necessary quantities of office supplies, cleaning materials and pest control supplies stored in a safe and lawful manner and petroleum products contained in motor vehicles; (iii) any underground storage tanks; (iv) accumulations of debris, mining spoil or spent batteries, except for ordinary garbage stored in receptacles for regular removal; or (v) any other

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environmental condition that could result in liability for an owner or operator of the Project under any federal, state, local or common law, statute, rule, regulation, ordinance or precedent.

Environmental Laws: (i) The Clean Air Act; (ii) the Clean Water Act; (iii) the Resource Conservation and Recovery Act; (iv) the Toxic Substance Control Act; (v) the Safe Drinking Water Control Act; (vi) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, *et seq*. as amended; (vii) the Occupational Safety and Health Act; (viii) the Residential Lead-Based Paint Hazard Reduction Act of 1992, including the Lead-Based Paint Poisoning Prevention Act and the implementing regulations at 24 CFR part 35; and (ix) any other federal, state, local or common law, statute, regulation, rule, ordinance, precedent or other requirement pertaining to the environment, public health or employee health and safety.

Environmental Reports: The Phase I environmental site assessment report dated January 4, 2021 prepared by Stohl Environmental, Inc. ("***Stohl***"), Pre-Renovation Asbestos, Lead-Based Paint, and PCB Inspection, Villa Maria, Cheektowaga, New York, dated March 18, 2019, prepared by Stohl, Limited Lead-Based Paint Testing – Tongue and Groove Flooring, Villa Maria College – Angela's House, Cheektowaga, New York, dated September 10, 2020, prepared by Stohl, Radon Testing, Angela's House Villa Maria Campus, Cheektowaga, New York, dated January 11,2021, prepared by AMD Environmental Consultants, Inc., Mold Assessment and Remediation Plan, Villa Maria College, Cheektowaga, New York, dated August 26, 2019, prepared by Stohl, Geotechnical Engineering Report Felician Sisters Provincial House Renovations, Buffalo, New York, dated November 2006, prepared by McMahon & Mann Consulting Engineers P.C. and if applicable, any Phase II environmental assessment report delivered by the Managing Member to the Investor Member prior to the date of this Agreement.

ESSHI: The Empire State Supportive Housing Initiative Contract by and between the New York State Department of Health and Catholic Charities of Buffalo, New York, Inc. as support agency to be entered into after the Admission Date.

Event of Bankruptcy: With respect to any Person:

(i) The entry of a decree or order for relief by a court having jurisdiction in respect of such Person in an involuntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) for such Person or for any substantial part of his or its property, or ordering the winding-up or liquidation of his affairs, and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days;

(ii) The commencement by such Person of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar law, or the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for such Person or for any substantial part of his or its property, or the making by such Person of any assignment for the benefit of creditors, or the taking of action by such Person in furtherance of any of the foregoing;

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(iii) The commencement against such Person of an involuntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy insolvency or similar laws which has not been vacated, discharged or bonded within ninety (90) consecutive days;

(iv) The admission by such Person of his inability to pay his debts as they become due; or

(v) Such Person becoming "insolvent" by the taking of any action or the making of any transfer or otherwise, as insolvency is or may be defined pursuant to the federal bankruptcy laws, the Uniform Fraudulent Conveyances Act, any state or federal act or law, or the ruling of any court.

Extended Use Agreement: The agreement to be entered into between the Company and the Authority as required pursuant to Section 42(h)(6) of the Code.

Extended Use Period: The later of the period specified in (i) Section 42(h)(6)(D) of the Code or (ii) the Extended Use Agreement.

Fee Agreements: The fee agreements of even date herewith described on Exhibit A-4, and which are attached hereto as exhibits.

Final Determination: With respect to any issue, the earliest to occur of: (i) a decision, judgment, decree, or other order affecting the Company being issued by any court of competent jurisdiction, which decision, judgment, decree, or other order has become final (i.e., all allowable appeals requested by the parties to the action have been exhausted or the time for such appeals has expired); (ii) the IRS having entered into a binding agreement with the Company or having reached a final administrative or judicial determination affecting the Company which, whether by law or agreement, is not subject to appeal; or (iii) the expiration of the applicable statute of limitations.

Fiscal Year: The calendar year or such other year that the Company is required by the Code to use as its taxable year.

Gain: The income and gain of the Company for federal income tax purposes arising from a sale or other disposition of all or any portion of the Company Property. If the value at which an asset is carried on the books of the Company pursuant to the capital account maintenance rules of Treasury Regulation Section 1.704-1(b) differs from its adjusted tax basis and gain is recognized from a disposition of such asset, the gain shall be computed by reference to the asset's book basis rather than its adjusted tax basis.

General Contractor: RP Oak Hill Building Company Inc. (f/k/a R&P Oak Hill Development, LLC).

Green Communities Criteria: The Enterprise Green Communities 2015 Criteria, required for Enterprise Green Communities 2015 certification, established and published from time to time by Enterprise Community Partners, Inc. as such criteria exist as of the date of this Agreement.

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Ground Lease: The Amended and Restated Ground Lease Agreement by and between Felician Sisters of North America Real Estate Trust, as lessor, and the Company and the HDFC, collectively as lessee, and acknowledged and agreed to by Delta dated as of the date hereof.

Guarantor: Jointly and severally, CB-Emmanuel, and each of the Individual Guarantors.

Guaranty Agreement: The guaranty agreement of even date herewith, which is attached hereto as Exhibit D.

HDFC: Angela's House Housing Development Fund Corporation, a New York not-for-profit corporation.

IM Interest FMV: The value of the Investor Member's Interest determined in the manner provided in Section 14.01.

Immediate Family: With respect to any individual, his or her spouse, children, including adopted children, stepchildren, parents, parents-in-law, nephews, nieces, brothers, sisters, brothers-in-law, and sisters-in-law, each whether by birth, marriage, or adoption, as well as any *inter vivos* trusts created for the benefit of such individual or any of the foregoing.

Independent Construction Inspector's Report: The report to be obtained by the Investor Member, at its discretion, by a qualified inspector who is not an Affiliate of the Managing Member or the General Contractor, which may include review of such items as (i) AIA forms G702 and G703; (ii) the extent and quality of the work in place; (iii) where applicable, a revised projected completion date; (iv) analysis of construction contract hard cost contingency balance, to include approved, pending and potential change orders; and (v) significant issues which may cause material delay in completion or material cost overruns.

Individual Guarantor(s): Jointly and severally, Benathan Upshaw and R. Christopher Bramwell, Jr.

Installment: An installment of the Investor Member's Capital Contribution, which is due as set forth in Exhibit A-1.

Interest: As to any Member, such Member's right, title, and interest in and to any and all assets, distributions, losses, profits and shares of the Company, whether cash or otherwise, and any other interests and economic incidents of ownership whatsoever of such Member in the Company.

Investor Member: Wincopin Circle LLLP, a Maryland limited liability limited partnership, and any Person who becomes a Substitute Investor Member as provided herein, in each such person's capacity as an investor member. If there is more than one investor member of the Company, the term "***Investor Member***" shall refer collectively to all such investor members.

Investor Services Fee: The fee payable to the Servicer pursuant to the Investor Services Agreement attached hereto as Exhibit I.

IRS: The Internal Revenue Service.

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Lease-up Period: The period ending on the last day of the Fiscal Year in which the Project achieves Qualified Occupancy for all Credit Units.

Lease-up Reserve: The lease-up reserve described in paragraph (iii) of Exhibit A-6.

Liquidation: The termination of a Managing Member's or Investor Member's entire Interest in the Company by means of a distribution, or a series of distributions, from the Company to the Managing Member or Investor Member.

Loan Conversion: The disbursement in full of all Loans; conversion of all Loans to permanent status, the repayment of all Construction Loans and the closing and funding of all permanent Loans in accordance with the terms shown on the Projections; provided that the principal amount of the Loans following Loan Conversion shall not be greater than the amount approved by the Investor Member in its reasonable discretion. For the avoidance of doubt, the Investor Member hereby approves of the principal amount of all permanent Loans shown on the Projections.

Loan Documents: With respect to each of the Loans, any and all documents executed by the Company in connection with such Loan, including, without limitation, any of the following: loan applications, loan commitments, notes, mortgages, regulatory agreements, building loan agreements, security agreements, and financing statements.

Loans: The loans shown on Exhibit A-3, and any other loans made to the Company with the Consent of the Investor Member.

Loss: The loss of the Company for federal income tax purposes arising from a sale or other disposition of all or any portion of the Company Property. If the value at which an asset is carried on the books of the Company pursuant to the capital account maintenance rules of Treasury Regulation Section 1.704-1(b) differs from its adjusted tax basis and loss is recognized from a disposition of such asset, the loss shall be computed by reference to the asset's book basis rather than its adjusted tax basis.

Management Agent: Delta, or such other property management company that is acceptable to the Investor Member.

Managing Member: Angela's House MM LLC, a New York limited liability company, and any additional or substitute managing members of the Company named in any duly adopted amendment to this Agreement. If there is more than one managing member, the term "***Managing Member***" shall refer collectively to all such managing members.

Member or ***Members***: The Managing Member and the Investor Member, either individually or collectively.

Minimum Gain: The amount determined by computing for each Nonrecourse Liability and Partner Nonrecourse Debt, the amount of Gain, if any, that would be realized by the Company if it disposed of the asset securing such liability for no consideration other than full satisfaction of the liability, and by then aggregating the separately computed Gains. For purposes of determining the amount of such Gain with respect to a particular Nonrecourse Liability or Partner Nonrecourse

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Debt, the adjusted basis for federal income tax purposes (or its adjusted book value if it is carried on the Company's books, maintained in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv), at a value different from its adjusted tax basis) of the asset securing the liability shall be allocated among all the liabilities that the asset secures in the manner set forth in Treasury Regulation Section 1.704-2(d)(2)(ii) (or successor provisions). It is the intent that Minimum Gain shall be computed in accordance with Treasury Regulation Section 1.704-2.

Minimum Set-Aside Test: The set-aside test selected by the Company pursuant to Section 42(g) of the Code with respect to the percentage of Units in its Project to be occupied by tenants with incomes equal to no more than a certain percentage of area median income. The Company has not selected and will not select the Average Income Test without the Consent of the Investor Member.

Mortgagees: The payees under the Loans, together with any successors or assigns in such capacity.

Mortgage Notes: The notes executed by the Company in favor of the Mortgagees for each of the Loans.

Mortgages: The mortgages or deeds of trust that grant security interests in the Company Property which secure the Mortgage Notes.

Net Cash Flow: The amount, determined for any Fiscal Year or portion thereof, equal to the excess, if any, of

(i) Cash Flow, over

(ii) the aggregate amount of the fees and other expenses payable from Cash Flow in such year set forth on Exhibit A-4.

Net Losses: The net loss of the Company for federal income tax purposes for each taxable year, calculated without regard to Gain or Loss and without regard to those items that are specially allocated in accordance with Regulatory Allocations or otherwise pursuant to Section 7.03; *provided, however,* that in determining net loss (i) any tax-exempt income received by the Company shall be included as an item of gross income, (ii) any expenditure of the Company described (or treated under Treasury Regulation Section 1.704-1(b)(2)(iv)(b) as described) in Section 705(a)(2)(B) of the Code shall be treated as a deductible expense, (iii) if the fair market value on the date that the asset is contributed to the Company (or if the basis of such asset for book purposes is adjusted under the Treasury Regulations, such adjusted book basis) differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, the amount for depreciation, amortization and other cost recovery deductions shall be equal to an amount which bears the same ratio to such beginning fair market value (or adjusted book basis) as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis, and (iv) if the value at which an asset is carried on the books of the Company differs from its adjusted tax basis and gain or loss is recognized from a disposition of such asset, the gain or loss shall be computed by reference to the asset's book basis rather than its adjusted tax basis.

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Net Profits: The taxable income of the Company for federal income tax purposes for each taxable year, calculated without regard to Gain or Loss and without regard to those items which are specially allocated in accordance with the Regulatory Allocations or otherwise pursuant to Section 7.03; *provided, however,* that in determining taxable income (i) any tax-exempt income received by the Company shall be included as an item of gross income, (ii) any expenditure of the Company described (or treated under Treasury Regulation Section 1.704-1(b)(2)(iv)(b) as described) in Section 705(a)(2)(B) of the Code shall be treated as a deductible expense, (iii) if the fair market value on the date that the asset is contributed to the Company (or if the basis of such asset for book purposes is adjusted under the Treasury Regulations, such adjusted book basis) differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, the amount for depreciation, amortization and other cost recovery deductions shall be equal to an amount which bears the same ratio to such beginning fair market value (or adjusted book basis) as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis, and (iv) if the value at which an asset is carried on the books of the Company differs from its adjusted tax basis and gain or loss is recognized from a disposition of such asset, the gain or loss shall be computed by reference to the asset's book basis rather than its adjusted tax basis.

Nonrecourse Liability: Any liability to the extent that no Member or related person bears (or is deemed to bear) the economic risk of loss within the meaning of Treasury Regulation Section 1.752-2.

Notice: A writing containing the information required by this Agreement and sent (i) by registered or certified mail, postage prepaid, return receipt requested, (ii) by commercial delivery service, (iii) by hand delivery, (iv) by telecopy, or (v) by electronic mail, paid for by the sender, to a Member at the last address or addresses designated for such purpose by such Member in Section 15.02 or as provided therein, the date of receipt of such registered mail or certified mail or the date of actual receipt of such writing by commercial delivery service, hand delivery or telecopy, being deemed the date of such Notice. If delivered by electronic mail, transmission shall be to the electronic mail address set forth in Section 15.02, with a "hard" copy of such notice sent by (i), (ii) or (iii) above as soon as practicable after delivery of such electronic copy; any notice sent by electronic mail will be deemed to be delivered on the date such notice was sent, if such notice was sent during the business hours of the recipient, or if such notice was sent other than during the business hours of the recipient, on the next business day following the date such notice was sent.

Notice Certifications: The certifications described in Section 3.02(c) and more fully set forth in Exhibit A-7 required to be provided by the Managing Member to the Investor Member in the Additional Capital Contribution Notices.

Operating Deficit: With respect to any period of time beginning after the Completion Date, the amount by which Project Expenses exceed the sum of: (i) Operating Revenue; and (ii) amounts available for the payment of such Project Expenses in the Operating Reserve and the Lease-up Reserve in accordance with the provisions of Exhibit A-6, including the Consent of the Investor Member.

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Operating Deficit Contribution: A capital contribution to the Company by the Managing Member, which shall be required under the circumstances described in Section 5.14 and shall be treated as Capital Contributions of the Managing Member.

Operating Reserve: The reserve to be funded pursuant to Section 5.18 as described in paragraph (i) of Exhibit A-6.

Operating Reserve Amount: The amount of the Operating Reserve shown on Exhibit A-2.

Operating Revenue: For any specified period of time, the amount of gross revenues from all sources derived from the Project as the result of the normal operation of the Project received on a cash basis, including (a) proceeds from rental interruption insurance, (b) proceeds from temporary condemnation in the nature of a lease, and (c) rental and operating subsidies which shall be calculated on an accrual basis but only if received within sixty (60) days of such accrual, and excluding (i) non-recurring revenue such as Sale Proceeds and Refinancing Proceeds or (ii) tenant-based voucher rental income exceeding maximum allowable rents allowed by Section 42 of the Code.

Owner's Title Policy Amount: The required minimum amount of the Title Policy as shown on Exhibit A-2.

Partner Nonrecourse Debt: Any Company liability to the extent the liability is nonrecourse for purposes of Treasury Regulation Section 1.1001-2 and a Member (or related person within the meaning of Treasury Regulation Section 1.752-4(b)) bears the economic risk of loss under Treasury Regulation Section 1.752-2.

Partnership Representative: As defined in Section 13.04(b)(i).

Percentage Interest: As to any Member, the percentage in the Company shown opposite the name of such Member in Exhibit A, as it may be amended from time to time in accordance with this Agreement.

Person: An individual or entity, such as, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, cooperative, or association, joint stock company, unincorporated organization, or government agency or political subdivision thereof, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so requires.

PILOT Agreement: That certain Agreement For Payment in Lieu of Taxes For Angela's House LLC entered into by and between The Town of Cheektowaga, Erie County, Cheektowaga Central School District, the Company and the HDFC, dated as of even date herewith.

Plans and Specifications: The plans and specifications for the Project stamped with the seal of an architect and/or engineer, which are subject to the approval of the Investor Member, and any changes thereto which, if such change constitutes a change in the design, scope or value of the Project, shall have received the approval of the Investor Member.

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Prime Rate: The prime rate as defined in Section 3.02(g).

Project: The aggregate of all of the individual buildings, dwelling Units, common areas, and improvements located in or around the Company Property.

Project Documents: The construction contracts, Plans and Specifications, agreements with architects and engineers, surveys and permits, Environmental Reports, Green Communities Criteria or similar requirements, Ground Lease, Fee Agreements, Guaranty Agreement, all applications, reservations, carryover allocations, binding agreements and all other agreements and documents related to the Credit, the Historic Investment Tax Credit, and the State Historic Investment Tax Credit (including the State Historic Investment Tax Credit Certificate), restrictive covenants, the Extended Use Agreement, ESSHI, the PILOT Agreement, Loan Documents, the Tenant Services Agreement and any other document or instrument executed in connection with any of the aforesaid documents.

Project Expenses: All costs and expenses of any type incurred on an accrual basis incident to the equipping, financing, ownership and operation of the Project, including, without limitation, amounts required to be funded into the Replacement Reserve (including prior unfunded annual deposits) or any other reserve required to be funded under Exhibit A-6 or by any lender, payments of fees to the Members or their Affiliates (other than fees, the payment of which is contingent on the amount of Cash Flow or Capital Proceeds), taxes, required payments of principal and interest on any Loans or obligations that are not contingent on the amount of Cash Flow or Capital Proceeds, and costs of capital improvements to the Company Property incurred after the Completion Date and not funded or to be funded from Capital Proceeds or the Company's Replacement Reserve (described on Exhibit A-6). For purposes of the foregoing calculation, debt service and other amounts payable in connection with any Loan or other loan shall be equal to the regularly scheduled payments under the Loan Documents (absent default or maturity). Additionally, Project Expenses shall include (a) real estate taxes or PILOT Agreement payments at full projected assessment, to the extent not abated or reduced by statute, (b) reserve requirements imposed on the Project by the Project Documents, the Loan Documents or this Agreement, (c) on an annualized basis, all projected expenditures, including those of a seasonal nature, which might be expected to be incurred on an unequal basis during a full annual period of operation, and (d) any earned but unpaid portion of the property management fee, including deferred amounts payable from Cash Flow in accordance with Exhibit A-4.

Project FMV: The value of the Project determined in the manner provided in Section 14.01(b).

Projected Credits: The aggregate amount of Credits projected to be received by the Investor Member based on the projections prepared in accordance with Sections 3.03(a) and 3.03(c).

Projected IRR: The amount shown on the "***Project IRR***" line on the Taxable Income, Capital Accounts and Tax Benefits page of the Projections.

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Projections: The projections of the anticipated results of the operation of the Company based on information provided by the Managing Member attached hereto as Exhibit H to this Agreement.

Property Management Agreement: The Agreement between the Management Agent and the Company attached as Exhibit F.

Qualified Occupancy: The occupancy of a Credit Unit by a Qualifying Tenant or the state of being held for occupancy by a Qualifying Tenant after such Unit becomes vacant subsequent to its rental to a Qualifying Tenant.

Qualifying Tenant: A tenant whose income does not exceed the relevant limit set forth in Section 42(g)(1) of the Code and/or other regulatory requirement.

Refinancing Proceeds: The excess of the gross proceeds of any borrowings by the Company other than the initial Loans set forth on Exhibit A-3 and any other Loans approved by the Investor Member over the sum of the following to the extent paid out of such gross proceeds: (i) any amounts disbursed to repay then existing loans of the Company and to pay and provide for all debts and obligations of the Company then to be paid or which are otherwise then due (not including, however, any amounts funded by Operating Deficit Contributions made to the Company by the Managing Member), (ii) all reasonable expenses of such borrowings, including, without limitation, all commitment fees, brokers' commissions, and attorneys' fees, (iii) all amounts paid to improve the Company Property or for any other purpose in order to satisfy conditions to or established in connection with such borrowings, and (iv) any amounts used to meet the operating expenses of the Company Property or set aside by the Managing Member for reserves.

Regulatory Allocations: The special allocations set forth in Sections 7.03(a), (b), (c), and (e), which are intended to comply with certain requirements of Treasury Regulation Sections 1.704-1(b) and 1.704-2.

Removal Default: With respect to the Managing Member, a Removal Default described in Section 9.02(a).

Rent Restriction Test: As defined under Section 42(g) of the Code.

Replacement Reserve: The reserve to be funded pursuant to Section 5.18 as described in paragraph (ii) of Exhibit A-6.

Required Debt Service Coverage: As to any specified period of time (the "***Period***"), the operation of the Project such that the Operating Revenue for the Period less the greater of (i) the Project Expenses for the Period or (ii) the lesser of the Project Expenses shown on (a) the Projections or (b) the current approved Budget for the Project (prorated for the Period), equals or exceeds three hundred twenty percent (320%) of the aggregate amount of principal and interest payments due during such Period on all Loans (assuming debt service requirements after Loan Conversion), but excluding any such payments that are contingent on Cash Flow. For purposes of this definition only, the term "Project Expenses" shall not include any debt service on the Loans.

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Sale Proceeds: The excess of all cash receipts and other consideration arising from the sale or other disposition of all or any portion of the Company Property or any proceeds realized from condemnation, insured casualty, or insured title defect, but excluding proceeds from rental interruption insurance or a temporary condemnation in the nature of a lease, if any, over the sum of the following to the extent paid out of such cash receipts and other consideration: (i) the amount of cash disbursed or to be disbursed in connection with or as an expense of such sale or other disposition, (ii) the amount necessary for the payment of all debts and obligations of the Company arising from or otherwise related to such sale or other disposition or to which the Company Property is subject and which are otherwise then due (not including, however, any Capital Contributions made to the Company by the Managing Member), (iii) the amount of insured casualty proceeds required by the Investor Member to be used to restore the Company Property, and (iv) any amounts set aside by the Managing Member for reserves.

Special Flood Hazard Area: The area defined by the National Flood Insurance Program requiring mandatory purchase of flood insurance.

Sponsor: Together, CB-Emmanuel and Delta.

Sponsor Loans: The loans, if any, made by the Sponsor or the Managing Member or Affiliate of the Sponsor or the Managing Member to the Company.

Stabilization Date: Beginning after the Completion Date, the date on which the Project has satisfied the Required Debt Service Coverage for a period of three (3) consecutive calendar months evidenced as a single time period throughout which: (i) physical occupancy of the residential units equals or exceeds the "Projected Occupancy" shown on the "Rental Income Assumptions and Applicable Fraction" page of the Projections and (ii) Operating Revenue is at least equal to the Effective Gross Income shown on the "Project Cash Flow" page of the Projections.

State: New York, the state in which the Project is located.

Substitute Investor Member: Any Person admitted from time to time to the Company as an Investor Member in accordance with the provisions of Article X hereof and so reflected on Exhibit A, as such Exhibit A may be amended from time to time in accordance with this Agreement.

Ten Percent Test Date: The date on which the Company's actual basis in the Project must exceed ten percent (10%) of the Company's reasonably expected basis in the Project as of the close of the second calendar year following the calendar year an allocation of Credit is made to qualify for a carryover allocation pursuant to Code Section 42(h)(1)(E). The date shall be the earlier of: (i) the date required by the Authority to meet the ten percent test, and (ii) twelve (12) months after the date the allocation was made.

Tenant Income Certification: A tenant's initial tax credit certification, including the tenant income certification/certificate of resident eligibility, all sources used in verifying income and assets (including, but not limited to, third party verification, checking and savings accounts, pay stubs, verification of assets, etc.), a copy of one completed lease signed and dated for each building,

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and a copy of the first and last page of each resident lease in each building showing the start date of the lease and signature of the resident(s) and owner.

Tenant Services Agreement: The Services and Subsidy Agreement by and between the Company and Catholic Charities of Buffalo, New York, Inc., dated as of the date hereof, including, among other exhibits thereto, the Housing/Services Agreement dated June 30, 2020 by and between the Company and Catholic Charities of Buffalo, New York, Inc.

Term: The period of time the Company shall continue in existence as stated in Section 1.07.

Title Policy: That certain title policy issued by Chicago Title Insurance Company in the amount of the Owner's Title Policy Amount in favor of the Company and in force as of the date hereof insuring the Company's title to the Company Property.

Total LIH Reduction Amount: The amount defined in Section 3.03(b)(iv).

Transfer Agreement: The Transfer Agreement in the form attached hereto as Exhibit M.

Treasury Regulations: The temporary and final regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

Units: The individual units of residential rental housing located on the Company Property.

Wincopin Loan: A loan as described in Section 10.01(f).

2.02 Rules of Construction

(a) Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Agreement:

(i) Words importing the singular number include the plural number and words importing the plural number include the singular number;

(ii) Words of any gender include correlative words of all other genders;

(iii) The table of contents and the headings or captions used in this Agreement are for convenience of reference and do not constitute a part of this Agreement, nor affect its meaning, construction, or effect;

(iv) Any reference in this Agreement to a particular "Article," "Section," or other subdivision shall be to such Article, Section, or subdivision of this Agreement unless the context shall otherwise require;

(v) Each reference in this Agreement to an agreement or contract shall include all amendments, modifications, and supplements to such agreement or contract unless the context shall otherwise require; and

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(vi) When any reference is made in this document or any of the schedules or exhibits attached hereto to the Agreement, it shall mean this Agreement, together with all other schedules and exhibits attached hereto, as though one document.

(b) In the event there is more than one Investor Member or more than one Managing Member, the following additional rules of construction shall apply unless otherwise provided:

(i) Unless otherwise provided herein, allocations to the Managing Member and Investor Member of Gain, Net Profits, Net Losses, Loss and credits under Article VII, and distributions of Net Cash Flow and Capital Proceeds under Article VIII shall be further allocated and/or distributed between or among the Managing Members and/or Investor Members in proportion to each Managing Member's or Investor Member's respective Percentage Interest as set forth on Exhibit A. Unless otherwise provided herein, no Managing Member shall have a superior right to receive distributions than any other Managing Member and no Investor Member shall have a superior right to receive distributions than any other Investor Member;

(ii) Unless otherwise provided herein, with respect to any matter on which the approval or ratification of the Managing Member or Investor Member is required or may be given, such approval or ratification shall not be deemed to have been given unless given by Consent of the Managing Member or Investor Member, as the case may be;

(iii) Unless otherwise provided herein, with respect to any matter on which the approval or ratification of the Managing Member or Investor Member is required or may be given, each Managing Member or Investor Member, as the case may be, shall be entitled to vote; and

(iv) Unless otherwise provided herein, the Managing Member's obligations under this Agreement shall be joint and several as to each Managing Member.

ARTICLE III

Membership Interests and Sources of Funds

3.01 Identity of Members and Percentage Interests

The names and business addresses of the Managing Member and the Investor Member are as identified on Exhibit A, as such exhibit may be amended from time to time in accordance with this Agreement and each such Member has the Percentage Interest indicated next to its name.

3.02 Capital Contributions

(a) *Managing Member*. Subject to the provisions of this Section 3.02, the Managing Member shall be obligated to (and does hereby covenant and agree to) contribute to the capital of the Company, by wire transfer or other form of immediately available funds, the aggregate amount set forth after the Managing Member's name on Exhibit A no later than the Admission Date. In addition, in exchange for its Interest, the Managing Member agrees to perform the following services:

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(i) Syndication Services. The Managing Member will perform services in connection with syndication and sale of the membership Interest to the Investor Member, including providing the Investor Member with all relevant information; preparing a financial plan to admit the Investor Member; conducting due diligence on behalf of the Company in connection with the admission of the Investor Member; and preparing appropriate disclosure documents related to the admission of the Investor Member in compliance with all federal and state securities laws.

(ii) Financing Services. The Managing Member will perform services in connection with permanent financing, including obtaining commitments for all permanent financing for the Project, including providing information to prospective lenders; negotiating final loan commitments; coordinating all loan closing checklist requirements with lenders; and monitoring loan requirements during the term of the loans.

(iii) Acquisition Services. The Managing Member will perform services in connection with the acquisition of the Company Property, including negotiating the purchase agreement with the seller of the Company Property, acting on behalf of the Company with federal, state and local authorities with respect to the Project; monitoring compliance with zoning, land-use and other requirements; and preparing or causing to be prepared such third party studies as it deems necessary in connection with the acquisition of the Company Property.

(b) *Investor Member*. Subject to the provisions of this Section 3.02, the Investor Member shall be obligated to (and does hereby covenant and agree to) contribute to the capital of the Company, by wire transfer or other form of immediately available funds, the aggregate amount set forth after the Investor Member's name on Exhibit A.

The Investor Member shall pay its Capital Contribution in Installments, in the amounts and at the times indicated on Exhibit A-1; *provided, however*, that the date for payment of any Additional Capital Contribution shall be the Additional Capital Contribution Due Date, which may be deferred in accordance with Section 3.02(d). Except as provided in this Section 3.02(b), the Investor Member shall not be obligated to make any Capital Contributions to the Company, and all required Capital Contributions shall be subject to any applicable adjustments; *provided, however*, that the Investor Member shall have the right to make further Capital Contributions to the Company, including the right to agree to make a limited or unlimited contribution to the extent necessary to eliminate a deficit in its Capital Account in accordance with Section 3.08, provided that any such deficit restoration shall be at the option of the Investor Member and shall not be enforceable against the Investor Member by any Person.

The Members specifically acknowledge that the Investor Member's Additional Capital Contributions may be adjusted pursuant to the terms of Sections 3.03, 3.04 and 3.10. In the event the Investor Member's Additional Capital Contributions are so adjusted, Exhibits A, A-1, and A-2, the Development Services Agreement attached as Exhibit C, and the Projections attached as Exhibit H will be revised accordingly and such revised Exhibits shall constitute a valid amendment to this Agreement. The Investor Member shall cause a copy of the revised Exhibits to be delivered to the Managing Member. If the Managing Member shall disagree as to any amount in the revised Exhibits, the Managing Member shall give Notice and an explanation to the Investor Member of such disagreement within thirty (30) days after receipt of such revised Exhibits. Failure by the

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Managing Member to respond within such thirty (30) day period shall be deemed approval by the Managing Member.

(c) *Notice Certifications*. The Managing Member shall deliver an Additional Capital Contribution Notice to the Investor Member which shall include the Notice Certifications in the exact form attached as Exhibit A-7 not more than thirty (30) days and not less than twenty (20) days (ten (10) days for Additional Capital Contributions prior to the Completion Date) in advance of the due date of each Additional Capital Contribution.

(d) *Deferral of Additional Capital Contribution Due Date*. Should the Managing Member fail to certify that each of the relevant Notice Certifications is true and correct in its Additional Capital Contribution Notice, or should any of the relevant Notice Certifications be in fact untrue, the Additional Capital Contribution Due Date shall be deferred until twenty (20) days (ten (10) days for Additional Capital Contributions made prior to the Completion Date) after such time as the Managing Member is able to and does certify that each of the relevant Notice Certifications is true (which certificate shall be no greater than ninety (90) days prior to the date of the Additional Capital Contribution), and each of the relevant Notice Certifications is in fact true, and failure to pay such Additional Capital Contribution prior to such time shall not constitute a default of the Investor Member.

(e) *Managing Member Default*. Under no circumstances shall the Investor Member be obligated to make any Additional Capital Contribution at any time that the Managing Member is in default under this Agreement or any Project Document or Loan Document. Notwithstanding the foregoing, upon cure of any such default within any applicable cure period provided for herein or in any such Project Document or Loan Document to the satisfaction of the Investor Member in its sole discretion, and demonstration, to the satisfaction of the Investor Member, of the Managing Member's ability to fully comply with this Agreement, such Project Documents and/or Loan Documents in the future, the Investor Member shall make such Additional Capital Contribution subject to the terms and conditions of this Agreement.

(f) *Discretion to Waive Preconditions*. The Investor Member, in its sole and absolute discretion, may waive, in whole or in part, any one or more preconditions to the payment of any Additional Capital Contribution and may accelerate or otherwise pay all or a portion of the amount of such Additional Capital Contribution that would have been due had all of the preconditions been satisfied. The waiver of any precondition, in whole or in part, shall not prevent the Investor Member from asserting the failure of the precondition as a defense against the requirement of paying the remainder of an Additional Capital Contribution or any other Additional Capital Contribution. Upon request from the Investor Member, the Managing Member, with the assistance of the Accountants, shall provide the information necessary for the Investor Member to determine the necessity and amount of an acceleration of any Additional Capital Contribution.

(g) *Default*. In the event that there is more than one Investor Member, each Investor Member shall be considered separately as an Investor Member for purposes of this Section 3.02(g). In the event that the Investor Member fails to pay any portion of any Additional Capital Contribution then due and payable (as such Additional Capital Contribution may be adjusted in accordance with Sections 3.03, 3.04 and 3.10) by the Additional Capital Contribution Due Date (as the same may be deferred pursuant to Section 3.02(d)) and any such failure is not cured within

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forty-five (45) days after written Notice of such failure, such Investor Member shall be deemed to be in default of its obligations under this Agreement and the Managing Member shall be entitled to take all actions available to the Company, including, without limitation, instituting a suit at law or in equity; *provided, however*, in the event of a Final Determination in favor of the Company, the defaulting Investor Member shall pay to the Company all Additional Capital Contributions and accrued interest at the prime rate as published from time to time by The Wall Street Journal (the "***Prime Rate***") plus two percent (2%) thereon, accruing from the date the Additional Capital Contribution Installment was due and payable, plus reasonable attorneys' fees and expenses incurred by the Company to enforce its rights under this Agreement, up to a maximum amount of One Hundred Thousand Dollars ($100,000). Such payment shall constitute the sole remedy of the Company under this Section 3.02. Notwithstanding any provisions of Section 3.02, upon payment of all amounts owed pursuant to the terms of this Section 3.02(g) as a result of the default of such Investor Member, and provided such payment is received prior to the acquisition by another Person of the defaulting Investor Member's Interest, such Investor Member shall be fully reinstated to its former Interest and Percentage Interest in the Company, including, but not limited to, the defaulting Investor Member's former share of distributions, as though a default under this Section 3.02(g) had not occurred. The obligation of the Investor Member to make payments of its Capital Contributions is nonrecourse to the partners of the Investor Member, and the partners of the Investor Member shall have no personal liability in the event of any default by the Investor Member.

(h) *Sale of Investor Member's Interest*. Subject to the provisions of Section 3.02(g) in the event of a default pursuant to Section 3.02(g), the Company may offer to sell the defaulting Investor Member's Interest first to the non-defaulting Investor Members, and if they do not collectively purchase all of the defaulting Investor Member's Interest, then the balance to any other Person on such commercially reasonable terms and conditions as the Managing Member deems most favorable under the circumstances. Any amount that the Person acquiring the Interest of the defaulting Investor Member shall pay in consideration of the acquisition of such Interest shall be applied in the following order: (i) to the payment of all reasonable fees and expenses incurred by the Company in connection with such sale; (ii) to the payment of the Additional Capital Contribution payment and any interest thereon then required to be paid by the defaulting Investor Member; (iii) to the payment, if any, of any future Additional Capital Contributions of the defaulting Investor Member; and (iv) any balance to the defaulting Investor Member. In no event may a sale under this Section 3.02(h) be made to the Managing Member or any Affiliate thereof unless such sale is made at the IM Interest FMV.

(i) *Obligations of Defaulting Investor Member upon Sale*. The obligations of the defaulting Investor Member to the Company shall be extinguished upon completion of the transfer of the defaulting Investor Member's Interest to a purchaser described in Section 3.02(h); *provided, however,* that the obligation of the defaulting Investor Member to make Additional Capital Contributions shall only be extinguished by, and to the extent of, the aggregate of payments made and to be made by the purchaser or purchasers of the defaulting Investor Member's Interest, plus payments of interest, fees and expenses as set forth in Section 3.02(g) above.

(j) *Rights of Nondefaulting Investor Members*. All rights and benefits of a defaulting Investor Member attributable to such Member's Interest in the Company shall be suspended during the period of default, and such suspension shall terminate on the date of the curing of such default

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(if such curing is permitted under Section 3.02(g) and all amounts due under Section 3.02(g) have been paid), or upon the admission of a purchaser of such Interest pursuant to this Section as a Substitute Investor Member. Upon the termination of such defaulting Investor Member's Interest in the Company, all rights and benefits of such defaulting Investor Member attributable to such Member's Interest in the Company shall terminate. If such suspension is in effect at the end of the Company's Fiscal Year, the profits and losses and Credits attributable to the defaulting Investor Member's Interest during the period of suspension that have not been allocated to such defaulting Investor Member in a tax return filed by the Company shall be allocated to the extent permitted under the Code and the Treasury Regulations thereto and this Agreement, to the non-defaulting Investor Members, pro rata in accordance with their Interests, until the admission of a Substitute Investor Member in place of the defaulting Investor Member.

3.03 LIH Adjustments to Capital Contributions

(a) *Adjustment at Cost Certification and upon Receipt of IRS Form 8609.* As of the date of Cost Certification, the Accountants shall prepare projections of the Credits available and allocable to the Investor Member (the "***Projected Credits***") for the Project based upon the Accountant's calculation of the eligible basis and qualified basis of the Project and the credit percentage applicable to the Project. If the Projected Credits are less than the "***LIH Target Amount***" shown on Exhibit A-2, the Investor Member's Capital Contribution (including Capital Contributions already paid to the Company) shall be reduced by an amount equal to $0.9099 for every dollar by which the Projected Credits are less than the LIH Target Amount. Any decrease in the Investor Member's Capital Contribution will be subtracted from the Additional Capital Contribution due as of Cost Certification, and if insufficient, from the next succeeding Additional Capital Contributions until the full reduction has been taken into account. In connection with the foregoing, if the amount of the reduction computed in this Section 3.03(a) exceeds the sum of all subsequent Additional Capital Contributions (as previously reduced pursuant to Sections 3.03(b), 3.03(c), 3.04 and 3.10), the Managing Member shall immediately make a Credit Adjuster Advance equal to the amount of such excess, and the Company shall immediately thereafter make a special distribution to the Investor Member, which shall neither reduce nor be limited by Net Cash Flow, equal to such amount. The adjustments required under this Section 3.03(a) shall also be made based on the final IRS Forms 8609 for the Project. In the event Credits are available over a fifteen (15) year period under Code Section 42(f)(3), the Investor Member's next succeeding Capital Contributions shall be reduced to reflect reduced Credits over the Credit Period in an amount which will result in the Investor Member receiving Projected IRR assuming no change from the timing of the Capital Contributions shown on the Projections with respect to its investment in the Company.

(b) *Adjustments for Credit Reductions.*

(i) *Events Causing Adjustments.* In the event the portion of Credit to be allocated to the Investor Member that the Company claims (as determined by the Accountants) with respect to any taxable year after the Lease-up Period is less than the Projected Credits for that year, and/or the Company determines or the Accountants determine that the Company must recapture any of the Credit allocated to the Investor Member that the Company claimed in any previous taxable year (either event constituting a "***Credit Reduction***"), the Investor Member's Additional Capital Contributions shall be reduced in the manner provided in Section 3.03(b)(ii).

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(ii) *Additional Capital Contributions Subject to Adjustment.* Upon the occurrence of a Credit Reduction, the amount of the next succeeding Additional Capital Contribution, after adjusting such Additional Capital Contribution as provided in Section 3.03(c), shall be reduced by the Total LIH Reduction Amount (as defined in Section 3.03(b)(iv)). In the event that the amount determined in the previous sentence exceeds the amount of the next succeeding Additional Capital Contribution, such excess shall reduce the second succeeding Additional Capital Contribution, and subsequent Additional Capital Contributions, until such excess is eliminated.

(iii) *Credit Adjuster Advances.* If, during the Compliance Period, the Total LIH Reduction Amount exceeds the sum of all subsequent Additional Capital Contributions (as previously reduced pursuant to Sections 3.03(a), 3.03(c) 3.04 and 3.10), or if all Additional Capital Contributions have been made, the Managing Member shall immediately make a Credit Adjuster Advance equal to the amount of such excess and the Company shall thereafter make a special distribution to the Investor Member, neither to reduce nor to be limited by Net Cash Flow, equal to such amount.

(iv) *Total LIH Reduction Amount.* The Total LIH Reduction Amount for a taxable year shall equal $1.00 multiplied by the sum of (A) the amount by which the portion of the Credit to be allocated to the Investor Member that the Company claims for that year (based on the lesser of the Managing Member's estimate for such year provided to the Investor Member or the actual tax return) is less than the Projected Credit for that year, (B) the amount by which the portion of the Credit to be allocated to the Investor Member in any future year from such event is, as a result of the event giving rise to a Credit Reduction, less than the Projected Credit for such future year, and (C) the portion of the Credit allocated to the Investor Member that the Company claimed but that the Company or the Accountants determine must be recaptured during such taxable year, if any, plus any interest and penalties imposed by the IRS as a result of such recapture or reduction.

The Members intend that the adjustments in this Section 3.03(b) shall not duplicate adjustments made in Section 3.03(a) or 3.03(c) and will not reduce the Managing Member's obligations under Section 3.03(a) or 3.03(c).

(c) *Adjustment for Delay in Lease-up.*

(i) In order to take into account a delay in lease-up, in addition to the adjustments provided for in Sections 3.03(a) and 3.03(b), if the Projected Credits for the Lease-up Period, calculated by the Accountant using the actual basis methodology, are less than the amount shown on Exhibit A-2, as adjusted pursuant to Section 3.03(a), (the "***Lease-up Projection***") when the Third and/or Fourth Installment of the Investor Member's Capital Contribution is due, the Third and/or Fourth Installment shall be reduced by $0.49 for each dollar by which the Projected Credits for the Lease-up Period are less than the Lease-up Projection. If the Third and/or Fourth Installment is insufficient, the next succeeding Additional Capital Contributions will be reduced until the full reduction has been taken into account. In connection with the foregoing, if the amount of the reduction computed in this Section 3.03(c)(i) exceeds the sum of all subsequent Additional Capital Contributions (as previously reduced pursuant to Sections 3.03(a), 3.03(b), 3.04 and 3.10), the Managing Member shall make a Credit Adjuster Advance equal to the amount of such excess,

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and the Company shall thereafter make a special distribution to the Investor Member, which shall neither reduce nor be limited by Net Cash Flow, equal to such amount.

(ii) In addition to the adjustment described above, if the Investor Member is not entitled to claim Credits for any year in the Lease-up Period (based on the lesser of the Managing Member's estimate for such year provided to the Investor Member or the filed tax return) in at least the amount of the Lease-up Projection (as adjusted to take into account any reduction pursuant to Section 3.03(c)(i)), when any Installment of the Investor Member's Capital Contribution is ultimately paid, such Installment shall be reduced by $0.49 for every dollar by which the actual Credits are less than the Lease-up Projection for that year. If such Installment is insufficient, the next succeeding Additional Capital Contributions will be reduced until the full reduction has been taken into account. In connection with the foregoing, if the amount of the reduction computed in this Section 3.03(c)(ii) exceeds the sum of all subsequent Additional Capital Contributions (as previously reduced pursuant to Sections 3.03(a) and 3.03(b), 3.04 and 3.10), the Managing Member shall make a Credit Adjuster Advance equal to the amount of such excess, and the Company shall thereafter make a special distribution to the Investor Member, which shall neither reduce nor be limited by Net Cash Flow, equal to such amount.

In computing the adjustment under paragraphs (i) and (ii) above, there shall be no duplicate reduction in the amount of the Investor Member's Capital Contributions under Sections 3.03(c)(i) and (ii) and under Sections 3.03(a) and 3.03(b).

(d) *[Intentionally Omitted.]*

(e) *Adjustment for Change to Depreciation or Failure to Make Code Section 163(j)(7)(B) Election*. In the event that if for any taxable year any building in the Project is not entitled to the depreciable life shown on Exhibit A-8 (except to the extent caused by a change in the Code), or the Company fails to elect to be treated as an "electing trade or business" pursuant to Code Section 163(j)(7)(B), the Investor Member's next succeeding Capital Contributions shall, at the option of the Investor Member, be reduced to reflect the reduction in tax benefits due to such change to depreciation, if any. The reduction in the Investor Member's Capital Contribution shall be made in such an amount that will provide the Investor Member with the Projected IRR. In connection with the foregoing, if the amount of the reduction computed in this Section 3.03(e) exceeds the sum of all subsequent Additional Capital Contributions (as previously reduced pursuant to Sections 3.03(a), 3.03(b), 3.03(c), 3.04 or 3.10), the Managing Member shall make a Credit Adjuster Advance equal to the amount of such excess, and the Company shall thereafter make a special distribution to the Investor Member, which shall neither reduce nor be limited by Net Cash Flow, equal to such amount.

(f) (i) *Upward Adjuster*. If the Credits shown on IRS Form 8609 are more than the LIH Target Amount and the increase in Credits is approved by the Investor Member and does not (i) have an adverse impact on the tax benefits available to the Investor Member or (ii) result from an increase in acquisition Tax Credits, the Investor Member's Sixth Installment of its Capital Contribution shall be increased by $0.9099 for every dollar of such increase allocable to the Investor Member up to the maximum amount set forth herein. If the Credits for the Project for 2023 shown on the Investor Member's tax returns which have been approved by the Investor Member are greater than the amount shown on Exhibit A-2 for such year (other than an increase

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in acquisition Credits), as such Projections are adjusted to reflect an increase in Credits pursuant to the previous sentence, and such increase in Credits is due solely to the Company renting the Credit Units at a faster rate than shown in the Projections, the Investor Member's Sixth Installment of its Capital Contribution shall be increased by $0.49 for every dollar of such increase up to the maximum amount set forth herein, provided that if the increase in 2023 Credits results in Credits becoming available over a fifteen (15) year period under Section 42(f)(3) of the Code, the upward adjuster shall be reduced to reflect the reduced value of Credits over the Credit Period.

(ii) The maximum increase of the Investor Member's Capital Contribution under this Section 3.03(f) shall be limited to the sum of: (a) five percent (5%) of the Investor Member's Capital Contribution shown on Exhibit A to this Agreement plus (b) One Hundred Ninety Thousand Dollars ($190,000). Notwithstanding any other provision of this Agreement, subject to the provisions of the applicable Loan Documents, unless otherwise approved by the Investor Member, the amount by which the Investor Member's Capital Contribution is increased pursuant to this Section 3.03(f) shall be applied first to any amount then due to the Investor Member, then to the reimbursement of any Development Advances, then to pay Deferred Development Fee (as such term is defined in the Development Services Agreement attached as Exhibit C to this Agreement), then to pay an incentive lease-up fee of up to one-twelfth of the gross rent shown on the Projections for such year, and any remaining balance will be applied as Capital Proceeds in accordance with Section 8.02.

(g) *Determination of Adjustment Amounts.* If the Investor Member disagrees as to the amount of the Projected Credits and/or the Projected Credits for the Lease-up Period as calculated by the Accountant, the Investor Member shall give Notice to the Managing Member of such disagreement within twenty (20) days after the later of (a) receipt by the Investor Member of IRS Form 8609 and required lease-up reporting and (b) delivery of the respective Accountant's calculation (the "***Contribution Dispute Notification***"), and the Investor Member shall pay that portion of the next Installment of the Investor Member's Capital Contribution based on that portion of the Projected Credit not in dispute. With respect to the amount or the timing of the amount of such Projected Credit in dispute, if the Managing Member and the Investor Member cannot agree on the amount of the adjustment to the Capital Contribution within five (5) days after the giving of the Contribution Dispute Notification, the Managing Member and the Investor Member shall jointly designate a certified public accountant (which shall not be the Accountants) as an arbitrator (or if the Managing Member and the Investor Member cannot agree upon an arbitrator within twenty (20) days, such arbitrator shall be a certified public accountant chosen by the American Arbitration Association). The designation of an arbitrator hereunder shall automatically delay the due date for payment of the portion of Capital Contribution until ten (10) business days after the conclusion of such arbitration (unless prior to the expiration of such period the Managing Member and the Investor Member agree upon the amount of the adjustment, if any). Such arbitrator shall be directed to promptly conduct, at the expense of the Company, an arbitration to determine the amount of the Projected Credit which the Company is entitled to claim and to allocate to the Investor Member on a basis that is prudent and reasonable. Such arbitrator shall be directed to give notice of his/her determination within sixty (60) days after the Investor Member gives the notice of disagreement specified in this Section 3.03(g), and upon the giving of such notice of determination the amount determined by such arbitrator shall be deemed the amount of the Projected Credit which the Company is entitled to claim and to allocate to the Investor Member for the purpose of determining any adjustment to the Investor Member's Capital Contribution. The

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costs and expenses of arbitration pursuant to this Section 3.03(g) shall be treated as a Company expense.

(h) *Excluded Credit Adjustment Amount.* Notwithstanding anything to the contrary set forth in this Agreement, no adjustment shall be made with regard to any reduction or recapture of Credits which would otherwise take place pursuant to this Agreement if such reduction or recapture is due solely to (i) an act or omission of the Investor Member attributable to gross negligence or intentional misconduct of the Investor Member in violation of this Agreement; (ii) the transfer by the Investor Member of all or a portion of its Interest in the Company; or (iii) any change in the Internal Revenue Code that occurs after the date of this Agreement with which the Managing Member is unable to comply despite the exercise of good faith and reasonable efforts.

3.04 HIT Adjustments to Capital Contributions

(a) *Definitions.*

Aggregate HIT Projected Credits: The aggregate amount of the Historic Investment Tax Credit projected to be available and allocable to the Investor Member by the Company and the Accountants on the Company's applicable federal income tax returns during the Historic Recapture Period.

Approved Historic Rehabilitation: The proposed rehabilitation work to be undertaken with respect to the Certified Historic Structure, or to parts thereof, as the case may be, which has received Part 2 approval from the National Park Service of the United States Department of the Interior.

Architect's Historic Rehabilitation Certificate: The certificate issued by the Architect to the Investor Member stating that the building for which the Company expects to claim the Historic Investment Tax Credit, as reflected in the Projections, have been rehabilitated in a manner consistent with the rehabilitation plans (taking into account any modifications required by the National Park Service) approved in Part 2 of the Historic Preservation Certification Application, and stating that the Company has submitted a request for Part 3 approval from the National Park Service.

Certified Historic Structure: That portion of the Company Property consisting of the building and structural components of the building that are described in Section 47(c)(3) of the Code.

Historic Investment Tax Credit: The credit against the federal income tax described in Section 47(a)(2) of the Code which, for purposes of this Agreement, shall be equal to twenty percent (20%) of the Qualified Rehabilitation Expenditures attributable to the rehabilitation of a Certified Historic Structure.

Historic Recapture Period: The period ending on December 31 after the end of the five (5) year period following the date the Project is placed in service, as provided in Section 50(a) of the Code.

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Historic Rehabilitation Base: The total amount of Qualified Rehabilitation Expenditures incurred by the Company that qualifies for the Historic Investment Tax Credit. The Historic Rehabilitation Base shall be determined by the Accountants in the preparation of the Company tax returns.

HIT Credit Amount: The amount of the Historic Investment Tax Credit that the Company actually allocates to the Investor Member on its federal income tax return (as determined by the Accountants) (or, if less, based on the estimate provided by the Managing Member) for 2022.

HIT Projected Credits: For any calendar year, the amount of the Historic Investment Tax Credit projected to be allocable to the Investor Member by the Company on the Company's federal income tax return for such year, as indicated in the Projections and shown on Exhibit A-2.

National Park Service: The National Park Service of the United States Department of Interior of the United States.

Qualified Rehabilitation Expenditures: Any amount expended by the Company that meets the requirements of Section 47(c)(2) of the Code and which is includable in the Historic Rehabilitation Base.

(b) *Adjustment Based on Projection of Historic Investment Tax Credits*. On or before the due date of the Third Installment of the Investor Member's Capital Contribution, the Accountants shall make an estimate of the Aggregate HIT Projected Credits. If the Aggregate HIT Projected Credits are less than the "***HIT Credit Target Amount***" shown on Exhibit A-2, the amount of the Third Installment of the Investor Member's Capital Contribution shall be reduced by an amount equal to $0.8999 for every dollar by which the Aggregate HIT Projected Credits are less than the HIT Credit Target Amount. If the Third Installment is insufficient, the next succeeding Additional Capital Contributions will be reduced until the full reduction has been taken into account. In connection with the foregoing, if the amount of the reduction computed in this Section 3.04(b) exceeds the sum of all subsequent Additional Capital Contributions (as previously reduced pursuant to Sections 3.03, 3.04(c) or 3.10), the Managing Member shall make a Credit Adjuster Advance equal to the amount of such excess, and the Company shall thereafter make a special distribution to the Investor Member, which shall neither reduce nor be limited by Net Cash Flow, equal to such amount.

(c) *Adjustment Based on Delay in Delivery of Historic Investment Tax Credits*. In order to take into account a delay in the delivery of the Historic Investment Tax Credit, in addition to the adjustments provided for in Section 3.04(b) and Section 3.04(d), if the HIT Projected Credits for 2022 are less than the amounts shown on Exhibit A-2, as adjusted pursuant to Section 3.04(b) (the "***HIT Credit First Year Projection***") when the Third and/or Fourth Installment of the Investor Member 's Capital Contribution are due, the Third and/or Fourth Installment shall be reduced by $0.08 for each dollar by which the HIT Projected Credits for 2022 are less than the HIT Credit First Year Projection. If the Third and/or Fourth Installment is insufficient, the next succeeding Additional Capital Contributions will be reduced until the full reduction has been taken into account. In connection with the foregoing, if the amount of the reduction computed in this Section

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3.04(c) exceeds the sum of all subsequent Additional Capital Contributions (as previously reduced pursuant to Sections 3.03, 3.04(b) or 3.10), the Managing Member shall make a Credit Adjuster Advance equal to the amount of such excess, and the Company shall thereafter make a special distribution to the Investor Member, which shall neither reduce nor be limited by Net Cash Flow, equal to such amount.

(d) *Adjustment Based on Amount of Historic Investment Tax Credits Allocated to the Investor Member.* In the event the amount of the Historic Investment Tax Credit that the Company actually allocates to the Investor Member on its federal income tax return (as determined by the Accountants, or if less based on a projection provided by the Managing Member with respect to any taxable year) is less than the HIT Projected Credits for such year and/or in the event the Company, the Accountants, or the IRS determine that the Company must recapture all or a part of the Historic Investment Tax Credit actually allocated to the Investor Member by the Company in any previous taxable year (the "***Total HIT Reduction Amount***"), the amount of the next succeeding Additional Capital Contribution shall be reduced by an amount equal to $1.00 for every dollar of the Total HIT Reduction Amount. In the event that the Total HIT Reduction Amount exceeds the amount of the next succeeding Additional Capital Contribution, such excess shall reduce the second succeeding Additional Capital Contribution, and subsequent Additional Capital Contributions, until such excess is eliminated. If the Total HIT Reduction Amount exceeds all subsequent Additional Capital Contributions (as previously reduced pursuant to Sections 3.03 and 3.10) (or if all Additional Capital Contributions have been made) the Managing Member shall immediately make a Credit Adjuster Advance equal to the amount of such excess and the Company shall thereafter make a special distribution to the Investor Member, neither to reduce nor to be limited by the amount of Net Cash Flow, equal to such amount.

(e) *Upward Adjuster.* In the event the amount of the Historic Investment Tax Credit that the Company actually allocates to the Investor Member on its federal income tax return (as determined by the Accountants, or if less based on a projection provided by the Managing Member with respect to any taxable year) exceeds the HIT Credit Target Amount and the calculation of such Historic Investment Tax Credit is approved by the Investor Member, the Sixth Installment of the Investor Member's Capital Contribution shall be increased by $0.8999 for every dollar of such increase. The aggregate of any additional Capital Contribution under this Section 3.04(e) plus any additional Capital Contributions made under Sections 3.03(e) and 3.10(c) shall be limited to the sum of: (a) five percent (5%) of the Investor Member's Capital Contribution shown on Exhibit A to this Agreement plus (b) One Hundred Ninety Thousand Dollars ($190,000). In addition to and not in limitation of the foregoing, in the event that the amount of the Third Installment of the Investor Member's Capital Contribution has been reduced pursuant to Section 3.04(b) and the amount of Aggregate HIT Projected Credits reflected on the final Cost Certification is greater than the amount of Aggregate HIT Projected Credits based on the Accountant's estimate on which the reduction in the Third Installment of the Investor Member's Capital Contribution was based pursuant to Section 3.04(b) (the "***Accountant's Estimate***"), the Fourth Installment of the Investor Member's Capital Contribution will be increased by an amount equal to $0.8999 for every dollar by which the Aggregate HIT Projected Credits reflected in the final Cost Certification are greater than the Aggregate HIT Projected Credits reflected in the Accountant's Estimate.

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3.05 Additional Advances

The Managing Member shall advance to the Company, in addition to any Credit Adjuster Advances required by Sections 3.03, 3.04 and 3.10, an Additional Advance in an amount required by the Company in order to (i) pay in full, prior to the end of the Compliance Period, any unpaid portion of the Development Fee and (ii) pay any amount required to fund the reserve accounts required on Exhibit A-6 that are not funded as a result of any Capital Contribution adjustment.

3.06 No Interest on Capital Contributions

No interest shall accrue or be payable to any Member by reason of its Capital Contribution or its Capital Account.

3.07 Right to Require Repayment of Capital

A Member shall not have the right to withdraw from the Company all or any part of its Capital Contribution. No Member shall have any right to demand and receive property of the Company in return for its Capital Contribution or in respect of its Interest, except as provided in this Agreement. No Investor Member shall have priority over any other Investor Member as to any return of Capital Contributions or as to any distributions made by the Company under Article VIII.

3.08 Deficit Restoration

(a) If, upon liquidation of a Member's Interest (whether or not in connection with the liquidation of the Company), the Member has a negative balance in its Capital Account, the Member shall have no obligation to make any contribution to the capital of the Company and the negative balance of the Member's Capital Account shall not be considered a debt owed by the Member to the Company or any other Person for any reason whatsoever.

(b) Notwithstanding anything to the contrary contained in this Agreement, to the extent the Company is liquidated within the meaning of Treas. Reg. § 1.704-1(b)(2)(ii)(g), the Investor Member shall be obligated to restore a deficit in its Capital Account up to a limited dollar amount (the "***Designated Amount***"). The Designated Amount shall be zero until the Investor Member notifies the Company in writing of its election to have a different amount apply. Such notification shall be provided to the Company and shall specify the Designated Amount. Such election shall be irrevocable. Notwithstanding the foregoing, the Designated Amount may be increased or reduced by written notice from the Investor Member at any subsequent date, but no subsequent reduction to the Designated Amount shall reduce the same below the Investor Member's deficit balance in its Capital Account (as such Capital Account is increased by the Investor Member's share of Company Minimum Gain and the Investor Member's Capital Contribution) at the end of the Company's immediately preceding tax year.

3.09 No Third-Party Beneficiary

None of the provisions of this Agreement shall be construed as existing for the benefit of any third-party, including any creditor of the Company or for the benefit of any third-party creditor of the Members, and no provision shall be enforceable by a party not a signatory to this Agreement.

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3.10 State Historic Investment Tax Credit Adjustments

(a) Definitions.

Approved State Historic Rehabilitation: The proposed rehabilitation work to be undertaken with respect to a Certified Historic Structure, or parts thereof, as the case may be, which has received approval from the New York State Office of Parks, Recreation and Historic Preservation.

Architect's State Historic Rehabilitation Certificate: The certificate issued by the Architect to the Investor Member stating that the building has been rehabilitated in a manner consistent with the rehabilitation plans (taking into account any modifications required by the New York State Office of Parks, Recreation and Historic Preservation) and stating that the Company has submitted a request for Part 3 Approval from the National Park Service.

State Historic Investment Tax Credit: The New York Credit for Rehabilitation of Historic Properties issued pursuant to New York Tax Law Section 210.40.

State Historic Investment Tax Credit Certificate: The Certificate issued by the New York State Office of Parks, Recreation and Historic Preservation with respect to the State Historic Investment Tax Credits for one hundred percent (100%) of the State Historic Investment Tax Credits allowable for the Company Property.

State HIT Credit Amount: The amount of the State Historic Investment Tax Credit that the Company actually allocates to the Investor Member on its federal income tax return (as determined by the Accountants) for 2022.

State HIT Credit Target Amount: For any calendar year, the total amount of the State Historic Investment Tax Credit projected to be allocable to the Investor Member by the Company on the Company's federal income tax return for such year, as indicated in the Projections and shown on Exhibit A-2.

State HIT Projected Credits: An estimate made by the Accountants of the amount of State Historic Investment Tax Credit available and allocable to the Investor Member for 2022, based on the Architect's State Historic Rehabilitation Certificate.

State HIT Credit Reduction Amount: The sum of (i) the amount by which the State HIT Credit Amount is less than the State HIT Projected Credits for such year, and (ii) the aggregate amount of the State Historic Investment Tax Credit that the Company, the Accountants, or the IRS (pursuant to a Final Determination) determine must be recaptured during such taxable year.

(b) *Adjustment Based on Projection of State Historic Investment Tax Credits and Delays in Delivery of State Historic Investment Tax Credits*. On or before the due date of the Third Installment of the Investor Member's Capital Contribution, the Accountants shall make an estimate of the State HIT Projected Credits. If the State HIT Credit Target Amount exceeds the State HIT Projected Credits, the amount of the Third Installment shall be reduced by $0.7299 for each dollar of excess. In addition, if the Company is entitled to the State Historic Investment Tax Credit in a

subsequent year than projected, the Third and/or Fourth Installment of the Investor Member's Capital Contribution shall be reduced by $0.08 for each dollar of the State HIT Credit First Year Projection for 2022 that is projected not to be available to the Company or allocable to the Investor Member until 2023.

(c) *Adjustment Based on Amount of State Historic Investment Tax Credits Allocated to the Investor Member*. In the event the amount of the State HIT Credit Amount for 2022 is less than the State HIT Projected Credit for such year, and/or in the event the Company, the Accountants, or the IRS determines that the Company must recapture all or a part of the State Historic Investment Tax Credit actually allocated to the Investor Member by the Company in any previous taxable year, the amount of the next succeeding Additional Capital Contribution shall be reduced by one hundred percent (100%) of the State HIT Credit Reduction Amount. In the event that the State HIT Credit Reduction Amount exceeds the amount of the next succeeding Additional Capital Contribution, such excess shall reduce the second succeeding Additional Capital Contribution, and subsequent Additional Capital Contributions, until such excess is eliminated. If the State HIT Credit Reduction Amount exceeds all subsequent Additional Capital Contributions (as previously reduced pursuant to Sections 3.03 and 3.04) or if all Additional Capital Contributions have been made, the Managing Member shall immediately make a Credit Adjuster Advance equal to the amount of such excess and the Company shall thereafter make a special distribution to the Investor Member, neither to reduce nor to be limited by the amount of Net Cash Flow, equal to such amount.

(d) *Upward Adjuster:* If the State HIT Credit Amount shown on the Investor Member's tax return are greater than the amount shown as allocated to the Investor Member on the Projections for such year, the Investor Member's Sixth Installment of its Capital Contribution shall be increased by $0.7299 for every dollar of such increase in State Historic Investment Tax Credits for 2022. Any additional Capital Contribution under this Section 3.10(d) shall be limited to the sum of: (a) five percent (5%) of the Investor Member's Capital Contribution shown on Exhibit A to this Agreement including any additional Capital Contributions made under Section 3.03(f) and 3.04(c) plus (b) One Hundred Ninety Thousand Dollars ($190,000). In addition to and not in limitation of the foregoing, in the event that the amount of the Third Installment of the Investor Member's Capital Contribution has been reduced pursuant to Section 3.10(b) and the amount of State HIT Projected Credits reflected on the final Cost Certification is greater than the amount of State HIT Projected Credits based on the Accountant's estimate on which the reduction in the Third Installment of the Investor Member's Capital Contribution pursuant to Section 3.10(b) was based (the "***Accountant's State Estimate***"), the Fourth Installment of the Investor Member's Capital Contribution will be increased by an amount equal to $0.7299 for every dollar by which the State HIT Projected Credits reflected in the final Cost Certification are greater than the State HIT Projected Credits reflected in the Accountant's State Estimate.

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ARTICLE IV

Right to Mortgage; Managing Member Bound by Loan Documents

4.01 Right to Mortgage

(a) The Company shall be authorized to borrow from the Mortgagees whatever amounts may be required, subject to the provisions hereof, in connection with the acquisition, development, construction and/or rehabilitation of the Company Property, and the meeting of the expenses of operating the Project (including, without limitation, any items for which the Mortgagees may provide mortgage funds), and shall secure the same by the Mortgages. Except with the Consent of the Investor Member, such borrowing shall not at any given time exceed the amount of unpaid principal due including accrued interest, nor be at a higher interest rate, nor change the payment terms, under the initial Mortgage Notes.

(b) Except with respect to the Construction Loan, the Loans shall provide that no Member shall have any personal liability for the payment of all or any part of such Mortgage Notes, except for customary exclusions for fraud, misappropriation of funds or waste.

(c) Subject to provisions of this Agreement with respect to related party loans, a limited partner or member (such limited partner or member being referred to herein as a "***Related Mortgagee***") in any entity that is a Member at any time may make, own, acquire, guarantee or otherwise credit enhance, in whole or in part, a loan secured by a mortgage, deed of trust, trust deed, or other security instrument encumbering the Project owned by the Company (any such loan being referred to as a "***Related Mortgage Loan***"). Under no circumstances will a Related Mortgagee be considered to be acting on behalf or as an agent or the alter ego of such Member. A Related Mortgagee may take any actions that the Related Mortgagee, in its discretion, determines to be advisable in connection with a Related Mortgage Loan (including in connection with the enforcement of a Related Mortgage Loan). By acquiring an interest in the Company, each Member acknowledges that no Related Mortgagee owes the Company or any Member any fiduciary duty or other duty or obligation whatsoever by virtue of such Related Mortgagee being a limited partner or member in a Member. Neither the Company nor any Member will make any claim against a Related Mortgagee, or against the Member in which the Related Mortgagee is a partner or member, relating to a Related Mortgage Loan and alleging any breach of any fiduciary duty, duty of care, or other duty whatsoever to the Company or to any Member based in any way upon the Related Mortgagee's status as a limited partner or member of a Member.

(d) The Managing Member shall not have any authority to enter into any loan on behalf of the Company (or on the Managing Member's behalf to the extent the proceeds will be used in the Project) which has not closed as of the Admission Date without the Consent of the Investor Member. Such Consent will be provided or withheld by the Investor Member after it has been provided an opportunity to review all loan documents to confirm that the loan amount and terms are consistent with the underlying assumptions in the Projections and the terms approved by the Investor Member as of the Admission Date as reflected in the Projections.

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4.02 Managing Member Bound by Loan Documents and Project Documents

The Managing Member, on behalf of the Company, shall be bound by the terms of the Loan Documents and the Project Documents. Any incoming managing member of the Company shall as a condition of receiving any Interest agree to be bound by the Loan Documents and the Project Documents to the same extent and on the same terms as any other Managing Members.

4.03 Housing Trust Fund Corporation Provisions

(a) The Company is authorized to execute a note and mortgage in order to secure loans to be made by the Housing Trust Fund Corporation ("***HTFC***"), and to execute a regulatory agreement and other documents required by HTFC in connection with such loan.

(b) Any incoming member shall, as a condition of receiving an interest in the Company Property agree to be bound by the note, mortgage and regulatory agreement and other documents required in connection with the loan to the same extent and on the same terms as the other members, as the case may be.

(c) For so long as HTFC is the holder of a mortgage or a regulatory agreement on the Project, any amendment to this Operating Agreement without the prior written consent of HTFC, shall be a default under HTFC's regulatory agreement and mortgage and security agreement if it results in any of the following: 1) the amendment modifies the duration of this Operating Agreement; 2) the amendment results in a new member; or 3) the amendment affects HTFC's mortgage or regulatory agreement.

(d) Notwithstanding any other provisions of this Operating Agreement, upon any dissolution, no title or right to possession and control of the Project, and no right to collect the rents therefrom shall pass to any person who is not bound by the regulatory agreement in a manner satisfactory to HTFC.

(e) Notwithstanding any other provisions of this Operating Agreement, in the event that any provision of this Operating Agreement conflicts with any provision of the regulatory agreement, the provision of the regulatory agreement shall control.

(f) For so long as HTFC, its successors or assigns, is the holder of a mortgage or a regulatory agreement encumbering the Company Property, the Company shall not be voluntarily dissolved without the prior written approval of HTFC.

(g) For so long as HTFC, its successors or assigns, is the holder of a mortgage or a regulatory agreement encumbering the Company Property, the Project is and shall remain the sole asset and business purpose of the Company.

(h) Notwithstanding any other provisions of this agreement, Guarantors shall guaranty payment of all project operating deficits (including but not limited to debt service, accounts payable, required reserve payments) during the first thirty-six (36) months after the project's final (including all buildings) placed in service date (the "***DHCR Operating Deficit Guaranty Period***") up to Five Hundred Thirty-Two Thousand Nine Hundred Seventy-Four Dollars ($532,974) (the

"***DHCR Guaranty Amount***"). Such guaranty is herein referred to as the "***DHCR Operating Deficit Guaranty***." No withdrawals shall be made from the reserve accounts required by HTFC's regulatory agreement during the DHCR Operating Deficit Guaranty Period until the DHCR Operating Deficit Guaranty obligation has been fulfilled.

ARTICLE V

Rights, Powers and Obligations of the Managing Member

5.01 Authority of Managing Member

(a) Subject to the terms of this Agreement, the Managing Member shall have the right, power, and authority, acting for and on behalf of and in the name of the Company, to: (i) execute and deliver on behalf of the Company any contract, agreement, or other instrument or document required or otherwise appropriate to acquire, construct, rehabilitate, renovate, improve, lease, operate, sell, encumber, mortgage, convey, or refinance the Company Property (or any part thereof); (ii) convey the Company Property by deed, mortgage, certificate, bill of sale, agreement, or otherwise, as appropriate; and (iii) bring, compromise, settle, and defend actions at law or in equity.

(b) All decisions made for and on behalf of the Company by the Managing Member (when acting in its capacity as the Managing Member of the Company) shall be binding upon the Company. Except as expressly otherwise set forth in this Agreement, the Managing Member (acting for and on behalf of and in the name of the Company), in extension and not in limitation of the rights and powers given it by law or by the other provisions of this Agreement, shall, in its sole discretion, have the full and entire right, power and authority, in the management of the Company's day-to-day business, to do any and all acts and things necessary, proper, ordinary, customary or advisable to effectuate the purposes of the Company. In so doing, the Managing Member shall take all actions necessary or appropriate to protect the interests of the Investor Member and of the Company. In furtherance and not in limitation of the foregoing provisions of this Article V and of the other provisions of this Agreement, the Managing Member is, as is more fully set forth in Section 5.01(a), specifically authorized and empowered to execute any and all instruments and documents as shall be required by any lender in connection with any loan or loans, including but not limited to executing the Mortgages, Mortgage Notes, any contract, building loan agreement, bank resolution and signature card, release, discharge, or any other document or instrument in any way related thereto or necessary or appropriate in connection therewith, all of which must be in accordance with this Agreement.

5.02 Limitations on the Authority of the Managing Member

Notwithstanding any other provision of this Agreement, the Managing Member shall have no authority to perform any act in violation of any applicable law or regulations, the Loan Documents, or the Project Documents; to do any act required to be approved, consented to, voted on, or ratified by the Investor Member under the Act or under this Agreement unless such approval, vote, consent, or ratification has been obtained; to cause the Company to engage in any business other than as set forth in Section 1.06; or do any act that would make it impossible to carry out the business of the Company as contemplated herein. The Managing Member shall have no authority

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to engage in the following activities without the prior Consent of the Investor Member and, if required, the consent of the Mortgagees:

(a) Effect a sale of all or any portion of the Company Property (other than a sale in connection with the Project Buyout Option described in Section 14.01(b) of this Agreement or the Right of First Refusal, pursuant to Exhibit J), including the Units and any commercial and/or community space, or submit a request to the Authority to find a buyer for the Project pursuant to a qualified contract under Section 42(h)(6)(E)(ii)(II);

(b) Effect a refinancing, encumbrance, mortgage, conveyance, or other disposition of all or a substantial portion of the Company Property other than the Loans;

(c) As sublessor, sublease the Company Property as an entirety, or sublease any portion of the Company Property except in the normal course of business, which normal course includes residential leases;

(d) Except with respect to the Construction Loan, become subject to any economic risk of loss within the meaning of Treasury Regulation Section 1.752-2 with respect to the Mortgage Notes, the Mortgages, or any of the Loan Documents;

(e) Following the Completion Date, construct any new capital improvements or replace any existing capital improvements costing in excess of Twenty Thousand Dollars ($20,000) and not contemplated in the Budget;

(f) On behalf of the Company, acquire any real property in addition to the Company Property;

(g) During the Compliance Period, lease or otherwise operate any of the Credit Units in such a manner that such Credit Units would fail to be treated as a "low-income unit" under Section 42(i)(3) of the Code, or lease or operate the Project in such a manner that the Project would fail to be treated as a qualified low-income housing project under Section 42(g)(1)(B) of the Code;

(h) On behalf of the Company, incur debt not in the ordinary course of business or arrange for the receipt of any grant of funds, nor incur debt in the ordinary course of business in excess of Twenty-Five Thousand Dollars ($25,000) in the aggregate at any one time outstanding, except as specifically permitted in this Agreement;

(i) Change the nature of the Company's business;

(j) (i) Voluntarily file a petition under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar law, or (ii) consent to or acquiesce to an involuntarily filing of a petition under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar law, or (iii) consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for the Managing Member or the Company or for any substantial part of the Managing Member's or the Company's property, or (iv) make any assignment for the benefit of the Managing Member's or

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the Company's creditors, (v) take any action in furtherance of any of the foregoing; (or) take or consent to any other action which would constitute an Event of Bankruptcy;

(k) Dissolve or wind up the Company;

(l) Confess any judgment except as required by the Loan Documents or initiate any litigation on behalf of the Company, or compromise any claim or liability in excess of Fifteen Thousand Dollars ($15,000) owed by or to the Company (in each case, except for routine tenant eviction actions);

(m) Modify or amend this Agreement;

(n) Prepay the Mortgage Notes (except in connection with Loan Conversion);

(o) Admit any Person as a Member, except as otherwise provided in this Agreement;

(p) Permit any Person to borrow from the Company or commingle Company funds with the funds of any Person;

(q) Permit the Company to pay directly or indirectly the Managing Member or any Affiliate a commission or fee in connection with the reinvestment or distribution of Capital Proceeds or liquidating distributions belonging to the Company except as provided for herein;

(r) On behalf of the Company or itself, receive any rebates or give-ups or participate in any reciprocal business relationships in circumvention of this Agreement;

(s) Make application for or accept increase or increases in the principal amount of Loans or materially modify the Loans;

(t) Make any material changes to the Property Management Agreement or dismiss or replace the Management Agent;

(u) Approve the form and substance of any accountant certification of the itemized amount of construction, rehabilitation, acquisition and development costs of the Project and the eligible basis and applicable percentage of each building in the Project;

(v) Modify, in any material respect, any Loan Document or Project Document;

(w) Change the source of any Loan made to the Company by the Managing Member or an Affiliate of the Managing Member or any Managing Member Capital Contribution;

(x) Delegate its authority, power and right to manage the Company Property except as set forth in Section 5.03;

(y) Permit the Company, or any other Person on behalf of or in connection with the Company, to pay directly or indirectly the Managing Member or any Affiliate any fees except as provided for herein;

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(z) Submit the completed and executed Form 8609 to the IRS without Investor Member review and approval;

(aa) Permit (i) the conveyance by the shareholders, partners or members of the Managing Member or the Developer of any ownership interest or (ii) any change in control of the Managing Member or the Developer, except (a) a conveyance upon the death of an individual member of CB-Emmanuel Realty, LLC to his designee or beneficiaries in accordance with the operating agreement of CB-Emmanuel Realty, LLC and (b) any conveyance by the shareholders, partners or members of the Managing Member or the Developer so long as R. Christopher Bramwell and Benathan Upshaw remain majority owners and in control of CB-Emmanuel Realty, LLC and CB-Emmanuel Realty, LLC remains indirectly in control of the Managing Member;

(bb) Dismiss or replace the Accountants;

(cc) Permit the Company to enter into any swaps, caps, collars, or other interest rate hedge products;

(dd) Apply the proceeds realized from any condemnation, insured casualty or insured title defect;

(ee) Make an election to use the Average Income Test with respect to the Project; or

(ff) Do any act in contravention of this Agreement.

5.03 Overall Management of Business

(a) Subject to the terms of this Agreement, the Managing Member shall have full and exclusive power and right to manage and control the business and affairs of the Company. Any action required or permitted to be taken by the Managing Member hereunder may be taken by such of its proper officers or agents as it shall validly designate and duly authorize for such purpose.

(b) The Managing Member may delegate its authority, power, and right to manage the Company Property to the Management Agent; *provided, however,* that any such delegation shall not relieve the Managing Member of its obligations and responsibilities to ensure the proper management of the Company Property.

(c) The Partnership Representative shall maintain the books and records of the Company and prepare or cause to be prepared all tax and information returns required of the Company or considered necessary by the Managing Member (including, but not limited to, federal, state, and local income tax and information returns and any amended returns), which returns shall be reviewed in advance by the Accountants, and which returns are subject to the review of the Investor Member as provided in Section 13.03(a)(iv). The Partnership Representative shall, with the Consent of the Investor Member, be responsible for making all elections required or allowed under the Code or the Treasury Regulations including, but not limited to, elections pursuant to Sections 42, 168, 709, and 754 of the Code, and all elections required or allowed under State or local law. No election shall be made without the Consent of the Investor Member. The Partnership Representative shall cause the Company to retain (i) all records relating to the Credits of each year of the Compliance Period required by Treasury Regulations 1.42-5 for a period of at least six (6)

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years after the due date (with extensions) for filing the Company Tax Returns for each year, (ii) all records relating to the Historic Investment Tax Credit and the State Historic Investment Tax Credits of each year of the Credit Period required by Treasury Regulations and the regulations relating to the New York Tax Law Section 210.40, respectively, for a period of at least six (6) years after the due date (with extensions) for filing the Company Tax Returns for each year; and shall further permit any Investor Member which transfers its Interest in the Company to a Substitute Investor Member to have access to such records.

5.04 Duty of the Managing Member to Maintain the Low-Income Housing Status of the Company Property

(a) During the Extended Use Period, the Managing Member shall hold for occupancy one hundred percent (100%) of the Credit Units in the Project in such a manner as to qualify each such Unit as a "low-income unit" under Section 42(i)(3) of the Code and the Project as a "qualified low-income housing project" under Section 42(g)(1)(B) of the Code, as such sections of the Code are interpreted from time to time in Treasury Regulations and rulings promulgated thereunder. The Managing Member shall not, by act or omission, permit any act to be taken that would cause the termination or discontinuance of the qualification of each Credit Unit as a "low-income unit" under Section 42(i)(3) of the Code or the qualification of the Project as a "qualified low-income housing project" under Section 42(g)(1)(B) of the Code.

(b) During the Extended Use Period, the Managing Member shall prepare and submit to the Secretary of the Treasury (or any other governmental authority designated for such purpose), on a timely basis, any and all annual reports, information returns, and other certifications and information and shall take any and all other action required (i) to insure that the Company (and its Members) will continue to qualify for the Credit for each of the Credit Units and the Company Property, and (ii) to avoid recapture or reduction of the Credit or the imposition of penalties or interest on the Company or any of the Members for failure to comply with Section 42 of the Code. The Managing Member shall concurrently provide the Investor Member with copies of all such communication.

(c) The Managing Member shall use its best efforts to develop strategies to maintain the Credit Units as low-income housing after the end of the Compliance Period for the Extended Use Period under Section 42 of the Code and thereafter.

(d) In addition to the requirements of Section 5.04(a), the Managing Member shall at all times hold at least twenty-one (21) Units in the Project available for occupancy for families having thirty percent (30%) or less of area median income, twenty-nine (29) Units in the Project available for occupancy for families having fifty percent (50%) or less of area median income, and seventeen (17) Units in the Project available for occupancy for families having sixty percent (60%) or less of area median income as agreed to in the Project's Credit application, the Loan Documents, the Project Documents and other requirements related to the Credit as applicable to the Project and the Company.

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5.05 Outside Activities

The Managing Member shall devote to the management of the business of the Company so much of its time as it deems reasonably necessary to the efficient operation of the Company Property, the Project, and the Units and in order to comply with this Agreement. The Managing Member is and shall remain a single purpose entity and shall not engage in and possess any interest in other business ventures (including, without limitation, limited partnerships and limited liability companies) of any kind, nature, or description whatsoever, independently or with others, whether existing at the date hereof or hereafter coming into existence, including, without limitation, acting as general partner, managing member or limited partner of other partnerships or limited liability companies that own, directly or through interests in other partnerships, housing projects similar to, or in competition with, the Project.

5.06 Liability to Company and Investor Member

The Managing Member shall not be liable, responsible, or accountable in damages or otherwise to the Investor Member or to the Company for any acts performed in good faith and in a manner reasonably believed by the Managing Member to be within the scope of authority of the Managing Member pursuant to this Agreement and in the best interest of the Company; *provided, however,* that the Managing Member shall be liable for its actions and/or omissions to the extent they are attributable to gross negligence, fraud, willful misconduct, malfeasance, material breach of any representation, warranty, covenant or agreement under this Agreement, breach of its fiduciary duty, or actions performed outside the scope of its authority.

5.07 Indemnification of Managing Member

(a) The Company shall indemnify, defend, and hold harmless the Managing Member from and against any loss, liability, damage, cost, or expense (including reasonable attorneys' fees) arising out of or alleged to arise out of any demands, claims, suits, actions, or proceedings against the Managing Member, by reason of any act or omission performed by it (including its employees and agents) while acting in good faith on behalf of the Company and in a manner reasonably believed by the Managing Member to be within the scope of the authority of the Managing Member pursuant to this Agreement and in the best interest of the Company, and any amount expended in any settlement of any such claim of liability, loss, or damage; *provided, however*, that: (i) the Managing Member must have in good faith believed that such action was in the best interests of the Company, and such course of action or inaction must not have constituted gross negligence, fraud, willful misconduct, malfeasance, material breach of any representation, warranty, covenant or agreement set forth in this Agreement, or breach of its fiduciary duty; and (ii) any such indemnification shall be recoverable from the assets of the Company, and no Member shall be personally liable therefor. This indemnity shall be operative only in the context of third-party suits, and not in connection with demands, claims, suits, actions or proceedings initiated by any Member or any Affiliate thereof against another Member.

(b) The Company shall not pay for any insurance covering liability of the Managing Member for actions or omissions for which indemnification is not permitted hereunder.

(c) Notwithstanding anything contained in this Section 5.07, the Managing Member shall not be indemnified or saved harmless from any liability, loss, damage, cost, or expense incurred by it in connection with: (i) any civil or criminal fines or penalties imposed by law; (ii) any claim or settlement involving the allegation that federal or state securities laws were violated by the Managing Member or the Company; or (iii) any claim involving gross negligence, fraud, willful misconduct, malfeasance, material breach of any representation, warranty, covenant or agreement set forth in this Agreement, or breach of a fiduciary duty, unless (A) the Managing Member is successful in defending such action on the merits to a final unappealable determination, (B) such claims have been dismissed in favor of the Managing Member with prejudice on the merits by a court of competent jurisdiction in a final unappealable verdict, judgment, or order, or (C) a court of competent jurisdiction approves a final settlement and determines that the Managing Member is entitled to costs.

(d) The provision of advances from the Company to the Managing Member for reasonable legal expenses and other costs as a result of a legal action pursuant to Section 5.07(e) is permissible only if the following three conditions are satisfied: (i) the legal action relates to the performance of the duties or services by the Managing Member on behalf of the Company; (ii) the legal action is initiated by a third party who is not a Member or Affiliate thereof; and (iii) the Managing Member covenants in advance to repay the advance of funds to the Company in accordance with Section 5.07(e) in the event it is determined that the Managing Member is not entitled to indemnification hereunder.

(e) The Managing Member, when entitled to indemnification pursuant to this Section 5.07, shall be entitled to receive, upon application therefor, and subject to the Investor Member's approval, not to be unreasonably withheld, reasonable advances to cover the costs of defending any proceedings against it; *provided, however*, that the Managing Member agrees that if it receives such advances, it shall repay such advances to the Company, with interest thereon, at an annual rate equal to the Prime Rate plus two percent (2%), computed on a daily basis, from the date made until repaid, if the Managing Member is determined not to be entitled to indemnification under this Section 5.07. All rights of the Managing Member to indemnification shall (to the full extent permitted by law) survive the dissolution of the Company and the dissolution, insolvency, bankruptcy, or withdrawal of the Managing Member.

(f) The indemnification rights contained in this Section 5.07 shall be limited to out-of-pocket loss or expense. Nothing contained herein shall constitute a waiver by the Investor Member or its Affiliates of any right that it may have against any party under federal, state, or common law principles.

The indemnification authorized by this Section 5.07 shall include, but not be limited to, the costs and expenses (including reasonable attorneys' fees) of the removal of any liens affecting any property of the indemnitee as a result of such legal action.

5.08 Indemnification of Company and Investor Member

(a) The Managing Member shall defend, indemnify, and save harmless (i) the Company and each Member and their partners and/or members from any loss, liability, damage, cost, or expense (including reasonable attorneys' fees) incurred by reason of any demands, claims,

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suits, actions, or proceeding arising (1) out of the Managing Member's gross negligence, fraud, willful misconduct, malfeasance, material breach of any representation, warranty, covenant, or agreement set forth in this Agreement, breach of fiduciary duty, or actions performed outside the scope of the authority of the Managing Member pursuant to this Agreement, or (2) as a result of the Managing Member's failure to maintain insurance as required by this Agreement, and (ii) the Investor Member from any liability incurred by it for Company obligations (including, without limitation, the Mortgage Notes) in excess of its Capital Contribution, except to the extent that a Final Determination has been made that the Investor Member has taken actions or exercised rights with respect to the operation of the Company in excess of those actions or rights granted or allowed under this Agreement or the Act. The foregoing indemnification shall be a recourse obligation of the Managing Member, and shall survive the dissolution of the Company and/or the insolvency, bankruptcy, removal or withdrawal of the Managing Member. The indemnification authorized by this Section 5.08 shall include, but not be limited to, the costs and expenses (including reasonable attorneys' fees) of the removal of any liens affecting any property of the indemnitee as a result of such legal action.

(b) *Managing Member's Indemnification of Company and Investor Member for Income Tax Liability*. The Managing Member shall indemnify the Company and the Investor Member for any reduction in tax benefits suffered (on an After-Tax Basis assuming a federal income tax rate of the maximum federal corporate income tax rate at the time of the determination by the Company or the Investor Member) in any taxable year attributable to any (i) taxable grant not approved by the Investor Member, and/or (ii) deemed sale of the State Historic Investment Tax Credit. The foregoing indemnification shall be a recourse obligation of the Managing Member, and shall survive the dissolution of the Company and/or the insolvency, bankruptcy, removal, or withdrawal of the Managing Member. The indemnification authorized by this Section 5.08(b) shall include, but not be limited to, the costs and expenses (including reasonable attorneys' fees) of the removal of any liens affecting any property of the indemnitee as a result of such legal action.

5.09 Environmental Indemnification

The Managing Member shall indemnify and hold harmless the Investor Member and any partner of the Investor Member (the "***Indemnified Parties***") from any and against all claims, actions, causes of action, damages, costs, liability and expense (including, without limitation, attorneys' fees, court costs and remedial response costs) incurred or suffered by, or asserted by any Person, entity or governmental agency against the Indemnified Parties related to breach of the Managing Member's representations, warranties or covenants, or an alleged violation of the Environmental Laws, or the presence of Environmental Hazards in, on, under or emanating from the Company Property. Notwithstanding the foregoing, the Managing Member shall not have an indemnification liability if the violation of the Environmental Laws or the presence of the Environmental Hazards is due to conditions arising after the effective date of the Managing Member's removal, if any, or withdrawal, sale, transfer or assignment of its Interest pursuant to a right to do so under this Agreement. The foregoing indemnification shall be a recourse obligation of the Managing Member, and shall survive the dissolution of the Company and/or the insolvency, bankruptcy, or withdrawal of the Managing Member. The indemnification authorized by this Section 5.09 shall include, but not be limited to, the costs and expenses (including reasonable attorneys' fees) of the removal of any liens affecting any property of the indemnitee as a result of such legal action.

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5.10 Representations and Warranties of the Managing Member

The Managing Member hereby represents and warrants to the Investor Member that the following are true and correct as of the date hereof and will be true and correct for the Term, unless specifically otherwise provided.

(a) The Company is a duly organized limited liability company validly existing and in good standing under the laws of the State of New York and has undertaken all acts, including without limitation, the filing of all certificates and the payment of all fees, taxes, and other sums necessary for the Company to operate as a limited liability company in the State of New York and to enable the Company to engage in its business.

(b) No event has occurred that has caused, and the Managing Member has not acted in any manner that will cause (i) the Company to be treated for federal income tax purposes as an association taxable as a corporation, (ii) the Company to fail to qualify as a limited liability company under the Act, or (iii) the Investor Member to be liable for Company obligations.

(c) All consents or approvals of any governmental authority, or any other Person, necessary in connection with the transactions contemplated by this Agreement or necessary to admit the Investor Member to the Company, have been obtained by the Managing Member and the Company has taken all action under the laws of the State of New York and any other applicable jurisdiction and has complied with all filing requirements necessary under the Act for the preservation of the limited liability of the Investor Member.

(d) The Managing Member has delivered to the Investor Member true copies of all documents material to the Investor Member's investment in the Company and true copies of all amendments to such documents and all other material information relevant to the Project or to the admission of the Investor Member to the Company. To the best of the Managing Member's knowledge, all such information provided to the Investor Member is accurate and complete in all material respects and the Managing Member has not failed to provide the Investor Member with any information necessary to make the information provided by the Managing Member complete and accurate in all material respects.

(e) The Company is under no obligation, and neither the Managing Member nor any of its Affiliates have taken any action that would cause the Company to be obligated, under any federal or State law, rule, or regulation to register the Interests or to comply with any exemption available for the sale of interests without registration.

(f) The Managing Member (i) is a limited liability company validly existing and in good standing under the laws of the State of New York and (ii) has full power to enter into and consummate this Agreement and all instruments pertaining hereto and to perform all acts related thereto. The consummation of all transactions contemplated herein and in the Loan Documents and the Project Documents to be performed by the Managing Member or its Affiliates does not and will not result in any material breach or violation of, or default under, any governing instrument of the Managing Member or its Affiliates or any agreements by which the Managing Member or its Affiliates or any of its property is bound, or under any applicable law, administrative regulation, or court decree.

(g) No Event of Bankruptcy has occurred with respect to the Managing Member or any of its Affiliates or the Guarantor.

(h) No litigation, action, investigation, event, or proceeding is pending or, to the best of its knowledge is threatened, that, if adversely resolved, would: (i) have a material adverse effect on the Company or the Company Property (or, to its knowledge, any adjacent or other property that would have a material adverse effect on the Company Property or the Company's investment in the Company Property); (ii) have a material adverse effect on the ability of the Managing Member or any of its Affiliates to perform their respective obligations under this Agreement; (iii) have a material adverse effect on the financial condition of the Managing Member; or (iv) constitute or result, if true, in a material breach of any representation, warranty, covenant, or agreement set forth in this Agreement.

(i) The Managing Member has provided the Investor Member with true and correct copies of any documents relevant to the Loans and the Loan commitments and all documents evidencing or securing the Loans and, if requested by the Investor Member, a complete set of the Plans and Specifications of the Project.

(j) All Loan Documents and Project Documents comply and are in accord with applicable laws, codes and regulations and the construction of the Company Property will be completed in accordance with the Loan Documents, Project Documents and all applicable laws, codes and regulations.

(k) No default (or event that, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under any of the Loan Documents, the Project Documents, or any other contract, agreement, or instrument to which the Company or the Managing Member is subject, and the Loan Documents and the Project Documents are in full force and effect and the Company is entitled to the benefit of the Loan Documents and the Project Documents.

(l) Except with respect to the Construction Loan, none of the Members or the Company has or will have, pursuant to the terms of the Loans, any personal liability as maker, guarantor, partner or otherwise with respect to the payment of principal or interest on the Loans, and in the event of default thereon, the sole recourse with respect to the payment of principal or interest on the Loans of any Mortgagee or other lender shall be to the Project and pledged collateral.

(m) Neither the Managing Member nor any of its Affiliates nor the Company has entered into any agreement or contract for the payment or offset of any construction loan or loan discounts, additional interest, yield maintenance or other charges or financing fees or any agreement to incur any financial responsibility with respect to the Project or providing for the guaranty of payment of any such charges or fees relating to the Construction Loan or the Loans, other than those disclosed in this Agreement; and except for the Construction Loan, in no event have they or the Company entered into any agreement or guaranty of any kind whatsoever (such as an escrow arrangement or letter of credit arrangement) that would, following Loan Conversion, subject the Company or any of its Members or Affiliates to personal liability or economic risk of loss as to the Loans nor has the Managing Member entered into any loan which shall be personally

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enforceable by any lender of the Loans following Loan Conversion or which may in any way affect allocation of the Projected Credit, the Historic Investment Tax Credit, and/or the State Historic Investment Tax Credits to the Investor Member.

(n) The Managing Member is not presently under any commitment to any real estate broker, rental agent, finder, syndicator or other intermediary with respect to the Project or any portion thereof except for the arrangements specifically described in this Agreement and the arrangements previously disclosed in writing to the Investor Member.

(o) There are no outstanding loans or advances from the Managing Member or its Affiliates to the Company, and, except as provided in Section 5.16, the Company has no unsatisfied obligation to make any payments of any kind to the Managing Member or its Affiliates.

(p) The Managing Member reasonably believes that, during the entire Term of the Company, the fair market value of the Project or the Company Property, including the value of Credits and below-market financing, will exceed the amount of nonrecourse indebtedness and any accrued interest thereon secured by the Project.

(q) There are no restrictions on the sale or refinancing of the Project, other than the restrictions set forth in the Loan Documents, the Project Documents, or under Section 42 of the Code.

(r) The HDFC holds bare leasehold title to the Company Property and the Company holds the beneficial leasehold ownership interest in the Company Property, the portion of the building that comprises the Project, and each of the Units with good and marketable leasehold title, free and clear of any liens, charges, or encumbrances other than the Mortgages, matters set forth in the Title Policy, and mechanics' or other liens that have been bonded against in such a manner as to preclude the holder of such lien from having any recourse to the Company Property, the Project, any of the Units, or the Company for payment of any debt secured thereby and the Managing Member has not received notice of any such liens, charges, or encumbrances.

(s) The Managing Member has not permitted the Company to accept any federal or non-federal grant of funds except as approved by the Investor Member.

(t) All building, zoning, and other applicable certificates, permits, and licenses necessary to permit the construction and/or rehabilitation, use, occupancy, and operation of the Company Property and the Project have been obtained (other than such as will be issued only after the completion of the Project or any specified portion thereof), all improvements constructed or to be constructed on the Company Property have been or will be constructed and equipped in full compliance with the requirements of all governmental authorities having jurisdiction over the Company Property and neither the Company nor the Managing Member has received any notice of or has any knowledge of any violation with respect to the Company Property of any law, rule, regulation, order, or decree of any governmental authority having jurisdiction that would have a material adverse effect on the Company Property or the Project or the Company's investment in the Company Property (including the Company's ability to transfer the Company Property in accordance with terms of this Agreement) or the construction and/or rehabilitation, use, occupancy, or operation thereof.

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(u) All appropriate roadways and public utilities necessary to the operation of the Company Property, including, but not limited to, sanitary and storm sewers, water, gas (if applicable), and electricity, are available to the Company Property and each of the Units and are or will be connected to each Unit in the Project on or before the date that a certificate of occupancy is obtained for each Unit.

(v) No amendments, modifications, or other changes or additions have been made to the Environmental Reports. The Managing Member warrants and represents that to the best of the Managing Member's knowledge, after due inquiry, except as disclosed in the Environmental Reports, there presently are not in, on or under the Company Property nor will there be in, on or under the Company Property upon completion of the construction any Environmental Hazard. If any Environmental Hazard was found to exist or be present, it has been (or prior to the Completion Date will be) either removed from the Company Property and disposed of or encapsulated and/or otherwise corrected, contained and made safe and inaccessible, all in strict accordance with federal, state, and local statutes, laws, regulations, rules, and ordinances, any recommendations set forth in the Environmental Reports, and any requirements in the Loan Documents.

The Managing Member further represents to the best of the Managing Member's knowledge, after due inquiry, that the Company Property is in compliance with all applicable Environmental Laws and the Managing Member has not received notice of any violations of the Environmental Laws.

(w) In the event the Federal Drug Free Workplace Act of 1988 and the regulations promulgated thereunder, including without limitation, 54 Code of Federal Regulations 4956 (1989), as such Act and regulations have been amended, are applicable, the Managing Member has complied with and has caused the Company to comply with such Act.

(x) No federal appropriated funds have been paid or will be paid, by or on behalf of the Managing Member or the Company, to any Person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and/or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

(y) No funds have been paid for influencing or attempting to influence an officer or employee of a member of Congress in connection with a federal contract, grant, loan and/or cooperative agreement benefiting the Company and/or the Managing Member. The Company and the Managing Member have complied with all restrictions, certifications and disclosure requirements contained in the Byrd amendment to the fiscal 1990 appropriations measures for the United States Department of the Interior (P.L. 101-121) and with any guidelines and rules issued by any federal entity in connection therewith ("***Byrd Amendment***"), if applicable.

(z) Amounts paid to the Managing Member and/or its Affiliates for services in accordance with the applicable Fee Agreements are reasonable in relation to the value of services provided and relate solely to the services actually rendered to the Company pursuant to the applicable Fee Agreements.

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(aa) The Company has obtained a 2021 reservation of Credit from the Authority in the amount (the "***Annual Credit Allocation***") shown on Exhibit A-2, such reservation is in full force and effect, all information contained in any application for reservation and/or carryover allocation of the Credit is complete and correct in all material respects, and the Project will have eligible basis with respect to the seventy percent (70%) present value credit related to rehabilitation/new construction expenditures (the "***Rehab/NC Basis Amount***") in the amount shown on Exhibit A-2. In addition, the Project's basis includes sufficient qualified rehabilitation expenditures (as defined in Section 47(c)(2) of the Code) with respect to the Historic Investment Tax Credit to produce a Historic Investment Tax Credit for the Company of at least the HIT Credit Amount shown on Exhibit A-2, and with respect to the State Historic Investment Tax Credit to produce a State Historic Investment Tax Credit for the Company of at least the State HIT Credit Amount shown on Exhibit A-2.

(bb) The Company has complied with the requirements of Section 42(h)(1) of the Code, including, without limitation, the requirement that the Company's basis in the Project as of the Ten Percent Test Date will exceed ten percent (10%) of the reasonably anticipated basis of the Project as of the end of 2023.

(cc) The Managing Member represents and warrants that it and its Affiliates are (i) in compliance with all applicable anti-money laundering laws, including, without limitation, the USA Patriot Act, and the laws administered by the United States Treasury Department's Office of Foreign Assets Control ("***OFAC***"), including, without limitation, Executive Order 13224, (ii) not on the Specially Designated Nationals and Blocked Persons List maintained by OFAC, and (iii) not otherwise identified by a government entity or legal authority as a person with whom a U.S. Person is prohibited from transacting business. "***U.S. Person***" shall mean any United States citizen, any permanent resident alien, any entity organized under the laws of the United States (including foreign branches), or any person in the United States.

(dd) The Company has not made any elections under the Code without the Consent of the Investor Member that would affect the amount, timing, availability, or allocation of Credits.

(ee) At all times during the terms of this Agreement, the Company shall comply with the provisions of the Fair Housing Act and the Americans with Disabilities Act.

(ff) Neither the Managing Member, nor the Developer, nor any Affiliate of the Managing Member or the Developer, has received any fee or any economic benefit from or related to the Project that has not been fully and clearly disclosed to the relevant Authority.

(gg) The Managing Member has not entered into or formed a joint venture with and is not acting as an agent of any Person with respect to ownership and operation of the Project or the Company and it will maintain its status as a separate and distinct entity from its owners and will observe all limited liability company formalities.

(hh) No building in the Project is federally subsidized as defined in Section 42(i)(2) of the Code.

(ii) The portion of the Company Property consisting of the building and structural components of the building qualifies as a Certified Historic Structure, any rehabilitation of such

portion constitutes an Approved Historic Rehabilitation, and as of the date commencing no later than the due date of the Fourth Installment of the Investor Member's Capital Contribution, Part 3 approvals for the Historic Investment Tax Credit have been received from the National Park Service with respect to such portion.

(jj) The rehabilitation of the portion of the Company Property consisting of the building and structural components thereof qualify for the State Historic Investment Tax Credit, and as of the due date of the Fourth Installment of the Investor Member's Capital Contribution, the Company has received the State Historic Investment Tax Credit Certificate from the New York State Office of Parks, Recreation and Historic Preservation with respect to such portion.

(kk) Delta is a corporation which is tax-exempt under Section 501(c)(3) of the Code which is not controlled by or affiliated with a for profit entity and one of its purposes includes the fostering of low-income housing.

(ll) The Managing Member shall ensure that all requirements are met which are necessary to obtain or achieve compliance with the Minimum Set-Aside Test, the Rent Restriction Test, and any other requirements necessary for the Project to initially qualify, and to continue to qualify, for Credits, including all applicable requirements set forth in the Extended Use Agreement.

5.11 Covenants of the Managing Member

The Managing Member covenants to the Investor Member that for the Term:

(a) The Managing Member shall cause the Company to do all things necessary to maintain its status as a limited liability company in good standing and had, has, and shall continue to have full power and authority to acquire the Company Property and to develop, construct, operate, and maintain the Project in accordance with the terms of this Agreement and to enable the Company to engage in its business.

(b) The Managing Member shall not act in any manner that will cause (i) the Company to be treated for federal income tax purposes as an association taxable as a corporation, (ii) the Company to fail to qualify as a limited liability company under the Act, or (iii) the Investor Member to be liable for Company obligations.

(c) The Company shall continue to take all action under the laws of the State of New York and any other applicable jurisdiction that is necessary to protect the limited liability of the Investor Member.

(d) The Managing Member shall, during and after the period in which it is a Member, provide the Company with such information and sign such documents as are necessary for the Company to make timely, accurate and complete submissions of federal and state income tax returns.

(e) The Managing Member shall furnish to counsel for the Investor Member promptly as and when requested in connection with the rendering of any legal opinion concerning federal

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income tax relating to the Investor Member's investment in the Company, all documents requested by counsel for the Investor Member.

(f) The Managing Member shall promptly inform the Investor Member of any litigation, action, investigation, event, or proceeding that is pending or, to the best of its knowledge, is threatened which, if adversely resolved, could (i) have a material adverse effect on the Company or the Company Property; (ii) have a material adverse effect on the ability of the Managing Member or any of its Affiliates to perform their respective obligations under this Agreement; (iii) have a material adverse effect on any adjacent property, which would have a material adverse effect on the Company Property or the Company's investment in the Company Property; (iv) have a material adverse effect on the financial condition of the Managing Member or any Guarantor; or (v) constitute or result, if true, in a material breach of any representation, warranty, covenant, or agreement set forth in this Agreement.

(g) The Managing Member shall promptly inform the Company and the Investor Member upon receiving any notice of or having any knowledge of any violation with respect to the Company Property of any law, rule, regulation, order, or decree of any governmental authority having jurisdiction, which would have a material adverse effect on the Company Property (including the Company's ability to transfer the Company Property in accordance with the terms of this Agreement) or the Project or the construction, rehabilitation, use, occupancy, or operation thereof.

(h) The Managing Member shall furnish to the Investor Member, within ten (10) business days of receipt thereof, a copy of any notice of default under the Mortgage Notes, the Mortgages, any of the Project Documents, or any of the Loan Documents given to the Company or the Managing Member.

(i) The Managing Member shall include the Investor Member as a recipient of Notices under any (i) loan document; (ii) construction contract; or (iii) any other agreement pursuant to which a third party may obtain a lien against the Project.

(j) Except with respect to the Construction Loan, the Managing Member agrees that neither it nor any of its Affiliates will at any time become subject to any economic risk of loss within the meaning of Treasury Regulation Section 1.752-2 with respect to any Company obligation. The Managing Member agrees that it will not cause the Investor Member to become, and it will take all steps necessary to prevent the Investor Member at any time from becoming, personally liable for payment or performance under the Mortgage Notes or the Mortgages. Except with respect to the Construction Loan, the sole recourse of the Mortgagees under the Mortgage Notes with respect to the principal thereof, interest thereon or any other obligation thereunder, shall be to the assets of the Company and the Mortgage Notes shall contain similar nonrecourse provisions.

(k) Neither the Managing Member nor any of its Affiliates nor the Company shall enter into any agreement or contract for the payment or offset of any construction loan or loan discounts, additional interest, yield maintenance or other charges or financing fees or any agreement to incur any financial responsibility with respect to the Project or providing for the guaranty of payment of any such charges or fees relating to the Construction Loan or the Loans, other than those approved

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by the Investor Member; except with respect to the Construction Loan, in no event shall the Managing Member, its Affiliates, or the Company enter into any agreement or guaranty of any kind whatsoever (such as an escrow arrangement or letter of credit arrangement) that would subject the Company or any of its Members or Affiliates to personal liability or economic risk of loss as to the Loans nor shall the Managing Member make any loan that shall be personally enforceable by any lender of the Loans or that may in any way affect allocation of the Projected Credit, the Historic Investment Tax Credit and/or the State Historic Investment Tax Credits to the Investor Member.

(l) Except as specified herein, no Member or Affiliate of any Member shall make a loan to the Company. Any such Member or Affiliate is referred to as a "***Lender***." For the purposes of this paragraph, "***Affiliate***" includes any person having an equity interest in any Member that is a pass-through entity for federal income tax purposes. A Member or an Affiliate may be a Lender if one of the following conditions is satisfied:

1. *Less than a Ten Percent (10%) Member.*

(a) The Lender's or Affiliate's percentage Interest in each item of income, gain, loss, deduction and credit of the Company (directly or indirectly through a Member of the Company) is less than ten percent (10%) for every year that the Lender or Affiliate is a Member;

(b) The Investor Member is informed of such relationship; and

(c) The loan made by such Member or Affiliate will not (based on an analysis by accountants employed by the Investor Member, or based on an opinion of counsel) affect the basis of any Member in the Company, the basis of any partner in the Investor Member, nor the allocation of any tax items among the Members or among the partners of a Member, under Section 752 or Section 704 of the Code, nor result in recapture of any tax credits previously allocated to the Members, to such an extent that the amount and timing of tax credits and tax losses allowable to the Investor Member and the partners thereof is less favorable than that assumed in the Projections; or

2. *Ten Percent (10%) or More Member.* If a Lender's or Affiliate's percentage Interest in the Company (directly or indirectly through a Member of the Company), determined as described in paragraph 1(a), above, is ten percent (10%) or more, then the Member or Affiliate may make the loan if the Investor Member Consents. As part of any request for such Consent, the Managing Member shall furnish to the Investor Member, if the Investor Member so requests, an analysis from the Accountants, or an opinion of counsel to the Company (unless the Investor Member elects to obtain an analysis from its accountant or an opinion of its counsel), to the effect that such loan will not affect the basis or allocations of tax items or recapture of tax credits of the Company, or of or among the Members, or the partners thereof, as described in paragraph 1(c) above.

(m) The Managing Member will not cause or allow restrictions on the sale or refinancing of the Project, other than the restrictions set forth in the Loan Documents, the Project Documents and under Section 42 of the Code.

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(n) The Managing Member will cause all of (i) the Company Property, (ii) the fixtures, maintenance supplies, tools, equipment and like property owned or to be owned by the Company or to be appurtenant to, or to be used in the operation of the Project, and (iii) the rents, revenues and profits earned from the operation of the Project, to be free and clear of all security interests and encumbrances except for the Mortgages described herein.

(o) The Managing Member will cause the Company to operate in compliance with all applicable laws, rules and regulations.

(p) The Managing Member will cause the Company to keep all public utilities necessary to the operation of the Company Property, including, but not limited to, sanitary and storm sewers, water, gas (if applicable), and electricity, operating in working condition, to the extent required by law and pursuant to the residential lease agreement of any of the Units.

(q) The Managing Member will cause the Company Property, including each of the Units, to be operated in compliance with all applicable laws, rules and regulations including but not limited to zoning regulations, ordinances, and subdivision laws, rules, and regulations.

(r) The Managing Member will cause the Company and Management Agent to maintain insurance against risks that are of a character usually insured by Persons engaged in a similar business and in form and amount and covering such risks as is usually carried by such Persons including, but not limited to, insurance of the type described in the Insurance Requirements attached as Exhibit L; *provided, however,* that: (i) in addition to such requirements, the Company shall at all times comply with the insurance requirements imposed by the Mortgagees; (ii) all such insurance policies are and shall be in full force and effect during the Term; and (iii) the Investor Member shall be named as a certificate holder and an additional insured on each such policy and shall have the right to receive thirty (30) days' notice prior to any termination or reduction of coverage by the insurer.

(s) The Managing Member shall take all actions necessary to ensure that the Company Property contains no, and is not affected by the presence of, any Environmental Hazard, and shall take all necessary actions to ensure that the Company Property is not in violation of any federal, state, or local statute, law, regulation, rule, or ordinance, including any Environmental Law. The Managing Member shall promptly deliver to the Investor Member any notice received from any source whatsoever of the existence or potential existence of any Environmental Hazard on the Company Property or of a violation of any federal, state, or local statute, law, regulation, rule or ordinance, including any Environmental Law with respect to the Company Property. If any Environmental Hazard is found to exist or be present, the Managing Member shall commence promptly the taking of action to assure it will be either removed from the Company Property and disposed of or encapsulated and/or otherwise corrected, contained and made safe and inaccessible, all in strict accordance with federal, state and local statutes, laws, regulations, rules and ordinances, any recommendations set forth in the Environmental Reports, and any requirements in the Loan Documents. If, at any time during the term of the Company the Investor Member determines that the foregoing representations or covenants in this Agreement relating to Environmental Hazards and Environmental Laws may not have been true when made, or may have become untrue, the Company shall promptly obtain an environmental audit of the Company Property. The scope of

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such audit and the company performing it shall be determined by the Managing Member with the Consent of the Investor Member.

Prior to occupancy by Qualifying Tenants, the Managing Member shall satisfy the radon testing required by the procedures outlined in Exhibit A-9 attached to this Agreement.

(t) In the event the Federal Drug Free Workplace Act of 1988 and the regulations promulgated thereunder, including without limitation, 54 Code of Federal Regulations 4956 (1989), as such Act and regulations may be amended, are applicable, the Managing Member shall comply with and will cause the Company and the Management Agent to comply with such Act and regulations.

(u) The Managing Member will comply and will cause the Company to comply with the restrictions, certifications and disclosure requirements contained in the Byrd Amendment, if such Act is applicable.

(v) The Managing Member will secure from the General Contractor a construction completion guarantee, a letter of credit, a one hundred percent (100%) payment and performance bond, or other assurances acceptable to the Investor Member.

(w) The Managing Member shall investigate and report to the Investor Member any proposal or offer of any Person, including the Managing Member, to acquire the Company Property or the Interest of the Investor Member.

(x) The Managing Member will cause the Company to comply in all material respects with all of the terms and conditions of the residential lease agreement for each of the Units.

(y) The Managing Member shall not employ any Person as an employee of the Company.

(z) The Managing Member will obtain a valid carryover allocation of Credit by December 31, 2021 and will comply with the requirements of Section 42(h)(1) of the Code, including, without limitation, the requirement that the basis of the Project as of the Ten Percent Test Date will exceed ten percent (10%) of the reasonably anticipated basis of the Project as of December 31, 2023.

(aa) The Managing Member will use commercially reasonable efforts to cause the Project to be constructed and/or rehabilitated, and thereafter operated, as low-income housing as required by the Code in order to qualify for and maintain the Credit and other tax benefits anticipated in connection therewith.

(bb) The Managing Member shall at all times during the Compliance Period and Extended Use Period rent the Credit Units to Qualifying Tenants, charge such tenants rental rates no greater than permitted under Section 42 of the Code, and in all other respects comply with the provisions of Section 42 of the Code and Treasury Regulations thereunder and any state or local law necessary to qualify for the Credit with respect to those Credit Units.

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(cc) The Managing Member will (i) execute on behalf of the Company all documents necessary to elect, pursuant to Sections 734, 743, and 754 of the Code, to adjust the basis of the Company's property, if, in the sole, but reasonable, opinion of the accountants for the Investor Member, such election would be advantageous to the Investor Member; (ii) provide to the accountants for the Investor Member for review and approval before filing each IRS Form 8609, Low Income Housing Tax Credit Allocation Certification, for the Project; and (iii) make such elections on the IRS Form 8609, Low Income Housing Tax Credit Allocation Certification, which in the sole, but reasonable, opinion of the accountants for the Investor Member, are advantageous to the Investor Member. In addition, the Managing Member shall obtain the Consent of the Investor Member to make any election under the Code that would affect the amount, timing, availability, or allocation of Credits.

(dd) The Managing Member will not after the Admission Date permit the Company to accept any federal or non-federal grant of funds without the Consent of the Investor Member.

(ee) No separate fee will be charged to the tenants of the Project for the use of any of the common area facilities (other than the coin-operated laundry facilities that may be leased by the Company and used on the premises).

(ff) Continual or frequent nursing, medical or psychiatric services will not be available to tenants in the Project.

(gg) The Project will not be operated as a hospital, nursing home, sanitarium, lifecare facility or intermediate care facility for the physically or mentally handicapped.

(hh) The Managing Member will obtain flood insurance if the Company Property is at any time determined to be in a Special Flood Hazard Area.

(ii) The Managing Member will include in all leases of Units to tenants an obligation of the tenant to immediately notify the Management Agent of any suspected water leaks, moisture problems, or mold in the dwelling units or common areas.

(jj) The Managing Member shall elect to begin the Credit Period in 2023 unless otherwise agreed to by the Investor Member.

(kk) The Managing Member will take all actions necessary or appropriate to prevent any portion of the Company Property from being treated as tax-exempt use property as defined in Section 168(h) of the Code, and in furtherance thereof, Angela's House DD LLC shall make an election in accordance with Section 168(h)(6) of the Code and will elect to be treated as a corporation for federal income tax purposes.

(ll) The Managing Member shall cause the Company to depreciate the "residential rental property" (as defined in Code Section 168(e)(2)) contained within the Company Property over a thirty (30) year term and the Managing Member shall cause the Company to make an election to be treated as an "electing real property trade or business" under Section 163(j)(7)(B) of the Code unless directed otherwise by the Investor Member.

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(mm) The Managing Member shall take all actions necessary in order to obtain the final Part 3 certifications of completed work by the National Park Service relevant to work on historic structures, and, if any, the equivalent documentation of the State Historic Investment Tax Credits from the New York State Office of Parks, Recreation and Historic Preservation.

(nn) The Managing Member and the Company shall fully and timely submit to any State authority and/or the Investor Member any documentation, forms, photographs or other materials required by the New York State Office of Parks, Recreation and Historic Preservation and the statutes of the State with respect to the State Historic Investment Tax Credit and shall maintain records of the same for a period of four (4) years following achievement of placement in service of the Company Property.

(oo) The Managing Member shall not permit its members to convey any of the ownership interest in Managing Member at any time without the Consent of the Investor Member.

(pp) The Project will be treated as residential rental property under Sections 168(c) and 168(e)(2) of the Code.

(qq) The Managing Member will use its best efforts to lease the Units to achieve the rental income shown on the Projections.

(rr) The Managing Member will use its best efforts to ensure that the Company Property continues to qualify for a property tax abatement under the PILOT Agreement throughout the Compliance Period.

(ss) The Managing Member will promptly notify the Investor Member of any participation of the Company in a "reportable transaction" within the meaning of Treasury Regulation §1.6011-4.

(tt) Delta is a corporation which is tax-exempt under Section 501(c)(3) of the Code which is not controlled by or affiliated with a for profit entity and one of its purposes includes the fostering of low-income housing and Delta will directly and/or indirectly materially participate (in full satisfaction of Section 469(h) of the Code) in the development and operation of the Project throughout the Compliance Period.

(uu) The Managing Member shall cause the Company to comply at all times with the terms of the Loan Documents and the Project Documents.

(vv) The Managing Member shall cause the Company Property to be constructed and operated in accordance with the "***Green Communities Criteria***" established and published from time to time by Enterprise Community Partners, Inc., as such Criteria exist as of the date of this Agreement.

(ww) The Managing Member shall not cause the Company to make an election under Section 168(k) of the Code to elect out of "bonus depreciation" for the personal property and site improvements on the Partnership Property unless directed otherwise by the Investor Member.

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(xx) In the event the Davis-Bacon Act of 1931 and the regulations promulgated thereunder, as such Act and regulations may be amended, are applicable, the Managing Member will comply and will cause the Company to comply with such Act and regulations, and will provide supporting legal authority in the event such Act does not apply.

(yy) If the General Contractor is in default under the Construction Contract, the Managing Member shall act in the best interests of the Company in enforcing the Company's rights and remedies under the Construction Contract within thirty (30) days of such default. If the Managing Member fails in such regard, the Investor Member shall have the right to enforce on behalf of the Company the Company's rights and remedies under the Construction Contract.

(zz) The Managing Member will use the proceeds of all Capital Contributions in accordance with the "Equity" page of the Projections.

(aaa) The Managing Member shall take all actions necessary to ensure that the Partnership receives the rental subsidy contemplated in the ESSHI, Tenant Services Agreement and documents related thereto.

(bbb) If less than $43,000 of the Lease-up Reserve is transferred into the Operating Reserve upon termination of the Lease-up Reserve in accordance with Exhibit A-6, the Managing Member shall be obligated to fund an amount such that the total amount funded into the Operating Reserve from sources other than the Investor Member's Capital Contribution upon termination of the Lease-up Reserve is $43,000.

(ccc) If Erie County's final approval of the PILOT Agreement is not received by the Completion Date, the Managing Member will contribute funds to the Company sufficient to fund a property tax reserve (the "***Property Tax Reserve***") in the amount of $132,000 to fund property tax payments with respect to the Project.

(ddd) The Managing Member agrees to comply with the following provisions regarding anti-corruption, notwithstanding any other provision of this Agreement to the contrary:

1. Definitions:

Anti-Corruption Laws: All laws, rules, statutes, codes and regulations of any governmental entity applicable to the Managing Member, its Affiliates or the Company concerning or relating to corruption or bribery, including laws prohibiting an offer, payment, promise to pay, or authorization of the payment or giving of money or anything else of value, to anyone, while knowing or believing that all or some portion of the money or thing of value will be offered, given, promised to, or retained by a Government Official or any other person for the purposes of obtaining or retaining business, securing any improper advantage or the improper performance of that person's or Government Official's function, or misuse of that person's or Government Official's position.

Government Official: An officer, employee or official of a government, government owned or controlled entity, political party or public international organization, or a candidate for political office.

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2. There has been no violation by the Managing Member or its Affiliates of Anti-Corruption Laws in connection with the execution of the transaction documents.

3. Without limitation, the Managing Member and its Affiliates (i) are in compliance with Anti-Corruption Laws, and (ii) shall remain in compliance with Anti-Corruption Laws.

4. No action, suit or proceeding is pending or, to the Managing Member's knowledge, threatened, relating to any Anti-Corruption Laws.

5. The Managing Member shall notify the Investor Member if it becomes aware of any violation of Anti-Corruption Laws, or circumstances likely to give rise to such a violation.

6. Upon request by the Investor Member, the Managing Member will provide information verifying its compliance with Anti-Corruption Laws.

5.12 No Compensation

Except as provided in the Fee Agreements, the Managing Member and its Affiliates shall not be entitled to receive any compensation in connection with its performance of its duties as Managing Member.

5.13 Obligation to Complete Construction

(a) The Managing Member shall diligently pursue and complete the construction and/or rehabilitation of the Company Property or cause the same to be completed in a good and workmanlike manner, defect-free, free and clear of all mechanics', materialmen's, or similar liens or claims of liens (except for liens that have been bonded over to the satisfaction of the Investor Member in its sole discretion), and shall equip the Company Property or cause the same to be equipped with all necessary and appropriate fixtures, equipment and articles of personal property, including refrigerators and ranges, all substantially in accordance with the Plans and Specifications and the terms and requirements of this Agreement, the Loan Documents and the Project Documents, and shall provide for, or cause to be provided for, all other actions and performance required to arrive at the Completion Date and shall meet all requirements for obtaining and maintaining all necessary certificates of occupancy and use permits for all the Units in the Project and any commercial and/or community space. The Managing Member or its Affiliates shall timely obtain all building, zoning, and other applicable certificates, permits, and licenses necessary to permit the construction and/or rehabilitation, use, occupancy, and operation of the Company Property and the Project or a specified portion thereof. All improvements constructed or to be constructed on the Company Property shall be constructed and equipped in full compliance with the requirements of all governmental authorities having jurisdiction over the Company Property.

The Managing Member shall use its best efforts in representing the Company during the course of construction of the Project and in the administration of the Construction Contract by (i) providing adequate on-site representation at regularly scheduled meetings and at intervals commensurate with the on-site construction activities, (ii) actively enforcing the terms of

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performance specified in the Construction Contract, (iii) providing the Investor Member with timely notice of any issues of non-compliance by the General Contractor, and (iv) acting as necessary in the interest of the Company to ensure that construction of the Project will be completed as originally contemplated.

The Managing Member shall forward, on a monthly basis, all executed Construction Contract change orders, which shall be signed by the Architect and the General Contractor, to the Investor Member. The Managing Member shall not approve any change order without the Consent of the Investor Member which change order (together with any related change orders) (i) exceeds Forty Thousand Dollars ($40,000), (ii) extends by more than five (5) days the schedule in the Construction Contract, (iii) materially reduces the quality of construction materials, (iv) materially alters the design of the Project, (v) materially changes the scope of the work for the Project, (vi) adversely affects the appearance, structural integrity or quality of such work, (vii) reduces the floor area of the building or the aggregate number of rooms or units, or (viii) would result in the aggregate amount of change orders not approved by the Consent of the Investor Member exceeding One Hundred Seventy-Five Thousand Dollars ($175,000) or the aggregate amount of all change orders exceeding an amount equal to fifty percent (50%) of the hard cost contingency in the approved construction budget. Notwithstanding the foregoing, the Managing Member must obtain the Consent of the Investor Member as to any change order which has not been approved by the Architect. In the event that the Investor Member fails to provide such Consent to the Managing Member within ten (10) business days of receipt by the Investor Member of a change order request, the Investor Member shall be deemed to have consented to the change order, provided that the Managing Member has complied with the terms of this paragraph.

In addition, the Managing Member shall cause to be completed and provided to the Investor Member in a timely manner Construction Reports in the form attached as Exhibit K to this Agreement, and monthly lease-up progress reports in accordance with Section 13.03(a)(vii) of this Agreement.

(b) If the Designated Proceeds are insufficient to:

(i) Complete the construction and/or rehabilitation of the Project as required under Section 5.13(a) above, in the manner and within the time necessary to comply with all of the terms, covenants and conditions of this Agreement, the Loan Documents and the Project Documents, including all future amendments thereto;

(ii) Arrive at the Completion Date in conformity with the Loan Documents;

(iii) Discharge all Company liabilities and obligations arising out of any casualty not covered by insurance proceeds;

(iv) Meet all requirements for obtaining and maintaining all necessary certificates of occupancy and use permits;

(v) Pay or provide for all requirements of the ongoing business operations of the Company applicable to the period prior to the later of (y) the Stabilization Date, or (z) Loan Conversion;

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(vi) Pay or provide for all amounts necessary to correct defects, including all latent defects, discovered within one (1) year after the later of (y) the Completion Date and (z) for each Unit, initial occupancy of such Unit, including all obligations, expenses, costs, liabilities, or expenditures in respect thereof, applicable to the period prior to such date;

(vii) Arrive at the Stabilization Date; and

(viii) Achieve Loan Conversion;

then, in any of such events, the Managing Member shall directly pay all funds ("***Development Advances***") that shall be necessary to accomplish the foregoing at such time as those costs and expenses become due and payable. If the Designated Proceeds are insufficient at any time to meet the payments required under this Section 5.13(b), the Managing Member shall be required to furnish promptly funds needed to meet such requirements, and such funds shall be returned to the Managing Member from any Designated Proceeds which thereafter become available. If Designated Proceeds are not sufficient to return all such funds paid by the Managing Member, then the shortfall shall be treated as a Development Advance pursuant to this Section. This is a guaranty of payment, not of collection. Any such Development Advances shall be deemed to be costs of the Managing Member and not of the Company; *provided, however*, that if the Investor Member determines, in its sole but reasonable discretion, that the repayment of or obligation to repay Development Advances to the Managing Member is not likely to reduce tax benefits or Credits otherwise allocable to the Investor Member, then Development Advances shall be repayable, without interest, solely as provided in Section 8.02 and Exhibit A-4 hereof.

5.14 Operating Deficit Contributions

If, at any time or from time to time after the later of (i) the Stabilization Date, or (ii) Loan Conversion, an Operating Deficit exists, then the Managing Member shall contribute funds (an "***Operating Deficit Contribution***") to the Company as a contribution to capital in an amount equal to the amount of the Operating Deficit. The Managing Member's obligation to make Operating Deficit Contributions after such date to fund Operating Deficits which are not funded from the Operating Reserve (withdrawals from the Operating Reserve being subject to the sole discretion of the Managing Member and subject to the Authority's approval, and subject to the Consent of the Investor Member to the extent required under Exhibit A-6), shall be limited to the "***Maximum Operating Deficit Contribution***," as shown on Exhibit A-2. The obligation of the Managing Member to make Operating Deficit Contributions shall terminate on the date that the following have occurred simultaneously: (i) the Project has operated at the Required Debt Service Coverage determined by audited financial statements provided that such coverage test shall require two hundred twenty-eight percent (228%) instead of three hundred twenty percent (320%) for a period of at least two (2) consecutive Fiscal Years, which two (2) year period shall have commenced no earlier than three (3) years after the first day of the year in which the later of the Stabilization Date is achieved and Loan Conversion occurs; (ii) the rental subsidy pursuant to the ESSHI is in full force and effect; and (iii) the balance in the Operating Reserve equals or exceeds the Operating Reserve Amount. Operating Deficit Contributions shall be repayable, without interest, solely from Cash Flow or as provided in Article VIII hereof.

5.15 [Intentionally Omitted]

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5.16 Dealing with Affiliates; Fees

(a) The Managing Member may, for, in the name of and on behalf of, the Company, enter into agreements or contracts for performance of services for the Company with an Affiliate thereof and may authorize the Management Agent to enter into such agreements and contracts, and the Managing Member may obligate the Company to pay compensation for and on account of any such services and may authorize the Management Agent to so obligate the Company; *provided, however,* such compensation and services shall be at costs to the Company not in excess of those that would be incurred in making arms'-length purchases of comparable services on the open market.

(b) The Company shall pay fees to the Members and their Affiliates, which fees, and the agreements governing them, are described on Exhibit A-4.

(c) The Company shall pay the Management Agent from gross rental income, a Management Fee pursuant to the Property Management Agreement attached as Exhibit F to this Agreement.

5.17 Obligation to Purchase Interest of Investor Member

(a) The Managing Member shall be obligated, as provided in Section 5.17(b), to purchase the Investor Member's Interest for the total Capital Contributions made to date by the Investor Member plus interest at the Prime Rate plus two percent (2%) (such interest beginning to accrue with respect to any Installment of the Investor Member's Capital Contribution on the date on which such Installment is made), plus the costs and expenses (including reasonable attorneys' fees) actually incurred, if any, in connection with the enforcement of these provisions, less the Credits, the Historic Investment Tax Credit and/or State Historic Investment Tax Credit allocated to the Investor Member not subject to recapture, if:

(i) the basis of the Project as of the Ten Percent Test Date does not exceed ten percent (10%) of the reasonably anticipated basis of the project as of December 31, 2023 or the Company does not receive a valid carryover allocation by December 31, 2021;

(ii) the rehabilitation expenditures have not been placed in service in accordance with the requirements of Section 42 of the Code by December 31, 2023 or the Company does not receive IRS Form(s) 8609 by September 1 of the calendar year following the first year of the Credit Period;

(iii) at any time before the Project has operated at Break-even for a period of three (3) consecutive calendar months, any Loan is in default, after the expiration of any applicable notice and cure period, or an action is commenced and successfully executed to foreclose, abandon, or permanently enjoin the construction of the Project;

(iv) the failure of the Project to achieve the minimum set-aside test or the rent restriction test under Section 42(g) of the Code prior to the end of the first year of the Credit Period;

(v) Loan Conversion is not achieved within twelve (12) months following the Target Completion Date (or such longer period as permitted under the Loan Documents if the

Company exercises any extensions thereunder, or in the event the Loan Documents are amended to provide a longer period for conversion with Consent of the Investor Member);

(vi) any Loan commitment is withdrawn and is not replaced by a comparable commitment acceptable to the Investor Member within a reasonable period of time;

(vii) the Project has not operated at Break-even for a period of three (3) consecutive calendar months within eighteen (18) months of the Completion Date; *provided, however*, that so long as there are no defaults under this Agreement or any of the Loan Documents, the repurchase obligation provided herein shall not apply for so long as the Managing Member funds a cash flow deficit reserve to be established and funded in amounts and at the times determined by the Investor Member in its sole discretion;

(viii) the Credit reflected on IRS Form(s) 8609 is less than seventy-five percent (75%) of the Annual Credit Allocation, the projected amount of the Historic Investment Tax Credit, and the projected amount of the State Historic Investment Tax Credit;

(ix) an Event of Bankruptcy with respect to the Managing Member or the Guarantor occurs prior to the Completion Date, unless a substitute Guarantor acceptable to the Investor Member in its sole discretion executes the Guaranty Agreement and any other documentation required by the Investor Member; or

(x) the Project has not received Part 3 approval for the Historic Investment Tax Credit from the National Park Service with respect to the Certified Historic Structure comprising the Company Property or the State Historic Investment Tax Credit Certificate for the State Historic Investment Tax Credit from the New York State Office of Parks, Recreation and Historic Preservation by the filing deadline of the Company tax return for the year in which the Project is placed in service (the "***Part 3 Deadline***"); *provided however* that if the failure to obtain the Part 3 approval by the Part 3 Deadline is not due to any action, inaction or delay by the Managing Member and does not have a material adverse effect on the Investor Member or the Company, then the Part 3 Deadline shall be extended one (1) year.

(b) Upon the occurrence of any of the events specified in Section 5.17(a), the Managing Member shall, within ten (10) days thereafter, give Notice to the Investor Member of the occurrence of such event and of the Managing Member's obligation to purchase the Investor Member's Interest. The Investor Member, by Consent of the Investor Member, may, by Notice to the Managing Member given (i) not later than sixty (60) days after the Managing Member's Notice, or (ii) at any time following the occurrence of any of such events if the Managing Member has failed to give the required Notice, elect to require the Managing Member to purchase the Investor Member's Interest, notwithstanding that the Investor Member may have actual knowledge of the occurrence of any such event. If the Investor Member elects to have its Interest purchased, the Managing Member shall purchase such Interest within twenty (20) days after Notice from the Investor Member of its election to have its Interest purchased. The Investor Member may unconditionally waive at any time its right to require the Managing Member to purchase its Interest by reason of the application of any of the numbered clauses of Section 5.17(a). After such waiver, the Managing Member shall have no further obligation to purchase by reason of the specific occurrence of the specified event under Section 5.17(a) to which such waiver relates; provided,

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however, the Investor Member's election not to have its Interest purchased by reason of the application of one such clause shall not constitute a waiver with respect to any future obligation of the Managing Member to purchase its Interest by reason of the application of any other such clause.

5.18 Reserves

The Managing Member shall cause the Company to establish the reserves described on Exhibit A-6.

5.19 Proposed Budget

The Managing Member has delivered to the Investor Member a copy of the budget for the first Fiscal Year of operations after the Completion Date. No later than December 1 of each year, the Managing Member shall submit to the Investor Member a budget (the "***Proposed Budget***") for the ownership and operation of the Project, reflecting the reasonably projected income and expenses for the following calendar year. The Investor Member shall review the Proposed Budget to determine the reasonableness of the projected figures. The Proposed Budget, as approved by the Investor Member, shall become the "***Budget***" for the following year. During the period that a budget is not approved, the Managing Member shall continue to operate the Project in accordance with the latest approved Budget (except for uncontrollable costs such as real estate taxes, insurance premiums, utilities, debt service) until a new Budget is approved by the Managing Member and the Investor Member.

5.20 Action for Breach

The representations, warranties and covenants in Sections 5.10 and 5.11 are being made by the Managing Member to the Investor Member in consideration for the investment in the Company by the Investor Member. Upon the occurrence of any breach of any representation, warranty, covenant or agreement contained herein, the Managing Member shall diligently attempt to cure such breach. If such breach is not susceptible to cure, or if the Managing Member fails to pursue a cure diligently, or if within thirty (30) days (or such longer period as may be required to effect a cure provided the Managing Member is diligently pursuing same, not to exceed ninety (90) days without the approval of the Investor Member) no cure has been achieved, then the Investor Member may pursue any available legal or equitable remedy against the Managing Member, without being required to dissolve the Company and notwithstanding the availability of any other remedy; *provided, however,* that with respect to any breach that results solely in a loss or reduction of the Credit, the Historic Investment Tax Credit and/or the State Historic Investment Tax Credit, if such breach occurred despite the Managing Member's good faith, diligent efforts to prevent such breach, the Investor Member shall be limited to its remedies under Sections 3.03, 3.04, 3.10, 5.17 and 9.02.

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ARTICLE VI

Rights and Obligations of the Investor Member

6.01 Management of the Company

The Investor Member shall not take part in the management or control of the business of the Company or transact any business in the name of the Company. The Investor Member shall not have the power or authority to bind the Company or to sign any agreement or document in the name of the Company. No action taken by the Investor Member in the exercise of its rights under this Agreement shall give the Managing Member or the Company any right to claim the Investor Member has acted as Managing Member in the exercise of such rights.

6.02 Limitation on Liability of the Investor Member

Notwithstanding any other provision of this Agreement, the liability of the Investor Member shall be limited to its Capital Contributions at any given time as and when payable under the provisions of this Agreement. Except as otherwise provided in this Agreement, the Investor Member shall not have any other liability to contribute money to, or in respect of the liabilities, obligations, debts or contracts of the Company, nor shall the Investor Member be personally liable for any liabilities, obligations, debts or contracts of the Company. The Investor Member shall not be obligated to make loans to the Company.

6.03 Outside Activities

Nothing herein contained in this Agreement shall be construed to constitute the Investor Member hereof the agent of any other Member hereof or to limit in any manner the Investor Member in the carrying on of its own businesses or activities. The Investor Member may engage in and possess any interest in other business ventures (including limited partnerships and limited liability companies) of every kind, nature and description, independently or with others, whether existing as of the date hereof or hereafter coming into existence, including, without limitation, acting as general partner or limited partner of other partnerships which own, directly or through interests in other partnerships, housing projects similar to, or in competition with, the Project. Neither the Company nor any of the Members shall have any rights by virtue of this Agreement in or to any such other business ventures or to the income or profits derived therefrom and nothing shall be construed to render them partners in any such business ventures.

6.04 Execution of Amendments

The Managing Member shall cause the due execution, acknowledgment, and filing for record (and publication, if required by the Act) of any amendment to this Agreement or further instruments in accordance with the Act, and shall cause a copy of the endorsed copy thereof to be furnished to the Investor Member.

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6.05 Inspection of the Project

Subject to the rights of tenants of the Project, the Investor Member and/or its agent or designee shall have the right to inspect the Project, including without limitation inspection of the Units, at any reasonable time and upon reasonable prior notice to the Managing Member and the Managing Member shall provide all reasonable assistance to the Investor Member in such effort.

ARTICLE VII

Allocations of Profits and Losses

7.01 Maintenance of Capital Accounts

The Company shall maintain a Capital Account for each Member. Such Capital Account shall be maintained in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv). To each Member's Capital Account there shall be credited (i) such Member's Capital Contributions, (ii) the fair market value of any property such Member contributes to the Company (net of liabilities securing such property that the Company assumes or takes such property subject to) and (iii) its distributive share of Net Profits and Gains, tax-exempt income and any item in the nature of income or gain allocated to such Member under Section 7.02. To each Member's Capital Account there shall be debited (i) the amount of cash and the fair market value (as of the date of distribution) of any Company property (net of liabilities securing the distributed property that such Member assumes or subject to which such Member takes the distributed property) distributed to such Member pursuant to any provision of this Agreement, (ii) such Member's distributive share of Net Losses and Loss and any items in the nature of expenses or deductions that are allocated to such Member pursuant to Section 7.02 and (iii) such Member's distributive share of any other expenditures which are not deductible by the Company or which are not allowable as additions to the basis of Company Property.

7.02 Profits and Losses

(a) After giving effect to the special allocations set forth in Section 7.03, the Net Profits, Net Losses, Loss and credits of the Company shall be allocated one-hundredth of one percent (0.01%) to the Managing Member and ninety-nine and ninety-nine/one-hundredths percent (99.99%) to the Investor Member; *provided, however*, that after the expiration of the Historic Recapture Period, Company gross income shall be allocated to the Managing Member in the amount of Net Cash Flow distributed to the Managing Member under Section 8.01, and *provided, further* that Gain shall be allocated among the Members as follows:

(i) To the Investor Member until the balance in the Investor Member's Capital Account equals the sum of (x) the amount of the federal income tax liability imposed on the Investor Member and its partners from a transaction giving rise to Sale or Refinancing Proceeds assuming all such Persons are subject to the maximum federal corporate income tax rate in effect at the time of the allocation, and (y) the Credit Deficiency; and

(ii) The balance, among the Members so that, to the extent possible, the ratio of (x) the balance of the Investor Member's Capital Account in excess of the balance described in Section 7.02(a)(i) to (y) the balance in the Managing Member's Capital Account in excess of the

unrepaid portion of any Operating Deficit Contribution, Credit Adjuster Advance or Additional Advance is ninety-nine and ninety-nine one-hundredths (99.99) to one one-hundredth (0.01) prior to the expiration of the Historic Recapture Period, and ten (10) to ninety (90) thereafter.

(b) For purposes of the allocations of Gain and Loss, a Member's Capital Account shall be determined immediately prior to the event giving rise to the Gain and Loss as if, at such time, the books of the Company had been closed as though at the end of the taxable year.

7.03 Special Allocations and Limitations

The following provisions shall apply notwithstanding the provisions of Section 7.02. In the event that there is a conflict between any of the following provisions, the earlier listed provision shall govern.

(a) [Intentionally Omitted]

(b) If there is a net decrease in Minimum Gain attributable to Nonrecourse Liabilities during any taxable year, each Member who has a share of the Minimum Gain attributable to such Nonrecourse Liabilities (as such share is determined pursuant to Treasury Regulation Section 1.704-2(g)) shall be specially allocated items of Company income and gain for such year (and, if necessary, for succeeding years) equal to each Member's share of the net decrease in Minimum Gain (as such share is determined pursuant to Treasury Regulation Section 1.704-2(g)(2)). Notwithstanding the preceding sentence, a Member shall not be specially allocated items of Company income and Gain to the extent:

(i) Such Member's share of the net decrease in the Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly recourse debt or Partner Nonrecourse Debt, and such Member bears the economic risk of loss (within the meaning of Treasury Regulation Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability;

(ii) Such Member contributes capital to the Company that is used to repay the Nonrecourse Liability, and such Member's share of the net decrease in Minimum Gain results from the repayment; or

(iii) If the Commissioner of the IRS waives or excepts such an allocation pursuant to Treasury Regulation Sections 1.704-2(f)(4) or (5).

It is the intent that items to be so allocated shall be determined and the allocations made in accordance with the minimum gain chargeback requirement of Treasury Regulation Section 1.704-2(f), and this Section 7.03(a) shall be interpreted consistently therewith.

(c) If there is a net decrease in Minimum Gain attributable to Partner Nonrecourse Debt during any taxable year, each Member who has a share of the Minimum Gain attributable to such Partner Nonrecourse Debt (as such share is determined pursuant to Treasury Regulation Section 1.704-2(g)) shall be specially allocated items of Company income and Gain for such year (and, if necessary, for succeeding years) equal to such Member's share of the net decrease in such Minimum Gain (as such share is determined pursuant to Treasury Regulation Section 1.704-

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2(g)(2)). Notwithstanding the preceding sentence, a Member shall not be specially allocated items of Company income and Gain to the extent:

(i) The net decrease in such Minimum Gain arises because the liability ceases to be Partner Nonrecourse Debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a Nonrecourse Liability; or

(ii) Treasury Regulation Section 1.704-2(i) otherwise so provides.

It is the intent that items to be so allocated shall be determined and the allocations made in accordance with the minimum gain chargeback requirement of Treasury Regulation Section 1.704-2(i) and this Section 7.03(c) shall be interpreted consistently therewith.

(d) In the event a Member unexpectedly receives in any taxable year any adjustments, allocations or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(*4*), (*5*), or (*6*) that cause or increase an Adjusted Capital Account Deficit of such Member, items of Company income and Gain shall be specially allocated to such Member in such taxable year (and, if necessary, in succeeding taxable years) in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible. It is the intent that items to be so allocated shall be determined and the allocations made in accordance with the qualified income offset provision of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and Section 7.03(c) shall be interpreted consistently therewith.

(e) No Net Losses, Losses or Company deductions for any taxable year shall be allocated to the Investor Member to the extent such allocation would cause or increase an Adjusted Capital Account Deficit with respect to such Member, and such Net Losses, Losses or Company deductions shall instead be allocated to the Managing Member.

(f) If in any taxable year there is a net increase during such year in the amount of Minimum Gain attributable to a Partner Nonrecourse Debt, any Member bearing the economic risk of loss with respect to such debt (within the meaning of Treasury Regulation Section 1.752-2) shall be specially allocated items of Company loss or deduction in an amount equal to the excess of (i) such Member's share of the amount of such net increase, over (ii) the aggregate amount of any distributions during such year to such Member of the proceeds of such debt that are allocable to such increase in Minimum Gain. It is the intent that items to be so allocated shall be determined and the allocations made in accordance with the required allocation of "partner nonrecourse deductions" pursuant to Treasury Regulation Section 1.704-2(i), and this Section 7.03(f) shall be interpreted consistently therewith.

(g) The Managing Member's interest in each material item of Company income, gain, loss, deduction, and credit will be equal to at least one one-hundredth of one percent (0.01%) of each such item at all times during the existence of the Company.

(h) The special allocations set forth in Sections 7.03(b), (c), (d) and (f) (the "***Regulatory Allocations***") are intended to comply with certain requirements of Treasury Regulation Sections 1.704-1(b) and 1.704-2. The Regulatory Allocations shall be taken into account in allocating other profits, losses and other items of income, gain, loss and deduction to the Members so that, to the extent possible, the net amount of such allocations of profits and losses and other items shall be

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equal to the amount that would have been allocated to each Member had the Regulatory Allocation not occurred. In the event that in any year the Regulatory Allocations alter the allocations of tax items to the Members, to the extent possible, depreciation deductions shall nevertheless be allocated ninety-nine and ninety-nine/one-hundredths percent (99.99%) to the Investor Member and one one-hundredth of one percent (0.01%) to the Managing Member.

(i) The respective interest of the Members in the Net Profits, Net Losses, Gain, and Loss or items thereof shall remain as set forth above unless changed by amendment to this Agreement or by an assignment of a Company Interest authorized by the terms of this Agreement. Except as otherwise provided herein, for tax purposes, all items of income, gain, loss, deduction, or credit shall be allocated to the Members in the same manner as are Net Profits from operations; *provided, however,* that with respect to property contributed to the Company by a Member, such items shall be shared among the Members so as to take into account the variation between the basis of such property and its fair market value at the time of contribution in accordance with Section 704(c) of the Code.

(j) In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial fair market value (as used as book value of the property by the Company). In the event the book value of any Company property is adjusted upon: (i) acquisition of a Company interest by any Person in exchange for a capital contribution; or (ii) any non-pro rata distribution to Members of Company property other than cash; subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its book value in the same manner as under Section 704(c) of the Code. Allocations pursuant to this Section 7.03 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Profits or Net Losses, other items, or distributions pursuant to any provision of this Agreement.

(k) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Treasury Regulation Section 1.752-3(a)(3), the Managing Member's interest in Company profits shall equal one-hundredth of one percent (0.01%) and the Investor Member's interest in Company profits shall equal ninety-nine and ninety-nine/one-hundredths percent (99.99%).

(l) After the Historic Recapture Period, in the event the Managing Member makes an Operating Deficit Contribution in a particular year, the Managing Member shall be specially allocated the expenses paid by the proceeds of such Operating Deficit Contribution, but in no event shall the Managing Member be allocated any depreciation deductions; *provided, however*, that no such allocation will be made to the extent it would result in any portion of the Company Property being treated as tax-exempt use property under Section 168(h) of the Code or cause the Managing Member to be a related Person within the meaning of Section 42(d)(2)(D) of the Code.

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(m) If any Member's Capital Contribution is used to fund any syndication fees or expenses referred to in Section 709 of the Code, such Member shall be specially allocated such fees or expenses.

(n) If an Interest in the Company is transferred or a member becomes a member during a taxable year (including the admission of the Investor Member), net income or net loss (and any item of income, gain, loss, deduction or credit) for such taxable year allocable to the transferred or new Interest shall be allocated among the Members on an interim closing of the books basis, based upon that portion of such taxable year during which each was recognized as owning such Interest and the amount of such Interest owned; provided, that such allocation must be in accordance with a method permissible under Section 706 of the Code and Treasury Regulations thereunder.

(o) After the Historic Recapture Period, in the event that any fee payable to any Managing Member or any Affiliate shall be determined to be a non-deductible, non-capitalizable distribution from the Company to a Member for federal income tax purposes, then there shall be allocated to such Managing Member an amount of gross income equal to the amount of such distribution; *provided, however*, that no such allocation will be made to the extent it would result in any portion of the Company Property being treated as tax-exempt use property under Section 168(h) of the Code or cause the Managing Member to be a related Person within the meaning of Section 42(d)(2)(D) of the Code.

(p) Nonrecourse deductions as defined in Treasury Regulation Section 1.704-2(b)(1) for any Fiscal Year shall be allocated ninety-nine and ninety-nine/one-hundredths percent (99.99%) to the Investor Member and one-hundredth of one percent (0.01%) to the Managing Member.

(q) After the Historic Recapture Period, any taxable income realized by the Company as a result of any grant or discharge of indebtedness or income from the sale of any State Historic Investment Tax Credits following the date hereof shall be allocated one hundred percent (100%) to the Managing Member; *provided, however,* that no such allocation will be made to the extent it would result in any portion of the Company Property being treated as tax-exempt use property under Section 168(h) of the Code or cause the Managing Member to be a related Person within the meaning of Section 42(d)(2)(D) of the Code.

ARTICLE VIII

Cash Distributions

8.01 Distributions of Net Cash Flow

Net Cash Flow, to the extent available, shall be distributed to and among the Members, annually within seventy-five (75) days after the close of each Fiscal Year, one-hundredth of one percent (0.01%) to the Managing Member and ninety-nine and ninety-nine/one-hundredths percent (99.99%) to the Investor Member during the Historic Recapture Period, and thereafter, ninety percent (90%) to the Managing Member and ten percent (10%) to the Investor Member.

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8.02 Distributions of Capital Proceeds

Any Capital Proceeds other than net proceeds upon liquidation of the Company resulting from the sale of the Company Property, which shall be governed by Article XII, shall be distributed to and among the Members in the following amounts and order of priority:

(a) To the Investor Member in an amount equal to the Credit Deficiency;

(b) To the Investor Member in the amount of the maximum federal corporate income tax liability that would be imposed on the Investor Member and its partners from the transaction giving rise to Sale or Refinancing Proceeds;

(c) To the Investor Member in the amount of any unpaid Investor Services Fee;

(d) To pay any unpaid Development Fee;

(e) To the Managing Member to repay any unrepaid portion of any Operating Deficit Contribution, Credit Adjuster Advance, Development Advance or Additional Advance;

(f) To pay any unpaid Company Administration Fee; and

(g) The balance, one hundredth of one percent (0.01%) to the Managing Member and ninety-nine and ninety-nine/one hundredths percent (99.99%) to the Investor Member during the Historic Recapture Period, and thereafter, ninety percent (90%) to the Managing Member and ten percent (10%) to the Investor Member.

ARTICLE IX

Admission of Successor and Additional Managing Members; Removal and Withdrawal of Managing Member

9.01 Admission of Successor or Additional Managing Members

(a) The Managing Member shall not have any right to retire or withdraw voluntarily from the Company or to sell, transfer, or assign all or any portion of its Interest, without the Consent of the Investor Member. In the event that the Consent of the Investor Member has been obtained by the Managing Member, the Managing Member shall designate one or more persons to be its successor. In no event shall the Interests of the other Members be affected thereby. The designated successor Managing Member shall be admitted as such to the Company upon approval of the Investor Member of such successor Managing Member and upon satisfying the conditions of this Article IX and Section 15.01. Any voluntary withdrawal by the Managing Member from the Company or any sale, transfer, or assignment by the Managing Member of its Interest shall be effective only upon the admission in accordance with this Section 9.01(a) and Section 15.01 of a successor Managing Member.

(b) The successor Managing Member shall pay to the Company all costs and expenses incurred in connection with such substitution, including, without limitation, legal and other costs

incurred in the review and processing of the assignment, in amending this Agreement, and in filing any necessary amended Certificate.

(c) The successor Managing Member shall by its execution of this Agreement and as a condition precedent to receiving any Interest in the Company or the Company Property agree to be bound by this Agreement to the same extent and on the same terms as the predecessor Managing Member.

(d) Upon the admission of the successor Managing Member, an amendment to this Agreement reflecting such admission, and stating the agreement set forth in Section 9.01(c) and in all respects in compliance with the requirements of the Act shall be executed and an amendment to the Certificate shall be executed and filed in accordance with the Act, if necessary.

9.02 Removal of a Managing Member, Management Agent or Accountants

(a) The Investor Member, by Consent of the Investor Member, shall have the right to remove a managing member of the Company as the Managing Member for any of the following reasons (each a "***Removal Default***"):

(i) The Managing Member has committed an act or acts of gross negligence, willful misconduct, substantial mismanagement of the Project or Company, malfeasance, fraud, or an act or acts outside the scope of its authority, or has breached its fiduciary duties as the Managing Member;

(ii) The Managing Member has breached any representation, warranty, agreement or covenant contained in this Agreement which breach has or is likely to have a material adverse effect on the Company or the Investor Member; provided however, if such breach is not susceptible to cure within thirty (30) days but is capable of being cured within sixty (60) days, provided the Managing Member is diligently pursuing a cure during the initial thirty (30) days after Notice from the Investor Member and effects such cure within sixty (60) days after Notice, a Removal Default shall not exist;

(iii) There is a default by the Company under any Project Document or agreement with the Mortgagees or any governmental regulation, which default has a material adverse effect on (a) the construction and/or rehabilitation, use, occupancy, or operation of the Company Property or the Project, (b) the ability of the Company to continue to operate the Project as housing eligible for the Credit, (c) the ability of the Company, the Managing Member or any of its Affiliates to perform their respective obligations under this Agreement or the Project Documents, or (d) the financial condition of the Company, the Managing Member or the Guarantor; and such default is not cured within any applicable notice and cure period;

(iv) The occurrence of a default by the Company on any Loan made to the Company that is not cured within the applicable cure period;

(v) The Managing Member or the Company has taken any action or failed to take any action that (A) is likely to cause the termination of the Company for federal income tax purposes, (B) is likely to cause the Company to be treated for federal income tax purposes as an association taxable as a corporation, (C) violates any federal or state securities laws, (D) is likely

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to cause the Company to fail to qualify as a limited liability company under the Act, (E) is likely to cause a material reduction in the tax benefits or a material increase in the tax liability of the Investor Member for which the Managing Member is responsible to make a Credit Adjuster Advance and the Managing Member fails to make the Credit Adjuster Advance in a timely manner in violation of Section 3.03, or (F) is likely to cause the Investor Member to be liable for Company obligations in excess of its Capital Contributions; *provided, however*, with respect to any action or failure to act that is likely to cause any of the aforementioned events (each a "***Prohibited Event***"), if such action or failure to act is capable of being cured such that the Prohibited Event is no longer likely to occur, and the Managing Member diligently proceeds to effect such cure within thirty (30) days after Notice from the Investor Member, but in any event prior to the occurrence of the Prohibited Event, a Removal Default shall not exist;

(vi) During the Compliance Period, the Managing Member or the Management Agent operates the Company Property or the Project in a manner so as not to qualify as a "qualified low-income housing project" under Section 42(g)(1) of the Code;

(vii) The occurrence of material construction cost overruns, and/or Operating Deficits, unless such overruns and/or Operating Deficits are funded in accordance with Section 5.13 and/or 5.14 and in such a manner so as not to materially adversely affect the Project and the allocation of Credits, Historic Investment Tax Credits and/or State Historic Investment Tax Credits to the Investor Member;

(viii) A filing of a foreclosure or other creditor's action or exercise of control over the Project by a lender or other creditor, or the filing of a bankruptcy petition or similar creditor's action by or against the Company, the Managing Member, the Sponsor or any Guarantor which is not dismissed within ninety (90) days;

(ix) The Company's failure to maintain records as required under the low income housing tax credit requirements, or the Company's repeated failure to provide timely reports to the Investor Member as required pursuant to the provisions of this Agreement (where repeated failure shall mean more than two failures, after Notice from the Investor Member of the need for timeliness, and which, in the aggregate, are material to the Investor Member);

(x) The Managing Member causes the construction schedule set forth in the Project Documents to be delayed by more than ninety (90) days;

(xi) The Managing Member withdraws or uses any Company Reserves, including the Operating Reserve or the Replacement Reserve, other than as permitted under this Agreement;

(xii) The occurrence of a default by the Managing Member or an Affiliate under any Fee Agreement or the Property Management Agreement which has a material adverse effect on the Project, the Company or the Investor Member, or the occurrence of a default by a Guarantor under the Guaranty Agreement, which default is not cured within any applicable notice and cure period;

(xiii) The conveyance by the shareholders, partners or members of the Managing Member or the Developer of any change in ownership, or change in control of the Managing

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Member, the Developer or a Guarantor, without the Consent of the Investor Member; except (a) a conveyance upon the death of an individual member of CB-Emmanuel Realty, LLC to his designee or beneficiaries in accordance with the operating agreement of CB-Emmanuel Realty, LLC and (b) any conveyance by the shareholders, partners or members of the Managing Member or the Developer so long as R. Christopher Bramwell and Benathan Upshaw remain majority owners and in control of CB-Emmanuel Realty, LLC and CB-Emmanuel Realty, LLC remains indirectly in control of the Managing Member; or

(xiv) The occurrence of any other event which under the Act requires the removal of the Managing Member.

If a Removal Default shall occur and the Investor Member elects to remove the Managing Member, the removal of the Managing Member, subject to any applicable restrictions in the Loan Documents, shall become effective immediately upon the later of (i) delivery of written Notice of such removal to the Managing Member from the Investor Member, or (ii) the expiration of the allowable cure period pursuant to this Section 9.02(a). No additional action shall be necessary for the removal of the Managing Member.

(b) Notwithstanding the right to remove the Managing Member pursuant to Section 9.02(a), in the event of a Removal Default, the Investor Member shall, in addition to all other rights and remedies which the Investor Member may have under this Agreement or otherwise available at law or in equity, and at Investor Member's sole discretion, have the right to cause its designee to be admitted as a controlling Managing Member with the rights and obligations set forth in Section 5.01, as an alternative to removing the Managing Member. Such admission shall, subject to any applicable restrictions in the Loan Documents, occur immediately upon written notice of such designation from the Investor Member, whereupon the designee shall hold a Percentage Interest as a Managing Member of .009% and the Managing Member shall hold a Percentage Interest as a Managing Member equal to .001%. Upon such admission of the Investor Member's designee as a Managing Member, the designee Managing Member shall file an amended Articles of Organization indicating the designee as a Managing Member, if necessary or required by applicable law. The exercise of the Investor Member's rights to cause its designee to be admitted as a controlling Managing Member shall not preclude its rights to cause the Managing Member to repurchase the Investor Member's Interests pursuant to Section 5.17 above.

(c) In accordance with Section 3.02(e), the Investor Member shall have no obligation to make any Additional Capital Contribution at any time that the Managing Member is in default under this Agreement.

(d) Upon the removal of the Managing Member for any reason pursuant to Section 9.02(a), the remaining or successor Managing Member shall cause the Company to redeem the removed Managing Member's Interest for One Hundred Dollars ($100), and such removed Managing Member shall thereafter cease to have any interest in the capital, profits, losses, distributions, and all other economic incidents of ownership of the Company and any fee that has been earned by the Managing Member and its Affiliates, pursuant to this Agreement, as of the occurrence of the Removal Default, shall be assignable to the Investor Member's designee, except the Development Fee which shall be governed by Section 9.02(e). In addition, except as otherwise provided in this Agreement, upon the removal of the Managing Member for any reason pursuant

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to Section 9.02(a), all agreements between the Company and the Managing Member or any Affiliates of such Managing Member including the Company Administration Agreement may, at the election of the Company, be terminated or assigned to the Investor Member's designee and the Company shall have no further obligation under such agreements, if terminated,

(e) Notwithstanding the removal of the Managing Member, the Managing Member shall be and shall remain liable for all obligations and liabilities incurred by it as Managing Member of the Company before such removal shall become effective, and, in addition, the obligations and liabilities of the Managing Member set forth in Section 9.04; *provided, however*, that if amounts otherwise payable to the Managing Member or its Affiliates as a Development Fee are applied by the Company to meet the Managing Member's obligations stated in Sections 5.13 and 5.14 of this Agreement, such application shall be treated as payment of such Development Fee, followed by satisfaction by the Managing Member of an equal amount of the Managing Member's liability to the Company and shall serve to reduce any such liabilities of the Managing Member or any successor, except for any liability incurred as a result of its gross negligence, misconduct, fraud or breach of its fiduciary duties as Managing Member of the Company. If the Managing Member is removed as a Member of the Company due to a Removal Default, then, immediately prior to such removal, the Managing Member shall be deemed to have made a Capital Contribution to the Company in an amount equal to any unpaid installments of the Development Fee and the Company shall be deemed to have made a payment in an equal amount to pay off such amount of the Development Fee. The Developer shall look only to this obligation of the Managing Member for the payment of the Development Fee and not to any Company assets. Further, upon any such removal of the Managing Member, at the election of the Company, either (i) the Managing Member shall be deemed to make a Capital Contribution to the Company in an amount equal to the balance, including interest, of any loan from the removed Managing Member, the Developer or any Affiliate of either entity and the Company shall be deemed to have thereupon made a payment in an equal amount to pay off the amount due on such loans, or (ii) the Managing Member shall be deemed to assign each Sponsor Loan or other loans from the removed Managing Member, the Developer or any Affiliate of either entity to the Investor Member's designee, and the Investor Member's designee will thereafter be the owner and payee of each such loan, and the Company shall have no further obligation for payments to the Managing Member, Developer or Affiliate under such loan.

The Investor Member's right to remove the Managing Member shall be in addition to any other rights or remedies the Company or the Investor Member may have as the result of the Managing Member's breach of this Agreement *provided, however*, that with respect to any breach that results solely in a loss or reduction of the Credit, Historic Investment Tax Credit, or State Historic Investment Tax Credit, if such breach occurred despite the Managing Member's good faith, diligent efforts to prevent such breach, the Investor Member shall be limited to its remedies under Sections 3.03, 3.04, 3.10 and 9.02(a).

(f) Upon removal of the Managing Member, the Investor Member shall have the right, without the consent of any other Member, to designate a successor Managing Member and the Investor Member may, within ninety (90) days of the sole Managing Member's removal, elect to continue the business of the Company. If the removal of the Managing Member gives the Company the right to terminate the Property Management Agreement, then the Investor Member may terminate the Property Management Agreement, and may negotiate a new Property Management

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Agreement on behalf of the Company. In the event the Managing Member shall be removed in accordance with the provisions of Section 9.02(a), such removal shall be "cause" for the termination of the Property Management Agreement.

(g) The removed Managing Member shall be liable for all costs and expenses, including reasonable attorney fees, incurred in the admission of a successor Managing Member and for all other costs, expenses, or damages incurred by the Company as a result of the removal which amounts may be offset against any amounts due to the removed Managing Member due under Section 9.02(c).

(h) If (i) a default shall occur by the Management Agent under the Property Management Agreement which default could reasonably have a material adverse effect on any Investor Member or the Company, and which default gives the Company the right to terminate the Property Management Agreement (a "***Management Agreement Default***"), subject to any applicable restrictions in the Loan Documents, and (ii) the Managing Member does not terminate the Property Management Agreement within ten (10) days of the Company's right to do so, the Investor Member may, by Consent of the Investor Member, require the Managing Member to terminate the Property Management Agreement. If the Managing Member does not terminate the Property Management Agreement within five (5) days of the Investor Member's request, the Investor Member shall have the right, on behalf of the Company, to terminate the Property Management Agreement. If the Property Management Agreement is terminated as provided in this Section 9.02(h), the Managing Member shall proceed to retain a new Management Agent (subject to any prior approval requirements in the Loan Documents), and the new Management Agent and the new Property Management Agreement shall be subject to the Consent of the Investor Member. In addition, the Managing Member shall, either on its own or upon the written request of the Investor Member, promptly terminate the Property Management Agreement if cause for such termination exists under the Property Management Agreement. As used herein, "cause" shall include, but not be limited to, any one of the following: (i) the failure of the Management Agent to perform, keep or fulfill any of its duties under the Property Management Agreement or to comply with the covenants, undertakings, obligations or conditions set forth in the Property Management Agreement, and the continuance of any such default for a period of thirty (30) days after notice of such failure (except in the event of Management Agent's willful misconduct, in which case no notice shall be required), (ii) the Management Agent has operated the Project in a manner so as not to qualify as a "qualified low-income housing project" under Section 42(g)(1) of the Code , (iii) failure to materially comply with the record keeping, tenant qualification and rental requirements of the regulatory agreement, and Code Section 42 and the regulations, rulings and policies related thereto, (iv) any serious problem or repair requiring immediate action by the Management Agent which has not been remedied, (v) material mismanagement of the Project. "Cause" shall also include the following unless such occurrences are beyond the control of the Management Agent: (i) failure of the Project to generate at least 90% of the Projected Credits in any calendar year, (ii) the occurrence of a vacancy rate for the Project in excess of ten percent (10%) for any six (6) consecutive month period, or (iii) the occurrence of Operating Deficits for three (3) consecutive months.

(i) By the Consent of the Investor Member, the Investor Member shall have the right to require the Managing Member to replace the Accountant or to obtain additional accounting

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services if there is financial mismanagement of the Company, including the failure to provide the reports required under this Agreement on a timely basis.

9.03 Event of Bankruptcy of a Managing Member

(a) A Managing Member shall cease to be a Managing Member upon an Event of Bankruptcy with respect to such Managing Member, or, with the Consent of the Investor Member, upon the occurrence of such Managing Member's insolvency. Upon such an Event of Bankruptcy, or, with the Consent of the Investor Member, such insolvency, the remaining or successor Managing Member shall cause the Company to redeem the Managing Member's Interest for One Hundred Dollars ($100) and such Managing Member shall thereafter cease to have any interest in the capital, profits, losses, distributions, and all other economic incidents of ownership of the Company; *provided, however,* such Managing Member or its Affiliates, as the case may be, shall be entitled to receive any fee, pursuant to this Agreement, that has been earned by the Managing Member or its Affiliates, as the case may be, as of the time of such Event of Bankruptcy or insolvency, which fee shall be offset by any amount owed to the Company and/or the Investor Member by the Managing Member or its Affiliates. In addition, upon any sale by a Managing Member under this Section 9.03(a), all agreements between the Company and any Affiliates of such Managing Member may, at the election of the Company, be terminated and the Company shall have no further obligation under any such agreements.

(b) If, at the time of an Event of Bankruptcy with respect to a Managing Member, such Managing Member was the sole Managing Member, the Investor Member shall have the right, in its sole discretion, to designate the successor Managing Member and the Investor Member may, within the maximum number of days permitted by the Act after the Managing Member's ceasing to be a Managing Member of the Company, elect to continue the business of the Company.

9.04 Liability of a Removed or Withdrawn Managing Member

Any Managing Member who for any reason voluntarily or involuntarily withdraws or is removed from the Company or sells, transfers, or assigns its Interest shall be and remain liable for all obligations, liabilities, and guarantees incurred by it as a Managing Member and for all acts and/or omissions occurring prior to the time when the withdrawal, removal, sale, transfer, or assignment becomes effective. Notwithstanding anything to the contrary in this Agreement, the Managing Member shall be and remain liable for any obligation or liability to the Investor Member and the Company that may arise at any time under Section 5.13 regardless of whether the Managing Member is a managing member of the Company.

9.05 Restrictions on Transfer of Managing Member's Interest

Notwithstanding anything to the contrary in this Article IX, the assignment or transfer of a Managing Member's Interest shall at all times be subject to any additional restrictions applicable to an assignment or transfer of the Interest of an Investor Member as set forth in Article X hereof. No assignee or transferee of all or any part of the Interest of a Managing Member shall have any right to become a Managing Member except as provided in this Article IX.

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9.06 Continuation of the Business of the Company

(a) If, at the time of an event described in Section 9.02 or Section 9.03 or any other event described in the Act with respect to a Managing Member, such Managing Member was not the sole Managing Member, the remaining Managing Member or Managing Members shall continue the business of the Company and shall immediately: (i) give Notice to the Investor Member of such event; and (ii) make any amendments to this Agreement and execute and file for recording any amendments or other documents or instruments necessary to reflect the termination of the Interest of the Managing Member as to which such event has occurred and such Managing Member's having ceased to be a Managing Member and in order to comply with the requirements of the Act.

(b) A Person shall be admitted as a successor or additional Managing Member with the Consent of the Investor Member if an amendment to the Certificate evidencing the admission of such Person as a Managing Member shall have been filed for recordation. Each Managing Member hereby agrees to execute promptly any such amendment to the Certificate, if required in the event of its withdrawal or removal pursuant to the provisions of this Article IX, and, in addition, hereby appoints Enterprise as its attorney-in-fact to execute any such amendment on its behalf and in its place and stead in the event of its withdrawal or removal. The election by the Investor Member to remove any Managing Member under Section 9.02 shall not limit or restrict the availability and use of any other remedy that the Investor Member or any other Member might have with respect to any Managing Member in connection with its undertakings and responsibilities under this Agreement, and they are understood by the parties hereto to be permitted by the Act as the exercise of powers not constituting participation in the control of the business so as to convert the investor membership interest of the Investor Member into a managing membership interest for any purpose or to any extent.

ARTICLE X

Assignability of Interests of Investor Member

10.01 Substitution and Assignment of an Investor Member's Interest

(a) An Investor Member may not sell, transfer, assign, pledge, or otherwise dispose of all or any part of its Interest without the Consent of the Investor Member and the Consent of the Managing Member, the granting or denying of which shall not be unreasonably withheld, and the payment by such Investor Member or its assignee of all costs of such assignment including the costs of filing the amended certificate, if applicable; *provided, however,* the Investor Member shall have (i) the absolute right to transfer up to one hundred percent (100%) of its Interest to any entity in which Enterprise serves as general partner, managing member or, directly or indirectly, controls the general partner or managing member, without obtaining the Consent of the Managing Member, or (ii) the right to transfer up to one hundred percent (100%) of its Interest to any entity regularly engaged in the syndication of Credits or the direct investment in Credits after the payment of its entire Capital Contribution obligation without obtaining the Consent of the Managing Member (a "***Permitted Transfer***"); *provided, however*, the Consent of the Managing Member shall be required for any transfer of the Investor Member's Interest to a Listed Transferee (as hereinafter defined) or an Affiliate thereof. For purposes of this Section 10.01(a), a "***Listed Transferee***" shall mean

any potential transferee of all or a portion of the Investor Member's Interest that is disclosed on a list provided by the Managing Member to the Investor Member in writing (the Managing Member's list of such transferees shall not be updated more frequently than every three (3) calendar years) describing those transferees with respect to which the Managing Member would withhold its consent due to a previous business relationship with such potential transferee or such potential transferee's general business reputation. For purposes of the initial three (3) calendar years beginning with the 2021 calendar year, the Listed Transferees shall be the following parties or affiliates, parent organization, parent of a parent organization, or subsidiaries thereof: Alden Torch, Sun America, Hunt Company, Alden Torch Financial, LLC, Kay-Kay Realty Corp., Wentwood Property Management, Redstone Equity Partners, LLC, Spectrum Enterprises, Inc., Alden Capital Partners, HCP Pacific Asset Management, Centerline, Hunt Mortgage Group, Hunt Development Group or any direct successor in interest to any of the foregoing. The Managing Member, at the sole expense of the assigning Investor Member, shall cooperate in good faith to effect a Permitted Transfer as expeditiously as possible, including without limitation the execution of appropriate amendments to, or updates of, the Project Documents and Loan Documents and/or any other documents which the assigning Investor Member reasonably determines necessary or appropriate to accomplish such Permitted Transfer, including, but not limited to, any amendments, updated corporate opinion, authorizing resolutions of the Managing Member and any other documents reasonably deemed necessary and appropriate by the Investor Member. The Company shall not be required to recognize any such assignment until the instrument conveying such Interest has been delivered to the Managing Member for recordation on the books of the Company. If an assignee of the Investor Member pursuant to this Section 10.01(a) does not become a Substitute Investor Member pursuant to Section 10.01(b), the Company shall not recognize the assignment, and the assignee shall not have any rights hereunder or any rights exercisable against the Company to receive any portion of the share of profits, losses and distributions of the Company to which the Investor Member would have been entitled if no such assignment had been made by the Investor Member. Any such profits, losses and distributions shall continue to be allocated as if there were no assignment.

(b) An assignee of the Interest of an Investor Member, or any portion thereof, shall become a Substitute Investor Member entitled to all the rights of an Investor Member if, and only if:

(i) The assignor grants to the assignee such right;

(ii) Except for those transfers permitted under Section 10.01(a), the Managing Member, with the Consent of the Investor Member, consents to such substitution, the granting or denying of which consent shall not be unreasonably withheld;

(iii) The assignor or assignee pays to the Company all costs and expenses incurred by the Company in connection with such substitution, including, without limitation, legal fees and costs incurred in the review and processing of the assignment, and in amending, if necessary, the Company's then current Agreement; and

(iv) The assignee executes and delivers such instruments, in form and substance satisfactory to the Managing Member, as the Managing Member may deem necessary or desirable

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to effect such substitution and to confirm the agreement of the assignee to be bound by all of the terms and provisions of this Agreement.

(c) Upon the admission of any Substitute Investor Member, an amendment to this Agreement, reflecting such admission, shall be executed by the Members. Such amendment shall reflect the name, address and Capital Contribution of such Substitute Investor Member, and anything else required by the Act, and shall set forth the agreement of such Substitute Investor Member to be bound by all the provisions of this Agreement. The Managing Member shall file such amended Certificate as the Act requires.

(d) The Company and the Managing Member shall be entitled to treat each Person set forth on Exhibit A as the absolute owner of its Interest in all respects, and shall incur no liability for distributions of cash or other property made in good faith to such owner until such time as a written assignment of such Interest has been received and accepted by the Managing Member and recorded on the books of the Company. The Managing Member may refuse to accept an assignment until the end of the next successive quarterly accounting period.

(e) Beginning after the end of the Credit Period, the Investor Member shall have the option to withdraw from the Company without the Consent of the Managing Member. In addition, beginning after the end of the Credit Period, the Investor Member may, in its sole and absolute discretion, elect to cause the Managing Member or its designee to purchase the Investor Member's entire Interest in the Company for one thousand dollars ($1,000.00), but only if the Managing Member provides adequate protection against the possibility of tax credit recapture prior to the end of the Compliance Period, which protection may include, but shall not be limited to, indemnification from a credit-worthy entity reasonably acceptable to the Investor Member. The Managing Member agrees that the Company will continue to use and operate the Property as affordable housing in accordance with the requirements of Section 42 of the Code for the remainder of the Compliance Period. In the event of a transfer of the Investor Member's Interest in accordance with this Section, the Investor Member and the assignee shall execute and deliver such instruments, in form and substance satisfactory to the Managing Member and the Investor Member, as may be necessary to effect such transfer and the Investor Member shall be responsible for any applicable transfer tax resulting from such withdrawal or put option exercise.

(f) Notwithstanding the foregoing provisions of Section 10.01, the Members specifically acknowledge that: (i) pursuant to the terms and provisions of the Transfer Agreement attached hereto as Exhibit M, Wincopin Circle LLLP contemplates the transfer of its Interest to an entity in which Enterprise is the general partner, managing member or directly or indirectly controls the general partner or managing member, (ii) all Members hereby consent to such transfer and the insertion of the name of the transferee as the transferee thereunder, (iii) such transfer shall be effective on such date as provided in the Transfer Agreement and shall constitute on such date a valid amendment to this Agreement, (iv) the transferee of the Interest of the Investor Member pursuant to the Transfer Agreement shall be automatically admitted to the Company as a Substitute Investor Member on the effective date of the Transfer Agreement, and (v) until such time as such Transfer Agreement is fully executed, Wincopin Circle LLLP may pledge its Interest to a third party lender to secure any loan (a "***Wincopin Loan***") made to Wincopin Circle LLLP which loan is used to finance any capital contributions made to the Company by Wincopin Circle LLLP. In the event that Wincopin Circle LLLP shall default under the terms of a Wincopin Loan and the

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lender thereunder shall exercise its remedies under such pledge, then such lender or any entity to which such lender may transfer Wincopin Circle LLLP's Interest shall become a Permitted Transferee and shall be admitted to the Company as a Substitute Investor Member. Wincopin Circle LLLP shall cause a copy of the fully executed Transfer Agreement to be delivered to the Managing Member.

ARTICLE XI

Management Agent

11.01 Managing Member to Engage Management Agent

The Managing Member shall have responsibility for engaging a management agent (which may be an Affiliate of the Managing Member) acceptable to the Investor Member, and, to the extent required by the applicable Project Documents, the approval of any Mortgagee or governmental authority having jurisdiction over the Project. The Management Agent shall manage and operate the Company Property in accordance with this Agreement and in accordance with the applicable Project Documents. The Property Management Agreement attached as Exhibit F shall provide that if the Managing Member is removed pursuant to Section 9.02, or if the Managing Member withdraws from the Company, and the Management Agent is an Affiliate of such removed or withdrawing Managing Member, the Investor Member, in its reasonable discretion, may elect to terminate the Property Management Agreement upon written notice from the Investor Member or from any designee Managing Member designated under Section 9.02(b). Any removal of the Management Agent in accordance with Article IX hereof or hiring of a new Management Agent shall be made only upon obtaining the consents or approvals, if any, required by the Loan Documents, the Project Documents or this Agreement. If the Managing Member shall at any time select a management agent other than the Management Agent, such successor to the Management Agent may (subject to the Consent of the Investor Member and to any required consent or approval of the Mortgagees) be an Affiliate of the Managing Member, but shall not be the Managing Member. The Management Agent shall be entitled to receive such management fees as are included in the Budget and that comply with the applicable Project Documents. Any successor Management Agent shall be entitled to receive such management fees as may be agreed upon between the Managing Member and such successor Management Agent consistent with the Budget, and that comply with the applicable Project Documents. For avoidance of doubt, Delta shall not be obligated to defer any portion of the Property Management Fee otherwise due and payable under the Property Management Agreement in the event of an Operating Deficit.

ARTICLE XII

Dissolution of Company

12.01 Dissolution

The Company shall be dissolved, and the business of the Company shall be terminated in accordance with the Act, upon the occurrence of any of the following events:

(a) The dissolution, liquidation, withdrawal, removal and/or Event of Bankruptcy of a Managing Member, under such circumstances where no other remaining Managing Member

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desires to continue the Company; *provided, however,* that the Company shall not be dissolved as aforesaid if the Investor Member shall, within the maximum number of days permitted by the Act, elect to continue the Company and the Company business, and shall designate a successor Managing Member, which upon its admission to the Company shall immediately obtain all of the Managing Member's rights to receive Net Cash Flow, Sale and Refinancing Proceeds, and the unpaid portion of any fees pursuant to this Agreement, to the extent not already earned by the Managing Member, for a purchase price of One Hundred Dollars ($100);

(b) An election to dissolve the Company made in writing by all of the Members in accordance with the Act;

(c) The sale or other disposition of all or substantially all of the Company Property;

(d) The expiration of the Term; or

(e) The occurrence of any other event causing the dissolution of a limited liability company under the laws of the State of New York.

12.02 Distribution of Company Assets

Upon the dissolution of the Company, the Company business shall be wound up and its assets liquidated; and the net proceeds of such liquidation shall be distributed in the following order of priority (but in all events in accordance with the Act):

(a) To the payment of the debts and liabilities of the Company (including any amounts that may be owed to any Member) and the expenses of liquidation;

(b) To establishing any reserves that the Managing Member or liquidator, in accordance with sound business judgment, deems reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company, which reserves may be paid over to an escrow agent to be held by such agent for the purpose of (A) distributing such reserves in payment of the aforementioned contingencies, and (B) upon the expiration of such period as the Managing Member or such liquidator may deem advisable, distributing the balance thereof in the manner provided in this Section 12.02; and

(c) To the Members in accordance with the then remaining balances in their respective Capital Accounts after all allocation of gain and all Capital Account adjustments have been made pursuant to Article VII.

Notwithstanding any other provision of this Agreement, upon Liquidation of a Member's entire Interest in the Company, whether in liquidation of the Company or otherwise, such Member shall receive a distribution in accordance with the positive balance in its Capital Account no later than the end of the taxable year of such Liquidation or, if later, within ninety (90) days of such Liquidation. For the avoidance of doubt, the Members hereby acknowledge and agree that the Buyout Options described in Section 14.01 were agreed to pursuant to an agreement negotiated at arm's length between the Members or their Affiliates, and that at the time of negotiating the Buyout Options, the Members or their Affiliates had materially adverse interests.

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12.03 Termination of the Company

The Company shall terminate when all Company Property shall have been disposed of (except for any liquid assets not so disposed of), and the net proceeds therefrom, as well as any other liquid assets of the Company, have been distributed to the Members as provided in this Article XII and in accordance with the Act.

ARTICLE XIII

Accounting and Reports

13.01 Bank Accounts

The Managing Member shall deposit or cause the deposit of the funds of the Company in the name of the Company in such separate bank account or accounts, and with such bank or banks whose deposits are insured by an agency of the federal government, as shall be determined by, and in the sole discretion of, the Managing Member. The Managing Member shall arrange for the appropriate conduct and operation of such account or accounts.

13.02 Books of Account

There shall be kept at the principal office of the Company true, correct, and complete books of account, maintained in accordance with generally accepted accounting principles, consistently applied, in which shall be entered fully and accurately each and every transaction of the Company. For federal income tax and financial reporting purposes, the Company shall use the accrual method of accounting. Each Member shall have access thereto to inspect and copy such books of account at all reasonable times. Any Member shall further have the right to a private audit of the books and records of the Company, provided that such audit is made at the expense of the Member desiring the same and is made at reasonable times during normal business hours after due Notice. The Company shall retain all books and records for the longer of (i) the period required under this Agreement or (ii) the longest of the period required by applicable laws and regulations, Section 42 of the Code, the Project Documents and Loan Documents.

13.03 Reports

(a) The Managing Member shall cause to be prepared and delivered to the Investor Member and, when required, shall cause the Company to file with relevant governmental agencies, each of the following:

(i) *Quarterly Financial Reports of the Company.* As soon as available and in any event not later than fifteen (15) days after the end of the first, second and third quarters of each year, to be completed and transmitted electronically to the Investor Member via the designated reporting website:

(A) unaudited financial statements of the Company, certified by the Managing Member as presenting fairly the financial condition of the Company at the date of such statements, including (1) the balance sheet as of the end of such quarter, and (2) the year-to-date

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statement of operations, if any. Such unaudited financial statements shall be prepared in accordance with generally accepted accounting principles applied on a consistent basis; and

(B) copies of (1) reserve activity, (2) status report and narrative description of material developments, (3) vacancy report, and (4) monthly occupancy reports.

(ii) *Annual Audited Financial Statements of the Company.* As soon as available, and in any event not later than forty-five (45) days after the end of each year in draft form and not later than sixty (60) days after the end of each year in final form, to be completed using the Investor Member's standard template and transmitted electronically to the Investor Member via the designated reporting website (except that bank statements and rent rolls can be submitted electronically or as hard copy):

(A) the audited financial statements of the Company, as of the end of such year, including the balance sheet, and the related statement of operations, statement of changes in Members' Capital Accounts and statement of cash flows with the report of the Accountants thereon to the effect that such statements present fairly the financial position at the end of such year and the results of its operations and changes in financial position for the year then ended in conformity with generally accepted accounting principles applied on a consistent basis; notwithstanding anything to the contrary in this Agreement, the Managing Member shall provide the Investor Member at least fifteen (15) days to review such financial statements; provided that drafts not timely received may require a longer review period, and provided further all such financial statements are subject to the approval of the Investor Member; upon such approval, the Managing Member shall immediately provide such statements in final form; and

(B) copies of (1) the rent rolls for the Project indicating the rent, family size, family income and area median income for each tenant, (2) the bank statements, (3) status report and narrative description of material developments and (4) vacancy report.

(iii) *Annual Financial Statements of the Managing Member, the Sponsor and the Guarantor*.

(A) As soon as available and in any event not later than two hundred seventy (270) days after the end of Delta's fiscal year, prepared on a "consolidating" basis (or with supplemental consolidating schedules attached), the audited financial statements of Delta as of the end of each such fiscal year, including the balance sheets, related statement of operations, statement of changes in Members' Capital Accounts or retained earnings, and statements of cash flows, with the report of a certified public accountant thereon to the effect that such statements present fairly the financial position at the end of such year and the result of its operations and changes in its financial position for the year then ended, in conformity with generally accepted accounting principles applied on a consistent basis. As soon as available and in any event not later than one hundred eighty (180) days after the end of CB-Emmanuel's fiscal year, (y) prepared on a "consolidating" basis (or with supplemental consolidating schedules attached), the audited financial statements of CB-Emmanuel as of the end of each such fiscal year, including the balance sheets, related statement of operations, statement of changes in Members' Capital Accounts or retained earnings, and statements of cash flows, with the report of a certified public accountant thereon to the effect that such statements present fairly the financial position at the end of such

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year and the result of its operations and changes in its financial position for the year then ended, in conformity with generally accepted accounting principles applied on a consistent basis, and (z) CB-Emmanuel's federal tax return, including all forms and schedules as well as all statements and Forms K-1. As soon as available and in any event not later than two hundred seventy (270) days after the end of the calendar year, a statement of each Individual Guarantor's financial position, certified by such individual, and each Individual Guarantor's federal tax return, including all forms and schedules as well as all statements and Forms K-1.

(B) Upon request, as soon as available and in any event not later than one hundred eighty (180) days after the end of the Managing Member's fiscal year, the financial statements of the Managing Member as of the end of each such fiscal year, including the balance sheet, related statement of operations, statement of changes in Members' Capital Accounts and statement of cash flows.

(iv) *Annual Tax Returns.* As soon as available and in any event not later than forty-five (45) days after the end of each fiscal year, when required by the IRS, in draft form and not later than sixty (60) days after the end of each fiscal year in final form, all information necessary for the preparation of the Investor Member's federal income tax return for each fiscal year in respect of income, gains, losses, deductions, or credits and the allocation thereof to each Member, including a Schedule K-1 (or other comparable form subsequently required by the IRS) and a copy of the federal "Company Return" and any state or local partnership tax return required to be filed by the Company. Notwithstanding anything to the contrary in this Agreement, the Managing Member shall provide the Investor Member at least fifteen (15) days to review the federal "Company Return," provided that drafts not timely received may require a longer review period, and provided further that such federal "Company Return" is subject to the approval of the Investor Member. Upon such approval, the Managing Member shall immediately provide such tax returns to the Investor Member in final form.

(v) *Periodic Reports Requiring Investor Member Approval.* Any and all periodic reports required to be provided to the Investor Member by any federal, state, or local government agency having jurisdiction over the Project, the Company Property, or the Company.

(vi) *Notice of Defaults, IRS Proceedings and Significant Developments.* Immediately upon receipt thereof (A) notice of any default under any Loan or financial obligation of the Company, (B) notice of any IRS proceeding involving the Company, or (C) any payment or draw made under any operating deficit guaranty, construction completion guaranty, performance bond or letter of credit, and any other significant developments affecting the Company, its business or assets.

(vii) *Construction and Lease-up Progress.* With each construction draw submitted to the Investor Member (regardless of whether such draw requires an equity Installment), but in no event less than once a month, a report on the progress of construction in the form attached as Exhibit K to this Agreement. If the Managing Member determines that the actual amount with respect to any line item in the then approved budget for the development of the Project is or likely will be less than the amount of such line item as set forth in the then approved budget for the development of the Project (a "***Cost Savings***"), the Managing Member will notify the Investor Member of such Cost Savings and such Cost Savings will be utilized only as approved

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by the Investor Member and by any lender or any governmental authority whose approval to such use is required.

As soon as available, and in no event later than fifteen (15) days after the end of each month, a monthly report on the progress of lease-up submitted electronically in accordance with Enterprise's lease-up tracking procedures.

(viii) *Tenant Income Certifications*. As soon as available, and in no event later than sixty (60) days after a Unit is qualified, copies of all initial Tenant Income Certifications.

(ix) *Cost Certification.* As soon as available, and in no event later than sixty (60) days after the Completion Date, the Cost Certification prepared by the Accountants.

(x) *Deficits; Draws on Bonds, Guaranties, or Reserves*. Within five (5) business days of the exercise thereof, notice of any draw, call or demand for payment of any Operating Deficit, contractor performance bonds or construction completion guarantee, and any draw on the Operating Reserve.

(xi) *Nonrecourse Liabilities*. As soon as possible, notice of any contemplated repayment or guarantee of any nonrecourse obligation of the Company or any other conversion of such nonrecourse obligation to a recourse obligation.

(xii) *Filings*. Within ten (10) days of filing or receipt, copies of all annual reports or other filings (including the Extended Use Agreement) submitted to the Authority and copies of all IRS Forms 8823 or correspondence with the Authority with respect to the Company or the Project.

(xiii) *Information Requested by the Investor Member*. Such other information regarding the state of the business, financial condition and affairs of the Company, as the Investor Member, from time to time, may reasonably request, including, but not limited to, a certification by the Managing Member that (A) all Loan payments and taxes and insurance payments with respect to the Project are current as of the date of the year-end report, (B) there is no default under any material provision of the Loan or Project Documents or this Agreement, or if there is any default, a description thereof, and (C) there is no building, health or fire code violation or, to the best of its knowledge, similar violation of a governmental law, ordinance or regulation against the Project or, if there is such violation, a description thereof.

(b) The Managing Member shall promptly respond to all reasonable requests for information made by the Investor Member.

(c) The Managing Member shall deliver to the Investor Member from time to time, and within ten (10) days after written request therefor, all such further statements and information as the Investor Member may reasonably request in order to enable the Investor Member to determine or verify the amounts of all payments that the Managing Member shall be required to make to the Members and the amounts of credits, and all such statements and information needed by the Investor Member in connection with reports and forms required to be filed by the Investor Member pursuant to federal or state securities law.

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(d) In the event that the Company's annual audited financial statements or tax returns provided for in Sections 13.03(a)(ii) and (iv) are not provided within the time frames set forth therein, the Managing Member shall be obligated to pay to the Investor Member the sum of Fifty Dollars ($50) per day for the first thirty (30) days and One Hundred Dollars ($100) per day thereafter, as liquidated damages, for each day from the date upon which such statements or returns are due until the date upon which such statements or returns are provided to the Investor Member in a form acceptable to the Investor Member. In the event the statements or returns are not provided on a timely basis, the Investor Member may direct the Managing Member to dismiss the Accountants, and to designate successor Accountants, subject to the approval of the Investor Member.

13.04 Partnership Representative

(a) *Defined Terms*. For purposes of this Section 13.04, the following terms shall have the meanings set forth below:

Administrative Adjustment Request: An administrative adjustment request under Code Section 6227.

Adjustment Year: The Company taxable year in which (i) in the case of an adjustment pursuant to the decision of a court in a proceeding brought under Code Section 6234, such decision becomes final, (ii) in the case of an Administrative Adjustment Request, such Administrative Adjustment Request is made, or (iii) in any other case, a notice of final Partnership Adjustment is mailed under Code Section 6231 or, if the Company waives the restrictions under Code Section 6232(b) (regarding limitations on assessment), the date the waiver is executed by the IRS.

Adjustment Year Member: Any Person who held an interest in the Company at any time during an Adjustment Year.

Former Member: Any Person who was a Reviewed Year Member but is not an Adjustment Year Member.

Imputed Underpayment: Has the meaning set forth in Section 6225 of the Code.

Indirect Member: Any Person who has an interest in the Company through its interest in one or more Pass-Through Members.

Partnership Adjustment: Any adjustment to any item of income, gain, loss, deduction, or credit of the Company, or any Member's distributive share thereof, in either case as described in any applicable Regulations or other guidance prescribed by the IRS.

Pass-through Member: A pass-through entity that holds an interest in the Company, including a partnership (as described in Treas. Reg. § 301.7701-2(c)(1) including a foreign entity that is classified as a partnership under Treas. Reg. § 301.7701-3(b)(2)(i)(A) or (c), an S corporation, a trust (other than a trust described in the next sentence) and a decedent's estate. For purposes of this definition, a pass-through entity does not include a disregarded entity described in Treas. Reg. § 301.7701-2(c)(2)(i) or a trust that is wholly owned by only one Person,

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whether the grantor or another Person, and the trust reports the owner's information to payors under Treas. Reg. § 1.671-4(b)(2)(i)(A).

Push-Out Election: An election by the Partnership Representative under Section 6226 of the Code with respect to any Imputed Underpayment(s) identified in a Final Partnership Adjustment for the Company.

Reviewed Year: The Company taxable year to which a Partnership Adjustment relates.

Reviewed Year Member: Any Person who held an interest in the Company at any time during the Reviewed Year.

Revised Partnership Audit Rules: Subchapter 63C of the Code (as amended by the Bipartisan Budget Act of 2015, P.L. 114-74 and the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113), and the Treasury Regulations promulgated thereunder, as amended from time to time.

Taxes: Any tax, penalties, additions to tax, additional amounts, and interest as described in Section 6226 of the Code.

(b) *Partnership Representative.*

(i) Appointment and Designation. The Members hereby authorize the Company to appoint the Managing Member as the initial partnership representative of the Company pursuant to Section 6223(a) of the Code (the "***Partnership Representative***"). The Managing Member shall be appointed the Partnership Representative for each taxable year of the Company provided that if an event or circumstance has occurred which, with the giving of notice or the passage of time, would constitute a Removal Default hereunder or a default by the Partnership Representative or Designated Individual of its/his/her duties and obligations under this Section 13.04, the Consent of the Investor Member must be obtained before the Partnership Representative is appointed for any taxable year of the Company. The Partnership Representative shall timely designate an individual to serve as the sole individual through whom the Partnership Representative will act for purposes of the Revised Partnership Audit Rules (the "***Designated Individual***") with the Consent of the Investor Member. No later than the effective date of the designation of the Designated Individual as the Designated Individual or of the Partnership Representative as the Partnership Representative, such Designated Individual or Partnership Representative, as applicable, must agree in writing to be bound by the same obligations and restrictions imposed on the Partnership Representative under this Section 13.04 prior to and as condition of such designation.

(ii) Resignation; Revocation. The Managing Member (and any successor Partnership Representative) may resign as the Partnership Representative by written notice to the Company, the Investor Member, and the IRS. Notice of such resignation shall be given to the IRS in the time and manner prescribed by the IRS. The resigning Partnership Representative shall designate a successor Partnership Representative only as directed by or with the Consent of the Investor Member. Upon removal of the Managing Member for any reason pursuant to the provisions of Section 9.02(a) of this Agreement or, with the Consent of the Investor Member, in

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the event of a default by the Partnership Representative or Designated Individual of its/his/her duties and obligations under this Section 13.04, the Company shall revoke the designation of the Managing Member as the Partnership Representative for all taxable years during which such designation was in effect by written notice to the Partnership Representative and the IRS. The designation of the Designated Individual as the Designated Individual shall automatically terminate on the effective date of the resignation or revocation of the applicable entity as Partnership Representative. Notice of such revocation shall be given to the IRS in the time and manner prescribed by the IRS and shall include the designation of another Person selected by the Investor Member as the successor Partnership Representative for the Company taxable year for which the designation was in effect and the designation of another Person selected by the Investor Member as the successor Designated Individual for the Company taxable year for which the designation was in effect. In furtherance hereof, the Managing Member hereby constitutes and appoints the Investor Member, with full power of substitution, its true and lawful attorney-in-fact in its name, place and stead to carry out fully the provisions of this Section 13.04(b)(ii) and take any action which the Investor Member may deem necessary or appropriate in connection herewith. The power of attorney hereby granted shall be deemed to be coupled with an interest, shall be irrevocable and shall survive and shall not be affected by the subsequent incapacity, dissolution, resignation, revocation or other termination of the Managing Member as the Partnership Representative.

(iii) Successor Partnership Representative. Any successor Partnership Representative must have a substantial presence in the United States, have been Consented to by the Investor Member, and otherwise satisfy all statutory and regulatory requirements imposed by the Revised Partnership Audit Rules. The Person so designated must agree in writing to be bound by the terms of this Section 13.04 and shall not take any action in its capacity as Partnership Representative until the resignation and/or revocation of the prior Partnership Representative becomes effective under the Code or Treasury Regulations.

(iv) Notice of Communications. The Partnership Representative shall give the Members prompt notice of any inquiry, notice, or other communication received from the IRS or other applicable tax authority regarding the tax treatment of the Company or the Members, and shall, to the extent possible, give the Members prior notice of and a reasonable opportunity to review and comment upon any written communication the Partnership Representative intends to make to any such taxing authority in connection with any examination, audit or other inquiry involving the Company. Without limiting the generality of the foregoing, the Company immediately shall send to all of the Members copies of any notice of a proposed or final Partnership Adjustment received by the Company and/or the Partnership Representative from the IRS.

(v) Duties and Limitations on Authority. The Partnership Representative and any Designated Individual shall have all power and authority of a partnership representative and designated individual, respectively, as set forth in Section 6223 of the Code, and shall represent the Company and its Members in all dealings with the IRS and state and local taxing authorities, provided, however, that, except as specifically provided in Section 13.04(c) below, the Partnership Representative shall not, without the Consent of the Investor Member, have any power or authority to do any or all of the following:

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(A) make an election to opt out of the application of the Revised Partnership Audit Rules to the Company;

(B) make a Push-Out Election;

(C) file an Administrative Adjustment Request;

(D) select any judicial forum for the litigation of any Company tax dispute; or

(E) take any other action (or fail to take any action) that might reasonably be expected to require the payment of any material Taxes by the Company or the Investor Member, or otherwise have a material adverse impact on the tax or economic position of the Company or the Investor Member.

(vi) Fiduciary Relationship. The relationship of the Partnership Representative to the Investor Member shall be that of a fiduciary, and the Partnership Representative shall have a fiduciary obligation to perform its duties in such manner as will serve the best interests of the Investor Member.

(vii) Indemnification. To the extent of available funds, the Company shall indemnify the Partnership Representative against judgments, fines, amounts paid in settlement and expenses (including attorneys' fees) reasonably incurred by the Partnership Representative in its capacity as the Partnership Representative, and not its capacity as a Member or a Former Member, in connection with any audit or administrative or judicial proceeding in which the Partnership Representative is involved solely by reason of being the Partnership Representative of the Company, provided that the same were not the result of negligence, misconduct, fraud, breach of fiduciary duty or breach of this Agreement on the part of the Partnership Representative and were the result of a course of conduct which the Partnership Representative, in good faith, reasonably believed to be in the best interests of the Company and the Investor Member and within the scope of its authority under this Section 13.04.

(c) *Modifications and Company Elections.*

(i) Modifications to Imputed Underpayment. If the Company and/or Partnership Representative receives notice of a proposed Partnership Adjustment from the IRS, the Partnership Representative shall so notify the Members in accordance with the provisions of Section 13.04(b)(iv) above and, if requested to do so by the Investor Member, shall request modification of the Imputed Underpayment proposed in such notice in accordance with any applicable Treasury Regulations, forms, instructions, and other guidance prescribed by the IRS. Any such request by the Investor Member shall describe the modifications or adjustment factors that the Investor Member believes affect the calculation of the Imputed Underpayment in sufficient detail to substantiate the request for modification. Unless an extension of time is granted by the IRS, all information required to support a requested modification shall be submitted by the Investor Member to the Partnership Representative no later than one hundred eighty (180) days after the Investor Member receives notice of the proposed Partnership Adjustment from the Partnership Representative, and the Partnership Representative shall submit such information to the IRS no

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later than two hundred seventy (270) days after the date the proposed Partnership Adjustment notice was mailed by the IRS.

(ii) Amended Returns. If requested to do so by the Investor Member, the Partnership Representative shall request a modification of an Imputed Underpayment based on an amended return (or, to the extent permitted by law, any similar statement) filed by a Member (or Indirect Member) that takes account of all of the Company adjustments properly allocable to such Member (or Indirect Member). Any such request shall be accompanied by an affidavit from the requesting Member (or Indirect Member) signed under penalties of perjury that the requesting Member (or Indirect Member) has either filed each required amended return (or similar statement) or provided all information to the IRS as requested pursuant to Code Section 6225(c)(2)(B)(iii), and paid all Taxes due as a result of taking into account the adjustments in the first affected year and all modification years, as such terms are defined and applied in any applicable Regulations, forms, instructions, and other guidance prescribed by the IRS.

(iii) Reallocation Adjustment. In the case of a Partnership Adjustment that reallocates the distributive share of any tax item from one Member to another, the Partnership Representative shall be required to submit the modification request to the IRS under this Section 13.04(c) only if all Members (or Indirect Members) affected by such adjustment ("Affected Members") provide the affidavit(s) described in clause (ii) above or the Partnership Representative is notified by the IRS that one or more Affected Members have taken (or will take) into account their allocable share of the adjustment through other modifications approved by the IRS (such as, but not limited to, a closing agreement).

(iv) Push-Out Election. If the Company receives notice of a final Partnership Adjustment from the IRS, the Partnership Representative shall so notify the Members and any Former Partners in accordance with the provisions of Section 13.04(b)(iv) above and, if requested to do so by the Managing Member, and only after a good faith consultation with the Investor Member, shall make an election (a "***Push-Out Election***") under Section 6226 of the Code with respect to one or more Imputed Underpayments set forth in the final Partnership Adjustment notice. Except as hereinafter provided, if a Push-Out Election is made, each Reviewed Year Partner shall take into account its allocable share of the Partnership Adjustments that relate to the specified Imputed Underpayment and shall be liable for any Taxes as described in Section 6226 of the Code and any applicable Treasury Regulations or other guidance prescribed by the IRS. Notwithstanding the foregoing, to the extent permitted by law, any Reviewed Year Partner that is a partnership or S corporation may, at its option and in accordance with any applicable Treasury Regulations or other guidance prescribed by the IRS, elect (in lieu of paying its allocable share of such Partnership Adjustments) to push out the liability for Taxes attributable to such Partnership Adjustments to its Members (including Indirect Partners). Any Push-Out Election shall be filed within forty-five (45) days of the date the notice of final Partnership Adjustment is mailed by the IRS and shall be in such form, and shall contain such information, as required by any applicable Regulations, forms, instructions and other guidance prescribed by the IRS. If a Push-Out Election is made, the Partnership Representative shall furnish to each Reviewed Year Partner and the IRS, for each Reviewed Year within sixty (60) days after the date all of the Partnership Adjustments to which the statement relates are finally determined, a statement that includes all items and information required under any applicable Regulations, forms, instructions, and other guidance prescribed by the IRS.

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(v) Reimbursement of Allocable Share of Imputed Underpayment. If the Company becomes obligated to make an Imputed Underpayment under Code Section 6225(a), each of the Members (including any Former Member) to whom such liability relates shall be obligated, within thirty (30) days after written notice from the Managing Member, to pay an amount that, on an After-Tax Basis if such payment is treated as an indemnity payment under this Section 13.04(c)(v), is equal to its allocable share of such amount to the Company; *provided, however*, that if and to the extent that the Company's liability results from a loss, disallowance or recapture of Credits for which a Credit Adjuster Advance is due to such Person and has not been paid, the amount otherwise payable by such Person to the Company under this Section 13.04(c)(v) shall be reduced by the amount of any unpaid Credit Adjuster Advance payable to such Person so that the Company will bear the portion of the Imputed Underpayment equal to such reduction. Any amount not paid by a Member (or Former Member) within such 30-day period shall accrue interest at Prime Rate plus 2% until paid. Any such payment made by any Member shall be treated as a Capital Contribution; *provided*, that such payment will be treated as an indemnity payment if the Investor Member determines in its sole discretion that treatment as a Capital Contribution would result in a reallocation of tax losses or Credits. Any such payment made by any Former Member shall be treated as an indemnity payment and not as a Capital Contribution or loan to the Company.

(vi) Withholding. Notwithstanding anything to the contrary contained herein, the Managing Member shall cause the Company to withhold from any distribution or payment due to any Member (or Former Member) under this Agreement any amount due to the Company from such Member (or Former Member) under clause (v) above. Any amount(s) so withheld shall be applied by the Company to discharge the obligation in respect of which such amount was withheld. All amounts withheld pursuant to the provisions of this Section 13.04(c)(vi) with respect to a Member (or Former Member) shall be treated as if such amounts were distributed or paid, as applicable, to such Member (or Former Member).

(vii) Indemnity. To the extent that a portion of the Taxes imposed under Code Section 6225(a) relates to a Former Member, the Managing Member shall require such Former Member to indemnify the Company for its allocable portion of such tax (including any penalties, additions to tax, additional amounts, and interest) to the extent such amounts have not been withheld pursuant to the provisions of Section 13.04(c)(vi). Each Member acknowledges that, notwithstanding the transfer or liquidation of all or any portion of its Interest in the Company, it shall remain liable for Taxes with respect to its allocable share of income and gain of the Company for the Company's taxable years (or portions thereof) prior to such transfer or liquidation unless otherwise agreed to in writing by the Members during the taxable year(s) (or portion thereof) to which the Taxes relate and all Former Members during the Company's taxable year(s) (or portion(s) thereof) to which the Taxes relate.

(viii) If the IRS assesses a tax upon any Member or Former Member pursuant to Code Section 6232(f) with respect to one or more Imputed Underpayments (and interest and penalties thereon) set forth in the final Partnership Adjustment notice with respect to which a Push-Out Election is not made by the Company, such Member or Former Member shall be liable for such amount (as such amount may be subsequently reduced pursuant to Code Section 6232(f)(4) to reflect payments made by the Company with respect to the applicable Imputed Underpayment).

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(ix) Continuing Obligations. Whether the liability is assessed to the Company or the Members (or Former Members), the parties hereto acknowledge and agree that nothing in this Section 13.04(c) is intended, nor shall it be construed, to modify or waive any obligations of the Managing Member under this Agreement including, without limitation, the obligation to make a payment pursuant to the provisions of Section 3.03 and Section 3.04.

(d) *Consistent Tax Treatment.* Except as hereinafter provided, each Member agrees that its treatment on its own federal income tax return of each item of income, gain, loss, deduction, or credit attributable to the Company shall be consistent with the treatment of such items on the Company return, including the amount, timing, and characterization of such items. Notwithstanding the foregoing general requirement, any Member may file a statement identifying certain items that are inconsistent (or that may be inconsistent) in accordance with any applicable Treasury Regulations, forms, instructions, or other guidance provided by the IRS. Any such statement shall be attached to the Member's tax return on which the item is treated inconsistently.

(e) *Tax Counsel or Accountants.* The Partnership Representative shall employ experienced tax counsel and/or accountants to represent the Company in connection with any audit or investigation of the Company by the IRS or any other taxing authority and in connection with all subsequent administrative and judicial proceedings arising out of such audit. Such counsel and/or accountants shall be responsible for representing the Company; it shall be the responsibility of the Members, at their expense, to employ tax counsel or accountants to represent their respective separate interests.

(f) *Survival.* The obligations of each Member or Former Member under this Section shall survive the transfer, redemption or liquidation by such Member of its Company Interest and the termination of this Agreement or the dissolution of the Company.

(g) *Amendments.* Upon the promulgation of revised Treasury Regulations implementing the Revised Partnership Audit Rules or upon further amendment of the Revised Partnership Audit Rules, the Members will evaluate and consider options available with respect to preserving the allocation of responsibility and authority described in this Section 13.04, while conforming with the applicable provisions of the revised partnership audit procedures. The Members agree to work together in good faith to make elections and amend this Agreement (if any party determines that an amendment is required) to maintain the intent of the parties with respect to the obligations and limitations of the Partnership Representative.

(h) *State and Local Income Tax Matters.* The provisions of this Section 13.04 shall also apply to state and local income tax matters affecting the Company to the extent the terms and conditions hereof have any application to audit procedures at the state and local level.

ARTICLE XIV

Buyout Options and Right of First Refusal

14.01 Buyout Options

(a) **Purchase of the Investor Member's Interest**

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Beginning after the end of the Compliance Period, and only if at such time or times the Managing Member has satisfied all obligations under this Agreement to the Investor Member, the Managing Member is not in default under any of the Project Documents, the Loan Documents or this Agreement, and no Event of Bankruptcy has occurred or is impending with respect to the Managing Member or the Guarantor, the Managing Member shall have the option (the "***Buyout Option***") for the Managing Member or an Affiliate to purchase the Investor Member's entire Interest in the Company for the "***Buyout Price***." The Buyout Price shall equal the greater of (i) the fair market value of the Investor Member's Interest (the "***IM Interest FMV***"), as of the date of the Buyout Notice (defined below) or (ii) the sum of (y) all federal, state and local taxes attributable to such sale, in excess of the amount shown as "Investor Tax upon Sale" on the "Investment Results after Disposition" worksheet of the Projections, including those incurred or to be incurred by the partners, direct or indirect, of the Investor Member ("***Buyout Taxes***") and (z) all unpaid fees, loans, credit adjuster distributions, and credit adjuster payments owed to the Investor Member.

Additionally, the Managing Member or an Affiliate shall have the option to purchase the Investor Member's Interest for the Buyout Price beginning the first calendar year after all Credits have been delivered if, in addition to satisfaction of the conditions above, (i) the Investor Member (a) approves such exercise, in its sole and absolute discretion, or (b) determines, in its sole and absolute discretion, that the Company will provide the Investor Member an internal rate of return calculated utilizing the same methodology as the Projections were calculated, but revised to reflect the actual delivery of Credits and losses to the Investor Member through the exercise of the Buyout Option, in an amount at least equal to the internal rate of return as shown on the Projections, even after the exercise of the Buyout Option; (ii) the Investor Member determines that an exercise of the Buyout Option after the Company has received all Credits available to it will not result in any negative tax consequences to the Investor Member, (iii) to the extent required by the Investor Member in its sole and absolute discretion, the Managing Member or its Affiliate provides adequate protection against the possibility of tax credit recapture prior to the end of the audit period applicable to the Compliance Period, which protection may include, but shall not be limited to, a guaranty or indemnification from a credit-worthy entity acceptable to the Investor Member, and (iv) the Managing Member and/or the Company shall pay to the Investor Member all unpaid fees, loans, credit adjuster distributions and credit adjuster payments owed to the Investor Member.

In order to exercise the Buyout Option, the Managing Member or its Affiliate shall provide written notice to the Investor Member (the "***Buyout Notice***") which shall include a proposed Buyout Price (with a copy of the appraisal and computations of both the IM Interest FMV and Buyout Taxes). The IM Interest FMV shall be determined by an independent appraiser selected by the Managing Member who shall prepare an appraisal of the Investor Member's interest, which appraisal may take into account any factors that the independent appraiser deems, in its sole and absolute discretion, relevant in determining the IM Interest FMV including, but not limited to, appropriate discounts typically applied to the valuation of an investor member's interest, and deferred maintenance and capital needs requirements set forth in a physical needs assessment.

The computation of the IM Interest FMV shall be subject to the Consent of the Investor Member (which will not be unreasonably withheld). In the event that the Investor Member fails to notify the Managing Member or its Affiliate of such Consent of the Investor Member within thirty (30) days of receipt of the Buyout Notice it shall be deemed to have rejected the computation. The

closing of the sale of the Investor Member's Interest to the Managing Member or its Affiliate shall occur within thirty (30) days after the Investor Member consents to the computation of the Buyout Price. The entire Buyout Price shall be paid to the Investor Member at the closing in cash or immediately available funds. All costs associated with the exercise of the Buyout Option, other than the Investor Member's attorney fees, including the costs of the appraiser appointed by the Managing Member or its Affiliate, as applicable, the Accountants' fees and any filing fees and transfer taxes attributable to the Buyout, shall be paid by the Managing Member or its Affiliate, as applicable.

In the event the Managing Member or its Affiliate has not provided a Buyout Notice to the Investor Member as required by this Section 14.01(a) prior to the date that is eighteen (18) months after the end of the Compliance Period, the Managing Member's right to exercise the Buyout Option shall terminate.

(b) **Purchase of the Project**

Beginning after the end of the Compliance Period, and only if at such time or times the Managing Member has satisfied all obligations under this Agreement to the Investor Member, the Managing Member is not in default under any of the Project Documents, the Loan Documents or this Agreement, and no Event of Bankruptcy has occurred or is impending with respect to the Managing Member or the Guarantor, the Managing Member or an Affiliate shall have the option (the "***Project Buyout Option***"), for the Managing Member or an Affiliate to purchase the Company Property for the "***Project Buyout Price***." The Project Buyout Price shall equal the greater of (i) the appraised value of the Company Property (the "***Project FMV***"), as of the date of the Project Buyout Notice, or (ii) the sum of (y) all federal, state and local taxes attributable to such sale, including those incurred or to be incurred by the partners, direct or indirect, of the Investor Member, in excess of the amount shown as "Investor Tax upon Sale" on the "Investment Results after Disposition" worksheet of the Projections ("***Project Buyout Taxes***") plus all outstanding indebtedness of the Company and (z) all unpaid fees, loans, credit adjuster distributions, and credit adjuster payments owed to the Investor Member.

In order to exercise the Project Buyout Option, the Managing Member or its Affiliate shall provide written notice to the Investor Member (the "***Project Buyout Notice***") which shall include a proposed Project Buyout Price (with a copy of the appraisal and computations of both the Project FMV and Project Buyout Taxes). The Project FMV shall be determined by an independent appraiser selected by the Managing Member or its Affiliate who shall prepare an appraisal of the Project, which appraisal may take into account any factors that the independent appraiser deems, in its sole and absolute discretion, relevant in determining the Project FMV including, but not limited to, appropriate discounts typically applied to the valuation of a Project, and deferred maintenance and capital needs requirements set forth in a physical need assessment, the terms of the tax abatement and affordability covenants.

The computation of the Project FMV shall be subject to the Consent of the Investor Member (which will not be unreasonably withheld). In the event that the Investor Member fails to notify the Managing Member or its Affiliate, as applicable, of such Consent of the Investor Member thirty (30) days of receipt of the Project Buyout Notice it shall be deemed to have rejected the computation. The closing of the sale of the Project to the Managing Member or its Affiliate

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shall occur within thirty (30) days after the Investor Member consents to the computation of the Project Buyout Price. The entire Project Buyout Price shall be paid to the Investor Member at the closing in cash or immediately available funds. All costs associated with the exercise of the Project Buyout Option other than the Investor Member's attorney fees, including the costs of the appraiser appointed by the Managing Member or its Affiliate, as applicable, the Accountants' fees and any filing fees and transfer taxes attributable to the Buyout, shall be paid by the Managing Member or its Affiliate, as applicable.

In the event the Managing Member or its Affiliate has not provided a Project Buyout Notice to the Investor Member as required by this Section 14.01(b) prior to the date that is eighteen (18) months after the end of the Compliance Period, the Managing Member's right to exercise the Project Buyout Option shall terminate.

14.02 Right of First Refusal

In accordance with the Right of First Refusal Agreement attached as Exhibit J to this Agreement, and provided there is no Removal Default with respect to the Managing Member, the Company will not transfer, sell, alienate, assign, give, bequeath or otherwise dispose of the Company Property to any Person without first offering the Company Property for a period of ninety (90) days to Delta (if it then qualifies as an organization described in Section 42(i)(7)(A) of the Code) or another qualified Section 501(c)(3) organization approved by the Investor Member (if it then qualifies as an organization described in Section 42(i)(7)(A) of the Code) (the "***Purchaser***") at a price equal to the sum of (i) the principal amount of all outstanding indebtedness secured by the Company Property, all other loans from the Managing Member or its Affiliates, and any accrued interest on any of such debt; and (ii) all federal, state and local taxes attributable to such sale, including those incurred or to be incurred by the partners, direct or indirect, of the Investor Member; *provided, however,* that such right of first refusal shall comply with Section 42(i)(7) of the Code, as amended, and as reasonably interpreted by the Investor Member. In the event the Purchaser has not exercised its Right of First Refusal within one (1) year after the end of the Compliance Period, the Purchaser's Right of First Refusal shall terminate.

14.03 Right of First Refusal of Investor Member

In the event that an Investor Member receives any consents required in Section 10.01 hereof to transfer its Interest, any non-transferring Investor Member shall have a first right of refusal to buy such Interest on the same terms as offered to the proposed transferee.

ARTICLE XV

Miscellaneous Provisions

15.01 Amendments to Agreement

(a) Each Member, including any additional Investor Member and Substitute Investor Member, additional Managing Member, and successor Managing Member shall become a signatory hereto by signing counterpart signature pages to this Agreement or an amendment to this Agreement or by granting a power of attorney to the Managing Member therefor, and by signing any other instrument or instruments deemed necessary by the Managing Member. By so signing,

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each Member, including any additional Investor Member and Substitute Investor Member, additional Managing Member, or successor Managing Member, as the case may be, shall be deemed to have adopted, and to have agreed to be bound by, all the provisions of this Agreement.

(b) No amendments shall be adopted pursuant to this Section 15.01 unless the adoption of such amendment does not affect the limited liability of the Investor Member under the Act or the status of the Company as a partnership for federal income tax purposes, or cause loss or recapture of the Credit for any Member that has not transferred its Company Interest.

(c) In making any amendments, there shall be prepared and timely filed for recordation by the Managing Member all documents and certificates required, if any, to be prepared and filed under the Act and under the laws of any other jurisdiction in which the Company is then formed or qualified.

(d) The proposal of an amendment may only be made:

(i) By the Managing Member, upon Notice to the Investor Member which shall include (A) the text of the amendment, and (B) a statement of the purpose of the amendment.

(ii) By the Investor Member, upon Notice to the Managing Member which shall include (A) the text of such amendment, and (B) a statement of the purpose of the amendment.

(e) Amendments to this Agreement shall become effective only upon the Consent of the Managing Member and the Consent of the Investor Member unless such Consent has been given under the terms of this Agreement. Consent may be withheld in the sole discretion of any Member.

15.02 Notices

All Notices to be given under this Agreement shall be sent to the Persons shown on Exhibit A-5. Any Member may change its Notice address by providing Notice thereof to all other Members.

15.03 [Intentionally Omitted]

15.04 Action for Breach

The representations, warranties, covenants, agreements, and duties of the Managing Member contained in this Agreement are being made in order to induce, and in consideration of, the Investor Member's acquisition of its Interest. Upon the breach of any representation, warranty, covenant, agreement, or duty, the Investor Member, if decided by Consent of the Investor Member, may pursue any available legal or equitable remedy against the Managing Member without being required to dissolve the Company and notwithstanding the availability of any other remedy.

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15.05 Consent and Voting

No vote or Consent of the Investor Member shall ever be construed to make the Investor Member liable as a managing member or cause the Investor Member to be liable for Company obligations.

15.06 Survival of Representations

All representations, warranties, and indemnifications contained herein shall survive the dissolution and final liquidation of the Company.

15.07 Entire Agreement

This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements between and among them respecting the subject matter of this Agreement.

15.08 Applicable Law

It is the intention of the parties hereto that all questions with respect to the construction, enforcement, and interpretation of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the laws of the United States of America and the laws of the State of New York, without regard to New York's internal conflict of laws principles.

15.09 Severability

This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable statutes, laws, ordinances, rules, and regulations. If any provision of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law. In the event that any provision of this Agreement or the application thereof shall be invalid or unenforceable, the Members agree to negotiate (on a reasonable basis) a substitute valid or enforceable provision providing for substantially the same effect as the invalid or unenforceable provision.

15.10 Binding Effect

When entered into by the parties hereto, this Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective spouses, heirs, executors and administrators, personal and legal representatives, successors and assigns.

15.11 Counterparts

This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

15.12 Successor Statutes and Agencies

Any reference contained in this Agreement to specific statutory or regulatory provisions or to specific governmental agencies or entities shall include any successor statute or regulation, or agency or entity, as the case may be.

15.13 No Implied Waiver

No failure on the part of any Member to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

15.14 Incorporation by Reference

Each document attached hereto as an exhibit is incorporated herein by reference and an occurrence of a default under an exhibit hereto shall constitute a default under this Agreement.

15.15 Authority Provisions

(a) The Company is authorized to execute the Extended Use Agreement and such other documents required by the Authority provided such documents are in a form approved by the Investor Member.

(b) Any incoming member shall, as a condition of receiving an interest in the Company Property agree to be bound by the Extended Use Agreement to the same extent and on the same terms as the other members, if required by the Authority.

(c) Further, notwithstanding any other provisions of this Agreement, in the event that any provision of this Agreement conflicts with any provision of the Extended Use Agreement, the provisions of the Extended Use Agreement shall control.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

ANGELA'S HOUSE LLC

FIRST AMENDED AND RESTATED OPERATING AGREEMENT

Signature Page

ANGELA'S HOUSE MM LLC,
a New York limited liability company

By: _____
Benathan Upshaw
Authorized Signatory

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ANGELA'S HOUSE LLC

FIRST AMENDED AND RESTATED OPERATING AGREEMENT

Signature Page

WINCOPIN CIRCLE LLLP,
Investor Member

By: Wincopin GP, LLC,
General Partner

By: Stephanie L. Shack
Name: Stephanie L. Shack
Title: Senior Vice President

#722191
010785-1223

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ANGELA'S HOUSE LLC

FIRST AMENDED AND RESTATED OPERATING AGREEMENT

Exhibit A
Members; Percentage Interests;
Capital Contribution Commitments

	Percentage Interests	Capital Contributions*
Managing Member		
Angela's House MM LLC	0.01%	$100
Investor Member		
Wincopin Circle LLLP	99.99%	$15,242,832
TOTALS	**100%**	**$15,242,932**

* The Capital Contribution of the Investor Member will be paid in Installments as described on the following Exhibit A-1 upon the last to occur of the receipt and approval by the Investor Member, to the satisfaction of the Investor Member, of all conditions for such Installment and the date associated with such Installment. Each Additional Capital Contribution is due on the later of the scheduled due date or twenty (20) days (ten (10) days for Additional Capital Contributions made prior to the Completion Date) after receipt and approval by the Investor Member of an Additional Capital Contribution Notice given by the Managing Member, including the Notice Certifications in the exact form attached as Exhibit A-7, in accordance with Section 3.02(c). In addition, the amounts of the Capital Contributions are subject to adjustment as provided in this Agreement.

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ANGELA'S HOUSE LLC

FIRST AMENDED AND RESTATED OPERATING AGREEMENT

Exhibit A-1
Capital Contribution Installments

Installment	Amount of Installment	Conditions for Capital Contribution
First	$2,133,996	Of which $1,833,996 shall be paid on the Admission Date, and the balance shall be paid upon receipt of all required approvals to the closing and funding of the Second Loan and the executed Loan Documents for the Second Loan.
Second	$2,591,281	During Construction within ten (10) days after receipt of a written draw request acceptable to the Investor Member which shall include: (a) AIA forms G702 and G703, including all change orders not previously submitted and approved to the extent required under Section 5.13; (b) lien waivers signed by General Contractor on all amounts expended by it through the current draw as shown on the current AIA G702, in a form acceptable to the Investor Member; (c) a draw schedule through the current draw detailing actual sources and uses to date and amounts remaining for each; (d) acceptable detail support for all soft costs not included in the general construction contract; (e) Exhibit K; and (f) such other items as the Investor Member may reasonably require (including, but not limited to, an Independent Construction Inspector's Report to be obtained by the Investor Member); but not before the later of 15% completion of rehabilitation of the Project as evidenced by a certificate of the Architect or July 1, 2021, and no more than $863,760 shall be paid prior to the later of 30% completion of rehabilitation of the Project as evidenced by a certificate of the Architect or October 1, 2021 and no more than $1,727,521 shall be paid prior to the later of 65% completion of rehabilitation of the Project as evidenced by a certificate of the Architect or April 1, 2022, and no draw request will be for an amount less than $25,000; *provided, however*, no payment will be made after sixty (60) days from the Admission Date without the Investor Member's receipt of copies of all loan documents for loans closed on or before the Admission Date and the Owner's title insurance policy; and, *provided, further*, that no payment will be made after December 31, 2021, without receipt and approval by the Investor Member of the carryover allocation agreement and the amendment to the articles of incorporation for the HDFC to reflect a perpetual term.

Installment	Amount of Installment	Conditions for Capital Contribution
Third	$8,679,904	Latest of:

(a) Completion Date (including, without limitation, receipt of temporary certificates of occupancy for one hundred percent (100%) of the Units, if required, receipt of a certificate of substantial completion signed by the architect of record, documenting that the buildings have been completed in accordance with the relevant Project Documents), and such other items as the Investor Member may reasonably require, including, without limitation, the Independent Construction Inspector's Report;

(b) final release of lien from General Contractor, evidencing that the General Contractor has been paid in full and final AIA forms G702 and G703, including all change orders not previously submitted and approved to the extent required under Section 5.13, or, if not available, partial lien release detailing amount paid to date, amounts remaining to be paid, and confirmed sources to pay and current AIA form G702 and G703;

(c) the 10% documentation together with the Accountant's certification as to the satisfaction of the Ten Percent Test;

(d) draft Cost Certification (before submission to the Authority), certified by the Accountant, which report shall include the Project's eligible basis, matching sources and uses, and calculation of annual Credit, the Historic Investment Tax Credit and State Historic Investment Tax Credit for 2022;

(e) satisfactory evidence of the Company's valid and timely election to be treated as an "electing real property trade or business" under Section 163(j)(7)(B) of the Code;

(f) copies of all insurance binders on the Company Property;

(g) the executed PILOT agreement;

(h) evidence of Angela's House DD LLC's Section 168(h)(6)(F) election, including evidence that Delta attached such election to its tax return;

(i) submission of the application for the State Historic Investment Tax Credit Certificate to the New York State Office of Parks, Recreation and Historic Preservation, and the Part 3 application submission to the National Park Service;

(j) evidence of satisfactory radon testing required by the procedures detailed in Exhibit A-9;

(k) ESSHI and any other operating or rental subsidy agreement;

(l) acceptable Operations and Maintenance Plans for lead-based paint, asbestos-containing materials, polychlorinated biphenyls and mold;

(m) Loan Conversion (which may be achieved concurrent with this Installment) and delivery of (i) all executed loan documents related thereto and (ii) an updated title report evidencing that there are no recorded mechanic's liens that have not been released or bonded against so as to preclude the holder of such lien from having any recourse to the Company Property, the Project, any of the Units, or the Company for the debt secured thereby and that there

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Installment	Amount of Installment	Conditions for Capital Contribution
		are no property taxes or payments in lieu thereof that are due and payable that remain unpaid; (n) Erie County's approval of the PILOT Agreement or the funding of the Property Tax Reserve in accordance with Section 5.11(ccc) of the Operating Agreement; (o) the subdivision plat; (p) the assigned SBL number for the Company Property; (q) evidence that all Company reserve accounts required on Exhibit A-6 have been established; (r) all required annual and quarterly reporting items in accordance with Section 13.03; (s) the satisfaction of all the conditions to all prior Capital Contributions; or (t) October 1, 2022.
Fourth	$857,651	Latest of: (a) a Final Cost Certification (before submission to the Authority), certified by the Accountant, which report shall include the Project's eligible basis, matching sources and uses, calculation of annual Credit, the Historic Investment Tax Credit and State Historic Investment Tax Credit; (b) Projected Credits prepared pursuant to Sections 3.03(a) and 3.03(c), the HIT Projected Credits pursuant to Section 3.04(b), and the State Historic Investment Tax Credit Projected Credits prepared pursuant to Section 3.10; (c) the initial achievement of 98% Qualified Occupancy and receipt of all initial Tenant Income Certifications (including first and last page of lease and third party confirmation); (d) a final as-built ALTA/NSPS Land Title Survey, a draft of which will be submitted for review and approval prior to issuance in final, which includes the following certificate in substantial form: "This is to certify that this map or plat and the survey on which it is based were made in accordance with the 'Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys,' jointly established and adopted by ALTA and NSPS, effective February 23, 2021," and includes Items 2, 3, 4, 6(a), 6(b), 7(a), 7(b)(1), 7(c), 8, 9, 10(a), 11(a), 11(b), 13, 14, 16, 17, 18 and 19 of Table A (the "***As-Built Survey***"); (e) Part 3 Approval from the National Park Service and any approvals or documents required to be completed to ensure the availability of the State Historic Credits; (f) permanent certificates of occupancy for 100% of the Units, if required; (g) if not previously provided, (1) final release of lien from General Contractor, evidencing that the General Contractor has been paid in full and final AIA forms G702 and G703, including all change orders not previously submitted

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Installment	Amount of Installment	Conditions for Capital Contribution
		and approved to the extent required under Section 5.13, and (2) if applicable, confirmation that all punch list items have been satisfied; (h) a copy of the Extended Use Agreement with recording information from the city/county in which the Property is located; (i) all required annual and quarterly reporting items in accordance with Section 13.03; (j) the satisfaction of all the conditions to all prior Capital Contributions; or (k) July 1, 2023.
Fifth	$735,000	Latest of: (a) achievement of the Stabilization Date; (b) all required annual and quarterly reporting items in accordance with Section 13.03; (c) the satisfaction of all the conditions to all prior Capital Contributions; or (d) July 1, 2023.
Sixth	$245,000	Latest of: (a) a draft IRS Form 8609 with Parts I and II completed, before submission to the IRS, and the executed IRS Form 8609 as submitted to the IRS; (b) the Company's tax returns (including K-1s) and audited financial statements for the first year of the Credit Period; (c) all required annual and quarterly reporting items in accordance with Section 13.03; (d) the satisfaction of all the conditions to all prior Capital Contributions; or (e) July 1, 2023.
TOTAL	**$15,242,832**	

Note: Defined terms used in this Exhibit A-1 have the meanings set forth in the Operating Agreement. No Installment will be paid unless the conditions to all prior Capital Contributions and all required reporting items have been satisfied or waived in writing by the Investor Member by Consent of the Investor Member.

Equity being disbursed pursuant to "an acceptable written draw request" in the construction period Installments above will be disbursed based on construction values actually added to the Project, as evidenced by approved AIA Form G702 and G703 and separate invoice amounts. Scheduled amounts for such payments during the Installment as are set forth in the Projections Exhibit are not an indication that such equity amounts will be disbursed on those dates unless the above values have been proved by the applicable draw request and are not otherwise projected to be paid for from other funding sources.

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Pursuant to Exhibit K, the Managing Member is required to provide the Investor Member with a schedule of all draws from other sources even if no Capital Contribution Installment is requested from the Investor Member for such draw. The requirement of reports pursuant to Exhibit K is a condition of each Additional Capital Contribution made under this Exhibit A-1 during the construction of the Project.

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ANGELA'S HOUSE LLC

FIRST AMENDED AND RESTATED OPERATING AGREEMENT

Exhibit A-2
Fixed Dollar Amounts

Reference Term	Section Reference		Amount
Annual Credit Allocation	5.10(aa)		$979,268
LIH Target Amount	3.03(a)		$9,791,701
Lease-up Projection	3.03(c)(i)	2023	$979,170
Maximum Operating Deficit Contribution	5.14		$352,000*
Operating Reserve Amount	5.14		$115,715
Owner's Title Policy Amount	2.01		$22,929,450
Rehab/NC Basis Amount	5.10(aa)		$16,585,683
HIT Credit Target Amount	3.04(b)		$3,884,897
HIT Credit First Year Projection	3.04(c)		$776,979
State HIT Credit Target Amount	3.10(b)		$3,884,896
State HITC Credit First Year Projection	3.01(c)		$3,884,896

* Notwithstanding the foregoing and notwithstanding anything in Section 4.03 of the Operating Agreement, for a period of thirty-six (36) months following the date that the Project is placed in service, the Maximum Operating Deficit Contribution shall be equal to Five Hundred Thirty-Two Thousand Nine Hundred Seventy-Four Dollars ($532,974).

ANGELA'S HOUSE LLC

FIRST AMENDED AND RESTATED OPERATING AGREEMENT

Exhibit A-3
Loans to the Project

Mortgage Priority	Lender	Loan Amount
	Evans Bank (the "***Construction Loan***")	Up to $12,100,000
Co-First	HCR SHOP (the "***SHOP Loan***")*	Up to $3,420,167
Co-First	HHAP (the "***HHAP Loan***")	$3,692,030
Second	HOME (the "***Second Loan***")*	$300,000
Third	NYSERDA (the "***Third Loan***")	$60,200
	TOTAL PERMANENT LOANS	$7,472,397

* Indicates Loan not closed on the Admission Date.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

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ANGELA'S HOUSE LLC

FIRST AMENDED AND RESTATED OPERATING AGREEMENT

Exhibit A-4
Fees; Priority; Uses of Cash Flow

Fees

Fee	Governing Agreement	Fee Recipient
Development Fee	Development Services Agreement	Developer
Property Management Fee	Property Management Agreement	Management Agent
Investor Services Fee	Investor Services Agreement	Investor Member
Company Administration Fee	Company Administration Agreement	Managing Member

Payments contingent on Cash Flow shall be made in the following order of priority:

First, to the Investor Member, an amount equal to the Credit Deficiency;

Second, to the Investor Member, an amount sufficient to pay federal income taxes on taxable income allocated to the Investor Member for such Fiscal Year by the Company, assuming the Investor Member is subject to the maximum corporate federal income tax rate then in effect;

Third, to pay the Investor Services Fee in accordance with the Investor Services Agreement, attached hereto as Exhibit I;

Fourth, from and after the Third Installment of the Investor Member's Capital Contribution to fund the Operating Reserve up to the Operating Reserve Amount;

Fifth, to pay any deferred portion of the Property Management Fee in accordance with the Property Management Agreement;

Sixth, to pay the Deferred Development Fee, if any, in accordance with the Development Services Agreement, attached hereto as Exhibit C;

Seventh, to the Managing Member to repay any Operating Deficit Contribution and Development Advances permitted to be repaid under Section 5.13;

Eighth, to pay the Company Administration Fee in accordance with the Company Administration Agreement, attached hereto as Exhibit E;

Ninth, to repay the HHAP Loan; and

Tenth, to repay the Third Loan.

Any remaining Cash Flow shall constitute Net Cash Flow which is distributable to the Members in accordance with Section 8.01 of this Agreement.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

ANGELA'S HOUSE LLC

FIRST AMENDED AND RESTATED OPERATING AGREEMENT

Exhibit A-5
Notice Addresses

Managing Member	Investor Member*
Angela's House MM LLC 221-10 Jamaica Avenue, LL1 Queens Village, NY 11428 Telephone: (646) 813-1303 Facsimile: (212) 534-6003 Email: ben.upshaw@cbemmanuel.com Attention: Benathan Upshaw	Wincopin Circle LLLP c/o Enterprise Community Asset Management, Inc. 70 Corporate Center 11000 Broken Land Parkway, Suite 700 Columbia, Maryland 21044 Telephone: (410) 964-0552 Facsimile: (410) 772-2630 Attention: Asset Management With a copy to: Email: sshack@enterprisecommunity.com Attn: General Counsel
With a copy to: Timmon M. Favaro, Esq. Cannon Heyman & Weiss, LLP 726 Exchange Street, Suite 500 Buffalo, New York 14210 Telephone: (716) 856-1700 ext. 314 Facsimile: (716) 856-2311 Email: tfavaro@chwattys.com	With a copy to: Kenneth S. Gross, Esq. Gallagher Evelius & Jones LLP 218 North Charles Street Suite 400 Baltimore, Maryland 21201 Telephone: (410) 727-7702 Facsimile: (410) 468-2786

* The Managing Member shall include the Investor Member as a recipient of Notices under any (i) loan agreement; (ii) construction contract; or (iii) any other agreement pursuant to which a third party may obtain a lien against the Project.

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ANGELA'S HOUSE LLC

FIRST AMENDED AND RESTATED OPERATING AGREEMENT

Exhibit A-6
Company Reserves

The Managing Member shall establish the following reserves in the name of the Company:

(i) *Operating Reserve*. An Operating Reserve equal to the Operating Reserve Amount to be funded upon the payment of the Third Installment of the Investor Member's Capital Contribution. In addition, the Managing Member shall fund the Operating Reserve from Cash Flow (calculated for this sole purpose prior to deducting contributions to the Operating Reserve) in order to maintain, to the extent possible, a balance at all times in the Operating Reserve equal to the Operating Reserve Amount. The Operating Reserve shall be deposited in an interest-bearing account in a bank approved by the Investor Member. No withdrawal may be made from the account without the Consent of the Investor Member, which Consent of the Investor Member will not be unreasonably withheld, conditioned or delayed. In the event funds are withdrawn from the account without required consent, Enterprise has the right to take sole control of the Operating Reserve, or to withdraw the balance in the Operating Reserve and deposit it into a new account which shall be established in the name of the Company. The Managing Member hereby appoints Enterprise as Attorney in Fact for the purposes of taking control of the Operating Reserve as outlined above in the event of a default by the Managing Member under this Exhibit A-6. Interest earned on the Operating Reserve shall be added to the Operating Reserve. The Managing Member may use funds in the Operating Reserve only (a) after the later of (y) the Stabilization Date, or (z) Loan Conversion, subject to any restrictions in the Loan Documents, and (b) with the Consent of the Investor Member, which Consent of the Investor Member shall not be unreasonably withheld, conditioned or delayed, for any Company purpose, but only to the extent the revenues of the Company are insufficient to accomplish such purposes. The Operating Reserve shall be maintained throughout the Term of the Company. Upon termination and winding up of the Company, subject to the provisions of Section 12.02, the balance in the Operating Reserve shall be used to (a) pay any tax (including exit and transfer taxes imposed) on the Company, Investor Member and its partners as a result of the sale of the Company Property and winding up of the Company or (b) for other uses approved by the Investor Member, including the repayment of any Sponsor Loan.

(ii) *Replacement Reserve*. A Replacement Reserve to be funded beginning the second full month after the Completion Date, in the amount of Three Hundred Dollars ($300) per unit per year, prorated for a partial year, increasing at three percent (3%) annually. The Replacement Reserve shall be deposited in an interest-bearing bank account. The Company shall utilize amounts in the Replacement Reserve to fund major repair, capital expenditures and replacement of capital items in the Project. No withdrawal may be made from the account for any capital expenditure during any calendar year in excess of Five Thousand Dollars ($5,000) without the Consent of the Investor Member. In the event funds are withdrawn from the account without required consent, Enterprise has the right to take sole control of the Replacement Reserve, or to

withdraw the balance in the Replacement Reserve and deposit into a new account which shall be established in the name of the Company. The Managing Member hereby appoints Enterprise as Attorney in Fact for the purposes of taking control of the Replacement Reserve as outlined above in the event of a default by the Managing Member under this Exhibit A-6. Interest earned on the Replacement Reserve shall be added to the Replacement Reserve. Upon any sale of the Project, subject to the terms and conditions in the Loan Documents, amounts in the Replacement Reserve shall be utilized to make any capital expenditures, repairs or improvements in connection with such sale or other uses approved by the Investor Member.

(iii) *Lease-up Reserve.* A Lease-up Reserve of One Hundred Fifty-One Thousand Four Hundred Thirteen Dollars ($151,413) to be funded prior to the Completion Date from Designated Proceeds other than the Investor Member's Capital Contribution. The Company shall utilize amounts in the Lease-up Reserve to pay operating expenses to the extent funds are not available from other sources beginning on the Completion Date until the later of (a) the Stabilization Date, or (b) Loan Conversion. The Lease-up Reserve shall be deposited in an interest bearing bank account in a bank designated by the Managing Member. Interest earned on the Lease-up Reserve shall be added to the Lease-up Reserve. At the later of (a) the Stabilization Date, or (b) Loan Conversion, any balance remaining in the Lease-up Reserve shall be first used to fund [$43,000] into the Operating Reserve, then to pay any Deferred Development Fee or to reduce the amount of any Sponsor Loans (provided, however, that such use of funds to pay the Deferred Development Fee or Sponsor Loans is subject to the Consent of the Investor Member), and any excess shall be transferred to the Operating Reserve and the Lease-up Reserve shall be closed as of that date.

(iv) *Investment of Reserve Accounts.* Funds in the reserve accounts shall be deposited in a banking institution whose deposits are insured by an agency of the federal government. If funds in Company reserve accounts deposited in any banking institution exceed Two Hundred Fifty Thousand Dollars ($250,000), the Company accounts shall be deposited in a commercial bank having combined capital and surplus of not less than Two Hundred Fifty Million Dollars ($250,000,000). The Managing Member (or the Management Agent, as directed by the Managing Member) may invest funds in the reserve accounts in domestic bank certificates which are insured by an agency of the federal government; in direct obligations of the federal government; in federal government agencies with an AA rating or better, federally guaranteed agencies, or in repurchase agreements which are direct obligations of the federal government or federal agencies, or which are specifically collateralized by federal government obligations. Any exceptions to the above policy must be approved by Enterprise. The Managing Member (or the Management Agent as directed by the Managing Member) shall select investment vehicles and maturities on such investment so as to maximize the Company's return taking into account the anticipated need for available cash in the reserve account(s). The term of any investment shall not exceed five (5) years.

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ANGELA'S HOUSE LLC

FIRST AMENDED AND RESTATED OPERATING AGREEMENT

Exhibit A-7
Notice Certifications

As a condition of payment of the Additional Capital Contribution requested by the Additional Capital Contribution Notice, the Managing Member hereby certifies that, as of the date set forth below, the following representations and warranties remain true, correct, and not misleading as of the date set forth below. The following certifications (i) - (xiii) in this Exhibit A-7 are hereinafter referred to as "***Notice Certifications***."

(i) *Occupancy*. After the occurrence of the Completion Date, each Credit Unit is either (A) occupied by Qualifying Tenants or (B) held available for occupancy by Qualifying Tenants at the time of payment of each Additional Capital Contribution, and the operation of the Project and each Unit in all respects complies with the provisions of Section 42 of the Code.

(ii) *No Defaults; Documents in Force; No Jeopardizing Events*. No default (or event that, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under any Loan Document, Project Document, or the Agreement; the Loan Documents, the Project Documents and the Agreement are in full force and effect; and no event has occurred and is continuing that materially jeopardizes or is likely to materially jeopardize the ability of the Company to continue to operate the Project as housing eligible for the Credit.

(iii) *No Liens*. The Company owns the Company Property, the Project, and each of the Units free and clear of any liens (including mechanics' liens), charges, or encumbrances other than matters set forth in the Title Policy.

(iv) *No Bankruptcies*. No Event of Bankruptcy has occurred and is continuing, and no event has occurred that, with the passage of time, could become an Event of Bankruptcy, with respect to the Managing Member or any of its Affiliates.

(v) *No Breach*. The Managing Member is not in breach in any material respect of any provision of the Agreement to be observed or performed by it including, but not limited to, all representations, warranties, and covenants given by the Managing Member, pursuant to this Agreement and all representations and warranties herein remain true and correct in all material respects.

(vi) *Advances Paid*. All Credit Adjuster Advances, Additional Advances, Development Advances, Operating Reserve deposits, Replacement Reserve deposits, Operating Deficit Contributions and any other deposits, advances, or contributions required to be made by the Managing Member or its Affiliates pursuant to this Agreement (and any exhibits attached hereto) have been made.

(vii) *Environmental*. To the best knowledge of the Managing Member after due inquiry, and except as disclosed in the Environmental Reports, the Company Property contains no, and is not adversely affected by the presence of, any Environmental Hazard, except as stated below, nor is it in violation of any federal, state, or local law, regulation, rule, or ordinance, and no violation of any Environmental Law has occurred or is continuing. The Managing Member has not received any notice from any source whatsoever of the existence of any Environmental Hazard or of a violation of any federal, state, or local law, regulation, rule or ordinance with respect to the Company Property. If any Environmental Hazard (including lead-based paint and asbestos) was found to exist or be present, it has been, or will be prior to the Completion Date, either removed from the Company Property and disposed of or encapsulated and/or otherwise corrected, contained and made safe and inaccessible, all in strict accordance with federal, state, and local statutes, laws, rules and regulations, any recommendations set forth in the Environmental Reports, and any requirements in the Loan Documents.

(viii) *Document Compliance*. All documents required by Section 13.03 of the Agreement to be provided to the Investor Member as of such date have been delivered to the Investor Member.

(ix) *No Audit*. There is no ongoing audit by the IRS in which the IRS is asserting, by means of a sixty (60) day letter, that the Credit, Historic Investment Tax Credit or State Historic Investment Tax Credit available to the Company for any taxable year is less than ninety-five percent (95%) of the amount of such credit claimed by the Company for that year or that all or a portion of such credit claimed with respect to any prior taxable year(s) must be recaptured pursuant to Section 42(j) or other relevant sections of the Code, or is unavailable to the Company.

(x) *Conformity with Laws*. The Project conforms in all material respects with applicable law.

(xi) *Prior Qualification*. The Company qualified for, and subject to adjustment as provided in the Agreement, has received all prior Additional Capital Contributions.

(xii) *All Prerequisites Satisfied*. The preconditions to payment of the Additional Capital Contribution described on Exhibit A-1 to the Agreement have occurred.

(xiii) *Sources and Uses in Balance*. The Company will have sufficient funds available from all sources to complete construction and convert all Loans to permanent status. [DELETE AFTER LOAN CONVERSION.]

[Signature appears on the following page.]

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

ANGELA'S HOUSE MM LLC,
a New York limited liability company

By: _____
Benathan Upshaw
Authorized Signatory

_____
Date

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

ANGELA'S HOUSE LLC

FIRST AMENDED AND RESTATED OPERATING AGREEMENT

Exhibit A-8
Significant Accounting Information

Information Required	Data
Taxpayer Identification Numbers	
Company	85-1624521
Investor Member	52-2331442
Quarterly Reporting Deadlines	
1st Quarter	04/15/xx
2nd Quarter	07/15/xx
3rd Quarter	10/15/xx
Annual Reporting Deadline	
Draft tax return and audited financial statements	02/15/xx
Final tax return and audited financial statements	03/01/xx
EReporting and tax return and financial statement prep guide website address http://www.enterprisecommunity.com/financing-and-development/asset-management/reporting	
Depreciable lives (federal tax purposes)	
Building	30 years
FF&E	5 years
Site Improvements	15 years
Soft costs pro-rata in accordance with hard cost depreciable lives	

Other elections required:

Election to be treated as an "electing real property trade or business" pursuant to Section 163(j)(7)(B) of the Code.

168(h) of the Code by Angela's House DD LLC, as follows (with a copy attached to the tax return of Delta):

"In accordance with Section 168(h)(6)(F)(ii) of the Internal Revenue Code, all tax-exempt entities holding a controlling interest in the taxpayer hereby elect to treat any gain recognized on any disposition of such interest (and any dividend received or accrued by the tax-exempt entity from the controlled entity) as unrelated business taxable income for purposes of Section 511 of the Internal Revenue Code."

Elect to use 30 year depreciation under Section 168(g) of the Code.

Elect to begin Credit Period in 2023.

Angela's House DD LLC elects on IRS Form 8832 to be treated as a corporation for tax purposes.

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ANGELA'S HOUSE LLC

FIRST AMENDED AND RESTATED OPERATING AGREEMENT

Exhibit A-9
Radon Testing Procedures

	PROCEDURES
When to Test:	>Every project to produce test results of less than 4 *pCi/L after substantial completion and before lease-up of the units (see Exceptions below for REHAB Projects).* >In the event of a failing test, proof of mitigation and further testing resulting in a test result of less than 4 pCi/L will be required.
Where to Test:	Generally, testing to be done in the lowest level of the home suitable for occupancy. Avoid testing in kitchens, bathrooms, laundry rooms or hallways as high humidity and drafty conditions can bias results. **Single family home(s)** - Each home: basement and 1st floor living space; **Townhouses** - Basement and 1st floor living space of each home **Multi-story building** – Basement and 25% of the 1st floor living space units **Multi-story buildings, scattered sites** - (same as above for each building)
Minimum Requirements:	>Two canisters on each level/in each unit
Testing Requirements:	>Testing to be performed by a qualified, licensed testing company. **Radon test and report must comply with EPA guidelines.**
Exceptions ?	We will accept "non-action" radon results done as part of the acquisition environmental review (on a case-by-case basis) provided the following: a) REHAB: No work is performed with respect to the foundation, grading, below slab plumbing, etc. b) Exceptions must be pre-approved by Development Risk Management with supporting documentation
Occupant Notification?	Yes
If remediation or mitigation is required:	>A radon report meeting the foregoing requirements must be submitted after mitigation.

	State Radon Reference Web Address
Alabama	www.alabamapublichealth.gov/radon/index.html
Alaska	http://dhss.alaska.gov/dph/Epi/eph/Pages/radon.aspx
Arizona	www.azdhs.gov
Arkansas	www.healthyarkansas.com
California	www.cdph.ca.gov/Programs/CEH/DRSEM/Pages/EMB/Radon/Radon.aspx
Colorado	www.colorado.gov/cdphe/categories/services-and-information/environment/radon
Connecticut	www.portal.ct.gov/dph/Environmental-Health/Radon/Radon-Program
Delaware	www.dhss.delaware.gov/dph/hsp/hhinsideradon.html
District of Columbia	www.doee.dc.gov/radon
Florida	www.floridahealth.gov/environmental-health/radon/index.html
Georgia	www.consumer.georgia.gov/consumer-topics/radon
Hawaii	http://hawaii.gov/health
Idaho	healthandwelfare.idaho.gov/Health/EnvironmentalHealth/IndoorEnvironment/Radon/tabid/939/Default.aspx
Illinois	www2.illinois.gov/iema/NRS/Radon
Indiana	www.in.gov/idem/health/2330.htm
Iowa	idph.iowa.gov/radon
Kansas	www.kdheks.gov/radiation/radon.htm
Kentucky	louisvilleky.gov/government/health-wellness/radon
Louisiana	deq.louisiana.gov/faq/category/32
Maine	www.maine.gov/dhhs/mecdc/environmental-health/rad/radon/hp-radon.htm
Maryland	phpa.health.maryland.gov/OEHFP/EH/Pages/Radon.aspx
Massachusetts	www.mass.gov/radon
Michigan	www.michigan.gov/deq/0,4561,7-135-3312_4120_4196---,00.html
Minnesota	www.health.state.mn.us/divs/eh/indoorair/radon
Mississippi	msdh.ms.gov/msdhsite/static/44,0,100.html
Missouri	health.mo.gov/living/environment/radon
Montana	deq.mt.gov/Energy/radon
Nebraska	dhhs.ne.gov/radon
Nevada	www.unce.unr.edu/programs/sites/radon
New Hampshire	www.des.nh.gov/organization/divisions/air/pehb/ehs/radon/index.htm
New Jersey	www.nj.gov/dep/rpp/radon/radontes.htm
New Mexico	www.env.nm.gov/rcb/indoor-radon-outreach-program
New York	www.health.ny.gov/publications/3168
North Carolina	www.ncradon.org
North Dakota	deq.nd.gov/AQ/radon
Ohio	www.odh.ohio.gov/odhprograms/rp/radlic/radon.aspx
Oklahoma	www.deq.state.ok.us/radon
Oregon	www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/HEALTHYNEIGHBORHOODS/RADONGAS/pages/index.aspx

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	State Radon Reference Web Address
Pennsylvania	www.dep.pa.gov/Business/RadiationProtection/RadonDivision/Pages/default.aspx
Rhode Island	www.health.ri.gov/healthrisks/poisoning/radon
South Carolina	www.scdhec.gov/HomeAndEnvironment/YourHomeEnvironmentalandSafetyConcerns/Radon
South Dakota	denr.sd.gov/des/aq/aarad.aspx
Tennessee	www.tn.gov/health/health-program-areas/healthy-homes/hh/radon.html
Texas	www.dshs.texas.gov/radiation/radon.aspx
Utah	geology.utah.gov/hazards/radon
Vermont	www.healthvermont.gov/radon
Virginia	www.vdh.virginia.gov › Radiological Health › Indoor Radon Program
Washington	www.doh.wa.gov/YouandYourFamily/HealthyHome/Contaminants/Radon
West Virginia	www.wvdhhr.org/rtia/radon.asp
Wisconsin	www.dhs.wisconsin.gov/radon/index.htm
Wyoming	www.health.wyo.gov/publichealth/prevention/cancer/radon

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Exhibit B

DESCRIPTION OF PARTNERSHIP PROPERTY

[Attached]

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

SCHEDULE A
(continued)

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Cheektowaga, County of Erie and State of New York, being part of Lot 33, Township 11, Range 7 of the Holland Land Company Survey (so-called), bounded and described as follows:

BEGINNING AT A POINT on the west line of Lot 33 at a distance of 51.87 feet northerly measured along the west line of said Lot 33 from its intersection with the north line of Doat Street; said west line of Lot 33 being also the west line of the Town of Cheektowaga and the east line of the City of Buffalo;

RUNNING THENCE: Northerly, along the west line of Lot 33 and the division line between the Town of Cheektowaga and the City of Buffalo, a distance of 615.61 feet to a point;

RUNNING THENCE: Easterly, at an interior angle of 90°-09'-00" with the last described line, a distance of 173.24 feet to a point;

RUNNING THENCE: Southerly, at an interior angle of 89°-49'-30" with the last described line, a distance of 345.81 feet to a point;

RUNNING THENCE: Easterly, at an interior angle of 270°-04'-49" with the last described line, a distance of 55.03 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 82.92 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 15.05 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 45.46 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 27.35 feet to a point;

RUNNING THENCE: Southerly, at an interior angle of 270°-50'-55" with the last described line, a distance of 226.24 feet to a point on the north line of Parcel No. 1 as shown on Map No. SK 219-14 for lands conveyed to the County of Erie for the reconstruction of Doat Street, C.R. No. 107 by deed recorded in the Erie County Clerk's Office in Liber 8039 of Deeds at Page 523;

RUNNING THENCE: Northwesterly, along the north line of Doat Street and along a non-tangent curve to the right having a radius of 1112.92 feet, a distance of 55.28 feet to a point of tangency;

RUNNING THENCE: Northwesterly, along the north line of Doat Street, a distance of 99.30 feet to an angle point;

RUNNING THENCE: Northwesterly, along the north line of Doat Street, at an interior angle of 170°-16'-55" with the last described line, a distance of 3.16 feet to a point;

RUNNING THENCE: Northerly, at an exterior angle of 69°-55'-38" with the last described line, a distance of 56.82 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 34.15 feet to the POINT OR PLACE OF BEGINNING.

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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Exhibit C

DEVELOPMENT SERVICES AGREEMENT

THIS DEVELOPMENT SERVICES AGREEMENT (this "***Agreement***"), dated and effective as of the 31st day of March, 2021, is made by and between ANGELA'S HOUSE LLC, a limited liability company formed under the laws of the State of New York (the "***Company***") and ANGELA'S HOUSE MASTER DEVELOPER LLC, a New York limited liability company (the "***Developer***").

RECITALS

The Company was formed for the purpose of acquiring, owning, developing, constructing and/or rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of a sixty-seven (67) unit residential project in one (1) building located in Cheektowaga, New York (the "***Project***"). The Company is operating by a First Amended and Restated Operating Agreement to which this Agreement is attached as an Exhibit and made a part thereof (the "***Operating Agreement***").

The Company desires that the Developer provide certain services with respect to the development of the Project.

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

1. **Appointment and Term.** The Company hereby appoints the Developer to render services in overseeing the development of the Project for the Company as herein contemplated and the Developer hereby accepts such appointment. The term of this Agreement shall begin on the date hereof and shall end on the last day of the Compliance Period.

2. **Authority and Obligations.** Subject to the provisions of the Operating Agreement, the Developer shall have the authority and obligation to:

(a) Obtain construction financing on behalf of the Company in an amount sufficient to fund the construction of the Project pursuant to the Projections.

(b) Prepare or cause to be prepared such environmental and neighborhood impact studies or reports, engineering surveys, and Plans and Specifications as may be required in connection with the construction of the Project.

(c) Prepare and submit to the Company for approval a construction budget and make recommendations to the Company regarding any necessary modifications thereto.

(d) Make available to the Company upon request copies of all contracts, option agreements, construction financing commitments, budgets, Plans and Specifications or other items prepared or obtained.

(e) Obtain a construction contract (the "***Construction Contract***") in an amount not to exceed the amount provided therefor pursuant to the Projections from a reputable general

contractor (the "***General Contractor***"), which may be an affiliate of Developer, which Construction Contract shall require the General Contractor to post a payment and performance bond in the full amount of the Construction Contract or letter of credit in an amount acceptable to the Company.

(f) Perform or cause to be performed, in a diligent and efficient manner, general administration and supervision of construction of the Project, including but not limited to the following:

(i) administration and supervision of the activities of the General Contractor and all other contractors, subcontractors and others employed in connection with the construction of the Project;

(ii) preparation of construction schedules pursuant to which all phases of construction are to be completed on or before the Completion Date and supervision of the scheduling of construction in conformity with such construction schedules;

(iii) periodic inspection of construction in progress, including but not limited to inspection at completion, for defects in construction and to assure compliance with the Plans and Specifications, and supervision of correction of any and all deficiencies noted pursuant to such inspections;

(iv) processing and payment of applications for progress payments made by the General Contractor, including verification of such applications against the progress of construction as indicated by the aforementioned periodic inspections; and

(v) analysis of requests for any and all change orders to or variations from the Projections and the Plans and Specifications and submission of such requests to the Company for approval.

(g) Perform, or cause to be performed, in a diligent and efficient manner, preparation of contracts, letter agreements, purchase orders, and similar documents as are necessary to complete timely the construction of the Project in accordance with the Plans and Specifications.

(h) Cause the Project to be completed on or before the Completion Date in a manner consistent with good workmanship, in compliance with the following:

(i) the Plans and Specifications;

(ii) all obligations of the Company under any documents executed by the Company under the Loan Documents; and

(iii) all municipal, state, and other governmental laws, ordinances, and regulations governing the construction of the Project and the use thereof for its intended purposes and all other requirements of law applicable to construction of the Project.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

(i) Maintain, or cause to be maintained, builders risk, contractor's liability, and workers' compensation insurance required by law or by the Investor Member with the Company named as an additional insured, the limits of such coverage to be reasonable under the circumstances, but no less than that required by construction lenders or applicable statutes.

(j) Keep or cause to be kept separate project accounts and cost records and prepare and furnish upon request financial and progress reports and statements with respect to construction of the Project.

(k) Make available to the Company upon request copies of all contracts and subcontracts.

(l) Deliver to the Company copies of all inspection reports and applications for payment given any lender providing a loan to the Company.

3. **Accrual Schedule**. The Development Fee shall be earned as follows:

(a) Five Hundred Thirty-Two Thousand Nine Hundred Seventy-Four Dollars ($532,974) shall be earned upon the execution of this Agreement.

(b) The balance of the Development Fee shall be earned proportionately to the amount of construction of the Project completed on any date, such that one hundred percent (100%) of the Development Fee shall be earned by the Completion Date.

(c) Once a portion of the Development Fee has been earned, it shall be payable by the Company in all events.

4. **Development Fee.**

(a) For development services to be performed under this Agreement, the Company shall pay the Developer a fee in the amount of Two Million Six Hundred Sixty-Four Thousand Eight Hundred Seventy-Two Dollars ($2,664,872) (the "***Development Fee***") in accordance with the payment schedule (the "***Development Fee Payment Schedule***") attached as Schedule 1 hereto. The parties to this Agreement specifically acknowledge that the Investor Member's Additional Capital Contributions may be adjusted in accordance with the provisions of the Operating Agreement, including without limitation Sections 3.03, 3.04 and 3.10, and that such adjustment may cause a revision of the Development Fee Payment Schedule. In the event the Investor Member's Additional Capital Contributions and the Development Fee Payment Schedule are so revised, the Investor Member shall cause a copy of the revised Development Fee Payment Schedule and Projections to be delivered to the Developer. If the Developer shall disagree as to any amount in the revised Development Fee Payment Schedule and Projections, the Developer shall give Notice and an explanation to the Investor Member of such disagreement within twenty (20) days after receipt of such revised Development Fee Payment Schedule and Projections. Failure by the Developer to respond within such twenty (20) day period shall be deemed approval by the Developer.

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(b) Any amount of the Development Fee including the Deferred Development Fee that has not been paid in full on or before the end of the Compliance Period shall be paid no later than such date.

(c) Subject to the approval of the Authority, if required, in addition to the Development Fee payable under this Paragraph 4, the Company shall pay to the Developer from loan proceeds an additional development fee (the "***Incentive Development Fee***"), payable at the Completion Date. The Incentive Development Fee shall be the amount, if any, that the projected development costs of items eligible for the Credit exceed the Company's actual aggregate expenditures for such items.

(d) The Developer shall not be compensated for, and no portion of the Development Fee shall apply to, services in connection with the development of nonresidential improvements, the organization or syndication of the Company, the acquisition of land or existing buildings included in the Project, obtaining an allocation of Credits or securing Project financing other than construction financing; it being the understanding between the parties hereto that all such listed activities are the exclusive responsibility of the Company, the Managing Member and/or consultants or others engaged by the Company.

5. **Operating Agreement.** Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Operating Agreement.

6. **Burden and Benefit.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. No party may assign this Agreement without the consent of the other party.

7. **Severability of Provisions.** Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

8. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

9. **Defined Terms.** Except as expressly provided herein, terms used in this Agreement with initial capital letters shall have the meanings set forth in the Operating Agreement.

10. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York, without regard to principles of conflicts of laws.

11. **Binding Agreement.** This Agreement shall be binding on the parties hereto, and their heirs, executors, personal representatives, successors and assigns.

12. **Headings.** All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision of this Agreement.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

13. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

14. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

The parties hereto have executed this Development Services Agreement as of the date first above written.

ANGELA'S HOUSE LLC,
a New York limited liability company

By: Angela's House MM LLC,
a New York limited liability company

By: _____
Benathan Upshaw
Authorized Signatory

ANGELA'S HOUSE MASTER
DEVELOPER, LLC,
a New York limited liability company

By: _____
Benathan Upshaw
Authorized Signatory

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Schedule 1

Development Fee Payment Schedule

(a) $2,450,651 from Capital Contributions as follows:

(i) $368,000 on the due date of the Investor Member's First Installment of its Capital Contribution as set forth on Exhibit A-1 of the Operating Agreement, of which $68,000 shall be paid on the Admission Date and $300,000 upon funding the remainder of the First Installment;

(ii) $245,000 on the due date of the Investor Member's Third Installment of its Capital Contribution as set forth on Exhibit A-1 of the Operating Agreement;

(iii) $857,651 on the due date of the Investor Member's Fourth Installment of its Capital Contribution as set forth on Exhibit A-1 of the Operating Agreement;

(iv) $735,000 on the due date of the Investor Member's Fifth Installment of its Capital Contribution as set forth on Exhibit A-1 of the Operating Agreement; and

(v) $245,000 on the due date of the Investor Member's Sixth Installment of its Capital Contribution as set forth on Exhibit A-1 of the Operating Agreement;

(b) $214,221 (the "***Deferred Development Fee***") with interest at eight percent (8%), compounding annually, from Cash Flow to the extent available for payment of such fee pursuant to Exhibit A-4 of the Operating Agreement or from capital proceeds under Section 8.02 of the Operating Agreement.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Exhibit D

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (this "***Agreement***" or "***Guaranty***"), dated and effective as of the 31st day of March, 2021, is made by and among ANGELA'S HOUSE LLC, a limited liability company formed under the laws of the State of New York (the "***Company***"), RICHARD C. BRAMWELL, JR. (a/k/a R. CHRISTOPHER BRAMWELL, JR.), an individual residing in the State of New York, BENATHAN UPSHAW, an individual residing in the State of New York, and CB-EMMANUEL REALTY, LLC, a New York limited liability company (each a "***Guarantor***" and collectively, the "***Guarantors***"), for the benefit of the Investor Member.

RECITALS

The Company was formed for the purpose of acquiring, owning, developing, constructing and/or rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of a sixty-seven (67) unit residential project in one (1) building located in Cheektowaga, New York (the "***Project***"). The Company is operating by a First Amended and Restated Operating Agreement to which this Agreement is attached as an Exhibit and made a part thereof (the "***Operating Agreement***").

The Investor Member is simultaneously acquiring an investor member interest in the Company pursuant to the Operating Agreement. As a result of the admission of the Investor Member to the Company and the Investor Member's contribution of capital to the Company in accordance with the terms of the Operating Agreement, the Guarantor or its affiliates expect to receive substantial benefits, including, without limitation, certain fees relating to the construction and development of the Project.

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

1. **Guaranty Obligation.** To induce the Investor Member to acquire an interest in the Company, to enter into the Operating Agreement and to become the Investor Member of the Company, each Guarantor hereby unconditionally, jointly and severally, guarantees to the Investor Member, commencing on the date of this Guaranty Agreement, the due and punctual performance by the Managing Member and the Developer of all of their obligations under the Operating Agreement, as the same may be amended from time to time, with or without the consent of, or notice to, the Guarantors and the Development Services Agreement, as the same may be amended from time to time, with or without the consent of, or notice to, the Guarantors (collectively referred to herein as the "***Obligations***").

2. **Covenant of Guarantor.** Each Guarantor shall furnish the Investor Member a current and accurate financial statement within one hundred eighty (180) days following the end of each calendar or fiscal year of such Guarantor (as applicable) and at such other times (and together with such other financial information) as the Investor Member may reasonably request from time to time. In addition, CB-Emmanuel Realty, LLC shall maintain: (i) Liquidity of not less than Seven Hundred Fifty Thousand Dollars ($750,000) until the later of (a) the Stabilization Date and (b) Loan Conversion, and, thereafter, (ii) Liquidity of not less than Five Hundred Thousand

Dollars ($500,000) until the Managing Member's obligation to make Operating Deficit Contributions has terminated. As used in this Guaranty, the term "***Liquidity***" refers to cash, cash equivalents and/or marketable securities which are unencumbered and freely transferable.

3. **Obligations of the Guarantor.** Each Guarantor hereby agrees that its Obligations hereunder shall be unconditional (and shall not be subject to any advance, set-off, counterclaim or recoupment whatsoever), irrespective of the regularity or enforcement of any Project Document, the Operating Agreement, the Development Services Agreement or this Agreement or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor or any other circumstances which might otherwise limit the recourse of the Investor Member against the undersigned. The undersigned hereby waives diligence, presentment and demand for payment, protest, any notice of any assignment hereunder in whole or in part or of any default hereunder or under any Project Document, the Operating Agreement or the Development Services Agreement, and all notices with respect to this Guaranty, the Operating Agreement, the Development Services Agreement or the Project Documents. No waiver by the Investor Member of any of its rights under the Project Documents, the Operating Agreement, the Development Services Agreement or this Guaranty and no action by the Investor Member to enforce any of its rights under this Guaranty or failure to take, or delay in taking, any such action shall affect the Guarantor's Obligations hereunder.

The Obligations of the Guarantors hereunder shall remain in full force and effect without regard to, and shall not be affected or impaired by, (i) any amendment or modification of or addition or supplement to the Operating Agreement, the Development Services Agreement or any of the Project Documents, except insofar as such amendment, modification, addition or supplement shall directly affect any Obligation hereunder (and the Investor Member shall have affirmatively consented thereto), (ii) any extension, indulgence or other action or inaction in respect of the Operating Agreement, the Development Services Agreement or the Project Documents, or any exercise or nonexercise of any right, remedy, power or privilege in respect of such documents or this Guaranty, (iii) any default by the Guarantors under, or any illegality or unenforceability of, or any irregularity or defect in, the Operating Agreement, the Development Services Agreement, the Project Documents or any provision of this Guaranty, (iv) any event of bankruptcy, insolvency, reorganization or similar proceeding involving or affecting the Company, the Investor Member or the Guarantor, or (v) any other circumstances, whether or not the undersigned or the Investor Member shall have actual or constructive notice or knowledge thereof. The undersigned hereby waives to the fullest extent permitted by law, any and all notices and defenses to which it may be entitled by law to its Obligations hereunder, including, without limitation, notice of acceptance of this Guaranty, and any requirement of diligence on the part of the Investor Member or any other parties to the Operating Agreement, the Development Services Agreement or Project Documents.

4. **[Intentionally Omitted]**

5. **Term.** This Agreement shall commence as of the date hereof and shall automatically terminate when the Managing Member and the Developer have satisfied in full their Obligations pursuant to the Operating Agreement and the Development Services Agreement and the Guarantor shall have satisfied in full its Obligations pursuant to this Agreement. The

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Obligations of the Guarantor shall remain in full force and effect notwithstanding the removal of the Managing Member in accordance with the Operating Agreement.

6. **Representation.** Each Guarantor hereby represents, solely as to itself/himself, that:

(a) It/he will maintain sufficient funds to be able to satisfy its Obligations under this Agreement,

(b) there is no action, suit, proceeding or investigation (pending or, to the best of its knowledge, threatened) involving the Guarantor, or which could materially, adversely affect the Guarantor's assets, operation or conditions, financial or otherwise; and

(c) the execution, delivery and performance by the Guarantor of this Agreement, the Project Documents and the Loan Documents, as applicable, and the carrying out of the transactions contemplated thereby, are not in violation of or in conflict with nor do they constitute a default under (a) any provision of any applicable law, statute, ordinance or rule or regulation; (b) any agreement indenture or instrument to which the Guarantor is a party; (c) any license or permit or (d) any judgment, decree or order of a court of competent jurisdiction, all as may be applicable to the Guarantor..

7. **Intended Beneficiary.** The parties intend that the Company and the Investor Member of the Company, and its successors, assigns or transferees, each be a direct beneficiary of this Agreement and that the Company and the Investor Member and its successors, assigns or transferees in such capacity may enforce the Guarantor's Obligations hereunder. No person other than the Company and the Investor Member, its successors, assigns or transferees and the parties to this Agreement may directly or indirectly rely upon or enforce the provisions of this Agreement, whether as a third party beneficiary or otherwise.

8. **Operating Agreement.** Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Operating Agreement, as the same may be amended from time to time, with or without the consent of, or notice to, the Guarantor.

9. **Burden and Benefit.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors and assigns. No party may assign this Agreement without the consent of the other party.

10. **Severability of Provisions.** Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

11. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

12. **Defined Terms.** Except as expressly provided herein, terms used in this Agreement with initial capital letters shall have the meanings set forth in the Operating Agreement.

13. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York, without regard to principles of conflicts of laws.

14. **Headings.** All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision of this Agreement.

15. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

16. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

17. **Guaranty of Payment.** Notwithstanding any other provision of this Agreement:

(i) this Agreement constitutes a guaranty of payment, not solely a guaranty of collection; and

(ii) the guaranty in this Agreement is primary and not conditional.

18. **Notices.** All Notices to be given under this Agreement shall be sent to the Persons shown below. Any party may change its Notice address by providing Notice thereof to all other parties.

If to Guarantors:

CB-Emmanuel Realty, LLC,
c/o Angela's House MM LLC
221-10 Jamaica Avenue, LL
Queens Village, NY 11428
Tel: (646) 813-1303; Fax: (212) 534-6003
Email: ben.upshaw@cbemmanuel.com
Attn: Benathan Upshaw

R. Christopher Bramwell, Jr.
221-10 Jamaica Avenue, LL
Queens Village, NY 11428
Tel: (646) 813-1303; Fax: (212) 534-6003
Email: chris.bramwell@cbemmanuel.com

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Benathan Upshaw
221-10 Jamaica Avenue, LL
Queens Village, NY 11428
Tel: (646) 813-1303; Fax: (212) 534-6003
Email: ben.upshaw@cbemmanuel.com

If to Company:

Angela's House LLC
c/o Angela's House MM LLC
221-10 Jamaica Avenue, LL
Queens Village, NY 11428
Tel: (646) 813-1303; Fax: (212) 534-6003
Email: ben.upshaw@cbemmanuel.com
Attn: Benathan Upshaw

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

The parties hereto have executed this Guaranty Agreement as of the date first above written.

ANGELA'S HOUSE LLC,
a New York limited liability company

By: Angela's House MM LLC,
a New York limited liability company

By: _____
Benathan Upshaw
Authorized Signatory

CB-EMMANUEL REALTY, LLC,
a New York limited liability company,
Guarantor

By: _____
Benathan Upshaw
Authorized Signatory

_____
RICHARD C. BRAMWELL, JR.
(A/K/A R. CHRISTOPHER BRAMWELL, JR.),
as Guarantor

_____
BENATHAN UPSHAW,
as Guarantor

#722191
010785-1223

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

The parties hereto have executed this Guaranty Agreement as of the date first above written.

ANGELA'S HOUSE LLC,
a New York limited liability company

By: Angela's House MM LLC,
a New York limited liability company

By: _____
Benathan Upshaw
Authorized Signatory

CB-EMMANUEL REALTY, LLC,
a New York limited liability company,
Guarantor

By: _____
Benathan Upshaw
Authorized Signatory

_____
RICHARD C. BRAMWELL, JR.
(A/K/A R. CHRISTOPHER BRAMWELL, JR.),
as Guarantor

_____
BENATHAN UPSHAW,
as Guarantor

#722191
010785-1223

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

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Exhibit E

COMPANY ADMINISTRATION AGREEMENT

THIS COMPANY ADMINISTRATION AGREEMENT (this "***Agreement***"), dated and effective as of the 31st day of March, 2021, is made by and between ANGELA'S HOUSE LLC, a limited liability company formed under the laws of the State of New York (the "***Company***") and ANGELA'S HOUSE MM LLC, a New York limited liability company (the "***Administrator***").

RECITALS

The Company was formed for the purpose of acquiring, owning, developing, constructing and/or rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of a sixty-seven (67) unit residential project in one (1) building located in Cheektowaga, New York (the "***Project***"). The Company is operating by a First Amended and Restated Operating Agreement to which this Agreement is attached as an Exhibit and made a part thereof (the "***Operating Agreement***").

The Company has agreed to make certain payments to Administrator as an inducement for the efficient administration of the Project.

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

1. **Services.** Subject to the applicable provisions of the Operating Agreement, the Administrator shall:

(a) Provide any and all supervisory services designed to cause the Project to operate efficiently, including reviewing and evaluating programs, policies and procedures instituted by the Management Agent for advertising and tenant recruitment, screening and selection;

(b) Investigate and make recommendations with respect to the selection and conduct of relations with consultants and technical advisors (including, without limitation, accountants, depositories, custodians, agents for collection, insurers, insurance agents and banks) if necessary at any given time; and

(c) Formulate programs for owner, tenant, public and government relations.

2. **Company Administration Fee.** Subject to the applicable terms and conditions of the Operating Agreement and the Loans and Project Documents and, assuming there is no Removal Default under Section 9.02 of the Operating Agreement, beginning in the later of (i) 2022, or (ii) the first calendar year the Company receives rental income (the "***Initial Year***"), the Company shall pay to the Administrator, over the term of this Agreement, an annual Company Administration Fee of Twenty Thousand Dollars ($20,000). After the Initial Year, the Company Administration Fee shall increase at the rate of three percent (3%) per year. The Company Administration Fee for the Initial Year shall be prorated for the number of months the Company has rental income. The Company Administration Fee shall be payable from Cash Flow available for payment of such fee

pursuant to Exhibit A-4 of the Operating Agreement. If not paid, the Company Administration Fee shall accrue without interest from year to year and shall be payable out of the next available Cash Flow or Capital Proceeds.

3. **Operating Agreement.** Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Operating Agreement. The occurrence of a default by the Managing Member under the Operating Agreement shall constitute a default by the Administrator and the Company shall have no further obligations under this Agreement. Upon the removal of the Managing Member in accordance with the Operating Agreement, at the election of the Investor Member, this Agreement shall terminate and the Company shall have no further obligations hereunder.

4. **Burden and Benefit.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, personal representatives, successors and assigns. No party may assign this Agreement without the consent of the other party.

5. **Severability of Provisions.** Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

6. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

7. **Defined Terms.** Except as expressly provided herein, terms used in this Agreement with initial capital letters shall have the meanings set forth in the Operating Agreement.

8. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York, without regard to principles of conflicts of laws.

9. **Headings.** All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision of this Agreement.

10. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

11. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

The parties hereto have executed this Company Administration Agreement as of the date first above written.

ANGELA'S HOUSE LLC,
a New York limited liability company

By: Angela's House MM LLC,
a New York limited liability company

By: _____
Benathan Upshaw
Authorized Signatory

ANGELA'S HOUSE MM LLC,
a New York limited liability company,
as Administrator

By: _____
Benathan Upshaw
Authorized Signatory

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Exhibit F

PROPERTY MANAGEMENT AGREEMENT

[Attached]

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

MANAGEMENT AGREEMENT

This Agreement is made as of the date set forth herein, between the Owner ("Owner") and Agent ("Agent") identified on the signature page hereof. Certain terms of this Agreement are set forth on the Information Schedule (the "Information Schedule") attached hereto and made a part hereof.

WITNESSETH:

In consideration of the terms, conditions, and covenants hereinafter set forth, Owner and Agent hereby mutually agree as follows:

1. **Definitions** (As used in this Agreement)

(a) "Building" shall have the meaning ascribed to such term in Section A of the Information Schedule.

(b) "Fiscal Year" shall mean calendar year unless specifically provided to the contrary herein.

(c) "Gross Collections" shall mean all amounts actually collected by Agent, as rents or other payments, but excluding

(i) income derived from interest or investments,

(ii) discounts and dividends on insurance, and

(iii) security deposits.

(d) "Gross Rents" shall mean revenues collected from Tenants plus any federal assistance paid to Owner with respect to the Building.

(e) "Lease" shall mean any Lease in which Owner has agreed to let and Tenant has agreed to accept the dwelling unit of the Building identified in the Lease in accordance with the terms of the Lease.

(f) "Mortgages" shall mean, collectively, all mortgages from time to time encumbering the Building and all promissory notes secured thereby.

(g) "Operating Account" shall mean an account in Agent's name and designated of record in an account name identifying the Building and approved by Owner in writing, at such financial institution as Owner may specify from time to time in writing.

(h) "Rent" shall mean that monthly amount which Tenant is obligated to pay Owner pursuant to the terms of a Lease.

(i) "Tenant" shall mean a person or family occupying a dwelling unit in the Building pursuant to a Lease.

(j) "HCR" shall mean New York State Housing and Community Renewal

2. **A**gent

(a) Appointment and Acceptance. Owner hereby appoints Agent as exclusive agent for the management of the Building, and Agent hereby accepts the appointment, subject to the terms and conditions set forth in this Agreement. Agent represents that it is experienced in professional management of property of the character and occupancy of the Building, and Agent agrees to manage the Building in accordance with the highest professional standards for such property.

(b) New York State Real Estate Broker's License. Agent represents and warrants that it holds a New York State license to sell real estate.

(c) Office. Agent represents and warrants that Agent maintains an office or place of business in New York State at no cost to the Owner.

(d) Experience/Qualifications.

i. Agent represents and warrants that it has over 31 years' experience in the operation of low-income housing.

ii. Agent represents to Owner that it is qualified to operate and manage the premises in accordance with professional standards prevailing in the marketplace, including but not limited to those certain standards set forth in the applicable HCR-approved marketing plans.

3. **Management Plan**

Attached hereto as Exhibit 1 and by this reference made a part hereof, if applicable, is a copy of the form of the Management Plan (without exhibits) for the Building (the "Plan"), prepared and approved by Owner and NYC HCR. The Plan, which will be substantially in the form of that attached, will contain a comprehensive and detailed description of the policies and procedures to be followed by Agent in the management of the Building, including but not limited to the collection of delinquent rents and charges; and the provisions of this Agreement are to be read in conjunction with and not as a limitation upon the specific obligations of Agent as set forth in the Plan. Agent agrees to comply with all applicable provisions of the Plan, regardless whether specific reference is made thereto in any particular provision of this Agreement.

4. **Meeting with Owner**

Agent agrees to cause a representative of Agent to confer with Owner and to attend meetings with Owner at any reasonable time or times requested by Owner.

5. **Basic Information**

As soon as practicable, but not later than final completion of rehabilitation or construction of the Building or any phase thereof, Owner shall furnish Agent with a complete set of general plans and specifications for the Building and copies of all guarantees and warranties pertinent to construction and fixtures and equipment of the Building. With the aid of this information and inspection by competent personnel, Agent

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shall thoroughly familiarize itself with the character, location, construction, layout, plan and operation of the Building, and especially the electrical, heating, plumbing, and ventilating system, and all other mechanical equipment in the Building.

6. **Development Phase**

Agent shall facilitate the work of Owner's general contractor in an effort to minimize disturbance of the Tenants and promote timely completion of rehabilitation or construction of the Building. Any disputes between the Agent and the general contractor shall be immediately referred to Owner by Agent. Further, Agent shall do the following during rehabilitation:

(a) Post notices around the construction area warning Tenants and others that area is under construction and trespass may be hazardous;

(b) Respond to Tenant complaints regarding the construction activity and notify Owner thereof; and

(c) Notify Owner of any dangerous condition that emanates from construction.

7. **Marketing/Affirmative Fair Housing Marketing Plan**

Agent shall carry out the Owner and NYS HCR -approved marketing activities. Subject to the prior written approval of Owner, advertising expenses incurred by Agent on behalf of Owner shall be paid out of the Operating Account or Development Budget as the case maybe as expenses of the Building. Agent shall advertise the Building in accordance with the Owner approved operating budget for and the Affirmative Fair Housing Marketing Plan approved by HCR ("Marketing Plan").

8. **Leasing and Inspection**

To the extent not inconsistent with the Division of Housing and Community Renewal requirements or Town of Cheektowaga HOME Investment Partnership Program, Agent shall offer for rent and shall rent the dwelling units in the Building, upon completion of construction of each such unit and from time to time thereafter, in accordance with a rent schedule approved in writing by Owner and the leasing guidelines and form of lease referred to herein below. Incident thereto, the following provisions shall apply:

(a) Agent shall show dwelling units for rent in the Building to all prospective Tenants without regard to race, color, national origin, sex, religion, family status, disability, marital status, or sexual orientation, and will provide reasonable accommodation to individuals with handicaps. The Agent shall use its best efforts to rent the dwelling units and, if appropriate and so agreed, and other facilities and concessions, in the Development and thereafter to keep the same fully rented.

(b) Agent shall take and process applications for rentals, including prospective Tenant interviews and credit checks. If an application is rejected, Agent shall promptly give to the applicant a proper written notice stating the reason for rejection, and the rejected application with reason for rejection will be kept on file for a minimum of three years. If the rejection is because of information obtained from a Credit Bureau, the source of the report must be revealed to the applicant in accordance with the Fair Credit Reporting Act. A current list of prospective tenants will be maintained.

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(c) Agent shall comply with the special low-income housing tax credit requirements concerning leasing and related matters as set forth in Paragraph 9 hereof. Agent shall comply requirements of all other project funding sources such as Homeless Housing Assistance Corporation, Town of Cheektowaga HOME funds, Empire State Supportive Housing Initiative ("ESSHI") and other NYS Homes and Community Renewal ("HCR") funding concerning leasing and related matters.

(d) Agent shall be responsible for the certification and recertification of tenants covered by any Housing Assistance Payments Contract that may be applicable to the Building with respect to federal Section 8 rent subsidies, following procedures required by the U.S. Department of Housing and Urban Development ("HUD"). After the first year of certification and recertification of Tenants, the certification and recertification process shall be the sole responsibility of Agent.

(e) Agent shall, subject to prior written approval by Owner of any deviation from Owner's approved rent schedule, Lease form, and leasing guidelines, execute all Leases in Agent's name, identified thereon as agent for Owner. The leases shall be in a form satisfactory to the Owner, Agent, HCR, and US Department of HUD as applicable.

(f) Intentionally omitted.

(g) Agent shall collect, deposit, and disburse security deposits, if required, in accordance with the terms of each Lease. The amount of each security deposit shall be as approved by Owner in writing. Security deposits shall be held by Agent in a trust account, separate from all other accounts and funds. Such account shall be in the name of the Agent, also identifying the Building, and designated of record as "Security Deposit Account." Interest on security deposits shall be paid according to law.

(h) Agent shall maintain a current list of acceptable prospective Tenants and undertake all arrangements necessary and incidental to the acceptance of rental applications and the execution of Leases. Agent shall exercise its best efforts (including, but not limited to, placement of advertising, interview of prospective Tenants, assistance in completion of rental applications and execution of Leases, processing of documents and credit and employment verifications, and explanation of the program and operations of Owner), to effect the leasing of dwelling units, renewal of Leases, and, in accordance with the terms of the Lease, subleasing of dwelling units in the Building. The Agent agrees to counsel all prospective tenants regarding eligibility and will prepare and verify eligibility certifications and recertifications in accordance with all program requirements and fair housing laws.

(i) Agent shall perform such other acts and deeds requested by Owner as are reasonable, necessary, and proper in the discharge of Agent's rental duties under this Agreement.

(j) Agent shall prorate the first month's rent collected from a Tenant should the Lease term commence on any day other than the first day of the month. If the Lease term occurs after the twentieth (20th) day of the month, the prorated amount, plus the next month's rent, shall be collected on or before the first day of the Lease term.

(k) Agent shall participate in the inspection of the dwelling unit identified in the Lease together with the Tenant prior to move-in and upon move-out, and shall record in writing any previous damage to the unit and any damage occurring during the Tenant's occupancy.

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(l) Agent shall, unless otherwise agreed by Owner and Agent in writing, (i) comply with the leasing guidelines attached hereto as Exhibit 2 and by this reference made a part hereof, and (ii) use for each Lease the form of lease agreement attached hereto as Exhibit 3 and by this reference made a part hereof, together with the form of Low-Income Lease Rider attached hereto as Exhibit 4 and by this reference made a part hereof, if required by Paragraph 8 hereof, without any material changes.

(m) If the Project is a rehabilitation of a pre-1978 built building and contains rental units with one bedroom or more that are expected to be available to tenants other than the elderly or disabled then the Agent must provide each prospective tenant a copy of the Government Printing Office published informational pamphlet entitled Lead-Based Paint: Protect Your Family and a copy of the Lead Hazard Evaluation report on the building prepared by the Owner's environmental consultant. Furthermore, the Agent agrees to indemnify and hold harmless the Owner for any damages and attorneys' fees incurred by the Owner or Agent for failure to properly implement this paragraph.

((n) Agent shall work with the support service provider for this project (Catholic Charities of Buffalo New York, Inc.) to ensure marketing, tenant selection and management of 21 ESSHI-supported units in accordance with ESSHI and HCR requirements.

(o) Owner shall provide to Agent a copy of the agreement designating rental subsidy and program services funding for a portion of the Development pursuant to the HHAP Program.

9. **Tax Credit Requirements/Compliance with Other Funding Source Requirements**

The criteria, procedures and requirements with respect to tenant eligibility and occupancy of the Development shall be as set forth in and in accordance with Section 42 of the IRS Code, the Tenant Selection Plan and Approved Marketing Plan approved by HCR, the Owner, and this Agreement. No person or family shall be approved for occupancy or shall be permitted to occupy any dwelling unit in the Development or any portion thereof, unless such person or family satisfies said criteria, procedures and requirements.

Agent acknowledges that Owner is required under its agreement to use best efforts to lease the percentage of the apartment space in the Building set forth in Section B of the Information Schedule (based on number of apartments or floor area, whichever is less) (the "Credit Units") to tenants whose income and rent levels qualify such apartments for inclusion in determining federal low-income housing tax credits (the "Credits") for the Building, and that the Credits will have substantial economic value to Owner and its members. Agent shall also lease any other qualified space if and as indicated in Section B of the Information Schedule. Owner shall furnish Agent with written descriptions of such requirements as they relate to Agent's leasing and management duties hereunder. Incident thereto, the following provisions shall apply for all Credit Units:

(a) Agent shall, prior to approving each rental application and prior to allowing prospective tenant to take occupancy,

(i) require prospective tenant to complete, execute, and deliver the forms of Low-Income Lease Rider, and

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(ii) obtain from the prospective tenant's employer (if any) the completed and executed form of Employment Verification, all attached hereto as part of **Exhibit 4**, as may be revised by Owner from time to time, and

(iii) shall perform such other verifications of such tenant's non-employment income as are necessary or appropriate, in order to provide necessary certification and verification of the amount of such tenant's annual family income, family size, and any other information reasonably requested by Owner in writing in connection with the Credits. Agent shall require tenants to certify in writing as to such matters on an annual basis, prior to such time as the information is required for tax reporting purposes for the Credits. Owner shall give Agent advance written notice of such requirements. Agent shall, prior to leasing Credit Units, determine tenant income eligibility for purposes of the Credits pursuant to applicable laws, using the Managing Agent's Low-Income Eligibility Worksheet attached hereto-as part of Exhibit 4 or such corrective revisions thereof as Owner shall furnish to Agent from time to time upon any revisions in applicable laws. Without Owner's express prior written consent, Agent shall not enter into any lease on behalf of Owner to a tenant who fails to meet the income eligibility requirements for the Credits. Agent shall complete, execute, and deliver to Owner, upon lease-up of the Credit Units and annually thereafter prior to the time such information is required for tax reporting purposes for the Credits, the form of Managing Agent's Low-Income Leasing Certification attached hereto as Exhibit 5, including a true and correct Rent Roll of all apartment units in the Building in the format attached therewith. Agent shall deliver copies of all leases, riders, certifications, and verifications for the Credit Units to Owner on a monthly basis, and shall deliver copies of annual recertification to Owner prior to the time they are required for tax reporting purposes for the Credits,

(b) Owner shall from time to time furnish Agent with a written schedule of maximum rents for the apartments, depending on family size for purposes of the Credits. Without Owner's express prior written consent, Agent shall not enter into any lease on behalf of Owner at a rental amount exceeding the applicable maximum.

(c) Agent shall maintain and preserve all written records of tenant family income and size, and any other information reasonably requested by Owner in writing in connection with the Credits, , Tenants or Building, throughout the term of the Agreement, and shall turn all such records over to Owner upon the termination or expiration of the Agreement. Agent shall maintain and preserve such records in an orderly and auditable manner.

(d) If requested by Owner in writing, Agent shall prepare reports of low-income leasing and occupancy in form suitable for submission in connection with the Credits,

(e) Agent shall cause the Project to be maintained in compliance with all local health, safety, and building codes to the extent of available funds, and shall promptly give written notice to Owner and to Owner's Investor Members, as identified in the Information Schedule, if Agent receives notice of any such code violation relating to the Building.

(f) Compliance with Other Funding Source Requirements.

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i. Agent shall comply with all regulatory requirements related to the management and operation of the Building and with all local, state, and federal laws and regulations that are applicable to the performance of its obligations under this agreement, including but not limited to the Marketing Plan and all applicable consumer debt collection laws and regulations.

ii. Agent shall cause the Building and the operation thereof to comply in all respects with the HCR Regulatory Agreement and shall prepare and file in a timely fashion (after review by Owner if so requested by Owner) all reports and filings required under the HCR Regulatory Agreement.

iii. Agent shall work with the support service provider for this project (Catholic Charities of Buffalo New York, Inc.) as needed to ensure referrals to 21 ESSHI-supported units and satisfy ESSHI reporting requirements.

10. **Collection of Rents, Etc.**

Agent shall collect when due, directly or through an on-site manager, all rents, charges, and other amounts receivable on Owner's account in connection with the management and operation of the Building. Such receipts shall be held in the Operating Account identifying the Building, separate from all other accounts and funds.

11. **Enforcement of Leases**

(a) Agent shall secure full compliance by each Tenant with the terms of such Tenant's Lease.

(b) Voluntary compliance shall be emphasized, and Agent shall counsel Tenants and make referrals to community agencies (which, in the case of Tenants of ESSHI-supported units, shall be the project's support service provider) in cases of financial hardship or other circumstances deemed appropriate by Agent, all to the end that involuntary termination of tenancies shall be avoided to the maximum extent, consistent with sound management of the Building.

(c) Nevertheless, the Agent may, and shall if requested by Owner, lawfully terminate any tenancy when sufficient cause for such termination occurs under the terms of the Tenant's Lease, including, but not limited to, nonpayment of rent. For this purpose, Agent is authorized to consult with legal counsel to be designated by Owner and bring actions for eviction and execute notices to vacate and judicial pleadings incident to such actions; provided, however, that Agent shall keep Owner informed of such actions and shall follow such instructions as Owner may prescribe for the conduct of any such action.

(d) Reasonable attorneys' fees and other necessary costs incurred in connection with such actions, as determined by Owner, shall be paid out of the Operating Account. Agent shall properly assess and collect from each Tenant or the security deposit the cost of repairing any damages to the dwelling unit arising during the Tenant's occupancy. Anything to the contrary herein notwithstanding, Agent shall work with the project's support service provider to assist Tenants of ESSHI-supported units with resolving lease violations and maintaining housing stability to the extent practicable and consistent with sound management of the Building.

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12. **Maintenance and Repairs**

Agent shall cause the Building to be maintained in a decent, safe, and sanitary condition and in a rentable and tenantable state of repair, all in accordance with local codes, and Agent otherwise shall maintain the Building at all times in a condition acceptable to Owner, including, but not limited to, performance of cleaning, painting, decorating, plumbing, carpentry, grounds care, and such other maintenance and repair work as may be necessary. Incident thereto, the following provisions shall apply:

(a) Special attention shall be given to preventive maintenance, and to the greatest extent feasible, the services of regular maintenance personnel shall be used.

(b) Subject to Owner's prior written approval, Agent shall contract with qualified independent contractors for the maintenance and repair of major mechanical systems, and for the performance of extraordinary repairs beyond the capability of regular maintenance personnel. Agent shall obtain, prior to commencement of any work, appropriate written evidence of such contractor's liability and worker's compensation insurance.

(c) Agent shall systematically and promptly receive and investigate all service requests from Tenants, take such action thereon as may be justified, and keep records of the same. Emergency requests shall be received and serviced on a 24-hour basis. Complaints of a serious nature shall be reported to Owner promptly after investigation. Owner shall have the right to receive copies of all service requests and the reports of action taken thereon.

(d) Agent shall use best efforts to take such action as may be necessary to comply with any and all orders or requirements of federal, state, county, or municipal authorities having jurisdiction over the Building and orders of any board of fire underwriters, insurance companies, and other similar bodies.

(e) Subject to the provisions of paragraph 18 hereof, Agent is authorized to purchase all materials, equipment, tools, appliances, supplies, and services necessary for proper maintenance or repair of the Building.

(f) Notwithstanding any of the foregoing provisions, the prior written approval of Owner shall be required for any expenditure exceeding $5,000.00 in any one instance for labor, materials, or otherwise, in connection with the maintenance and repair of the Building, except for emergency repairs involving manifest danger to persons or property, or required to avoid suspension of any necessary service to the Building. In the event of emergency repairs, Agent shall notify Owner of the fact promptly, and in no event later than 72 hours from the occurrence of the event.

13. **Utilities and Services**

Agent shall make arrangements for water, electricity, gas, sewage, and trash disposal, vermin extermination, decorating, laundry facilities, and telephone service in connection with the Building. To the extent available, all utilities shall be paid in accordance with an annual budget plan established by the utility.

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14. **Personnel**

All on-site personnel shall be contracted service providers or employees of Agent and shall be paid from the Operating Account as an expense of the Building to the extent set forth in the annual operating budget approved by Owner. Agent shall at all times have sufficient personnel physically present at the Building for the full and efficient performance of its duties under this Agreement, including physical presence of responsible persons at such times as reasonably may be requested by Owner.

15. **Operating Account**

Disbursements from the Operating Account shall be governed by the following:

(a) From the funds collected and held by Agent in the Operating Account pursuant to paragraph 9 hereof, and subject to Owner's approved operating budget, Agent shall make the following disbursements promptly when payable, in the following order of priority:

(i) salaries and any other compensation due and payable to the employees referred to in paragraph 13 hereof including Agent's compensation, together with related payroll taxes;

(ii) real estate taxes and assessments, any payments in lieu of real estate taxes, and fire and other hazard insurance premiums (including any required monthly escrow payments therefore), utilities, interest on the Mortgages, amortization of the principal of the Mortgages, fees, and establishment and maintenance of all reserve funds;

(iii) other payments due and payable by Owner as operating expenses incurred pursuant to Owner's approved operating budget and in accordance with this Agreement, and

(iv) distributions to or at the direction of Owner, including distributions to Owner's members in accordance with Owner's agreement.

(b) In the event that the balance in the Operating Account is at any time insufficient to pay disbursements due and payable under subparagraph 15(a) hereof, Agent shall promptly inform Owner of the fact and Owner may then remit to Agent sufficient funds to cover the deficiency. In no event shall Agent be required to use its own funds to pay such disbursements.

16. **Operating Budget**

Agent shall prepare and recommend an annual operating budget for the Building for each fiscal year during the term of this Agreement and shall submit the same to Owner and Tax Credit Syndicator's asset manager at least sixty (60) days before the beginning of such fiscal year. The annual operating budget shall include a schedule of recommended rents to be charged for each dwelling unit, including recommended rent increases with respect to Lease renewals and new Leases. In preparing each proposed annual operating budget, Agent shall use its best efforts to take account of anticipated increases in real estate taxes, utility charges, and other operating costs. To the extent feasible, Agent shall support anticipated increases in real estate taxes and utility charges with written evidence or documentation - documentation – and rent increases shall be supported with all required approvals such as HCR approval. Proposed annual operating budgets for the Building shall be subject to approval by Owner and

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Syndicator's Asset Manager. Owner shall promptly inform Agent of any changes incorporated in the approved operating budget, and Agent shall make no expenditures in excess of the amounts set forth in such approved operating budget, for each line item of operation expense itemized, without the prior written approval of Owner, except as permitted pursuant to subparagraph 11(f) hereof for emergency repairs involving manifest danger to persons or property, or required to avoid suspension of any services to the Building.

17. **Records and Reports/Accounting Practices**

In addition to any requirements specified by Owner, Agent shall have the following responsibilities with respect to records and reports:

(a) Upon execution of this Agreement, Agent immediately shall ascertain the general condition of the Building, including, but not limited to, the taking of an inventory of all furniture, equipment, tools, and supplies, and shall prepare a report on the physical and financial status of the Building. Within thirty (30) days after the execution of this Agreement, Agent shall provide Owner with a copy of the reports and inventories so prepared.

(b) Agent shall establish and maintain a comprehensive system of records, books, and accounts, including computerized systems, in a manner satisfactory to Owner. All records, books, and accounts shall be subject to examination at reasonable hours by any authorized representative of Owner, or of Owner's investment member as identified in the Information Schedule ("Owner's Investor Member').

(c) Agent shall prepare a monthly report, in form satisfactory to Owner, containing and including at least the following:

(i) a statement of income and expenses and accounts receivable and payable for the preceding month, including an itemized list of all delinquent rents as of the tenth (10th) day of the current month, as well as a report on action taken thereon by Agent;

(ii) a rent roll/cash receipts form for the previous month;

(iii) a disbursements summary for the previous month;

(iv) current bank statements with reconciliation of the Operating and Security Deposit Accounts;

(v) copies of paid bills and invoices for the previous month; and

(vi) a narrative of any unusual actions taken or emergencies responded to, and a full report of any accidents, claims, end potential claims, for the previous month. Agent shall submit each such report to Owner on or before the fifteenth (15th) day of each month, and shall concurrently mail a copy of the entire report to Owner's Investor Member.

(d) Agent shall promptly furnish such additional information (including monthly occupancy reports) as may be requested from time to time by Owner or Owner's Investor Member with respect to the renting and financial, physical, or operational condition of the Building.

(e) Agent shall prepare, execute, and file all forms, reports, and returns required by law in connection with the employment of personnel, unemployment insurance, workman's

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compensation insurance, disability benefits, Social Security, and other similar insurance, and all other benefits or taxes now in effect or hereafter imposed.

(f) Agent shall establish tenant files containing copies of leases, certification forms, notices, and other documentation required by HUD, if and to the extent applicable.

(g) Except as may otherwise be expressly provided in this Agreement, all bookkeeping, data processing services, and management overhead expenses shall be borne by Agent out of its funds and shall not be treated as Building expenses.

18. **Fidelity Bond.**

Agent shall furnish and maintain, at the expense of the Building, for the duration of this Agreement, and any extensions thereof, plus thirty (30) days after the expiration or termination thereof, a commercial blanket bond in favor of Owner, in an amount not less than the sum of

(a) three (3) months' potential maximum Gross Rents plus projected laundry income for the Building plus all reserve accounts plus

(b) aggregate Tenant security deposits held from time to time, both in amounts as determined by Owner, and in a form and with a company acceptable to Owner, which commercial blanket bond shall cover Agent and all employees hired by Agent in connection with this Agreement. Such fidelity bond shall at least cover losses discovered by Owner within two (2) years after the occurrence of such losses. Such fidelity bond shall be attached to this Agreement, and such fidelity bond shall name Owner as loss payee and contain a written provision that Owner shall be given at least thirty (30) days' prior written notice of cancellation, non-renewal or change in coverage. The bond must be in compliance with mortgagee, state and federal requirements applicable to the Building. Other terms and conditions of the bonds, and the surety thereon, will be subject to the approval of Owner and applicable funding sources. Agent shall provide Owner and Owner's Investor Member a copy of such bond and any replacements within thirty (30) days after written request from Owner or Owner's Investor Member.

19. **Bids, Discounts, and Rebates**

Agent shall obtain contracts, materials, supplies, utilities, and services on the most advantageous terms to the Building, and shall solicit competitive bids on all contracts or purchases exceeding $2,500.00 for those items which can be obtained from more than one source. Agent shall secure and credit to Owner all discounts, rebates, or commissions obtainable with respect to purchase, service contracts, and all other transactions on Owner's behalf.

20. **Liability of Agent**

Except as expressly provided to the contrary herein, the obligations and duties of Agent under this Agreement shall be performed as agent of Owner, but Agent, personally, shall be liable for its breaches of this Agreement; provided, however, that the Agent shall not be responsible for incurring any expenditures in excess of existing or reasonably projected available funds from the Building or funds supplied by Owner. All expenses incurred by Agent in accordance with its obligations and duties under this Agreement and consistent with Owner's approved operating budget, except those due to its breaches of this Agreement

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and those expressly specified as Agent's expenses herein, shall be for the account of and on behalf of Owner.

21. Indemnification

To the extent permitted by law and except to the extent attributable to the negligent or intentional acts or omissions of Agent (including its employees or independent contractors), Owner agrees to defend, indemnify, and save harmless Agent from all claims and suits in connection with the Building provided that such claims and suits are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, and such claims and suits arise, or are alleged to arise, in whole or in part out of any negligent act or omission of Owner, its officers, employees, or agents. Owner agrees to include Agent as an additional insured in Owner's public liability policy, but only while Agent is acting as real estate manager for Owner under this Agreement. Owner shall provide Agent with a certificate of insurance evidencing such liability insurance and providing not less than 30 days' notice to Agent prior to cancellation. To the extent permitted by law, and except to the extent attributable to the negligent or intentional acts or omissions of Owner (including its employees or independent contractors), Agent agrees to defend, indemnify, and save harmless Owner and its members, managers and independent contractors from all claims, investigations, and suits, or from actions or failures to act of Agent, with respect to any alleged or actual violation of state or federal labor or other laws pertaining to employees, it being expressly agreed and understood that as between Owner and Agent, all persons employed in connection with the premises are employees of Agent, not Owner. In addition, Agent agrees to defend, indemnify, and hold Owner harmless from and against any and all losses, damages, claims, costs, expenses, and liabilities (including but not limited to all legal fees, court costs, and costs of investigation) resulting from any breach of this Agreement by Agent and any intentional tort, criminal activity, reckless and other willful misconduct, and any other negligent or intentional act or omission by Agent, its agents or employees or independent contractors. Agent agrees that it will promptly notify Owner of any claims against Agent or Owner. Agent will cooperate with Owner and, upon reasonable request, will attend hearings and trials and assist in effecting settlements, securing and giving evidence, and obtaining the attendance of witnesses in the conduct of suits. Agent will not voluntarily settle any suit, make any payment, assume any obligation, or incur any expense without the express written consent of Owner.

22. **Insurance**

Agent shall cause insurance coverage required under the Mortgages, and such additional forms and amounts of insurance as Owner may require, to be placed and kept in effect at all times with insurance companies satisfactory to Owner. Agent shall be designated as an insured while acting as real estate manager for Owner under public liability insurance for a limit of liability acceptable to Agent and Owner. Agent shall investigate and promptly furnish to Owner full written reports of all accidents, claims, and potential claims for damages relating to the Building, and shall cooperate fully with Owner's insurers, regardless of whether the insurance was arranged by Agent or others.

Agent shall at all times keep its employees and contractors insured for statutory workers' compensation, disability and other employee benefits required by all applicable laws and shall maintain liability insurance covering automobiles and other vehicles operated by Agent. Agent shall maintain employer's liability insurance for an amount not less than $1,000,000.00 covering claims and suits by or on behalf of employees and others, not otherwise covered by statutory workers' compensation insurance. In addition, Agent shall maintain a comprehensive commercial liability policy in the amount of $1,000,000.00 per

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occurrence/$2,000,000.00 aggregate and property fire damage/legal liability in the amount of $50,000.00, ensuing out of claims from Agent's actions or omissions, including without limitation any intentional torts, criminal activity, and reckless or other willful misconduct of Agent, its agents, independent contractors and employees. Such policy shall include coverage for contractual liability under this Agreement. Owner and its member, managers and independent contractors shall be protected in all such insurance by specific inclusion of Owner under an additional insured or alternate employer rider. Agent shall provide Owner with a certificate of insurance evidencing that all insurance referenced in this Paragraph is in full force and effect and providing not less than thirty (30) days' notice to Owner prior to cancellation, lapse, or non-renewal or the reduction in the amount of coverage.

23. **Limitation of Liability**

Agent agrees that it will not seek recourse against the individual members, managers, shareholders, directors, officers, employees or agents of Owner or any of their personal assets for satisfaction of any liability with respect to this Agreement.

24. **Increased Risk**

Agent shall give Owner written notice if any facts of which Agent is aware evidence an increase in the risk of casualty loss or a claim of liability in connection with the Building or its operation. Such notice shall be given as soon as Agent has knowledge of such facts.

25. **Right of Inspection/Audit Right**

Owner shall have the right, within ten (10) days written notice to Agent, to audit all files and accounts pertaining to the Building at Agent's principal office during normal business hours. If such audit reveals a material discrepancy (defined as a discrepancy of more than 2% of each budgeted income and expense line item, as reflected in the annual budget), Agent shall be responsible for promptly correcting such discrepancy within ten (10) days after receipt of notice of same and shall reimburse Owner for direct out-of-pocket costs of such audit.

26. **Escrow Payments.**

From the funds collected and deposited by Agent in the Operating Account, Agent shall make any monthly escrow payments required under the Mortgages, for the purpose of funding insurance, tax, and such other reserve or escrow accounts for the Building as Owner may require pursuant to the Mortgages. Such payments shall be held in an interest-bearing account within a bank insured by the FDIC. Agent promptly shall present tax bills and insurance premium notices to the escrow agent for payment and shall furnish Owner with evidence of timely payment of such taxes and insurance premiums. For Security Deposits, any balance in the Security Deposit Account, which is retained by the Agent as a result of lease violations, and any interest that may be earned which is not payable to the respective tenants shall be transferred to the General Operating Account and treated as income for the Project.

27. **Agent's Compensation**

As compensation for all of Agent's ongoing property leasing, management, and related services under this Agreement, beginning in the month following the month in which a certificate of occupancy for the Building is issued, Agent shall receive a monthly fee in the amount set forth in **Section C** of the Information

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Schedule (the "Management Fee"), to be paid out of the Operating Account and treated as a Building expense. Such fee shall be payable on the tenth (10th) day of the month following the month in which the services were rendered.

28. **Intentionally Omitted**

29. **Compliance with Laws**

In the performance of its obligations under this Agreement, Agent shall comply with applicable local, state, and federal laws and regulations.

30. **Term of Agreement/Right to Cancel**

This Agreement shall be in effect for the period commencing as of the date hereof and ending on the first (1st) anniversary of the date hereof, and shall be automatically extended for one (1) year periods thereafter until the date set forth in Section E of the Information Schedule, subject to the following conditions:

(a) Either Owner or Agent may elect not to extend this Agreement by notifying the other party at least sixty (60) calendar days in advance of the last day of the initial period hereunder or any annual extension period thereafter.

(b) This Agreement may be terminated by mutual written consent of Owner and Agent. This Agreement may be terminated by either Owner or Agent, with or without cause subsequent to the end of the initial one year term upon the giving of sixty (30) days' advance written notice to the other party.

(c) In the event Agent fails to perform any of its duties hereunder or to comply with any of the provisions hereof, Owner shall notify Agent in writing and Agent shall have ten (10) days thereafter within which to cure such default to the reasonable satisfaction of Owner, and if such default cannot be cured within such ten (10) day period, Agent shall have such additional time as may be necessary to cure the same provided that Agent demonstrates to the continuing satisfaction of Owner that it is diligently pursuing all necessary actions to cure such default and that the same will be cured within a reasonable time without damage or expense to Owner.

(d) In the event a petition in bankruptcy is filed by or against Owner or Agent, or in the event Owner or Agent makes an assignment for the benefit of creditors or takes advantage of any insolvency act, Owner or Agent may terminate this Agreement without notice to the other.

(e) Within five (5) days after the termination of this Agreement, Agent shall close all accounts and pay the balances or assign all certificates of deposit regarding the Building to Owner. Within ten (10) days after the termination of this Agreement, Agent shall deliver to Owner all plans and surveys of the Building in its possession and all books and records concerning the Building, Within thirty (30) days after the termination of this Agreement, Agent shall submit to Owner all reports required under Paragraph 17 or any other provision hereof to the date of such termination, and Agent and Owner shall account to each other with respect to all matters outstanding as of the date of termination.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

31. **Communication Methods/Notices.**

(a) All notices or other communications required or desired to be given under this Agreement shall be in writing and shall be delivered either personally or by U.S. certified mail, return receipt requested, which shall be deemed delivered upon personal delivery or two (2) business days after mailing, to the parties at the addresses set forth in Section F of the Information Schedule. In the event of a change in the mailing addresses stated above, any addressee whose address changes hereby agrees to give notice of a new or forwarding address within seven (7) days of the effective date of said change to the other addressee, whereupon subsequent notices shall be addressed to such new or forwarding address.

(b) Agent shall communicate with the project's support service provider in accordance with the terms of the project's applications for ESSHI and HHAP funding.

32. **Amendment.**

This Agreement constitutes the entire agreement between Owner and Agent, and no amendment or modification thereof shall be valid or enforceable except by supplemental agreement in writing, executed by the parties hereto or the party to be bound thereby. In addition, no such amendment or modification shall be valid or enforceable without the prior written consent of Owner's Investor Member.

33. **Waiver of Trial by Jury.**

The parties to this Agreement expressly waive the right to trial by jury.

34. **Attorney's Fees.**

If any judicial remedy is necessary to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and other expenses, in addition to any other relief the court may grant.

35. **Enforceability.**

The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions thereof, Owner's remedies under this Agreement are cumulative, and the exercise of one remedy shall not be deemed an election of remedies nor foreclose the exercise of Owner's other remedies, No waiver by Owner of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach. Owner or Agent may apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, or for such other relief' as may be appropriate, since the injury arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain,

36. **Governing Law**

The law of the state in which the Building is located shall govern the interpretation and enforcement of this Agreement.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

37. **Captions**

The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or the intent of this Agreement.

38. **Execution of Counterparts**

For the convenience of the parties, this Agreement may be executed electronically and in multiple counterparts, each of which shall constitute a complete original of this Agreement, which may be introduced in evidence or used for any other purpose without the production of any other counterparts.

39. **Successors and Assigns.**

This Agreement shall inure to the benefit of and constitute a binding obligation upon Owner and Agent and their respective successors and assigns; provided, however, that Agent shall not assign this Agreement, or any of its duties hereunder, without the prior written consent of Owner. In the event Owner's current general partner or any successor general partner of Owner is removed as general partner in accordance with Owner's partnership agreement, .any successor general partner selected in accordance with such partnership agreement shall have authority to act hereunder on behalf of Owner, and until such successor is selected Owner's Investor Member shall have temporary authority to act hereunder on behalf of Owner.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

In Witness Whereof, the parties have executed this Agreement as of the 31st day of March, 2021.

Owner: Angela's House LLC
a New York limited liability company

By: _____
Print: Benathan Upshaw
Its: Authorized Signatory

Agent:
DELTA DEVELOPMENT OF WESTERN NEW YORK, INC.
a New York not-for-profit corporation

By: _____
Print: Steven Timmel
Its: Authorized Signatory

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INFORMATION SCHEDULE

The following provisions are incorporated into and made a part of the foregoing Property Management Agreement between Owner and Agent to which this Information Schedule is attached.

A. Paragraph 1. The term "Building" means, collectively, the real property commonly known as Angela's House consisting of one wing of a building located at 600 Doat Street, Cheektowaga, NY, and all improvements, appurtenances, and equipment located thereon, including 67 dwelling units and interior and exterior common areas.

B. Paragraph 9, The percentage of apartment space (number of apartments or floor area, whichever is less) to be leased to low-income tenants is one hundred percent (100%). Any other eligible space required to qualify for the Credits and leasing requirements applicable thereto, if any, are as follows: NONE.

C. Paragraph 27, The Management Fee shall be in an amount equal to 5.512% of the Gross Rents received in each month following the month in which a certificate of occupancy was issued for the Building..

D. Paragraph 30. The date on which the Agreement will terminate, subject to the conditions contained in Paragraph 30(a) through (ce) thereof, shall be the fifteenth (15th) anniversary of the execution the Agreement,

E. Paragraph 31, The addresses to which all notices required or desired to be given under the Agreement shall be delivered are as follows:

Agent: Delta Development of Western New York, Inc.
525 Washington Street
Buffalo, New York 14203

Owner: Angela's House LLC
221-10 Jamaica Avenue, LL1
Queens Village, NY 11428

With a copy to Owner's Investor Member Investor

Member: Wincopin Circle LLLP
c/o Enterprise Community Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, Maryland 21044
Attn: Asset Management

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EXHIBITS TO
PROPERTY MANAGEMENT AGREEMENT

Exhibit 1: Form of Management Plan (as attached by Owner and Agent)

Exhibit 2: Leasing Guidelines (as attached to this form Agreement)

Exhibit 3: Form of Lease (as attached by Owner and Agent)

Exhibit 4: Form of Low-Income Lease Rider (as attached to this form Agreement, must be attached to each individual tenant lease), with attachments:

Exhibit 5: Managing Agent's Low-Income Eligibility Worksheet and Certification of Qualified Occupant

Exhibit 6: Employment/Income Verification(s)

Exhibit 7: Managing Agent's Low-Income Leasing Certification (as attached to this form Agreement), with attachments:

Exhibit 8: Qualified Income Levels (changes annually) Qualified Income Levels Exhibit 8: Rent Roll (standard format)

Exhibit 9: Property Description

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Management Plan

Project Information

Name:	Angela's House
Owner:	Angela's House LLC
Address:	600 Doat St., Cheektowaga, NY 14211
County:	Erie
DHCR project:	20190373
Number of Units:	67
Type of Structure:	Apartment Complex

1. RESPONSIBILTY OF OWNER AND DELEGATION OF AUTHORITY TO MANAGEMENT AGENT

a. The Owner, Developer and Management Agent for the property have developed and will adhere to management requirements that are designed to:

i. Meet the statutory provisions of the programs

ii. Protect the State's investment in the units

iii. Establish a level of accountability which can be verified by NYS DHCR

iv. Provide a basis for ensuring the future viability of the project.

b. Management Agent, Delta Development of WNY, Inc, will be used to oversee the operations of the property. Delegation of the duties and responsibilities of the Management Agent will be spelled out in a Management Agreement that will be reviewed and approved by DHCR and the Owner of the project.

c. An identity of interest relationship not exist between the Owner of the project and the Management Agent. An affiliate of the Owner of the project is also the Management Agent.

d. On-site staff, whose wages and benefits will be a cost of the project, will directly oversee the daily operations of the site. Any on site staff will report to and be directly responsible to a Property Manager assigned to the project. With the exception of specific, project related expenses approved in advance by the DHCR, the cost of the Property Manager's wages and benefits will be an expense of the Management Agent and included in the monthly management fee charged for services pursuant to the approved Management Fee.

e. The Management Agent shall consult the Owner for any expenditure over $5,000 except for regular mortgage and escrow payments, regular utility and insurance costs, approved budgetary items or except for a situation that calls for an immediate answer or a decision that has to be made in an emergency. The Owner and tax credit syndicator must approve the annual budget that will

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prepared by the Management Agent. The Owner, or their designated representative, must also be contacted in the event of a legal dispute, charge of discrimination, or significant environmental or life safety problem involving the site.

f. The Executive Director of the Management Agent is the key contact person for the Agent. The key contact person will be involved in decisions associated with the above referenced issues. There are no singularly incurred operating expenses to the Owner and the Management Agent which are divided between both parties.

g. All decisions involving required reports by DHCR, all management related matters including reserve personnel administration, community relations, and employee terminations, will be made by the Management Agent. Owner's approval is required on financial matters as approved in the annual operating budget. All decisions regarding financing, refinancing, real estate tax appeals, and sale of the project will be made by the Owner with the prior approval of the HTFC.

h. Property, Hazard, fidelity and liability insurance coverage for this project and for all projects managed by the Management Agent, may be bid out as a group policy in order to minimize the cost to the protects. The amount of the annual premium charged to the project is based upon an underwriter's allocation of cost as provided by the insurance consultant who places the group policy.

2. PERSONNEL POLICY AND STAFFING

a. All hiring will be in conformance with federal, state and local laws pertaining to equal opportunity. Hiring will be done on the basis of capabilities and potential.

b. The project is planned to be staffed as:

1. Property Manager
2. Site Manager at 28 hours per week
3. Maintenance Technician(s) at 56 hours per week

c. The Management Agent's Executive Director through his/her Property Manager will direct the onsite staff in discharging their duties who, in turn, reports directly to the Owner/General partner of the project. Decisions regarding personnel policy and conditions of employment will be made by the Property Manager, who will hire the Site Manager and all other personnel associated with the project.

d. The Property Manager will train site staff and maintenance workers on the property in the appropriate methods for completing their job responsibilities. In this endeavor, the Property Manager may use personal training, written texts and handbooks, and training as appropriate. Cost of such training, as approved by DHCR, will be borne by the project. All employees will be subject to a three-month probationary period (90 Calendar days) during which time they will be expected to learn and demonstrate competence in the applicable DHCR regulations and good management practice.

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3. PLANS AND PROCEDURES FOR MARKETING UNITS, ACHIEVING AND MAINTAINING FULL OCCUPANCY, AND MEETING THE AFFIRMATVE FAIR HOUSING MARKETING PLAN

a. The Agent shall rent apartment units only to tenants incompliance with the tenant income limitations and other restrictions set forth in the applicable documentation and agreements between the Owner and DHCR relating the allocation to the Owner Of Low-income Housing Credits pursuant to Section 42 of the Internal Revenue Code of 1996 (the 'Code") and in Section 42 of the Code as well as applicable requirements in connection with the Housing Trust Fund financing and Section 8 Housing Assistance payment Contract . The Agent shall not charge rent to tenants greater than that of the set aside income adjusted for family size, as set forth in Code Section 42 (g), except as permitted by law in connection with the Low Income Housing Credit and the Agent shall maintain occupancy of all units in the Housing Complex on a non-transient: basis , except as may be otherwise permitted by Code Section 42.

b. The intent of the marketing plan will be to reach those low-income and minority persons who are least likely to apply (LLA) for housing at the project without special outreach efforts. These outreach efforts will include conversations or meetings with and letters to area agencies and social organizations known to have an affiliation with minorities or the underprivileged. These communications will inform the organization of the existence and availability of the housing units and will encourage clients of the organization to apply for Housing. All communications with LLA groups will be documented accordingly.

c. The Management Agent will work to maintain the highest occupancy possible by facilitating above-referenced employee training program and administering the above-referenced marketing program.

d. The project will be advertised by signs at the site, handout brochures or fliers made available to interested parties, and newspaper advertisements and articles in local and regional papers. Irrespective of the project's occupancy level, the Agent will continue to follow the Affirmative Fair Housing Marketing Plan (AFHMP) approved for this project and to continue to advertise throughout the compliance period in order to provide the community an opportunity to apply for the project and to provide the project with an active waiting list.

e. The project will take reasonable steps to ensure effective communication with applicants, tenants, and members of the public that have sight or hearing impairments. These steps will include, but not be limited to the following:

i. In the event a sight impaired applicant or current tenant requires special devices to review documents associated with services applying for or leasing an apartment unit management will work with the applicant to ensure that all documents can be reviewed and understood.

ii. Permit tenants with handicaps to use assistive devices and service animals.

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iii. Include evidence of Management's willingness to take the above referenced steps in ads or brochures or communications about the project.

f. The project will make reasonable accommodation to allow the apartment units to be fully enjoyed by tenants with disabilities or handicaps. The accommodations will include but not be limited to the following: Paddle type faucet handles and door knobs, stoves with front mounted controls, entry buzzers and smoke detectors for the hearing in-paired, specific assignment of handicap parking spaces, and the addition of as-needed railings and grab rails. These accommodations will be made without any required payment on the part of the tenant.

g. In the event that a disabled tenant or applicant requests or requires a structural modification to an apartment unit to allow it to be fully usable, management request occupant to supply it with the needed technical data and plans which would be needed to receive local code approval to complete the change. Management will review the plan and confirm if the tenant has the financial ability to pay for the required structural changes or has assistive funding available from service agencies that aid handicapped individuals. If dependable tenant funding is available, and if Management determines that the Structural change will not impose a significant administrative or financial burden on the project, it will approve of the structural change at the tenant's expense. Management may require prior written agreement that the unit be returned to original condition upon termination of the lease with the handicapped tenant if, in its sole opinion, Management believes that the accommodations made would be an imposition rather than an accommodation to any subsequent tenant. The agreement relative to the change be writing, approved by a DHCR representative, and retained with the tenant's file.

h. The project wait list will conform to DHCR requirements as outlined in section 7.00 of the Project Operating and Management Requirements or any subsequent modifications thereof.

i. All tenants at the project will receive a move-in inspection form that records the condition of their specific apartment at the initiation of their lease term. This form will be used as a basis to determine the amount of damage charges, if any, which must be assessed against the tenant for unusual wear and tear, at the time of lease termination. After move-in, an annual inspection of each occupied unit will be conducted and documented. At least 24 hour's notice must be given to tenants prior to any inspection except in the case of an emergency that threatens the safety of the building or the safety of tenant or tenants. A copy of the standard form is attached and a part of this document as Attachment 5.

j. All tenants will receive an orientation interview with the Rental Manager when the lease is signed. The Rules and Regulations attached as Attachment 3 will be discussed and the tenant be presented with copies of any documents, booklets, or fliers that might prove helpful. At or prior to move-in, each new tenant will be visited by the Rental Manager to conduct a move-in inspection of the unit. At that time, the tenant will have an opportunity to ask questions about the system for requesting service and the Rental Manager can determine if any special accommodations are needed to provide fully acceptable housing.

k. The project Rental Manager will be assigned the responsibility to determine tenant or applicant eligibility.

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l. The Project wait list procedure is in Section 4.(a) below. The wait list is maintained in chronological order of receipt and if applicable a notation for frail elderly applicants.

m. Available apartments will be offered to the qualified applicant who is chronologically first on the Project wait list, except in that the tenant selection may be postponed until applicants for occupancy are available whose occupancy will allow borrowers to meet 21 units rented to frail elderly.

4. PROCEDURES POR DETERMINING ELIGIBILITY CERTIFYING AND RECERTIFYING INCOMES.

a. All applications, including ineligible unacceptable applications, will be kept on file for inspection and review by the Regulatory Agency at the site office. All ineligible or unacceptable applicant files will be subject to review if the prospective tenant raises a question. Once a completed application is received and assets and income are verified, the tenant's name will be placed on the appropriate waiting list. Date and time will be recorded on the waiting list when the application is received. The tenant will be notified in writing when their application is accepted or rejected. The list will be of the type that eliminates any opportunity to adjust the chronological order of the applicants. The list will be kept at the office and will be available for inspection.

b. The Property Manager assigned to the subject property will receive training in the requirements of operating a rental assisted property and certifying and recertifying tenants before he is assigned to the site. The training will consist of handbooks, policy and procedure manuals, support documents and interviews with other experienced managers. Property Managers will attend available seminars and courses offered in the area to remain current with the administrative and regulatory requirements of the property. Site Rental Managers will undergo the same type training to ensure that they remain knowledgeable about appropriate operational procedures for the property.

5. LEASING AND OCCUPANCY POLICIES

a. Management will use its best efforts to avoid overcrowding within the rental units. At the time of this plan, the guidelines in effect are as follows:

No. Units		Min Occupants	Max Occupants
65	1 BR	1	2
2	2 BR	2	4

The above occupancy standards will serve as general guidelines. With DHCR approval, management may assign a larger or smaller unit than the household needs all of the following conditions are met.

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i. No household, otherwise eligible and having the number of members appropriate to the unit, is available to occupy the unit and management has made a diligent effort to reach tenants who qualify for the larger or smaller unit.

ii. The tenant agrees to transfer to the first correctly sized unit if and when it becomes available in the project.

b. Admission criteria for selecting tenants for occupancy will be as follows:

The prospective tenant must be income qualified according to the then current guidelines.

The prospective tenant must demonstrate that they have the ability to assure responsibility for adhering to lease terms.

The prospective tenant must demonstrate the ability to adjust to reasonable standards of living.

The prospective tenant must demonstrate the ability to pay rent and possess a favorable rent payment history and a favorable credit history. The Rental Manager will take into account extenuating circumstances, when reviewing credit history.

c. The Project Rental Manager assigned to the subject property will receive training in the administrative requirements of operating a DHCR rental assisted property as they pertain to lease provisions, prohibitions, occupancy standards, and admissions policies before she is assigned to the Rental Manager will maintain a consistently high degree of knowledge, skill and ability in the above areas.

d. When non-English speaking or reading persons apply for or rent an apartment, as-needed provisions will be made to provide readers or translators to assure that such persons understand the lease agreements or established rules and regulations.

6. RENT COLLECTION POLICIES AND PROCEDURES

a. Rent at the site is due and payable in advance, on the first day of the month. Tenants are allowed a fifth day grace period before the imposition of late payment penalties. Any rent or charge unpaid as of the fifth day of the month by 12:00 noon are subject to the $25.00 penalty, unless special arrangements have previously been made approved in writing by the Management Agent.

b. All rents payments are to be made at the project Rental Office. A rent payment drop box will be provided and clearly marked to accommodate payments after normal working hours. The Rental Manager is responsible for posting a rent receipt ledger card and establishing the tenant's rent payment history.

c. Collections will normally be made by check or money order. Collections of all types will be deposited on a regular basis in such a manner that no significant amount of checks or orders are left in the project rental office.

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d. The amount of the security deposit should the net tenant contribution for one month or basic rent, whichever is greater. The Rental Manager allows tenants to pay the required Security deposit installments if the tenant unable to pay the entire amount at the time of lease signing. Security deposits are deposited with a local bank in separate accounts under the tenant's name and social security number. The bank controls the account, provides accounting records of same, and returns the security deposit to the operating account. Payment is then made to the tenant at the account at the request of the Manager. All interest earned on the security deposit except for 1% per year is returned to the tenant at lease termination providing the apartment has not sustained any damage and providing the tenant is not in default of any required rental payments. Security deposit interest is paid to the tenant at the termination the lease, unless the tenant opts to receive it on an annual basis.

7. PROCEDURES POR REQUESTING AND IMPLEMENTING A RENT INCREASE

a. Whenever a rent increase or utility allowance adjustment is being requested, tenants will be notified in writing of the proposed change and a copy of the tenant notice will be posted on the community bulletin board.

b. Management Agent central office administrative personnel will process any requests for changes in the occupancy charges.

c. Basic rent may not be adjusted without the prior written approval of the DHCR/HTFC. The Management Agent will submit a rent increase request to the local Asset Manager assigned to the project by the NYS Division of Housing and Community Renewal (DHCR). The Agent will provide an operating budget with sufficient documentation that justifies the rent increase request and any additional documents that will be required by the Asset Manager his/her review of the rent increase request.

8. PLANS AND PROCEDURES FOR CARRYING OUT AN EFFECTIVE MAINTENANCE, REPAIR, AND REPLACEMENT PROGRAM

a. A preventative maintenance program will be established to prevent serious mechanical failures and physical deterioration of the building.

b. As-built plans and specifications as well as a copy of the General Contractor's warranty binder will be kept at the site office. Central Office personnel or construction advisors will be responsible to update these plans whenever modifications to the project are made.

c. Appliances and mechanical equipment will be checked on an as-needed basis, but no less than annually and always upon unit turn over. Service will be provided on an as-needed basis or on a regular, cycle basis, as suggested by the manufacturer of the equipment.

d. Safety checks of fire alarms, smoke detectors and sprinkler systems will be done at apartment turnover or annually for each unit and common space. A qualified technician will check the fire extinguishers and all safety systems at least annually. Outside lighting and potentially hazardous

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conditions such as ice and snow accumulation will be checked on a regular basis and attended to in an expeditious fashion.

e. Apartments will be inspected for damage and redecoration needs at the time of lease termination and at least once annually as described Section 3 (i) of this Plan. Repairs and redecoration be completed on an as-needed basis prior to occupancy by a new tenant.

f. Major exterior projects will be undertaken on an as-needed basis. The intent will be to keep the painted surfaces from deteriorating prior to their full estimated useful life. Major interior painting will be done between apartment occupancy changes if needed.

g. Exterior repairs will be completed on an as-needed basis. Grounds care will be completed on a weekly basis during the growing season. Additional grounds work will be completed on a seasonal basis, as conditions require.

h. Garbage and trash will be removed the project on a weekly basis, or as conditions require.

i. Common area clean up, including halls, community rooms, laundry rooms, parking lots, etc. will be performed on a regular weekly and as-needed basis. The stated intent of the janitorial program will be to address problem conditions as quickly possible after they arise, and to maintain a structured cleaning program which ensures that all areas of the project are inspected and cleaned on a regular basis.

j. Maintenance service requests (Work Orders) are submitted by the tenants as conditions warrant. Service requests are submitted in writing or via the telephone to the Rental Manager. Service requests are routinely attended to within 48 hours of their submission. When special conditions or a lack of appropriate repair parts postpones completion of the required service, effected tenant will be notified and advised of the estimated service date.

k. Invoices for property operations are processed on a bi-weekly basis. Accommodations are made to process payments on a special basis if needed to avoid late payment charges or penalties.

l. The project operating budget will be completed during the third quarter of the current fiscal year for the subsequent fiscal year. Budgeting forms and guidelines will be adhered to so that the approved budget is a realistic and cost-efficient financial plan for the project.

m. Major replacement or repair items will normally be funded from project replacement reserves. Prior to initiation of major replacement or repair work, an outline of the work and an estimate of cost along with bids will be submitted to DHCR for approval. Once the work item (s) and their cost have written approval, the work will be initiated, completed and inspected. Upon completion of the pre-approved work, replacement reserve funds will be released for payment. The management agent will establish a file with the appropriate documentation that includes the work specifications, the competitive bids, work specs, approvals, withdrawals and vendor payments for on all replacement reserve work items.

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9. PLANS AND PROCEDURES FOR PROVIDING SUPPLEMENTAL SERVICES.

a. Centrally-located coin operated laundry machines will be available on site for use by the tenants.

b. The laundry machines will be operated by route operators contracted by the project. The contract will specify the current rate of return to the owner and the route operators (generally 60/40 respectively) for the project. The term and maintenance of the equipment will also be clearly spelled out in the contract.

c. The cost of or replacing the equipment will be the responsibility of the route operator at no cost to the project.

10. PLANS FOR ACCOUNTING, RECORDKEEPING, AND MEETING DHCR REPORTING REQUIREMENTS

a. All monthly and annual reports required by DHCR will be prepared and submitted by an assigned administrative assistant at the Managing Agent's central office. The books and records of the project will generally be kept on an accrual basis as prepared or approved by the accountants servicing the books and records of the property. All mandatory records will be kept in accordance with generally accepted accounting practices and designated accounts shall be set up for project operations. The account, as per the Management Agreement shall be: Tax and Insurance Escrow, Security Deposit Account, General Operating Account, Operating Reserve Account and Replacement for Reserve Account. All reports will be filed in a timely manner as may be required. The computerized accounting system shall be on an accrual basis and monthly financial reports shall be produced for the Owner showing detail of all deposits and expenses. The Controller for Delta, INSERT NAME, will oversee all project records and supervise in the preparation of al financial reports, mortgage payments, worksheets and annual reports as may be required by regulatory agencies.

b. Reserve funds will be maintained separate and apart those of other projects owned or managed by the Owner.

c. The project bookkeeping chart of accounts and bank accounts will be fully compatible with the requirements of subsection 7.03 of the Project Operating and Management Requirements.

d. Quarterly and annual financial reports required by DHCR will be prepared by the Management Agent's central office Administrative Manager, unless they require the assistance or approval of an independent accountant.

e. The firm or individual engaged to perform the annual audit or verification of review will not be associated with the project, other than to prepare the audit or review.

f. The project will utilize as many forms and records as are needed to ensure that the project is operated in an appropriate fashion. The records will be retained for the full term of any rental assistance contract and as further required by law.

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g. Individual folders will be kept for resident by the Management Agency at the site office and will contain completed resident applications, verification of income and assets, lease agreement, security deposit data, service requests and correspondence. All tenant files shall be retained for a minimum of 10 years from the vacate date so as to exceed LIHTC requirements. Initial certifications for the first credit year will be archived for the term of the compliance period, plus six years as required by LIHTC rules.

RECORDS MAINTAINED ON SITE BY THE PROJECT STAFF	RECORDS MAINTAINED BY THE MANAGEMENT AGENT
rental applications	approved budget
income verifications	management plan
lease and payment history	management agreement
tenant files	Employee records
tenant correspondence	duplicate set of
qualifying move-ins	files for initial qualifying tenants
tenant rent roll	certificate of occupancy
monthly rental vouchers	legal communications
apartment inspection forms	insurance policies
completed service requests	tax information
energy audit information	paid bills
preventative maintenance checklists	aged accounts receivable
affirmative fair housing info	accounting records
marketing/outreach documentation	bank statements
Service contracts and insurance info	partnership docs
wait list	regulatory agreements
site accident reports	
income verifications	

11. ENERGY CONSERVATION MEASURES AND PRACTICES

a. Residents will be reminded of the importance of energy usage and the relationship of increased energy costs to increased rent through the tenant newsletter, fliers, and community presentations. An energy audit acceptable to DHCR will be conducted every five years or as otherwise required by the Regulatory Agency.

b. During the move-in interview, tenants will be instructed in appropriate energy conservation practices that they should follow to minimize the amount of energy used on the project. Information regarding energy efficiency practices Will be retained in the project management office and made available to the tenants.

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c. Management will control the heat and lights and water used in the community room or in the common areas of the project. To reduce energy costs at the project, management will investigate the usage of, and if appropriate and affordable, utilize the following to promote energy efficiency:

i. energy efficient lighting
ii. water saver shower heads, toilet tanks, aerators
iii. added insulation
iv. interior storm shields
v. caulking and weather- stripping as appropriate
vi. energy efficient boilers and water heaters
vii. utility timers and photoelectric cells
viii. night set-back thermostats

d. Whenever an energy audit carried out, management will review the findings and if any corrective measures are in order and affordable Management will avail itself of the services of consultants and inducements offered by the utility companies in this regard. Energy efficiency measures will be discussed no less than annually when the projected budget is prepared and submitted to DHCR for approval. The Property Manager assigned to the project will be the person to discuss the viability of any of the energy conservation measures.

12. PLANS FOR A TENANT ORGANIZATION AND RELATIONSHIP WITH MANAGEMENT

a. Management encourages and supports appropriate tenant organizations and groups. Management addresses the issue of establishing and maintaining tenant organizations when it meets with the tenants during organized gatherings or through tenant newsletters. Should a tenant association (TA) be organized, Management will request proof of annual elections and update the TA's contact list and list of board members.

b. Both the Rental Manager and the Property Manager shall be knowledgeable of DHCR Tenant Grievance and Appeals Procedures. Copies of the procedures will be kept at the site office and made available to the tenants. The Rental Manager will post a copy of the procedure in a conspicuous place such as the bulletin board in the community room or the mailroom at the project.

13. TERMINATION OF LEASES OR OCCUPANCY AGREEMENTS AND EVICTIONS

a. The Management Agent is responsible for knowing State and Local laws and DHCR's regulations regarding termination of leases, evictions and occupancy agreements. At the time of occupancy, all lease provisions will be clearly explained to the residents. The term of all leases shall be twelve (12) months. The resident may give 30 days notice to management for good cause. Should an eviction be necessary, all data backing up this decision will have been documented in the resident file. Management may terminate the lease for good cause which includes one or more substantial violations or repeated minor violations as well as for misrepresentations by the resident in regard to rent, income or eligibility. The lease agreement shall clearly outline provisions and procedures for residents giving notice to vacate and/or the Management Agent's eviction of the

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resident. To the extent necessary and expedient, the Property Manager and Rental Manager assigned to the project will also be knowledgeable about the regulations.

b. The Rental Manager and project's Property Manager will be knowledgeable about State and local laws and DHCR regulations relative to the giving of notices to tenants when a termination of lease, or an eviction is proposed.

14. SECURITY SERVICING

a. The Executive Director of Management Agent and his/her property Management Specialist are responsible to know the DHCR requirements related to Fidelity Bond coverage and to acquire same.

b. The Executive Director of Management Agent and his/her property Management Specialist are responsible to know the DHCR requirements related to property, hazard, fidelity and liability insurance and to acquire same.

15. MANAGEMENT AGREEMENT

A copy of the current Management Agreement is a. attached and made a part of this Management Plan as exhibit C.

16. MANAGEMENT COMPENSATION

Management services are provided by a qualified Management Company contracted by General Partner for the project. The fee is paid monthly. Specific terms of the management fee are spelled out in the attached Management Agreement. The management fee and the Management Agreement may be changed if requested by the Management Agent and approved by DHCR. Currently the fee is equal to 6% of gross receipts.

HFA Termination Clause: If the Agency notifies the Owner of reasons for which it is not satisfied with the management of the project, and such deficiency is not remedied in a reasonable time thereafter, then, at the Agency's request, the Agency shall offer the management agent the opportunity to cure such dissatisfaction. If such cure is not accomplished within thirty (30) days and the Agency requests a termination of the managing agent, the Owner shall engage a replacement managing agent subject to the Approval by the Agency which shall not be unreasonably withheld or delayed.

17. ON-SITE MANAGEMENT

a. The project Rental Manager and Maintenance Technician will live within a reasonable distance from the property so that he/she can respond to emergency situations and perform the following management duties and responsibilities.

b. The Rental Manager is responsible for assuring that the tenants receive prompt, efficient courteous, and quality service. In order to execute this responsibility, the Rental Manager should

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supervise the general administration and physical operation of the property. The Rental Manager should provide direction to and assurance that the rental program properly executed; assure the provision and maintenance of efficient mechanical operations, adequate buildings and equipment; and responsible for the employment of good tenant relations.

c. The Rental Manager should perform the following duties:

i. Regularly inspect the building and grounds, noting physical appearance of property, deterred maintenance, other related data.

ii. Inform the Property Manager of observed deferred maintenance and property deficiencies in writing noting specific locations, conditions, and recommendations for corrective measures.

iii. Establish a rental office procedure with the approval of the Property Manager.

iv. Interview all potential tenants and help select those that qualify.

v. Confer with the Property Manager on all evictions, lease violations, and special arrangements.

vi. Be responsible for all job duties, explain employee duties responsibilities, and inform operation staff of policies and procedures.

d. The Maintenance Technician will receive general supervision and direction from the Rental Manager. The Maintenance Technician shall comply with established policies and operational procedures.

e. The Maintenance Technician should perform the following duties:

i. The Maintenance Technician responsible for Operating and maintaining the electrical and mechanical equipment used to c. provide services for the property and assume the provision and maintenance of efficient building heat and air-conditioning functions including maintenance, repairs, and other related services.

ii. Prepare monthly reports based upon weekly inspections, outlining property conditions, including cleaning of buildings and grounds, and a summary of maintenance operations.

iii. Maintain heaters, air conditioners, and other equipment in the buildings, to assure continuous services, and that the operating safely and equipment efficiently; determine by inspection that all control equipment is operating properly; check such items as circuit, switches, relays and starters, connections and filters for mechanical and electrical faults, signs of wear, dirt, overloading, and other indications OE trouble; and perform such preventive maintenance as lubricating motor bearings and replacing

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brushes and filters. The emergency call system will be physically inspected at least bi-annually in addition to electronically monitored from an external monitoring station.

iv. Perform all necessary maintenance and repairs on the apartments, common areas and parking lots, including routine service calls as well as turnover, cleaning, painting, and snow removal, mow lawns, trim edges, clip shrubs, and weed flowerbeds.

v. Periodically inspect building and grounds to determine necessary preventive maintenance needed and consult with the Property Manager regarding such conditions.

vi. Maintain files containing written records of maintenance services, equipment readings, operating manuals, inventory, and a library consisting of pertinent data relating to equipment and building fixtures.

vii. Responsible to perform the duties required to keep the grounds in attractive, well-maintained condition and to provide adequate and efficient housekeeping functions which assure cleanliness of all building halls, basements, stairways, trash and other public areas.

viii. All public areaways, stairways, halls, laundry rooms, building entrances and trash must be swept daily.

ix. The washers and dryers in laundry rooms are to be dusted and wet rag cleaned once a week.

x. ALL light fixtures, including high hanging globes and wall-mounted globes are to be dusted regularly and cleaned of insects, etc.

xi. Mailbox fronts and public walls or halls must be cleaned regularly as required and the trash room walls, including trash door areas will be scrubbed and maintained.

xii. Perform other related duties as assigned.

f. The site Rental Manager and Maintenance Superintendent will live off site.

g. The project office will be opened approximately 28 hours per week. The specific office hours will be posted on the front of the rental office and will be made known to prospective tenants via a recorded telephone message.

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EXHIBIT 1

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT 2

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

MOVE IN CHECKLIST

Angela's House

Resident:

Move-In Date:

ITEM	COMPLETED	COMMENTS
Emergency Contact form		
Application		
Landlord References		
Home Visit		
Credit & Criminal Check		
Registered sex offender check		
Non-Student Affidavit		
Race & Ethnicity form		
VAWA – Notification of Occupancy Rights		Given to Resident
Renters Insurance Memo		Given to Resident
Resident Code of Conduct		Given to Resident
Move-In Checklist		
Photo ID, SS card & Birth certificate		
Lease		
Rules & Regulations		
Pet Rules		
Low Income Lease Rider		
Acknowledgement of Terms - HOME Assisted Rental Housing– Holy Family only		
Lead paint Disclosure (If applicable)		
VAWA Addendum		
Tenants Right and Obligations		
Appendix A		
TIC		
Certification Worksheet		
Completed third party verification forms		
Asset disposed of Declaration		
W-9		
Copy of 1st month's rent and security deposit		
Move-out Charges		
Cable agreement		
Approval letter		
Top list letter		
Waitlist letter		
Move-in inspection		

Signature: _____ Date: _____

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ATTACHMENTS:

1. APPENDIX A
2. EXHIBIT D SUMMARY OF TENANT RIGHTS AND OBLIGATIONS (FOR LIHC PROPERTIES)
3. HOUSE RULES AND REGULATIONS
4. PET POLICY/RULES (IF APPLICABLE)
5. APARTMENT INSPECTION
6. VAWA
7. EMERGENCY CALL SYSTEM NOTIFICATION LEASE RIDER
8. SMOKE FREE HOUSING POLICY

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Lease for project units with Housing Trust Funds (10/19)

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APPENDIX A

1. PURPOSE

This Appendix sets forth how your monthly rent will be determined, and the circumstances under which your Monthly Rent set forth on page 1, #6 of your lease may increase or decrease.

2. BASIC FACTORS

There are four basic factors which are used to calculate Monthly Rent:

Basic Rent

Basic Rent for the unit is $_____. Basic Rent is the amount of rent necessary to pay the expenses of the project.

Market Rent

Market Rent is the amount of rent that would have to be charged if the Housing Trust Fund Corporation had not subsidized the development of your unit. Market rent shall apply to households that do not qualify as persons of low income pursuant to the requirements of NYS Low Income Housing Trust Fund Program. In any event, the rent charged shall not exceed the lesser of 30% of the tenant's income, or the market rent.

Tenant's Household Income

This is the combined income of all persons residing in the unit.

Shelter Allowance

Shelter Allowance is the amount that the local Department of Social Services will pay for rent.

3. INCREASES IN RENT

A. Unless your Monthly Rent is based on Shelter Allowance, Your Monthly Rent may increase if Basic Rent increases due to increases in operating costs of the project that your unit is in. Your Monthly Rent will be the amount stated on page 1, #6 of the lease or Basic Rent, whichever is more.

B. Your Monthly Rent may increase if your Household's Income increases but not unless your Household's Income increases above public assistance level. If your Household's Income increases, your Monthly Rent will adjust to 30% of your Household's income (less an allowance for certain utilities you may pay for). Your Monthly Rent will not be increased above Market Rent but will not be less than Basic Rent.

C. If your Monthly Rent is based on the Shelter Allowance, and the Shelter Allowance is increased, Monthly Rent will be increased to the new Shelter Allowance amount.

D. If you or any member of your household is receiving a rent subsidy, and that rent subsidy increases, your

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rent may be increased accordingly at the discretion of the Landlord.

E. For a rent increase of 5% or more, the written tenant notification period depends on the length of occupancy:

- 30 days' notice is required for a tenant who has occupied a unit for under a year and does not have a lease term of at least a year.
- 60 days' notice is required for a tenant who has occupied a unit, or has a lease term, for more than one year but less than two years.
- 90 days' notice is required for a tenant who has occupied a unit, or has a lease term, of more than two years

4. DECREASES IN RENT

You are not entitled to decreases in rent based on decreases in income or decreases in rent subsidies, however, you should report such decreases to the Landlord. The Landlord may decrease your rent if:

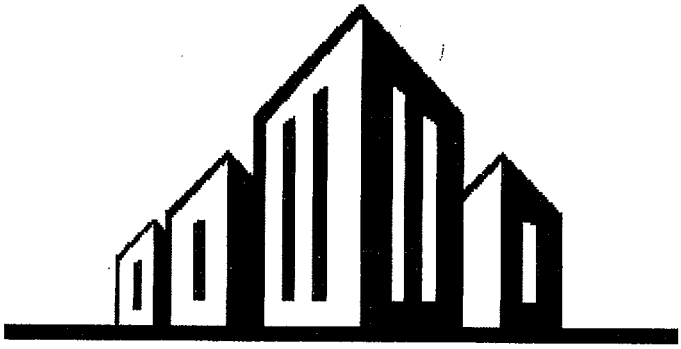
A. If any such rent subsidy you are receiving is decreased. Your Monthly Rent may be decreased accordingly at the discretion of the Landlord but will not be less than Basic Rent.

B. If the tenant's income is significantly reduced. Your Monthly Rent may be decreased accordingly at the discretion of the Landlord but will not be less than Basic Rent.

5. IMMEDIATE INCREASE FOR FAILURE TO PROVIDE INFORMATION, FALSE INFORMATION

If tenant fails to provide information, or falsifies information required to be furnished to the Landlord under this lease, it will constitute a breach of this lease and rent will immediately increase to Market Rent. Tenant further understands that she/he will be required to pay the difference between rent paid and Market Rent, if incomplete or false information was previously supplied.

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DELTA DEVELOPMENT
OF WESTERN NEW YORK INC.

House Rules

Angela's House

600 Doat St.
Cheektowaga, NY 14211
(716) 847-1635

Resident Name _____

Unit _____

Revised December 1, 2018

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GENERAL INFORMATION

The Delta Development HOUSE RULES is part of the lease. By signing the Lease, you agree to abide by the terms of this Handbook.

Delta Business Hours:	Monday - Friday 8:00 AM. to 5:00PM. (closed holiday and weekends) **716-847-1635**
Site Office Hours:	Posted Outside Each Rental Office **«sitephonenumber»**
After Hours Maintenance: (Emergencies ONLY)	**1-800-634-4278** The answering service will call the maintenance personnel on call.
Emergency Phone Numbers	Police/Fire/Ambulance/Poison Control: 911

LIST OF STANDARD FEES

The following fees will be charged for the services listed below:

FOB (replacement/additional)	$25
Apartment Key (replacement)	$20
Garbage Clean-up	$10/bag or item
Lockout	$30 during business hours (1st call free); after hours Delta will contract a locksmith at tenant's expense
Lock change	$50
Mailbox key (replacement)	$15
Mail key lock change	$25
Toilet Clogged (as a result of misuse)	Free (1st service call) $25 (additional calls)
Replace Blinds (as a result of misuse)	$50

List and fees are subject to change by Delta Development of WNY.

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APARTMENT INSPECTION REPORTS

Any deficiencies in your apartment should be noted on the Apartment Inspection Report in your Move-In packet. Any issue not noted on this Inspection Report should be reported to the office within 3 days of your move-in date. The report is used at the end of your Lease to determine charges. Problems not indicated on the inspection report will be charged against your deposit. Please be thorough and TAKE YOUR TIME.

The report is not a request for repair. To ask for repairs, call the office or put in a work order.

RENT PAYMENTS

Rent is due the 1st day of each month. Rent not paid by midnight on the 5th of the month is late.

Rent may be paid with a check or money order. We do not accept cash or credit cards for rent.

Each person on the Lease is jointly responsible to make sure the total rent is paid in full on time.

RENTER'S INSURANCE

Delta Development of WNY insurance only covers the Landlord's property and buildings, *NOT your personal belongings or your liability to others.* We strongly advise each resident to purchase renter's insurance. Most insurance companies offer renter's insurance at a reasonable cost.

GUEST POLICY

Residents are responsible for conduct of their guests. No guest may stay with you for longer than 14 days in total during any twelve-month period. Guests are not allowed to stay in the unit or use the facilities if resident is not currently residing in the unit.

Any violation of the lease agreement or house rules by a guest is deemed to be a breach by the resident. Guests include but are not limited to anyone not identified in the lease as an authorized occupant, such as spouse/significant other, parents, children, grandchildren, siblings, aunts, uncles, cousins, friends, aides, and/or acquaintances.

It is a lease violation to give building keys, entry cards or FOBS to individuals not on the lease without prior approval from the landlord.

All residents are responsible for the conduct and actions of any guests or visitors. Any Violations of rules, including disruptive behavior and damages caused to the premises will be considered a violation of the lease.

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PEACEFUL ENJOYMENT

All residents, their family, and guests should conduct themselves in a manner that will not disturb their neighbors. Noise (including voices, stereos, radios, car radios, televisions, musical instruments or other sound emitting items), odors, or any other actions that cause a disturbance are not permitted and constitute a lease violation. Remember you are responsible for the conduct of your family, friends, guests, and anyone you invite into the community. To report a noise incident or other disturbance to the office, be specific regarding time, date, and duration. If you are seriously disturbed by noise or activities call the police.

CONDUCT

Tenants and/or tenants' guests who are verbally abusing, threatening or menacing Landlord, staff, or other Tenants and/or their guests will subject Tenant to eviction. Such actions are considered a major lease violation.

SECURITY

Tenants/Residents are prohibited from propping open common area doors or admitting persons into the building, other than their own guests/invitees, and agree to completely close all doors after entering the building. Propping open doors is a major lease violation.

FIRE SAFETY

- Keep emergency numbers by your phone.
- Follow the Building Evacuation Plan
- If there is a fire, call 911 immediately. Do not assume that someone else has called.
- If your Building Evacuation Plan requires that you leave your apartment. Check the inside of your door before leaving your apartment. If it is cool to the touch, open the door slowly and make sure that it is safe to exit. If your door feels hot, stay inside your apartment.
- If your Building Evacuation Plan requires you to stay in your apartment, open your window and seal off all cracks around your door with towels.
- If you are on an upper floor and cannot exit safely, wait for a firefighter to assist you.
- If a Fire is in your apartment, leave the apartment immediately and make sure that the door closes behind you. Once you are safely out of your apartment call 911.
- If there is a fire you will need to use the stairs as the elevators will not be out of service.

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GENERAL SAFETY

Please do not bring anything into your apartment or the community that increases the risk of fire. Things that could cause an increased risk of fire include flammable oils, charcoal starter fluid, propane, benzene, gasoline, kerosene, or other hazardous materials. If any of these items are found in the unit, it will be considered a major lease violation

EMERGENCY SITUATIONS

If the apartment is damaged by fire or other event, not the fault of the Tenant, the apartment is not habitable, and because of the damage Tenant moves out, the tenant will not be required to pay rent from the date of the damage and will be entitled to cancel the lease with three days notice.

If the apartment is partially damaged and the damaged rooms are not in use, you will pay a proportionate amount of the rent from the day of the damage.

If the apartment is damaged by fire or other event, not through the fault of the TENANT and cannot be lived in, the Landlord shall have the right to repair and rehabilitate the building within a reasonable amount of time, or, shall have the right to terminate the lease until such time that the unit is habitable.

LANDLORD may enter the unit in the event of an emergency, or during reasonable hours and after advance notice, or as part of a maintenance program, without your consent.

LANDLORD may enter the premises at any time without notification when there is a reasonable cause to believe that an emergency exists or that the apartment has been vacated.

If you and all adult members of your household are absent from the premises at the time of entry, LANDLORD will attempt to leave on the premises a written statement specifying the date, time and purpose of entry.

UTILITIES

Failure to pay any amount due any utility company, or failure to contract with the local utility company to provide you service, will be deemed to be Material Noncompliance and/or Good Cause for termination. Utilities may include but are not limited to electricity, fossil fuels, and water.

In the event that you enter into an agreement with the LANDLORD to receive discounted cable services, a violation of that agreement (including non-payment for those services) shall be considered non-compliance with these Rules and Regulations and your lease with this facility may be terminated.

If the facility has entered into an exclusive agreement with a cable provider to provide cable services at a discounted rate, then in order for you to receive cable services you must enter into an agreement with the LANDLORD. Additional services beyond the basic cable services may be negotiated with the cable provider.

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You must not waste utilities furnished by the LANDLORD or use utilities or equipment for any improper or unauthorized purpose.

You may use only in a reasonable manner and for the use they were intended all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other equipment and facilities including elevators.

VEHICLES AND PARKING

No more than one registered vehicle is permitted in the parking area per lease holding resident unless Landlord grants permission in writing.

No inoperable or unregistered vehicles, or any trailers, motorcycles, boats or other similar vehicles are permitted to be stored or parked on site.

No vehicles of absent guests, friends or relatives are permitted to be stored or parked on site.

Landlord may tow such vehicles at owner's expense.

Repairs or maintenance of vehicles of any type shall not take place in the parking lot.

You are responsible for the prevention of the accumulation of oil and/or grease on parking areas.

You may not store or accumulate unsightly items including inoperable automobiles, other vehicles and machinery or appliances on the premises.

DELIVERIES

Tenants should be present to receive deliveries.
Management shall not be responsible for packages left in halls, at doors of suites or any other place on the premises, or for any article left with any employee, or for any personal property left in the laundry.

PETS

You must seek the approval of LANDLORD before any pet is permitted on the premises.

The pet policy is attached to the Dwelling Lease.

Unauthorized pets will result in a lease violation.

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TENANT PASSING

Upon death of the sole household member, the Landlord will not provide access to the unit to anyone who does not have a "Certificate of Voluntary Appointment" issued by the Surrogates Court.

TRAVEL AND EXTENDED ABSENCES

Tenant should take all necessary, reasonable and prudent steps to insure the leased premises is secure and all risk of damage or harm minimized. This shall include, but shall not be limited to, closing of windows to prevent wind and rain damage. Tenant shall be responsible for the cost of cleaning and/or repair required to restore the unit to its original condition should damage occur as a result of Tenant's failure to do so.

In the event Tenant will be absent from the unit in excess of 10 days, Tenant must inform Landlord of his/her intention and assure Landlord that all measures have been taken to properly secure the premises.

ABANDONMENT

Lease abandonment shall be deemed to have occurred when Tenant leaves the rental unit for a significant period of time without informing Landlord. A unit left unattended for an extended period of time may be in need repair, pose security concerns, or experience other problems that can result in adverse issues affecting both Landlord or other Tenants of the building.

If Landlord has a reasonable belief that the premises or personal property contained within have been abandoned, including but not limited to the fact that rent is past due, or the premises appears unoccupied, Landlord, in its sole discretion, may serve a " Notice of Belief of Abandonment." Service may be effectuated personally [if possible], by mailing to the leased premises, by mailing to an address at which Tenant has been known to receive mail, or by affixing it to the door of the unit.

If Tenant does not respond by the termination date set forth in the "Notice of Belief of Abandonment," Landlord may take immediate possession and secure the premises without liability for conversion or wrongful eviction.

If personal property remains in the premises following termination, Tenant will be served with a "Notice of Right to Reclaim Abandoned Property." Service shall be accomplished in the same manner as set forth for service of "Notice of Belief of Abandonment." An inventory will be made of items left in the unit and the property will be held for an additional 18 days after which they will be disposed of in whatever manner Landlord deems fit.

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LOCKOUT SERVICE

We provide one free lockout service for residents during regular business hours. After the 1st time, the fee charged for lockout calls during regular business hours is $30.00; this charge will be added to your monthly rental bill.

If you are locked out after hours (between 4PM and 8AM or during weekends & holidays) please contact the emergency service number for assistance and the maintenance staff will coordinate a locksmith to come to the property at your expense. This charge will be added to your next month's rental bill.

MAINTENANCE & WORK ORDERS

To report a maintenance concern, call the office at «sitephonenumber» or submit a workorder. Provide a detailed message **including your name, address, contact number, and the problem that needs to be addressed.** You will be contacted no later than the next business day to schedule maintenance service.

Do not wait to report a problem. In case of an emergency, the manager and maintenance staff have the right to enter your apartment without your permission.

EMERGENCIES & AFTER HOURS

LIFE-THREATENING EMERGENCY: CALL 9-1-1

Although there is no complete list of emergencies, here are some guidelines for when to call 9-1-1:

- When you smell smoke or see a fire.
- When there is a medical emergency, poisoning, or injury.
- Any situation that is potentially dangerous and you are not sure whom to call.

Service technicians are on call 24 hours a day, 7 days a week to answer emergency calls. After hours, call 800-634-4278 and the answering service will page maintenance to report your emergency request. A technician will respond to an emergency as quickly as possible. Keep your line free, after placing your request, so the technician can call you back for details. This will allow the technician to arrive prepared to correct the problem.

URGENT SERVICE REQUESTS: CALL (800) 634-4278

If you are experiencing any of the following issues, please call our 24-hour Emergency service number:

- Gas odors (If you suspect a gas leak, you should evacuate the building immediately and call from outside. Do not smoke or operate electrical switches or appliances. These items may produce a potentially dangerous spark.)
- No heat or electricity
- roof Leaks
- No water or no hot water
- Refrigerator Problems
- Toilet problems
- Water leaks of any kind
- Flooding
- Broken Windows or Doors

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ELECTRICAL

If you have an electrical problem, contact the office. Running electrical wiring or extension cords is a violation of building codes and our property insurance.

SNOW REMOVAL/PARKING LOT MAINTENANCE

- Each resident must move their car in accordance with any notification or instructions from management
- **Each resident is responsible for their own vehicle even if they are away for an extended period of time, e.g. winter break. Make arrangements to have your car moved or check with the office for a possible area to park during your absence.**
- Any vehicle parked illegally will be towed at the owner's expense. Illegal parking includes, but is not limited to, parking in roadways, fire lanes, on grass and on sidewalks, blocking dumpsters or other vehicles and parking in the area to be cleared.
- Parking with the front of your car extending over the curb/sidewalk will result in a fine and/or towing, as it obstructs snow removal.
- Parking **space is not guaranteed for each resident during Snow Removal and/or Parking Lot Maintenance.** Resident should plan to park off property, if necessary, until plowing/maintenance is completed.
- Cars not moved or parked illegally will be towed at the owner's risk and expense.

TRASH

All trash should be placed in securely closed plastic bags. All bagged trash should be placed in the appropriate tote in the refuse room, put it down the trash chute in the refuse room, or place in the dumpster outside of your building, as posted in your community. To dispose of leftover food, place in sealed bags or plastic containers before putting the appropriate receptacle. NEVER leave garbage bags or trash outside your apartment.

Bulk items should never be disposed of outside of waste enclosures or left on community grounds. Please do not place any trash in halls, stairways, or laundry rooms.

Never place any electronics appliances such as televisions, computers etc. in dumpsters or refuse rooms as these items require special handling. Please consult management for proper disposal instructions.

If your building participates in a recycling program, make sure that all items to be recycled are clean and placed in the appropriate location.

EXTERMINATING SERVICE

If you detect a problem, contact the office immediately. Pest control services are performed by request or on a maintenance schedule. Any refusal to allow pest control services will result in a major lease violation.

To avoid pest issues:

- Keep your apartment clean
- Clean your stove after each use
- Take trash out daily
- Keep your door closed
- Leave screens on the windows
- Follow the instructions of the pest control service

DO NOT:

- place trash outside your door
- store paper bags, cardboard boxes or empty cans
- keep large trash bins inside or outside

LAUNDRY ROOMS

Card operated washers and Dryers have time limited cycles. Be considerate of others; remove your clothes promptly when cycle ends.

DO NOT overload machines or use tints or dyes. You are responsible for any damage caused to appliances. Place an "Out of Order" sign on non-working machines and file a work order at the office. Money lost due to a machine malfunction will be refunded by calling 877-264-6622.

Use trash containers to keep the laundry areas clean. Do not use laundry trash containers for food or other personal garbage.

Management is not responsible for loss or damage to personal belongings.

WEAPONS PROHIBITION

As a condition of Landlord's agreeing to enter into a Lease, Tenants/Residents agree not to carry, possess, use or store weapons (including firearms, knives designed for use as weapons, swords, stun-guns, and/or ammunition) in the Leased Premises or common areas of the apartment complex. Storing, carrying, possessing, implying possession of, threatening to use, brandishing, using or discharging a weapon anywhere in the premises or on the community grounds shall be deemed a material breach of the Lease warranting immediate eviction. Tenant/Resident hereby voluntarily waive all constitutional and/or legal rights they may otherwise have to possess weapons in exchange for the right to reside in the premises.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

SMOKING POLICY

Visitors and Guests

Tenant agrees and acknowledges that smoking any tobacco or marijuana product, and/or the use of e-cigarettes, vaping or Juul devices by Tenants or their Guests on the Premises, or in dwelling units, where prohibited, or anywhere in the building or on the grounds including, but not limited to, hallways, stairways, foyers, common rooms and facilities, patios exterior landings, steps, entrance ways, roof tops, fire escapes, basements, storage areas, parking areas, driveways, walkways, lawns, gardens and any adjoining grounds and building facilities is prohibited and considered a lease violation.

Tenant shall inform guests of the No-Smoking Policy and shall promptly report to Landlord any incident of smoking or migrating secondhand smoke.

Smoke Free Communities

For sites that adopted a "smoke free" apartment policy, effective July 1, 2013, in accordance with the provision of HUD Notice H2010-21 (September 15, 2010)

Any resident found to be smoking in their apartment, in a community that has been designated "Smoke free", in the common areas or on the grounds will be issued a violation letter. If after issuance of the first warning the resident is still not complying with the policy, a second violation letter will be issued. If after the first two warnings there is still evidence that the resident is continuing to violate the smoking policy, a 30-day notice for eviction will be issued.

Smoke-Free Public Places

Smoking is not permitted at any time in any enclosed or partially enclosed public accessed areas including but not limited to:

Common areas	Halls/ Corridors	Offices
Dining areas	Restrooms	Entranceways

Smoking in these areas will result in a major lease violation.

In non-smoke free communities, smoking may only occur within a reasonable distance outside any area where smoking is prohibited. A *"Reasonable Distance"* is a distance far enough outside an enclosed area (and not less than 25 feet) to ensure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means. A *"Public Place"* means any enclosed or partially enclosed area to which the public is invited or in which the public is permitted.

Units/Residences

A private residence or apartment is not a "public place." however, under the New York State Smoke Free Workplace laws, smokers should refrain from smoking while any Delta employee is present in their apartments conducting maintenance or required inspections.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

USE OF MARIJUANA

Residents are prohibited from using marijuana. This prohibition includes marijuana in a smokeless manner and/or marijuana for medical use.

- Regardless of the purpose of legalization under state law, the use of marijuana in any form is illegal under the Controlled Substances Act (CSA) and therefore is an illegal controlled substance under Section 577 of the Quality Housing and Work Responsibility act of 1998 (QHWRA).

- Use of marijuana on or near the premises will be considered a violation of the Lease Agreement and subject to termination of the lease.

SEX OFFENDERS

HUD prohibits providing housing assistance to anyone who is subject to a state lifetime sex-offender registry. The owner/agent has opted to make that rule more restrictive by prohibiting any sex offender registrant from living on the property.

If an owner/agent and or property staff discovers that a household member is a registered sex offender and was admitted in error, the owner/agent and or property staff will immediately pursue termination of assistance and termination of tenancy. The Owner/agent and /or property staff will first offer the family the opportunity to remove the ineligible (sex offender° family member from the household.

If the family is unwilling to remove that individual from the household, the owner/agent and/or property staff must pursue termination of assistance and termination of tenancy for the household in accordance with HUD instructions.

Sex offender screening is conducted at each annual certification. If any resident is subject to registration on any state sex offender registry, the owner/agent and /or property staff and/or HUD will immediately notify the household that they have the option to remove the sex offender or the owner/agent and/or property staff will pursue termination of assistance and termination of tenancy.

If the owner/agent has good cause (i.e. notification from a state sex offender registry or law enforcement agency), all household members acknowledge that sex offender screening can be conducted by the owner/agent and/or property staff or by HUD or HUD's representatives.

If it is discovered that any household member is subject to registration on any state sex offender registry, the owner/agent and/or property staff and/or HUD will immediately notify the household that they have the option to remove the sex offender or the owner/agent and/or property staff will pursue termination of assistance and termination of tenancy.

If the household notifies the owner/agent that the sex offender is permanently moving out of the unit, the owner/agent must be able to verify alternative permanent residence within five (5) business days. Self-certification is not acceptable verification in this case.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

VAWA

All residents of (site) will be provided protections in accordance with the Violence against Women Reauthorization Act of 2013.

VAWA provides legal protections to victims of domestic violence, dating violence, stalking or sexual assault. These protections prohibit Owners/Agents (0/As) from evicting or terminating assistance from individuals being assisted under this program if the asserted grounds for such action are an instance of domestic violence, dating violence, stalking or sexual assault.

In the event that an applicant or resident requests protection under this act, HUD form 5382, "CERTIFICATION OF DOMESTIC VIOLENCE. DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING AND ALTERNATE DOCUMENTATION" will be provided to the applicant/resident for completion and should be submitted within 14 business days, or an agreed upon extension date, to receive protection under VAWA. The victim is not required to provide the name of the perpetrator and is not required to provide documentation such as a police report to verify the information provided.

In lieu of the certification form or in addition to it, 0/As may accept a) a federal, state, tribal, territorial, or local police record or court record or b) documentation signed and attested to by a professional (employee, agent or volunteer of a victim service provider, an attorney, medical personnel, etc.) from whom the victim has sought assistance in addressing domestic violence, dating violence or stalking or the effects of the abuse. The signatory attests under penalty of perjury (28 U.S.C. §1746) to his/her belief that the incident in question represents bona fide abuse, and the victim of domestic violence, dating violence or stalking has signed or attested to the documentation.

VAWA protections are also provided to affiliated persons, which include:

1. A spouse, parent, brother, sister, or child of the victim, or a person to whom the victim stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of the victim) or;
2. Any individual, resident/applicant, or lawful occupant living in the household of that individual.

VAWA provides protection of victims and affiliated persons from being denied housing or from losing their HUD assisted housing as a consequence of their status as a victim of VAWA crimes.

VAWA protections are not provided to guests, unauthorized residents or service providers, including live-in aides hired by the resident/applicant.

Emergency Transfers

In accordance with the Violence Against Women Act (VAWA), Owner/Agent allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation. The ability of Owner/Agent to honor such request for tenants currently receiving assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

violence, sexual assault, or stalking, and on whether Owner/Agent, has another dwelling unit that is available and is appropriate to offer the tenant for temporary or more permanent occupancy.

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L is eligible for an emergency transfer, if: the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer.

Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements.

Tenant hereby acknowledges receipt of a copy of these House Rules.

_____ _____

Tenant Date

_____ _____

Tenant Date

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Angela's House
600 Doat St.
Cheektowaga, NY 14211
(716) 847-1635

Resident:

PET RULES [Cats and Dogs Only]

Date of last update 9/1/10

The residents of the St Patrick Village Apartments are permitted to own and keep common household pets in their dwelling units in accordance with the enumerated rules. The residents who choose to own a pet agree to incorporate these pet rules, and any amendments, by reference, into the lease as a condition of continued residency. A violation of the pet ownership rules may be grounds for the removal of the pet and/or termination of the pet owner's residency.

DEFINITION

For the purpose of these pet rules, "pet" is defined as domesticated small animals traditionally kept in the homes for pleasure rather than for utility or commercial purposes. Pet is understood to be limited to dogs, litter box trained cats, birds (specifically parakeets, canaries or finches), small caged rodents (i.e. hamsters, gerbils, guinea pigs), fish and turtles. Hoofed animals are not allowed. Any animals deemed to be potentially harmful to the health and safety of others are not allowed. Animals trained for attack or with vicious tendencies including, but not limited to, Pit Bulls, Dobermans, Rottweilers and wolf dogs are strictly forbidden. These rules, in compliance with federal regulations, distinguish cats and dogs from other pets as "fur bearing" animals. **These rules apply to dogs and cats only.**

REASONABLE ACCOMODATIONS

An animal used by a tenant or visitor that is needed as a reasonable accommodation for the tenant or visitor's disability will be allowed on the premises.

PET RESTRICTIONS

No more than one fur bearing pet is permitted in an apartment. There may be no more than two birds or one small caged animal per apartment. No limit is placed on the number of fish; however, the size of the fish tank may not exceed 10 gallons. **Other than those animals which are provided for in the above section entitled Reasonable Accommodations, visitors are not permitted to bring any type of pet onto the premises.**

LOCATION OF PETS IN THE BUILDING

Pets will be kept in the tenant's apartment. Pets shall not be brought into public lobbies, the community room, laundry room or through common areas, except to go directly outside. When dogs or cats are moved through the building, they must be on leash or in an enclosed carrier and they must be moved from the resident's apartment to the nearest usual outside exit, avoiding all public areas to the extent possible.

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SIZES

Dogs shall weigh no more than 25 pounds at time of maturity and stand no more than 15 inches at the shoulder. Pets acquired before maturity shall be understood to mature at the height and weight not to exceed these height and weight restrictions. American Kennel Club's standards shall determine the height and weight after maturity of the breed. A non-documented animal will be assumed to mature to that which has been determined by veterinarian evidence to the management in a signed letter.

LICENSURE AND TAGS

Every dog must wear the appropriate local animal license; while every dog and cat must wear a valid rabies tag and a tag bearing the owner's name, address and phone number. All licenses and tags must be current.

ADMISSION OF PETS

REGISTRATION

Every pet must be approved and registered with the management prior to its admission and thereafter annually on the anniversary date of admission. (this includes dogs, cats, small birds, small caged animals and fish). Registration of dogs and cats requires proof of current dog licensure, including up-to-date proof of inoculations. Cats must have current inoculations, as appropriate to the species including, but not limited to, feline distemper shots. Dogs shall have certificates of appropriate inoculations for distemper, parvo and rabies. Such tests, vaccines or shots shall be maintained on an annual basis and verified by a veterinarian with management. A verification letter that a cat or dog has been spayed or neutered is required prior to admission. Pet owners release authorizing kennelization in an emergency, evidence of a flea control program and verification of an alternate caretaker are also required as discussed below.

ALTERING

Female dogs and cats over six months must be spayed, and males over six months must be neutered, unless a letter is received from a licensed veterinarian giving medical reasons why such action is detrimental to the pet's health.

LIABILITY

Residents owning pets shall be liable for the entire **amount of all damages** to premises caused by their pet and all cleaning, deflecting and deodorizing required because of such pet. Pet owners shall be strictly liable for the entire amount of any injury to the person or property of other residents, staff or visitors caused by their pet, and shall indemnify the owner for all costs of litigation and attorney's fees resulting from such damages.

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PET DEPOSIT

Each dog and cat owner must provide a pet security deposit of $100.00 in addition to the standard rental security deposit. Residents owning pets shall be liable for the entire amount of all damages to premises caused by their pet and all cleaning, de-flea-ing, deodorizing and emergency kenneling required because of such pet. Such damages will be drawn against the pet deposit. Pet owners may be allowed to pay $50.00 initially and $10.00 per month until the pet security deposit of $100.00 has been reached. The St Patrick Village may increase the amount of pet security deposit by amending these rules should experience indicate the necessity to do so.

SANITATION

Dogs and cats are required to be "house-broken". Cats must be litter box-trained and dogs must be able to exercise outside the building. Management shall designate a space to be used exclusively for the purpose of exercising dogs. Pet owners shall be responsible for the immediate clean up of feces after the exercise of their dog. Resident dog owners must bag and securely tie dog feces and deposit it in the designated trash receptacle. Cat owners shall bag "kitty litter" , tie securely and drop in the designated trash receptacle. Failure to remove pet waste in accordance with these rules will result in a pet waste removal charge of $5.00 per occurrence to the pet owner.

FLEA CONTROL

Upon admission of a pet, the pet owner shall file with management proof that a flea control program acceptable to management will be maintained for a fur bearing pet.

Thereafter, the owner of a fur bearing pet shall file at intervals determined by management proof that the pet and/or the apartment is being sprayed for fleas by an accredited exterminator or as recommended by an exterminator.

NOISE

No pet may make noise which disrupts other residents. Barking and/or whining dogs, crying or "caterwauling" cat will not be considered acceptable pets and will not be admitted or allowed to remain on premises.

PET BEHAVIOR

No pet that bites, attacks, or demonstrates aggressive behavior toward humans may be kept on premises.

If any pet demonstrates such behavior that constitutes a nuisance or threat to health or safety to other occupants or persons of the community, management will immediately order the owner to remove the pet from the premises, the owner must keep it under control in the owner's apartment, however, until means are available to relocate the pet. If these orders are not followed through,

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

however, the management may contact the appropriate local authority for removal of the pet from the property.

LEASHES

Dogs shall be on hand-held leashes (not over 3 feet in length) and cats shall be in "cat carriers" at all times outside the confines of the pet owner's apartment. Pet owners may at no time tie or chain pet anywhere on the property.

ALTERNATE CARETAKER

The pet owner must supply management with the names of at least *two* persons who will be willing to assume immediate responsibility for the pet in case of an emergency (i.e. when the pet owner is absent or unable to adequately maintain the pet.) Written verification of the willingness of these persons to assume alternate caretaker responsibility is required. It is the responsibility of the pet owner to inform management of any change in the names, addresses or telephone numbers of persons designated as alternate caretakers. Any expenses relating to alternate caretakers are the responsibility of the pet owner.

In cases of emergency, when the management is unable to reach the alternate caretakers, the pet owner agrees to allow management to place the pet in an appropriate boarding facility with all fees and costs borne by the pet owner. Within five days of such an emergency, the resident, his agent, family or estate must make arrangements with the holder of the pet as to its disposition and shall be responsible for all obligations, financial and otherwise, in such disposition.

RULE ENFORCEMENT

Any tenant who receives three letters of violation of any of these pet rules will be required to remove the pet from the premises, and provide management with a signed affidavit stating that the dog or cat is no longer on the premises and will not return in the future. Misrepresentation of this affidavit will be grounds for eviction of the resident as it will constitute a major lease violation. After the first and second letter the tenant may request a conference with the management to further discuss the particular violations to be corrected.

Management may exercise the right to act immediately in insisting an offending pet be removed forthwith in situations deemed to be of an emergency nature. In such instances, management will act as specific in the section on "alternate caretaker" in removing a sick, injured and/or aggressive animal.

Note: Abandonment of animals is inhumane. Furthermore, it is a violation of local dog control ordinances.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

I, _____, acknowledge receiving this notice, either at:

☐ Move-in
☐ Certification

☐ As an Update to a previous notice

_____ _____
Resident Signature Date

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT 4

LOW-INCOME LEASE RIDER

THIS RIDER, AN INCOME CERTIFICATION, AND AN EMPLOYMENT VERIFICATION MUST BE OBTAINED FROM ALL TENANTS OF APARTMENTS FOR WHICH LOW-INCOME HOUSING TAX CREDITS ARE REQUIRED.

Tenant: _____

(If there is more than one adult occupant, each one must complete and sign a rider and attachments.)

Lease Date: _____ to _____.

Apartment: _____

Building Address: 600 Doat St.
Cheektowaga, NY 14211
(716) 847-1635

The undersigned tenant hereby certifies and agrees as follows:

1. Income Certification. My attached income certification is true, correct, and complete. I agree to provide a similar certification annually upon request during the term of my occupancy.

2. Employment Verification. The landlord or property manager has my permission to verify my income from my employer, using the attached form now and on an annual basis.

3. False Statements. If my income certification and/or any lease application submitted by me is false, or if I fail to provide annual certifications, the landlord or property manager will have the right to terminate my lease and recover possession of my apartment. I understand that the landlord and property manager are relying on my income certification in accepting me as a tenant, and that the landlord will be seriously harmed if my income does not qualify the apartment for low-income housing tax credits. This rider shall be considered part of my lease.

Date: _____

Tenant:

_____
(Signature)

To Be Attached:

A. Managing Agent's Low-Income Eligibility Worksheet and Certification of Qualified Occupant

B. Employment/Income Verification, as applicable

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

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DELTA DEVELOPMENT
OF WESTERN NEW YORK INC.

To: All Residents
From: Delta Development of WNY
Date: March 30, 2021
Re: Renter's Insurance

Delta Development wants to remind all residents that personal property (furniture, clothing, food, etc.) is not necessarily protected should a fire, flood, break-in or other catastrophic event occur at your building. Therefore, management would like to suggest that residents purchase and/or be aware of the benefits of personal renter's insurance.

Renters insurance is designed to help protect you and your belongings. A typical policy includes liability coverage, protection for your belongings and coverage for additional living expenses, should the home you're renting become temporarily uninhabitable. While you may not always be able to prevent certain situations, renters insurance may help minimize the impact. It's important to consider that personal property coverage may not help protect everything you own. You may find that certain types of belongings have limited coverage under a standard policy. Therefore, an insurance agent may help you decide whether additional coverage is appropriate. The typical cost for basic renter's insurance is $12 per month and covers up to $30,000 of personal damage, annually.

Delta Development does not provide or sell renters insurance to residents, nor can we make it mandatory for you to buy an insurance policy. Management is simply advising residents on the benefits. If you would like to learn more, you may contact a local insurance provider.

Delta Development does not recommend any agency in particular, nor will management make any judgements on the type of coverage you should purchase. You may feel free to use any agency that you like.

Below you will find a few contacts that were produced in an internet search for local insurance providers;

Allstate Insurance 716-226-0726

Farmers Insurance 716-604-0345

Geico Insurance 716-934-5200

Lawley Insurance 716-849-8618

If you have further questions, please feel free to contact your Site Manager. Thank you for your attention to this matter.

7/18/17

CONFIRMATION OF ELECTRIC SERVICE

By signing below, I _____confirm that I have opened an account with National Grid for Electric Service at : 600 Doat St., Cheektowaga, NY 14211, Unit #: ___.

The account number is: _____

I understand that as a condition of the lease I am required to maintain Electric Service for the entire term of my tenancy.

UTILITY HISTORY RELEASE AUTHORIZATION

Once per year, we must recommend a Utility Allowance for each unit type in our facility. The recommended utility allowance should represent our best estimate of the average monthly utility cost that an energy conscious resident will incur for the year. The utility allowance is not meant to pay all actual utility costs, but rather it is to reimburse a prudent utility consumer for their utility expense.

By signing and dating below, you are authorizing the release of your monthly utility bills from your local utility provider going forward until or unless this authorization is rescinded, and confirm that you understand that this information will be only acquired for the purposes of determining your average utility consumption within this time period.

RESIDENT INFORMATION
Name
Street (Service Address)
City - State Zip
Account Number
Signature Date

PENALTIES FOR MISUSING THIS CONSENT:

Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD, the PHA and any owner (or any employee of HUD, the PHA or the owner) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willfully requests, obtains or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than $5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate, against the officer or employee of HUD, the PHA or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security number are contained in the Social Security Act at 42 U.S.C. 208(f)(g) and (h). Violation of these provisions are cited as violations of 42 U.S.C. 408, f, g and h.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

RESIDENT CODE OF CONDUCT

Introduction

Delta Development of WNY considers the right to peaceful enjoyment of our communities to be of the utmost importance for all members of the community. This Code of Conduct Policy, therefore, is intended to clarify Management's expectations of our residents so as to achieve this important objective.

Policy Statement

In order to meet our commitment to promote a peaceful environment for all members of our communities, it is essential that residents and guests conduct themselves in an appropriate manner towards other residents, visitors, staff, or outside contractors working in our communities. All residents are expected to:

- Value and respect others
- Avoid gossip
- Be respectful
- Report any bullying behavior immediately to Management
- Respect the privacy of other residents

Unacceptable Behavior

In accordance with the standards above, no resident should ever:

- Raise their voice or use profane language when dealing with another member of the community or the staff.
- Conduct themselves in a way that would place them or anyone else in danger.
- Physically attack or threaten another member of the community, staff member, guest or vendor.
- Verbally harass or intimidate another member of the community, staff member, guest, or vendor.

Unacceptable behavior includes but is not limited to the above examples.

Interaction with Management Staff

On an ongoing basis it will be necessary for you to conduct business with the Management staff, to complete annual reviews, and to have staff members, as well as outside contractors, enter your apartment to complete repairs and updates to our community. Your cooperation in these instances is required to assure that lease requirements are satisfied and that health and safety standards are met and maintained. It is expected that these interactions be handled in a businesslike and non-confrontational manner.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

I understand that any behavior contrary to the Code of Conduct will result in immediate action by Delta Development of WNY up to and including termination of my tenancy.

Resident Name & Signature	Apt. #	Date
Resident Name & Signature	Apt. #	Date

Management _____ Date _____

If you are disabled and wish to request a reasonable accommodation or if you have difficulty understanding English, please request our assistance and we will ensure that you are provided with meaningful access based on your individual needs.

Si usted está incapacitado y desea solicitar un acomodo razonable, o si tiene dificultad para entender el Inglés, por favor solicite nuestra ayuda y nos aseguraremos de que se le proporciona un acceso significativo basado en sus necesidades individuales

1. Delta Development does not discriminate on the basis of disability status in the admission or access to, or treatment or employment in, its federally assisted programs and activities.
2. The person named below has been designated to coordinate compliance with the nondiscrimination requirements contained in the Department of Housing and Urban Development's regulations implementing Section 504 (25 CFR, part 8 dated June 2, 1988).

Name:	Mary Vantino
Address	525 Washington Street, Buffalo, NY 14203
Telephone-voice:	(716) 847- 1635
Telephone TTY:	711 Telecommunications Relay Service

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Site

Angela's House
600 Doat St.
Cheektowaga, NY 14211
(716) 847-1635

Resident

Resident:

Unit Inspection Report – [*Move In/Move Out Report]*

A. **Move-In** | **Move**

Responsibility
T- Tenant
L- Landlord

			Cost
Date:		Date:	
Apartment Key		Apartment Key	
Mail Box Key		Mail Box Key	
Front Door Key		Front Door Key	
			Work Order ID

Kitchen

Ceiling			
Walls			
Floor			
Stove			
Refrigerator			
Drainboard			
Sink			
Electrical Fixtures			
Cabinets			
Other			

B. Bathroom

Ceiling			
Doors			
Walls			
Floor			
Toilet			
Basin			
Tub or Shower			
Electrical Fixtures			
Emergency Cord			

C. Living Room

Ceiling			
Door Way			
Walls			
Floor			
Electrical Fixtures			
Window/Rod			

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

D. Bedroom 1

Ceiling _____
Doors _____
Walls _____
Floor _____
Electrical Fixtures _____
Window/Rod _____
Emergency Cord _____
Smoke Detectors _____

E. Bedroom 2

Ceiling _____
Doors _____
Walls _____
Floor _____
Electrical Fixtures _____
Window/Rod _____
Emergency Cord _____
Smoke Detectors _____

F. Bedroom 3

Ceiling _____
Doors _____
Walls _____
Floor _____
Electrical Fixtures _____
Window/Rod _____
Emergency Cord _____
Smoke Detectors _____

Move – In ___ / ___ / ___

This unit is in decent, safe and sanitary condition. Any deficiencies identified in this report will be remedied within 30 days of the date the tenant moves into the unit.

_____
Manager's Signature Date

I have inspected the apartment and found this unit to be in decent, safe and sanitary condition. Any deficiencies are noted above. I recognize that I am responsible for keeping the apartment in good condition, with the exception of normal wear. In the event of damage, I agree to pay the cost to restore the apartment to its original condition.

_____
Resident's Signature Date

Move – Out ___ / ___ / ___

Resident not present at MO inspection ☐

_____
Manager's Signature Date

☐ Agree with move-out inspection

☐ Disagree with move-out inspection

If disagree, list specific items of disagreement.

_____
_____
_____

_____
Resident's Signature Date

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Application Review Form Date: ___ / ___ / ___

Site: Angela's House

Applicant:

Apt. #:

Rent: $_____ S.D: $_____

Move In Date: _____

Forms must be in this order

If multiple scan files are needed to email the package then files should be categorized as Application/Certification/Leasing Files.

Application Documents

1. Application _____
2. Application Received Letter _____
3. Landlord Reference _____
4. Home Visit _____
5. Student Certification _____
6. Credit/Criminal Report _____
7. National Sex Offender Search _____
8. VAWA Paperwork (HUD form 8530 & 8532) given to resident ☐ Yes ☐ No

Certification Documents

9. Asset Divestiture Form _____
10. Certification Worksheet _____
11. Third Party Verifications _____
    a. Income
    b. Assets
    c. Expenses
12. TIC/50059 _____

Leasing Documents

13. Lease _____

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Angela's House
600 Doat St.
Cheektowaga, NY 14211

Resident:

RELEASE OF SECURITY DEPOSIT IS SUBJECT TO THE FOLLOWING PROVISIONS

Date of last update 7/1/2007

The release of the security deposit is subject to all terms of lease having been fulfilled and there being no damage to property at time of vacating of leased premises beyond fair wear and tear as per an inspection by the landlord after possession of the apartment has been returned by the tenant. The following charges will deducted from the security deposit:

Area	*Item*	*Charge*
General	At least 30 days written notice must be given to the landlord prior to lease expiration date or the security deposit could be forfeited.	
	A forwarding address must be provided to the Management Office to allow the portion of security deposit due tenant to be refunded by check through the mail. This payment will be made payable to all persons signing the lease. Refunds cannot be picked up at the office.	
	Any delinquent rent or unpaid charges will be deducted from the security deposit.	
	Wall/Ceiling repair/patching in excess of 30 minutes labor	$25 minimum and $25 per additional hour
	Emergency Devices Tampered with, damaged or missing	(Actual Cost)
	Doors, door casings or trim must be cleaned	$25 minimum and $25 per additional hour
	Doors, door casings or trim replaced due to damage beyond wear and tear	(Actual Cost)
Area	*Item*	*Charge*
Locks and Keys	Apartment Key Not Returned	$25.00
	Mail Box Key Not Returned	$25.00
	Entry Key/Fob Not Returned	$25.00
Area	*Item*	*Charge*
Kitchen	Refrigerator must be defrosted and clean	$30.00
	Refrigerator Rack/Bins/Accessories Missing or Broken	$50.00 Each
	Stove top or burners must be cleaned	$20.00
	Stove Knobs missing or broken	$5.00 Each
	Oven must be cleaned	$30.00
	Oven Rack missing	$50.00 Each
	Broiler pan must be cleaned	$10.00
	Broiler pan missing	$20.00
	Range Hood replaced due to damage beyond wear and tear	(Actual Cost)
	Range Hood cleaned	$30.00
	Stove replaced due to damage beyond wear and tear	(Actual Cost)
	Cleaned as near to new as possible.	$20.00
	Cupboard, Counter Top, Cabinet in kitchen cleaned	$50.00
	Cupboard, Counter Top, Cabinet in kitchen replaced	(Actual Cost)
	Sink Must be Cleaned	$20.00

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

	Sink or Sink Fixtures replaced due to damage beyond wear and tear	(Actual Cost)
	All furniture, trash, containers, misc items removed	$25.00 Minimum and $25 hr
	All furniture, trash, containers, misc items disposal.	(Actual Cost)
	Kitchen floors must be swept, washed, all marks removed.	$15.00
	Kitchen floors replaced due to damage beyond wear and	tear (Actual Cost)
	Kitchen Fixtures replaced due to damage beyond wear and tear	(Actual Cost)
Area	*Item*	*Charge*
Bathroom	Doors, door casings or trim must be cleaned	$25.00 Minimum and $25 hr
	Doors, door casings or trim replaced due to damage beyond wear and tear	(Actual Cost)
	Floors must be washed, all marks removed.	$15
	Floors replaced due to damage beyond wear and tear	(Actual Cost)
	Sink/Basin must be clean	$15
	Sink/Basin replaced due to damage beyond wear and tear	(Actual Cost)
	Toilet must be cleaned	$25
	Toilet replaced due to damage beyond wear and tear	(Actual Cost)
	Tub/Shower must be cleaned.	$25.00 Minimum and $25 per hour
	Tub/Shower replaced due to damage beyond wear and tear	(Actual Cost)
	Medicine Cabinet/Vanity must be cleaned	$15
	Medicine Cabinet/Vanity replaced due to damage beyond wear and tear	(Actual Cost)
	Bathroom Fixtures replaced due to damage beyond wear and tear	(Actual Cost)
Area	*Item*	*Charge*
Living Room	Floors must be vacuumed and cleaned.	$30.00
	Floors replaced/repaired due to damage beyond wear and tear	(Actual Cost)
	All furniture, trash, containers, misc items removed.	$25.00 Minimum and $25 hr
	All furniture, trash, containers, misc items disposal.	(Actual Cost)
	Fixtures replaced due to damage beyond wear and tear	(Actual Cost)
Area	*Item*	*Charge*
Bedroom	Floors must be vacuumed and cleaned.	$30.00
	Floors replaced/repaired due to damage beyond wear and tear	(Actual Cost)
	All furniture, trash, containers, misc items removed	$25.00 Minimum and $25 hr
	All furniture, trash, containers, misc items disposal.	(Actual Cost)
	Fixtures replaced due to damage beyond wear and tear	(Actual Cost)

I, Maintenance Unit, acknowledge receiving this notice, either at:

- ☐ Move-in
- ☐ Certification
- ☐ As an Update to a previous notice
- ☐ Upon Giving Notice to Vacate

Resident Signature _____ Date

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Form **W-9**
(Rev. December 2014)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification; check only **one** of the following seven boxes:

Individual/sole proprietor or single-member LLC | C Corporation | S Corporation | Partnership | Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶

Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.

Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
Exempt payee code (if any) _____
Exemption from FATCA reporting code (if any)
(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Print or type
See Specific Instructions on page 2.

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here | **Signature of U.S. person** ▶ | **Date** ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at *www.irs.gov/fw9.*

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. Individual. Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note. ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. Sole proprietor or single-member LLC. Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation. Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. Other entities. Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. Disregarded entity. For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

Limited Liability Company (LLC). If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)

2—The United States or any of its agencies or instrumentalities

3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

4—A foreign government or any of its political subdivisions, agencies, or instrumentalities

5—A corporation

6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession

7—A futures commission merchant registered with the Commodity Futures Trading Commission

8—A real estate investment trust

9—An entity registered at all times during the tax year under the Investment Company Act of 1940

10—A common trust fund operated by a bank under section

584(a) 11—A financial institution

12—A middleman known in the investment community as a nominee or custodian

13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over $600 required to be reported and direct sales over $5,000[1]	Generally, exempt payees 1 through 5[2]
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

[1] See Form 1099-MISC, Miscellaneous Income, and its instructions.

[2] However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency. **Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note. You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on this page), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: *A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.*

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code* earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

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1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account[1]
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor[2]
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee[1] The actual owner[1]
5. Sole proprietorship or disregarded entity owned by an individual	The owner[3]
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-	The grantor*
For this type of account:	**Give name and EIN of:**
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity[4]
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the	The trust

[1] List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

[2] Circle the minor's name and furnish the minor's SSN.

[3] You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

[4] List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 2.

*Note. Grantor also must provide a Form W-9 to trustee of trust.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to *phishing@irs.gov*. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: *spam@uce.gov* or contact them at *www.ftc.gov/idtheft* or 1-877-IDTHEFT (1-877-438-4338).

Visit IRS.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

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EXHIBIT D

LOW-INCOME HOUSING CREDIT REGULATORY AGREEMENT
SUMMARY OF TENANT RIGHTS AND OBLIGATIONS

1. **TERM OF REGULATION**
The Building in which you live is a Low-Income Housing Credit Project which is subject to regulation by the New York State Division of Housing and Community Renewal (DHCR) and the United States Internal Revenue Service pursuant to U.S. Internal Revenue Code Section 42 (the "Statute"), and a Low-Income Housing Credit Regulatory Agreement between DHCR and the owner of the project (the "Agreement"). The term of regulation began on the date that the Project was placed in service and ends on the earlier of the following dates (except as indicated in section 6 below):

a. _____years; or

b. on the date the Project is acquired by foreclosure or an instrument in lieu of foreclosure; or

c. one year after DHCR's receipt of Recipient's written request for a Qualified Contract for the purchase of both the non-low income portion of the building for fair market value and the low-income portion of the project, if DHCR has failed to present such a Qualified Contract during the one year period. Such a request may be made at any time after the Project has been in service as a Qualified Low-Income Building for a period of fourteen (14) years.

2. **AVAILABILITY OF THE AGREEMENT/RENT DISCLOSURE**
The landlord must attach a copy of this Summary to all leases for regulated apartments and must give a copy of the entire Agreement to any person who requests a copy. The landlord must disclose the restricted rent for a regulated apartment to a prospective tenant prior to the signing of a lease for that apartment.

3. **RETALIATION PROHIBITED**
The landlord cannot retaliate against any tenant or lawful occupant of the Project who notifies DHCR of alleged violations of this Summary or the Agreement.

4. **ANNUAL INCOME CERTIFICATION REQUIRED**
Prior to occupancy, and on an annual basis, you must submit a statement regarding your income and the income of all other persons occupying your apartment (or intending to occupy the apartment unit as the case may be) and any other information and/or documentation necessary to verify the information contained in that statement.

5. **RIGHTS TENANTS MAY ENFORCE IN ANY NEW YORK STATE COURT** Any person who is eligible to rent a low-income apartment in the Project can enforce certain rights listed in the Agreement in any New York State Court. You do not have to

be a tenant in the project to enforce these rights. These rights are secured by the Agreement which is recorded in the Erie County Clerk's Office.

6. SECTION 8 TENANTS

You cannot be refused an apartment because of your status as a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937.

7. EVICTIONS/RENT INCREASES

a. You and the other lawful occupants of your apartment can not be evicted or otherwise have your tenancy terminated for other than good cause, nor can the landlord increase the rent for your apartment except as permitted by the Statute.

b. In the event that regulation of the Project is terminated pursuant to Section 1(b) or 1(c) of this summary, no tenant residing in any low-income apartment in the Project can be evicted except for good cause, nor can the new landlord increase the rent for your apartment before the close of the three (3) year period following a termination of this agreement pursuant to subsections 1(b) or 1(c) above.

I HAVE REVIEWED EXHIBIT D:
SUMMARY OF TENANT RIGHTS AND OBLIGATIONS WITH MANAGEMENT

_____

INITIAL IN BLUE INK ONLY **DATE**

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EMERGENCY CALL SYSTEM NOTIFICATION LEASE RIDER

Angela's House LLC has an emergency call system installed on the property. Please note that this system is not fail safe and that in the event of an emergency, **call 911** immediately.

An emergency is any situation that requires immediate assistance from the police, fire department or ambulance.

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VIOLENCE, DATING VIOLENCE OR STALKING

U.S. Department of Housing and Urban Development
Office of Housing

OMB Approval No. 2502-0204
Exp. 6/30/2017

LEASE ADDENDUM
Violence Against Women and Justice Department Reauthorization Act of 2005

TENANT	LANDLORD	UNIT NO. & ADDRESS

This lease addendum adds the following paragraphs to the Lease between the above referenced Tenant and Landlord.

Purpose of the Addendum

The lease for the above referenced unit is being amended to include the provisions of the Violence Against Women and Justice Department Reauthorization Act of 2005 (VAWA).

Conflicts with Other Provisions of the Lease

In case of any conflict between the provisions of this Addendum and other sections of the Lease, the provisions of this Addendum shall prevail.

Term of the Lease Addendum

The effective date of this Lease Addendum is _____. This Lease Addendum shall continue to be in effect until the Lease is terminated.

VAWA Protections

1. **The Landlord may not consider incidents of domestic violence, dating violence or stalking as serious or repeated violations of the lease or other "good cause" for termination of assistance, tenancy or occupancy rights of the victim of abuse.**
2. **The Landlord may not consider criminal activity directly relating to abuse, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that abuse.**
3. **The Landlord may request in writing that the victim, or a family member on the victim's behalf, certify that the individual is a victim of abuse and that the Certification of Domestic Violence, Dating Violence or Stalking, Form HUD-91066, or other documentation as noted on the certification form, be completed and submitted within 14 business days, or an agreed upon extension date, to receive protection under the VAWA. Failure to provide the certification or other supporting documentation within the specified timeframe may result in eviction.**

_____ _____
Tenant **Date**

_____ _____
Landlord **Date**

Form **HUD-91067**
(9/2008)

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EXHIBIT 3

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TURNKEY/HOUSING TRUST FUND LEASE

1. This is a residential lease between the owner (Landlord) of_____(address) and Tenant(s)_____.

2. **PREMISES**
The lease is for apartment #_____in the project known as_____
, New York.

3. **LEASE TERM**
The tenant may choose a lease with a term of one or two years. This lease is from_____to_____

4. **PERMITTED RESIDENTS**
Except as otherwise permitted by law the tenant agrees that it is a violation of the lease to permit any individuals other than those listed in this paragraph to reside in the premises. Subletting is not allowed without prior written consent of the owner in accordance with NYS Housing Trust Fund Corporation policies.

The individuals to reside in the unit are:

_____

_____

Any change of residents must be immediately reported to the Landlord and will require a redetermination of eligibility as set forth in Appendix A.

5. **ELIGIBILITY FOR BELOW MARKET RENT**
The Landlord is obligated by the NYS Housing Trust Fund Corporation to maintain the project for occupancy by Persons of Low Income. The construction of the apartment was subsidized by the State of New York through the NYS Housing Trust Fund Corporation. The rent paid by an eligible tenant will be lower than the tenant would have had to pay if the subsidy had not been provided. Tenant agrees to provide correct information and any required documentation to the Landlord regarding tenant's household income, household composition and any other items necessary for Landlord to determine tenant's eligibility to reside in the premises at a below market rental rate pursuant to the requirements of NYS Low Income Housing Trust Fund Program.

Determination of eligibility will be made prior to initial occupancy and thereafter, yearly on the anniversary date of occupancy. Tenant agrees to provide any appropriate verification of the required information as requested by the Landlord.

6. **MONTHLY RENTAL PAYMENTS, CALCULATION**
Monthly rental payments in the amount of $_____("Monthly Rent") will be due on the first day of each month. Monthly Rent payments shall be paid to_____, New York. (address)

Monthly rent includes payment for the following utilities:

_____

Monthly rent includes payment for the following services:

_____

Payment for all other utilities and services are the responsibility of the tenant, including, but not limited to telephone, and cable TV. The monthly rent may be adjusted during this lease term as stated in Appendix A.

7. LEASE RENEWAL

Sixty days prior to the end of the term of this lease for tenants in occupancy less than 2 years, or ninety days for tenant in occupancy over two years the Landlord shall offer the tenant a new lease. The tenant may choose a one- or two-year lease term. In the event that the landlord fails to offer the tenant a new lease, tenant shall be entitled to stay in the unit under the same terms and conditions as are set forth in this lease until the landlord has fulfilled its obligation to give the tenant the required notice of tenant's opportunity to sign a new lease.

8. TERMINATION OF TENANCY

A. The tenant understands that it is not the purpose of the security deposit to be used for the last month's rent.

B. Tenant may terminate this agreement prior to the end of the lease for good cause such as moving to another location for employment, loss of job, severe illness, death of spouse, or other reasons customary or mandatory in the community, or as provided in law. The Tenant must notify the Landlord in writing at least thirty (30) days before intending to leave, or tenant will have to pay the rent (and utilities) for the next month unless the unit is re-rented.

C. Any termination of this lease by the Landlord must be carried out in accordance with state and local law, and the terms of this lease. The Landlord may terminate this lease only for:

1) Tenant's material noncompliance with the terms of this lease, such as (but not limited to): nonpayment of rent, repeated late payment of rent, illegal activities, permitting unauthorized persons to live in the unit, serious or repeated damage to the unit or common areas, creation of physical hazards, serious or repeated interference with the rights and quiet enjoyment of other tenants, and giving the Landlord false information regarding income or other factors considered in determining the tenant's rent payment or eligibility for residence in the premises, or failure to provide such information to the landlord upon request.
2) Tenant's failure to carry out obligations under any state or local law or regulations;
3) Other good cause.

9. VIOLATION OF TERMS OF LEASE - PROCEDURE

Except as provided in paragraph **20**, if tenant does not comply with the terms of the lease except in the cases of nonpayment of rent, Landlord will do the following:

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A. Send tenant a written notice demanding that tenant live up to the terms of the lease within 10 days (or 15 days if the notice is served by mail); and

B. If tenant does not comply within that time, Landlord will send tenant a second written notice terminating the lease 30 days after the second notice is mailed to tenant. On that day tenant is to vacate the apartment and return the keys to the Landlord. If tenant does not vacate, Landlord may start eviction proceedings within requirements of the New York State law.

10. ABANDONED PROPERTY

Landlord shall notify Tenant of Landlords policy regarding the disposition of property left in the apartment or elsewhere on the premises after termination of this lease.

11. SECURITY DEPOSIT AND REFUND POLICY

The tenant shall pay Landlord $_____as a security deposit, not to exceed one month's rent. Security deposits will be held in a tenant bank account selected by the Landlord. Any interest earned will be paid to the tenant, less statutorily allowed handling and administration charges, not to exceed 1% of the security deposit. The Landlord will hold this security deposit for the period the tenant occupies the unit. After the tenant has moved from the unit, the Landlord will determine whether the tenant is eligible for a refund of any or all of the security deposit. The amount of the refund will be determined under the following conditions and procedures:

A. Unless the tenant terminates the tenancy with less than two weeks' notice, the Landlord will inspect the unit between 1 and 2 weeks before move out and prepare a written report. The Landlord will permit the tenant to participate in the inspection if the tenant so requests and shall provide the tenant with at least 48 hours written notice of the date and time of the inspection.

B. The Landlord will refund to the tenant the amount of the security deposit after deducting the following, as applicable:

1) Damages that are not due to normal wear and tear and are not listed on the "unit inspection report"; and
2) Unpaid rent.

C. The Landlord agrees to refund the amount due within 14 days after the tenant has vacated the unit. The Landlord will also give the tenant a written list of charges that were subtracted from the deposit. If the tenant disagrees with the Landlord, the Landlord agrees to meet with the tenant and discuss the disputed charges.

D. If the unit is rented by more than one person, the tenants agree that they will work out the details of dividing any refund among themselves. The Landlord may pay the refund to the tenant first identified in paragraph 4 of this lease.

12. LATE FEES, RETURNED CHECK POLICY

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There will be a late fee of $_____for any payment made after the fifth of any month. Fees are limited to $50 or 5% of the monthly rent, whichever is less. Any late fee, payment or charge shall not be considered additional rent. The Landlord may collect a $15.00 administrative fee plus bank charges on any check not honored for payment. After the second occurrence, the Landlord may require payment in a form other than a personal check. Extra charges will be due immediately.

13. OBLIGATIONS OF LANDLORD AND TENANT

A. The Landlord agrees to:

1) Regularly clean all common areas of the project;
2) Maintain the common areas and facilities in a safe condition;
3) Maintain all building systems and Landlord provided equipment and appliances in a safe and working order;
4) Make necessary repairs with reasonable promptness;
5) Maintain outside lighting in good working order;
6) Provide extermination services as necessary;
7) Maintain the grounds and shrubs;
8) Annually ensure that smoke detectors in the unit and common areas are in good working order; and
9) Maintain the buildings and common areas in accordance with the local housing codes and regulations.

B. The tenant agrees to:

1) Keep the unit clean and sanitary;
2) Use all appliances, fixtures and equipment in a safe manner and only for the purposes for which they are intended;
3) Not litter the grounds or common areas of the project;
4) Not destroy, deface, damage or remove any part of the unit, common areas or project grounds;
5) Give the Landlord prompt notice of any defects in plumbing, fixtures, appliances, heating or cooling equipment or any other part of the unit or related facilities;
6) Remove garbage and other waste from the unit in a clean and safe manner and dispose of it in the designated method;
7) To fully cooperate with the Landlord to achieve compliance with requirements for waste separation and recycling;
8) Not leave children unsupervised;
9) Not disturb the peaceable occupancy of others;
10) Not give keys to individuals not residing in the unit without prior written approval of the Landlord; and
11) Not create any conditions on the premises which pose a threat to the health or safety of any person or persons.

14. DAMAGES AND PROHIBITED ALTERATIONS

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A. The Landlord will make repairs to the apartment, its fixtures and equipment, which are necessary because of carelessness, misuse or neglect by the tenant or his/her visitors. The tenant agrees to pay for the actual costs of said repairs within 30 days after receipt of the Landlord's demand for payment.

B. The tenant agrees that the following alterations are prohibited without first obtaining the Landlord's written permission:

1) Change or removal of any part of the appliances, fixtures or equipment in the unit;
2) Painting, or installation of wallpaper or contact paper in the unit;
3) Attachment of awnings or window guards in the unit;
4) Attachment or placement of any fixtures, signs or fences on the building(s), the common areas or the project grounds;
5) Attachment of any shelves, screen doors or other permanent improvements in the unit;
6) Installation of washingmachines, dishwashers, dryers, fans, freezers, heaters or air conditioners in the unit; or
7) Placement of any aerials, antennas or other electrical connections on the unit.

15. TENANTS USE OF PREMISES. RIGHTS OF OTHER TENANTS

The tenant agrees that the apartment will be used only to live in, and that the apartment is tenant's primary residence and will not be used as a place of business. The tenant may not use the apartment to conduct illegal activity. The tenant agrees not to damage the apartment, the building, the grounds, or the common areas, or to interfere with the rights of other tenants to live in their apartments in peace and quiet. Landlord agrees to do nothing which would prevent or interfere with tenant's legal use of the apartment.

16. REPAIR AFTER FIRE OR OTHER EVENT

If the apartment is damaged by fire or other event, not the fault of the tenant and cannot be lived in, the Landlord shall have the right to repair and rehabilitate the building within a reasonable amount of time, or, shall have the right to terminate the lease.

17. LANDLORD'S RIGHT TO ENTER PREMISES

The landlord may enter the unit in the event of an emergency, or after advance notice and during reasonable hours: as part of a periodic inspection; as part of a preventive maintenance program; or to show the unit to prospective tenants after the tenant has given notice of intent to move. The tenant agrees not to install additional or different locks on any doors or windows of the unit without the written permission of the Landlord. If the Landlord approves the tenant's request to install such locks, the tenant agrees to provide the Landlord with a key for each lock. When this lease ends, the tenant agrees to return all keys to the dwelling unit to the Landlord. The Landlord may charge the tenant for lock-related charges in accordance with the attachment "schedule of charges".

18. ADDITIONAL RULES

The tenant agrees that tenant's family and guests will obey all house rules which are attached to this lease and any procedures outlined. The tenant agrees to obey additional rules established after the effective date of this lease if the rules are related to the safety, care and cleanliness of the building, and the safety, comfort and

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convenience of the tenants, and if the tenant received written notice of the proposed rule at least 30 days before the rule is enforced.

19. SEPARATE REMEDY FOR ADDITIONAL CHARGES

Owner agrees to accept tenant rental payments and to seek separate legal remedy for the collection of any other charges which may be payable to owner by tenant.

20. GOOD CAUSE TO TERMINATE LEASE

The tenant will be notified of violations of this paragraph. Violation of any of the provisions of this paragraph which do not cease within 10 days of such notice will result in termination of the lease. **No further notice or opportunity will be given to the tenant prior to termination of this lease.**

The tenant agrees that the tenant and members of the household must not engage in or permit:

1) Any criminal activity, including drug-related criminal activity, and/or criminal activity involving illegal weapons in the unit or on the property.
2) Any other unlawful activity.

21. NOTICES

Notices to tenant: Any required notice from Landlord to tenant must be (A) personally delivered or (B) in writing, (1) signed by or in the name of Landlord or Landlord's agent, and (2) addressed to tenant at the apartment and sent by certified mail to tenant at the unit and provided in accordance with the law.
Notices to Landlord: Tenant will give all required notices to Landlord in writing, delivered personally or sent by mail to Landlord at_____or at such other address as Landlord may designate. It is suggested that the notice be sent by certified mail.

22. ELDERLY AND DISABLED PERSONS, SPECIAL PROVISIONS

Tenants 60 years of age and older or tenants subject to a disability as defined in the New York State Executive law, Article 15, Section 292, who have an executed lease agreement at the time that the property is sold, or any applicable governmental regulatory agreement or loan is terminated or repaid, shall be permitted to continue occupancy at a rate where total housing costs do not exceed 30 percent of their income, unless such tenants are evicted for good cause in accordance with all applicable state laws.

23. HOUSEHOLD SIZE

Tenant understands that the Landlord will assign the units according to the size of the household in accordance with New York State Division of Housing and Community Renewal requirements of no more than two persons per bedroom and no more than two persons for a zero-bedroom unit. The Landlord must offer the tenant from among available units in the development a lease for a unit of appropriate size if a tenant's household size increases or decreases so that it is not within these guidelines. Except as otherwise prohibited by law, tenant's refusal to move into a unit of appropriate size when requested to do so would constitute good cause for termination of the lease and tenant agrees to vacate the unit if requested to do so by the Landlord.

24. TENANT ASSURANCES

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The tenant makes the following statements:

A. I understand that if there is a significant decrease in household income, I may request a rent decrease from the Landlord.

B. I understand that should I receive rental benefits to which I am not entitled due to my/our failure to provide information, or due to incorrect information provided by me or on my behalf by others or by any other household member, I will be required to make restitution and I agree to pay any amount of benefits to which I was not entitled.

C. I agree to promptly provide any certificates and income verifications required by the Landlord to permit determination of eligibility and, when applicable, the monthly tenant rent to be charged. I understand failure to do so will constitute a breach of the lease.

D. I understand and agree that my monthly rent is the amount shown in paragraph 6 or adjusted pursuant to Appendix A and may increase up to market rent as my income increases.

E. I agree that I shall provide the Landlord a person(s) to contact in the event of death or emergency.

25. EFFECT OF SALE OF PREMISES

The terms of this lease shall continue in effect in the event that the premises are transferred to a new owner.

26. NO ORAL AMENDMENTS

This Lease may not be changed except by a written agreement signed by the Landlord and the Tenant.

27. RENT STABILIZATION RIDER

The Landlord and the Tenant agree to execute a rent stabilization rider as approved by the HTF if the apartment becomes subject to the terms of the Rent Stabilization Law.

SIGNATURES: **The Tenant and the Landlord have each received identical copies of the lease; each copy signed and dated by both Landlord and Tenant.**

_____	_____
TENANT	LANDLORD
_____	_____
TENANT	
_____	_____
DATE	DATE

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ATTACHMENTS:

APPENDIX A
EXHIBIT D SUMMARY OF TENANT RIGHTS AND OBLIGATIONS (FOR LIHC PROPERTIES)
HOUSE RULES AND REGULATIONS PET
POLICY/RULES (IF APPLICABLE)
APARTMENT INSPECTION
VAWA
SMOKE FREE HOUSING POLICY
SPRINKLER DISCLOSURE RIDER
WINDOW GUARDS (IF APPLICABLE)

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APPENDIX A

1. PURPOSE

This Appendix sets forth how your monthly rent will be determined, and the circumstances under which your Monthly Rent set forth on page 1, #6 of your lease may increase or decrease.

2. BASIC FACTORS

There are four basic factors which are used to calculate Monthly Rent:

Basic Rent

Basic Rent for the unit is $ _____. Basic Rent is the amount of rent necessary to pay the expenses of the project.

Market Rent

Market Rent is the amount of rent that would have to be charged if the Housing Trust Fund Corporation had not subsidized the development of your unit. Market rent shall apply to households that do not qualify as persons of low income pursuant to the requirements of NYS Low Income Housing Trust Fund Program. In any event, the rent charged shall not exceed the lesser of 30% of the tenant's income, or the market rent.

Tenant's Household Income

This is the combined income of all persons residing in the unit.

Shelter Allowance

Shelter Allowance is the amount that the local Department of Social Services will pay for rent.

3. INCREASES IN RENT

A. Unless your Monthly Rent is based on Shelter Allowance, Your Monthly Rent may increase if Basic Rent increases due to increases in operating costs of the project that your unit is in. Your Monthly Rent will be the amount stated on page 1, #6 of the lease or Basic Rent, whichever is more.

B. Your Monthly Rent may increase if your Household's Income increases but not unless your Household's Income increases above public assistance level. If your Household's Income increases, your Monthly Rent will adjust to 30% of your Household's income (less an allowance for certain utilities you may pay for). Your Monthly Rent will not be increased above Market Rent but will not be less than Basic Rent.

C. If your Monthly Rent is based on the Shelter Allowance, and the Shelter Allowance is increased, Monthly Rent will be increased to the new Shelter Allowance amount.

D. If you or any member of your household is receiving a rent subsidy, and that rent subsidy increases, your

rent may be increased accordingly at the discretion of the Landlord.

E. For a rent increase of 5% or more, the written tenant notification period depends on the length of occupancy:

- 30 days' notice is required for a tenant who has occupied a unit for under a year and does not have a lease term of at least a year.
- 60 days' notice is required for a tenant who has occupied a unit, or has a lease term, for more than one year but less than two years.
- 90 days' notice is required for a tenant who has occupied a unit, or has a lease term, of more than two years

4. DECREASES IN RENT

You are not entitled to decreases in rent based on decreases in income or decreases in rent subsidies, however, you should report such decreases to the Landlord. The Landlord may decrease your rent if:

A. If any such rent subsidy you are receiving is decreased. Your Monthly Rent may be decreased accordingly at the discretion of the Landlord but will not be less than Basic Rent.

B. If the tenant's income is significantly reduced. Your Monthly Rent may be decreased accordingly at the discretion of the Landlord but will not be less than Basic Rent.

5. IMMEDIATE INCREASE FOR FAILURE TO PROVIDE INFORMATION, FALSE INFORMATION

If tenant fails to provide information, or falsifies information required to be furnished to the Landlord under this lease, it will constitute a breach of this lease and rent will immediately increase to Market Rent. Tenant further understands that she/he will be required to pay the difference between rent paid and Market Rent, if incomplete or false information was previously supplied.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

HOUSE RULES AND REGULATIONS

The tenant **may not**:

A) Have pets or animals of any kind in the unit other than those expressly permitted in writing in Pet Rules as may be established by the Landlord, not including animals needed as a reasonable accommodation to the tenant's disability, in accordance with state and federal fair housing laws.

B) Make or permit noises or acts that will disturb the rights or comfort of neighbors. The tenant agrees to keep the volume of any radio, phonograph, television or musical instrument at a level which will not disturb the neighbors.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT 4

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT 4

LOW-INCOME LEASE RIDER

THIS RIDER, AN INCOME CERTIFICATION, AND AN EMPLOYMENT VERIFICATION MUST BE OBTAINED FROM ALL TENANTS OF APARTMENTS FOR WHICH LOW-INCOME HOUSING TAX CREDITS ARE REQUIRED.

Tenant: _____

(If there is more than one adult occupant, each one must complete and sign a rider and attachments.)

Lease Date: _____ to _____.

Apartment: _____

Building Address: 600 Doat St.
Cheektowaga, NY 14211
(716) 847-1635

The undersigned tenant hereby certifies and agrees as follows:

1. Income Certification. My attached income certification is true, correct, and complete. I agree to provide a similar certification annually upon request during the term of my occupancy.

2. Employment Verification. The landlord or property manager has my permission to verify my income from my employer, using the attached form now and on an annual basis.

3. False Statements. If my income certification and/or any lease application submitted by me is false, or if I fail to provide annual certifications, the landlord or property manager will have the right to terminate my lease and recover possession of my apartment. I understand that the landlord and property manager are relying on my income certification in accepting me as a tenant, and that the landlord will be seriously harmed if my income does not qualify the apartment for low-income housing tax credits. This rider shall be considered part of my lease.

Date: _____

Tenant:

_____
(Signature)

To Be Attached:

A. Managing Agent's Low-Income Eligibility Worksheet and Certification of Qualified Occupant

B. Employment/Income Verification, as applicable

EXHIBIT 5

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

TENANT INCOME CERTIFICATION

Effective Date: _____

☒ Initial Certification ☐ Recertification ☐ Other _____ Move-In Date: _____ (YYYY-MM-DD)

PART I. DEVELOPMENT DATA

Property Name: _____ County: Erie County BIN #: 1 PISD: _____

BIN Address: _____ City: Buffalo Zip: 14220-1845

Unit Number: _____ # Bedrooms: _____ Square Footage: _____

PART II. HOUSEHOLD COMPOSITION — DEMOGRAPHIC INFO (LIHTC ONLY)

HH Mbr #	Last Name	First Name	Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YY)	F/T Student?	SS# - last 4 digits	Race	Ethnicity	Disabled?
1										
2										
3										
4										
5										
6										
7										

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	$	$	$ $0.00	$ $0.00

Add totals (A) through (D), above — TOTAL INCOME (E): $

PART IV. INCOME FROM ASSETS

Hshld Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
		TOTALS:	$	$ .00

Enter Column (H) Total If over $5000 _____ X Passbook Rate .06% = (J) Imputed Income $ 0.00

Enter the greater of the total of column I, or J: imputed income — TOTAL INCOME FROM ASSETS (K) $ 0.00

(L) Total Annual Household Income from all Sources [Add (E) + (K)] $

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current/anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature _____ (Date) _____ Signature _____ (Date) _____

Signature _____ (Date) _____ Signature _____ (Date) _____

Includes expected updates to the HUD LIHTC Tenant Data Collection Form – (Revised April 2012) – OMB Approval No. 2528-0165 (Exp. 05/31/2013) Use after February 1 2015

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

PART V - DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page 1 $

Current LIHTC Income Limit per Family Size for the federal 50% or 60% set aside: $

Household Income at Move-in: $

Household Size at Move-in:

Household Meets Income Restriction at:
☒ 60% ☐ 50%
☐ 40% ☐ 30%
☐ ____ %

RECERTIFICATION ONLY:

Current Income Limit x 140%: $

Household Income exceeds 140% at recertification:
☐ Yes ☐ No

PART VI - RENT

Tenant Paid Rent $

Utility Allowance $

Other non-optional charges: $ 0.00

GROSS RENT FOR UNIT: (Tenant paid rent + Utility Allowance & other non-optional charges) $

Maximum Rent Limit for this unit: $

Unit Meets Rent Restriction at:
☒ 60% ☐ 50%
☐ 40% ☐ 30%
☐ ____ %

Federal Rent Assistance Amount: $ 0.00 *Source: ____ (*1-8)

Non-Federal Rent Assistance Amount: $ 0.00

TOTAL RENT ASSISTANCE: $ 0.00

* Source of Federal Assistance
1 **HUD Multi-Family Project-Based Rental Assistance(PBRA)
2 Section 8 Moderate Rehabilitation
3 Public Housing Operating Subsidy
4 HOME Rental Assistance
5 HUD Housing Choice Voucher (HCV), tenant-based
6 HUD Project-Based Voucher(PBV)
7 USDA Section 521 Rental Assistance Program
8 Other Federal Rental Assistance

**(PBRA) Includes: Section 8 New Construction/Substantial Rehabilitation; Section 8 Loan Management; Section 8 property Disposition; Section 202Project Rental Assistance Contracts (PRAC)

PART VII - STUDENT STATUS

ARE ALL OCCUPANTS FULL TIME STUDENTS?

☐ yes ☒ no

If yes, Enter student explanation* (also attach documentation)

*Enter 1-6: ____

*Student Explanation:
1 TANF assistance
2 Job Training Program
3 Single parent/dependent child
4 Married/joint return
5 Formerly in foster care
6 Extended-Use Period

PART VIII - PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

a. Tax Credit ☒
See Part V above

b. HOME ☐
Income Status
☐ <= 50% AMGI
☐ <= 60% AMGI
☐ <= 80% AMGI
☐ OI**

c. Tax Exempt ☐
Income Status
☐ 50% AMGI
☐ 60% AMGI
☐ 80% AMGI
☐ OI**

d. AHDP ☐
Income Status
☐ 50% AMGI
☐ 80% AMGI
☐ OI**

e. Age ____ ☒
(Name of Program)
Income Status
☒ Age 55+
☐ OI**

** Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, or other program designated and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE DATE

Includes expected updates to the HUD LIHTC Tenant Data Collection Form – (Revised April 2012) – OMB Approval No. 2528-0165 (Exp. 05/31/2013) Use after February 1 2015

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT 6

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EMPLOYMENT VERIFICATION

THIS SECTION TO BE COMPLETED BY MANAGEMENT AND EXECUTED BY TENANT

TO: «verifyingrecipient»
«recipientaddressline1»
«recipientaddressline2»
«recipientaddresscity», «recipientaddressstate» «recipientaddresszipcode»

Date: «sitepropertydate»

RE: «membername»
Applicant/Tenant Name

Social Security Number: «memberssno»

Unit # (if assigned): «buildingnumber»-«unitnumber»

I hereby authorize release of my employment information.

_____ _____
Signature of Applicant/Tenant Date

The individual named directly above is an applicant/tenant of a housing program that requires verification of income. The information provided will remain confidential to satisfaction of that stated purpose only. Your prompt response is crucial and greatly appreciated.

_____
Project Owner/Management Agent

Return Form To:

«SiteName»
«vlresponsertnadd1»
«vlresponsertnadd2»
«vlresponsertncity», «vlresponsertnstate»
«vlresponsertnzip»

THIS SECTION TO BE COMPLETED BY EMPLOYER

Employee Name: _____ Job Title: _____

Presently Employed: Yes ____ Date First Employed _____ No ____ Last Day of Employment _____

Current Wages/Salary: $_____ (circle one) hourly weekly bi-weekly semi-monthly monthly yearly other_____

Average # of regular hours per week: _____ Year-to-date earnings: $_____ through __/____/____

Overtime Rate: $_____ per hour Average # of overtime hours per week: _____

Shift Differential Rate: $_____ per hour Average # of shift differential hours per week: _____

Commissions, bonuses, tips, other: $_____ (circle one) hourly weekly bi-weekly semi-monthly monthly yearly other_____

List any anticipated change in the employee's rate of pay within the next 12 months: _____; Effective date: _____

If the employee's work is seasonal or sporadic, please indicate the layoff period(s): _____

Additional remarks: _____

_____ _____ _____
Employer's Signature Employer's Printed Name Date

_____ _____
Employer's Title Employer [Company] Name and Address

_____ _____ _____
Phone # Fax # E-mail

NOTE: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

UNIT # «buildingnumber» -
«unitnumber»

NON-RECEIPT OF CHILD SUPPORT/SPOUSAL SUPPORT AFFIDAVIT

THIS SECTION COMPLETED BY MANAGEMENT

Applicant/Resident Name: «membername»

Names of children 1._____ 2. _____

3. _____ 4. _____

THIS SECTION TO BE COMPLETED BY APPLICANT/RESIDENT

In connection with your review of my household's qualification for the Housing Credit Program, I confirm to you the following information with respect to receipt of spousal and/or child support.

☐ I confirm that I have custody (50% or more of the time) of all children listed as household members.

Check only one of the options shown below:

☐ **I am not entitled** to receive any alimony, spousal support, child support or other compensation pursuant to any court order; and

I am not entitled to receive any alimony, spousal support, child support or other compensation pursuant to any non-court agreement; and

I am not in the process of seeking any monies for alimony, spousal support or child support through legal channels or otherwise. I am not under any affirmative obligation to seek such monies.

☐ **I am entitled** to receive alimony, spousal support, child support or other compensation pursuant to a court order or other agreement in the amount of $_____per month (attach supporting documentation); and

Notwithstanding the above, I expect to receive no more than $_____over the next 12 months. I do not expect to receive the full amount due me because _____;
And I have taken the following actions in an attempt to collect the monies due me:_____

_____

☐ Although I **am not currently entitled** to receive any alimony, spouse support, child support or other compensation pursuant to a court order or other agreement, I believe that I will receive such an order within the next 12 months. I expect to receive $_____per month commencing _____/_____/_____.

I understand that this affidavit is made as part of the qualification procedure to determine eligibility for the Housing Credit Program. Under penalty of perjury, I certify that the information presented in this certification is true and accurate to the best of my knowledge. The undersigned further understand(s) that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of a lease agreement.

_____
Printed Name of Applicant/Resident

_____ _____
Signature of Applicant/Resident Date

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

UNIT # «buildingnumber» - «unitnumber»

PUBLIC ASSISTANCE VERIFICATION

Agency Name: «verifyingrecipient»

Address «recipientaddressline1» «recipientaddressline2» «recipientaddresscity», «recipientaddressstate» «recipientaddresszipcode»

Phone: «recipientphone» Fax: «recipientfax» Email: «recipientemail»

RE: «membername» «memberssno»
Print applicant/resident name Social Security Number

I hereby authorize release of the information requested below.

_____ _____
Signature of applicant/resident Date signed

The recipient named above has applied for an apartment governed by the Federal Tax Credit Program provided for under Section 42. The program requires verification of all income and asset sources of this person and also at annual recertifications. To determine whether this individual is within the guidelines of our program, we ask for your cooperation in completing the applicable information below. We hold this information in strict confidence for use only in determining the eligibility status of this individual. Your prompt return of this information by fax or in the enclosed envelope will be greatly appreciated.

_____
Management Agent

THIS SECTION TO BE COMPLETED BY AGENCY

Please fill in the blanks. Write N/A if not applicable.

Check the type(s) of assistance received, fill in the GROSS amount CURRENTLY received and frequency of the payments.

BENEFIT	GROSS AMOUNT	FREQUENCY	Anticipated changes in next 12 months AMOUNT	EFFECTIVE DATE
☐ Aid to Families with Dependent Children	$_____	_____	$_____	_____
☐ Temporary Assistance For Needy Families	$_____	_____	$_____	_____
☐ General Assistance or Relief	$_____	_____	$_____	_____
☐ Child Support Disregard or Pass-through	$_____	_____	$_____	_____
☐ Other (list type) _____	$_____	_____	$_____	_____

Does this person receive child support/alimony directly? ☐ NO ☐ YES, payor is_____

Comments _____

Representative Printed Name_____ Telephone #_____

Representative Position_____ E-Mail_____

Representative Signature _____ Date form completed_____

Fill in only if different from above:

Phone _____ Fax _____ E-mail _____

Address _____

NOTE: Section 1001 of Title 18 of the U. S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

OFFICE USE ONLY:

Date Received: _____ Calculations: _____

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

UNIT # «buildingnumber» - «unitnumber»

SOCIAL SECURITY VERIFICATION

Agency Name «verifyingrecipient»
Address «recipientaddressline1» «recipientaddressline2» «recipientaddresscity», «recipientaddressstate» «recipientaddresszipcode»

Phone: «recipientphone» Fax: «recipientfax» Email: «recipientemail»

«memberssno» Social Security Number

«residentBirthDate» Date of Birth

I hereby authorize release of the information requested below.

_____
Print Applicant/Resident Name

_____ _____
Signature of Applicant/Resident Date Signed

The recipient named above has applied for an apartment governed by the Federal Tax Credit Program provided for under Section 42. The program requires verification of all income and asset sources of this person and also at annual recertifications. To determine whether this individual is within the guidelines of our program, we ask for your cooperation in completing the applicable information below. We hold this information in strict confidence for use only in determining the eligibility status of this individual. Your prompt return of this information by fax or in the enclosed envelope will be greatly appreciated.

_____
Management Agent

THIS SECTION TO BE COMPLETED BY AGENCY

Please fill in information for all applicable items. Write N/A if not applicable.

Check the type(s) of income received and enter the Gross Amount the person is CURRENTLY receiving and frequency of the payments.

BENEFIT TYPE	GROSS AMOUNT	FREQUENCY OF PAYMENTS (Weekly, Monthly, etc.)
☐ Social Security	$_____	_____
☐ Supplemental Security Income	$_____	_____
☐ Disability or death benefits	$_____	_____
☐ Other (describe) _____	$_____	_____

Does this household receive Medicare? ☐ YES ☐ NO

Are there any changes expected in the next 12 months? ☐ YES ☐ NO

If "YES", what change_____ Effective Date_____

Comments: _____

Representative Printed Name_____ Telephone #_____

Representative Position _____ E-Mail _____

Representative Signature_____ Date form completed_____

NOTE: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

OFFICE USE ONLY:

Date Received_____ Calculations: _____

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

UNIT #«unitnumber»

VETERAN'S BENEFITS VERIFICATION

To: «verifyingrecipient» Date: «sitepropertydate»
«recipientaddressline1»
«recipientaddresscity»«recipientaddressstate» «recipientaddresszipcode»

RE: «membername» «memberssno»
Applicant/Tenant Name Social Security Number

I hereby authorize release of all information requested in this inquiry.

Signature of Applicant/Resident Date Signed

The individual named directly above is an applicant/tenant of a housing program that requires verification of income. The information provided will remain confidential to satisfaction of that stated purpose only. Your prompt response is crucial and greatly appreciated.

Project Owner/Management Agent

Return this form to:

«SiteName»
«vlresponsertnadd1»
«vlresponsertnadd2»
«vlresponsertncity», «vlresponsertnstate» «vlresponsertnzip»

THIS SECTION TO BE COMPLETED BY VETERANS ADMINISTRATION

Compensation (Service Connected):
( ) Disability _____
( ) Death _____
( ) Dependency and Indemnity _____

Pension (Non-Service Connected):
( ) Disability _____
( ) Death _____

Effective date of current award: _____

Current Compensation Received: $ _____ per month

Changes: If any change is contemplated, please check here ( ) and explain on reverse side.
VETERAN'S ADMINISTRATION CENTER
Signature: _____ Date: _____
Print name: _____ Tel. #: _____
Title: _____
Address: _____

Warning: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

UNIT # «buildingnumber» - «unitnumber»

GENERAL INCOME VERIFICATION

Date: «currentsystemdate»

To: «verifyingrecipient»
«recipientaddressline1»
«recipientaddressline2»
«recipientaddresscity», «recipientaddressstate» «recipientaddresszipcode»
«recipientphone»
Fax: «recipientfax»
Email: «recipientemail»

From: «sitepropertymanager»
Property Manager
«vlresponsertnadd1»
«vlresponsertnadd2»
«vlresponsertncity», «vlresponsertnstate» «vlresponsertnzip»
«vlresponsertnphone»

RETURN THIS VERIFICATION TO THE PERSON LISTED ABOVE.

Subject: Verification of Information Supplied by an Applicant for Housing Assistance.

RE: «membername» «memberssno»
Print Applicant/Resident Name Social Security Number

This person has applied for housing assistance under a program of the U.S. Department of Housing and Urban Development (HUD). HUD requires the housing owner to verify all information that is used in determining this person's eligibility or level of benefits.

We ask your cooperation in providing the following information and returning it to the person listed at the top of the page. Your prompt return of this information will help to assure timely processing of the application for assistance. Enclosed is a self-addressed, stamped envelope for this purpose. The applicant/tenant has consented to this release of information as shown below.

THIS SECTION TO BE COMPLETED BY AGENCY
Please fill in the blanks. Write N/A if not applicable.

Check the type(s) of assistance received, fill in the GROSS amount CURRENTLY received and frequency of the payments.

BENEFIT	GROSS AMOUNT	FREQUENCY	Anticipated changes in next 12 months AMOUNT	EFFECTIVE DATE
☐Pension, retirement benefits or Annuities:	$_____	_____	$_____	_____
Explain: _____				
☐Settlements received from Insurance, lawsuits, etc:	$_____	_____	$_____	_____
Explain: _____				
☐Regular gifts/contributions or Payments:	$_____	_____	$_____	_____
Explain: _____				
☐Lottery winnings, inheritance, Trust:	$_____	_____	$_____	_____
Explain: _____				
☐Other (list type)	$_____	_____	$_____	_____
Explain: _____				

Representative Printed Name _____ Telephone # _____

Representative Position _____ E-Mail _____

Representative Signature _____ Date form completed _____

Fill in only if different from above:

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Phone _____ Fax _____ E-mail _____

Address _____

OFFICE USE ONLY:

Date Received: _____ Calculations: _____

YOU DO NOT HAVE TO SIGN THIS FORM IF EITHER THE REQUESTING ORGANIZATION OR THE ORGANIZATION SUPPLYING THE INFORMATION IS LEFT BLANK.

_____

RELEASE: I hereby authorize the release of the requested information. Information obtained under this consent is limited to information that is no older than 12 months. There are circumstances, which would require the owner to verify information that is up to 5 years old, which would be authorized by me on a separate consent attached to a copy of this consent.

_____ _____

SIGNATURE DATE

PENALTIES FOR MISUSING THIS CONSENT:

Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains, or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than $5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security number are contained in the Social Security Act at 208 (a) (6), (7) and (8). Violations of these provisions are cited as violations of 42 USC 408 (a), (6), (7) and (8).

«sitename» does not discriminate on the basis of disabled status in the admission or access to, or treatment or employment in, its federally assisted programs and activities.

EQUAL HOUSING OPPORTUNITY

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

UNIT # «buildingnumber» -
«unitnumber»

WORKERS COMPENSATION VERIFICATION

Agency Name «verifyingrecipient» Date «sitepropertydate»

Address «recipientaddressline1» «recipientaddressline2» «recipientaddresscity», «recipientaddressstate» «recipientaddresszipcode»

Phone: «recipientphone» Fax: «recipientfax» Email: «recipientemail»

I hereby authorize release of the information requested below.

«membername» «memberssno»
Print Applicant/Resident Name Social Security Number

_____ _____
Signature of Applicant/Resident Date Signed

The recipient named above has applied for an apartment governed by the Federal Tax Credit Program provided for under Section 42. The program requires verification of all income and asset sources of this person and also at annual recertifications. To determine whether this individual is within the guidelines of our program, we ask for your cooperation in completing the applicable information below. We hold this information in strict confidence for use only in determining the eligibility status of this individual. Your prompt return of this information by fax or in the enclosed envelope will be greatly appreciated.

_____
Management Agent

THIS SECTION TO BE COMPLETED BY AGENCY

Please fill in the information for all applicable items. Write N/A if not applicable.

Check the type(s) of income received and enter the Gross Amount the person is CURRENTLY receiving before any deductions.

1. Are benefits being paid now? ☐ YES ☐ NO
2. If YES, what is the Gross Weekly Payment? $_____
3. Date of Initial Payment _____
4. Duration of Benefits _____ weeks
5. Is this person eligible for future benefits: ☐ YES ☐ NO
6. If YES, how many weeks? _____ weeks
7. If NO, what is the termination date of the benefits? _____
8. Did the person receive a lump sum payment? ☐ YES ☐ NO
6. If YES, what was the gross amount of payment? $_____
7. Date of lump sum payment? _____

Comments:_____

Representative Printed Name_____ Telephone#_____

Representative Position_____ E-Mail_____

Representative Signature_____ Date form completed_____

NOTE: Section 1001 of Title 18 of the U. S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

OFFICE USE ONLY:

Date Received_____ Calculations_____

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

UNIT # «buildingnumber» -
«unitnumber»

BENEFITS VERIFICATION
WORKER'S COMP & DISABILITY

Agency Name «verifyingrecipient» Case Worker_____

Address «recipientaddressline1» «recipientaddressline2» «recipientaddresscity», «recipientaddressstate» «recipientaddresszipcode»

Phone «recipientphone» Fax «recipientfax» Email «recipientemail»

RE: «membername» «memberssno»
Print Applicant/Resident Name Social Security Number

I hereby authorize release of the information requested below.

_____ _____
Signature of applicant/resident Date signed

The recipient named above has applied for an apartment governed by the Federal Tax Credit Program provided for under Section 42. The program requires verification of all income and asset sources of this person and also at annual recertifications. To determine whether this individual is within the guidelines of our program, we ask for your cooperation in completing the applicable information below. We hold this information in strict confidence for use only in determining the eligibility status of this individual. Your prompt return of this information by fax or in the enclosed envelope will be greatly appreciated.

_____
Management Agent

THIS SECTION TO BE COMPLETED BY AGENCY
Please fill in the blanks. Write N/A if not applicable.

Check the type(s) of assistance received; fill in the GROSS amount CURRENTLY received and frequency of the payments.

TYPE OF BENEFIT: ☐ Worker's Comp ☐ Disability

1. Gross Benefit Amount $_____
2. Start date of current benefit _____
3. End date of current benefit _____
4. Frequency of benefit payments. Check one: ☐ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other _____
5. Is this person eligible for an extension of benefits: ☐ NO ☐ YES, projected amount is $_____
6. Do you expect any change in the next 12 months?: ☐ NO ☐ YES: $_____, Effective date _____

   What change? _____

Representative Printed Name_____ Telephone #_____

Representative Position _____ E-Mail _____

Representative Signature _____ Date form completed _____

Fill in only if different from above:

Phone _____ Fax _____ E-mail _____

Address _____

NOTE: Section 1001 of Title 18 of the U. S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

OFFICE USE ONLY:

Date Received: _____ Calculations: _____

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

UNIT # «buildingnumber» -
«unitnumber»

CHILD SUPPORT/SPOUSAL SUPPORT VERIFICATION

Agency Name «verifyingrecipient»

Address «recipientaddressline1» «recipientaddressline2» «recipientaddresscity», «recipientaddressstate» «recipientaddresszipcode»

Phone: «recipientphone» Fax: «recipientfax» Email: «recipientemail»

Obligator name_____ Case Number _____

Child (children) _____, _____

_____, _____

RE: «membername»_____ «memberssno»
Print Applicant/Resident Name Social Security Number

I hereby authorize release of the information requested below.

_____ _____
Signature of Applicant/Resident Date signed

The recipient named above has applied for an apartment governed by the Federal Tax Credit Program provided for under Section 42. The program requires verification of all income and asset sources of this person and also at annual recertifications. To determine whether this individual is within the guidelines of our program, we ask for your cooperation in completing the applicable information below. We hold this information in strict confidence for use only in determining the eligibility status of this individual. Your prompt return of this information by fax or in the enclosed envelope will be greatly appreciated.

_____
Management Agent

THIS SECTION TO BE COMPLETED BY AGENCY

Please fill in the blanks. Write N/A if not applicable.

Please complete the following. If the monies are based on a percentage of the payor's income, please indicate the average amount per period.

Type of BENEFITS	GROSS AMOUNT	FREQUENCY	DATE EXPIRES	Anticipated changes in next 12 months AMOUNT	EFFECTIVE DATE
☐ Child Support	$_____	_____	_____	$_____	_____
☐ Spousal support (alimony)	$_____	_____	_____	$_____	_____
☐ Other (list type)	$_____	_____	_____	$_____	_____

Are payments current? ☐ YES ☐ NO, date of last payment received_____

Are monies paid to offset an AFDC/TANF grant? ☐ YES ☐ NO

Comments _____

Representative Printed Name _____ Telephone # _____

Representative Position _____ E-Mail _____

Representative Signature _____ Date form completed _____

Fill in only if different from above:

Phone _____ Fax _____ E-mail _____

Address _____

NOTE: Section 1001 of Title 18 of the U. S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

OFFICE USE ONLY:

Date Received: _____ Calculations: _____

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

UNIT # «buildingnumber» - «unitnumber»

GENERAL INCOME VERIFICATION

Agency Name «verifyingrecipient»

Address «recipientaddressline1» «recipientaddressline2» «recipientaddresscity», «recipientaddressstate» «recipientaddresszipcode»

Phone: «recipientphone» Fax: «recipientfax» Email: «recipientemail»

RE: «membername» «memberssno»
Print Applicant/Resident Name Social Security Number

I hereby authorize release of the information requested below.

_____ _____
Signature of Applicant/Resident Date signed

The recipient named above has applied for an apartment governed by the Federal Tax Credit Program provided for under Section 42. The program requires verification of all income and asset sources of this person and also at annual recertifications. To determine whether this individual is within the guidelines of our program, we ask for your cooperation in completing the applicable information below. We hold this information in strict confidence for use only in determining the eligibility status of this individual. Your prompt return of this information by fax or in the enclosed envelope will be greatly appreciated.

_____
Management Agent

THIS SECTION TO BE COMPLETED BY AGENCY

Please fill in the blanks. Write N/A if not applicable.

Check the type(s) of assistance received, fill in the GROSS amount CURRENTLY received and frequency of the payments.

BENEFIT	GROSS AMOUNT	FREQUENCY	Anticipated changes in next 12 months AMOUNT	EFFECTIVE DATE
☐Pension, retirement benefits or Annuities:	$_____	_____	$_____	_____
Explain: _____				
☐Settlements received from Insurance, lawsuits, etc:	$_____	_____	$_____	_____
Explain: _____				
☐Regular gifts/contributions or Payments:	$_____	_____	$_____	_____
Explain: _____				
☐Lottery winnings, inheritance, Trust:	$_____	_____	$_____	_____
Explain: _____				
☐Other (list type)	$_____	_____	$_____	_____
Explain: _____				

Representative Printed Name _____ Telephone # _____

Representative Position _____ E-Mail _____

Representative Signature _____ Date form completed _____

Fill in only if different from above:

Phone _____ Fax _____ E-mail _____

Address _____

NOTE: Section 1001 of Title 18 of the U. S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

OFFICE USE ONLY:

Date Received: _____ Calculations: _____

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

UNIT # «buildingnumber» -
«unitnumber»

MILITARY VERIFICATION

Agency Name «verifyingrecipient»

Address «recipientaddressline1» «recipientaddressline2» «recipientaddresscity», «recipientaddressstate» «recipientaddresszipcode»

Phone: «recipientphone» Fax: «recipientfax» Email: «recipientemail»

RE: «membername» «memberssno»
Print Applicant/Resident Name Social Security Number

I hereby authorize release of the information requested below.

_____ _____
Signature of Applicant/Resident Date signed

The recipient named above has applied for an apartment governed by the Federal Tax Credit Program provided for under Section 42. The program requires verification of all income and asset sources of this person and also at annual recertifications. To determine whether this individual is within the guidelines of our program, we ask for your cooperation in completing the applicable information below. We hold this information in strict confidence for use only in determining the eligibility status of this individual. Your prompt return of this information by fax or in the enclosed envelope will be greatly appreciated.

_____
Management Agent

THIS SECTION TO BE COMPLETED BY AGENCY

Please fill in the blanks. Write N/A if not applicable.

Check the type(s) of assistance received, fill in the GROSS amount CURRENTLY received and frequency of the payments.

BENEFIT TYPE	GROSS AMOUNT	FREQUENCY	Anticipated changes in next 12 months AMOUNT	EFFECTIVE DATE
☐ Base pay and longevity pay	$_____	_____	$_____	_____
☐ Proficiency pay	$_____	_____	$_____	_____
☐ Hazardous duty pay	$_____	_____	$_____	_____
☐ Imminent danger pay	$_____	_____	$_____	_____
☐ Sea & foreign duty pay	$_____	_____	$_____	_____
☐ Government portion of Quarter's allowance	$_____	_____	$_____	_____
☐ Subsistence allowance	$_____	_____	$_____	_____
☐ Veteran's benefits	$_____	_____	$_____	_____
☐ Other (list type) _____	$_____	_____	$_____	_____
☐ Number of dependents_____	$_____	_____	$_____	_____

Representative Printed Name_____ Telephone #_____

Representative Position_____ E-Mail _____

Representative Signature_____ Date form completed_____
Fill in only if different from above:

Phone _____ Fax _____ E-mail _____

Address _____

NOTE: Section 1001 of Title 18 of the U. S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

OFFICE USE ONLY:

Date Received: _____ Calculations: _____

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT 7

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

MOVE IN CHECKLIST

Angela's House

Resident:

Move-In Date:

ITEM	COMPLETED	COMMENTS
Emergency Contact form		
Application		
Landlord References		
Home Visit		
Credit & Criminal Check		
Registered sex offender check		
Non-Student Affidavit		
Race & Ethnicity form		
VAWA – Notification of Occupancy Rights		Given to Resident
Renters Insurance Memo		Given to Resident
Resident Code of Conduct		Given to Resident
Move-In Checklist		
Photo ID, SS card & Birth certificate		
Lease		
Rules & Regulations		
Pet Rules		
Low Income Lease Rider		
Acknowledgement of Terms - HOME Assisted Rental Housing– Holy Family only		
Lead paint Disclosure (If applicable)		
VAWA Addendum		
Tenants Right and Obligations		
Appendix A		
TIC		
Certification Worksheet		
Completed third party verification forms		
Asset disposed of Declaration		
W-9		
Copy of 1st month's rent and security deposit		
Move-out Charges		
Cable agreement		
Approval letter		
Top list letter		
Waitlist letter		
Move-in inspection		

Signature: _____ Date: _____

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT 8

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

FY 2020 Income Limits Summary

Effective: 4/1/2020

Income Limit Area	Income Limit Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
	Income Limit (Section 8 and Tax Credit)								
Erie & Niagara Countys	Extremely Low (30%) Income Limits	$16,350	$18,650	$21,720	$26,200	$30,680	$35,160	$39,640	$44,120
	Very Low (50%) Income Limits	$27,200	$31,050	$34,950	$38,800	$41,950	$45,050	$48,150	$51,250
$ 77,600	60 Percent Income Limits	$32,640	$37,260	$41,940	$46,560	$50,340	$54,060	$57,780	$61,500
	90 Percent Income Limits	$48,960	$55,890	$62,910	$69,840	$75,510	$81,090	$86,670	$92,250

The Final FY 2020 Erie County FMRs for All Bedroom Sizes

	Efficiency	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom
FMR	*$674*	*$703*	*$843*	*$1,051*	*$1,190*
LOW HOME RENTS	$641.00	$660.00	$799.00	$971.00	$1,083.00

FY 2020 Erie County Tax Credit Max Rents

	Efficiency	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom
50%	*$680*	*$728*	*$873*	*$1,009*	*$1,126*
60%	*$816*	*$873*	*$1,048*	*$1,211*	*$1,351*
80%	*$1,087*	*$1,165*	*$1,397*	*$1,614*	*$1,801*

Gross Rent (tenant rent payment plus utility allowance) for LIHC units may not

Line	Item		
1	Number of Bedrooms		4
2	Person Assumption Per Room		1.5
3	Numbers of Persons		6
4	Number of Persons for Lower Lir		6
5	**Applicable Income Limit**	**$**	**37,100.00**
6	Number of Persons for Upper Lir		6
7	**Applicable Income Limit**	**$**	**37,100.00**
8	Total (Lines 5 + 7)	$	74,200.00
9	Applicable Income Limit for 6 Per	$	37,100.00
10	**60% of Median Income Limits (4**	**$**	**44,520.00**
11	30% of Annual Income (Line 10 *	$	13,356.00
12	**Maximum Monthly Restricted R**	**$**	**1,113.00**

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Buffalo-Niagara Falls, NY	1 PERSON	2 PERSON	3 PERSON	4 PERSON
FY 2013 MFI:			63900	
30% of Median	13450	15350	17250	19150
VERY LOW INCOME	22400	25600	28800	31950
60% of MEDIAN	26880	30720	34560	38340
LOW-INCOME	35800	40900	46000	51100

Genesee County, NY	1 PERSON	2 PERSON	3 PERSON	4 PERSON
FY 2013 MFI:			65300	
30% of Median	13750	15700	17650	19600
VERY LOW INCOME	22900	26150	29400	32650
LOW-INCOME	36600	41800	47050	52250

	Efficiency	One-Bedroom	Two-Bedroom	Three-Bedroom
	557	591	736	941

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

5 PERSON	6 PERSON	7 PERSON	8 PERSON
20700	22250	23750	25300
34550	37100	39650	42200
41460	44520	47580	50640
55200	59300	63400	67500

5 PERSON	6 PERSON	7 PERSON	8 PERSON
21200	22750	24350	5900
35300	37900	40500	43100
56450	60650	64800	69000

Four-Bedroom

1065

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

STATE: NEW YORK ----------I N C O M E L I M I T S----------
PROGRAM 1 PERSON 2 PERSON 3 PERSON 4 PERSON 5 PERSON 6 PERSON 7 PERSON 8 PERSON
Buffalo-Niagara Falls, NY MSA

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT 9

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Cheektowaga, County of Erie and State of New York, being part of Lot 33, Township 11, Range 7 of the Holland Land Company Survey (so-called), bounded and described as follows:

BEGINNING AT A POINT on the west line of Lot 33 at a distance of 51.87 feet northerly measured along the west line of said Lot 33 from its intersection with the north line of Doat Street; said west line of Lot 33 being also the west line of the Town of Cheektowaga and the east line of the City of Buffalo;

RUNNING THENCE: Northerly, along the west line of Lot 33 and the division line between the Town of Cheektowaga and the City of Buffalo, a distance of 615.61 feet to a point;

RUNNING THENCE: Easterly, at an interior angle of 90°-09'-00" with the last described line, a distance of 173.24 feet to a point;

RUNNING THENCE: Southerly, at an interior angle of 89°-49'-30" with the last described line, a distance of 345.81 feet to a point;

RUNNING THENCE: Easterly, at an interior angle of 270°-04'-49" with the last described line, a distance of 55.03 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 82.92 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 15.05 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 45.46 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 27.35 feet to a point;

RUNNING THENCE: Southerly, at an interior angle of 270°-50'-55" with the last described line, a distance of 226.24 feet to a point on the north line of Parcel No. 1 as shown on Map No. SK 219-14 for lands conveyed to the County of Erie for the reconstruction of Doat Street, C.R. No. 107 by deed recorded in the Erie County Clerk's Office in Liber 8039 of Deeds at Page 523;

RUNNING THENCE: Northwesterly, along the north line of Doat Street and along a non-tangent curve to the right having a radius of 1112.92 feet, a distance of 55.28 feet to a point of tangency;

RUNNING THENCE: Northwesterly, along the north line of Doat Street, a distance of 99.30 feet to an angle point;

RUNNING THENCE: Northwesterly, along the north line of Doat Street, at an interior angle of 170°-16'-55" with the last described line, a distance of 3.16 feet to a point;

RUNNING THENCE: Northerly, at an exterior angle of 69°-55'-38" with the last described line, a distance of 56.82 feet to a point;

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 34.15 feet to the POINT OR PLACE OF BEGINNING, containing 2.893 Acres, be the same, more or less.

SUBJECT to easements, rights of way and restrictions or record.

BEING AND INTENDED TO BE a portion of lands conveyed to Felician Sisters of North America Real Estate Trust by deed recorded in the Erie County Clerk's Office in Liber 11182 of Deeds at Page 7392.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Exhibit G

[INTENTIONALLY OMITTED]

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Exhibit H

PROJECTIONS

[Attached]

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Summary of Project Information

Instructions: Do not add/delete rows or columns, move data fields or change descriptions in HTCPro workbook tabs. These changes affect the ability to upload data to Salesforce.

Project ID# 39357

FINAL

3/31/21 10:46 AM

Project Location

		LLC or LP?
Legal Name:	Angela's House LLC	LLC
Project Name:	Angela's House	
Project Address:	600 Doat Street	
City:	Cheektowaga	
County:	Erie	
State:	NY	
Zip:	14211	
HUD Statistical Area:	Buffalo-Cheektowaga-Niagara	Get HUD Data
Very Low (50%) Income (Family of Four):	$38,800	$77,600
	2015	2016	2017	2018	2019	2020
Historical AMI:	$69,000	$67,300	$68,200	$74,700	$76,900	$77,600

2020

Site/Building Information

Size of Site (acres):	2.30	Novogradac LT AMI trend (%)	2.5%
Number of Buildings in Project:	1	Computed 5 yr AMI trend (%)	2.4%
Year Built (Existing Buildings Only)	1980		
Number of Sites\Properties	1		

Timing Assumptions

	DATE
Partnership Closing Date	March 31, 2021
Construction Start Date	April 5, 2021
Acquisition Placed in Service Date	
Date First Building Placed in Service	August 31, 2022
Construction Completion Date	August 31, 2022
Qualified Occupancy (100% of Tax Credit Units)	March 31, 2023
Permanent Finance Start Date	October 1, 2022
Months during Construction	17
Months during Lease Up	8
Disposition Year	2038

Sponsor Name

CB Emmanuel

Ownership Assumptions

	Inv. Mem.	For Profit MM/AM	Non Profit MM/AM
Percentage Ownership Interest	99.990%	0.01%	0.000%
Share of Project Cash Flow	99.990%	0.01%	0.000%
Share of Capital Proceeds at Sale	10.000%	90.00%	0.000%
Investor Income Tax Rate:	21.00%	Notes:	
Gross Income Allocation		90.000%	0.000%

Related Party Seller? No

LP gets 99.99% of everything thru historic recapture period

Depreciation Assumptions

Is FP GP a For-Profit Subsidiary of a Non-Profit?	Yes	
Will a 168 (h) (6) Election be made?	Yes	
Is there a Commercial Depreciation Override?	No	
Will there be a Building by Building Override?	No	
Will there be Soft Cost Allocation?	No	
Depreciable Life of Building	30.0	Years
Depreciable Life of Furniture, Fixtures, Equipment	5	Years
Depreciable Life of Site Work	15	Years
Will there be Bonus Depreciation?	Yes	

Assumptions Affecting CF Calculations

Is the property manager an affiliate of the GP?	Yes
nt of LP net cash flow to be distributed	100%

e Author Susan Grossman

Project ID 39357

\123data\Final Numbers\M&T 3.FIN\Angela's House\[Angela's House FINAL.xlsm]Info

HTCPro version 5.5b

Project Description

Project Location:	Suburban		
Construction Type:	Substantial Rehab		
For Constr type: Moderate/Substantial Rehab	Occupied?	No	
For Construction type Mixed:	# Of New units:	# Of Rehab units:	No. of Stories
Property Type:	Mid-rise Apartment Building(s) (3-6 Floors)		6
Property Type:			
Property Type - Specify if Other:			
Property Type - Specify if Other:			
Scattered Site	No		

Population Served (Check ONLY if applicable):

- ☐ Family
- ☑ Senior
- ☐ Native American

Frail Elderly

Special Needs Type (if Applicable):	# Units	% Units			
	21	31%	Homeless	Others	
		0%			
		0%			
		0%			
		0%			

Deal Financing Type (check only if applicable)

- ☐ Bond Deal
- ☐ HOPE VI
- ☐ RAD
- ☐ Rural Development
- ☐ Federally Financed (Other)
- ☑ Project Based Section 8
- ☐ ACC

Tax Credit Information

	Check all that apply	Term (Yrs)	Tax Credit Rate	Credit Allocation Year 1	Credit Allocation Year 2	Credit Allocation Year 3
				2021		
Federal Acquisition Tax Credits (4%)	☐	10				
Federal Constr/Rehab Credits (9% or 4%)	☑	10	9.00%	979,268		
Fed Historic Tax Credits (Listed on Natl Registe)	☑	5	20.00%	3,885,285		
State Low Income Tax Credits	☐					
State Historic Tax Credit	☑	1	20.00%	3,885,285		
Other State Credit (Specify)	☐					
Other State Credit (Specify)	☐					
Other Fed Credit (Specify)	☐					
Other Fed Credit (Specify)	☐					
Third Party -Bifurcate Federal and State Investor	☐					

Notes: Notes: Multiple year allocations

Basis Boost rate: Is Project located in a: % of project eligible 100.00%

If in a DDA/QCT, Basis Boost Rate (100%-130%):

If % of project eligible for Basis boost is less than 100%, please explain here:

Have Tax Credits Been Allocated to the Project?	Yes			
Federal Tax Credit Status	Reservation			
Lock-in Date for Tax Credit %	Not Lockec	Year:		
TC Minimum Set Aside Election:	40%/60%			Source of Income (or Rent) Restriction
Additional Income Restrictions:	31%	at	30%	TC Reservation
Additional Income Restrictions:	43%	at	50%	TC Reservation
Additional Income Restrictions:	0%	at	0%	TC Reservation
Additional Income Restrictions:	0%	at	0%	
Additional Income Restrictions:	0%	at	0%	
LIHTC Resyndication?	Choose One:			

FINAL

Rental Income Assumptions and Applicable Fraction

Project ID# 39357 — 3/31/21 10:46 AM

Project Name: Angela's House

Notes:
Sponsor's vacancy 5% as per HCR requirement
Market rates from market study 12/9/2019, trending one year forward.

Residential Rental Income Assumptions

Unit Information							Rent and Income Targeting						Affordability and Marketability Analysis						Total
Unit Description	No. of BRs	No. of Baths	Average Unit Sq. Ft.	No. of Units	Tax Credit Unit Check if Yes	Rent Subsidy Check if Yes	Max. Tenant Income Limit (% AMI)	Max. Income Target for Rent (% AMI)	Utility Allow-ance	Maximum Contract Rent	Actual Contract Rent	Market Rents	Contract Rent % Below Market	Contract Rent per Sq. Foot	Maximum Tenant Rent Burden %	Minimum Tenant Income	Maximum Tenant Income	Gross Rent Affordability (% AMI)	Contract Rent % Below Max TC Rent	Total Annual Rental Income
BR - 30% AMI - ESSHI	1	1.0	650	21	☑	☑	30%	30%	0	437	721	893	19%	$1.11	40%	21,630	17,460	50%	-65%	181,692
BR - 50% AMI	1	1.0	650	27	☑	☐	50%	50%	0	728	596	893	33%	$0.92	40%	17,880	29,100	41%	18%	193,104
BR - 60% AMI	1	1.0	650	17	☑	☐	60%	60%	0	873	730	893	18%	$1.12	40%	21,900	34,920	50%	16%	148,920
BR - 50% AMI	2	1.0	850	2	☑	☐	50%	50%	0	873	730	969	25%	$0.86	40%	21,900	34,920	42%	16%	17,520
					☐	☐								-	40%	-	-			-

Detailed Schedule of Rents and Tax Credits During Lease-Up

Project ID# 39357 3/31/21 10:46 AM

Project Name: Angela's House **Number of Buildings in Project:** 1

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Date 1st Bldg Available for Occupancy:	08/31/22	Const Completion Date:	08/31/22
Projected First Credit Delivery Date	01/01/23	Projected Stabilization Date	6/1/2023
Qualified Occupancy(100% of Tax	03/31/23		

Month	Tax Credit Units Leased	Cumulative Tax Credit Units Leased	Non Tax Credit Units Leased	Cumulative Non-tax Credit Units Leased	Total Units Leased	Tax Credit Rental Income	Non-tax Credit Rental Income	Total Rental Income	Tax Credit Unit Delivery	NC/rehab Tax Credits 9% or 4%	Acquisition Tax Credits 4%	Total Tax Credits
Total Number of Units	67		0									
Year: 2022										1,218	0	1,218
January-22	N/A	N/A	N/A	N/A	**0**	0	0	**0**	N/A	0	0	0
February-22	N/A	N/A	N/A	N/A	**0**	0	0	**0**	N/A	0	0	0
March-22	N/A	N/A	N/A	N/A	**0**	0	0	**0**	N/A	0	0	0
April-22	N/A	N/A	N/A	N/A	**0**	0	0	**0**	N/A	0	0	0
May-22	N/A	N/A	N/A	N/A	**0**	0	0	**0**	N/A	0	0	0
June-22	N/A	N/A	N/A	N/A	**0**	0	0	**0**	N/A	0	0	0
July-22	N/A	N/A	N/A	N/A	**0**	0	0	**0**	N/A	0	0	0
August-22	0	0	-	0	**0**	0	0	**0**	0	0	0	0
September-22	2	2	-	0	**2**	1,346	0	**1,346**	0	0	0	0
October-22	11	13	-	0	**13**	8,751	0	**8,751**	0	0	0	0
November-22	11	24	-	0	**24**	16,156	0	**16,156**	0	0	0	0
December-22	11	35	-	0	**35**	23,561	0	**23,561**	0	0	0	0
First Year TOTALS					**35**	**49,815**	0	**49,815**		**0**	**0**	**0**
								Credits without Excess Basis		**0**	**0**	**0**
Year: 2023				1st year Credits Using Excess Basis?			No	Notes:				
January-23	11	46	0	0	**46**	30,966	0	**30,966**	46	56,028	0	56,028
February-23	11	57	0	0	**57**	38,371	0	**38,371**	57	69,426	0	69,426
March-23	10	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
April-23	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
May-23	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
June-23	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
July-23	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
August-23	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
September-23	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
October-23	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
November-23	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
December-23	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
Second Year TOTALS					**67**	**520,367**	**0**	520,367		**979,268**	**0**	**979,268**
								Credits without Excess Basis		**941,510**	**0**	**941,510**
Year: 2024				1st year Credits Using Excess Basis?			Yes	Notes:				
January-24	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
February-24	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
March-24	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
April-24	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
May-24	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
June-24	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
July-24	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
August-24	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
September-24	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
October-24	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
November-24	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
December-24	0	67	0	0	**67**	45,103	0	**45,103**	67	81,606	0	81,606
Third Year TOTALS					**67**	**541,236**	**0**	541,236		**979,268**	**0**	**979,268**
				1st year Credits Using Excess Basis?			No	Credits without Excess Basis		**979,268**	**0**	**979,268**

Operating Expense and Fee Assumptions

Project ID# 39357 — 3/31/21 10:46 AM

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Project Name: Angela's House

Base Year for Expenses: 2022

Professional Fees	Amount	Per Unit	Inflator
Legal Expenses (Project)	1,500	22	
Audit Expense (Project)	8,000	119	
Bookkeeping Fees/Account Services	500	7	
Other Professional Fees	-	-	
Total Professional Fees	**$10,000**	149	3.00%

Administrative Expenses	Amount	Per Unit	Inflator
Advertising & Marketing	6,000	90	
Other Renting Expense	-	-	
Manager or Superintendent Salaries-PR	28,000	418	
Office Salaries-PR	-	-	
Administrative Free Rent-PR	-	-	
Payroll Taxes and Benefits-PR	29,500	440	
Office Supplies/Expenses	12,000	179	
Office or Model apartment Rent	-	-	
Management Consultants	-	-	
Telephone and Answering Service	-	-	
Miscellaneous Administrative Expenses	1,700	25	
Total Administrative	**$77,200**	1,152	3.00%

Utilities	Amount	Per Unit	Inflator
Fuel Oil / Heating	-	-	
Electricity	65,602	979	
Gas	36,863	550	
Water/Sewer	18,807	281	
Other Utilities	-	-	
Total Utilities	**$121,272**	1,810	3.00%

Repairs and Maintenance	Amount	Per Unit	Inflator
Janitor and Cleaning Contracts	-	-	
Decorating Contracts	-	-	
Elevator Maintenance Contracts	9,900	148	
Exterminating Contracts	1,675	25	
Grounds Contracts (incl. swimming pool)	6,718	100	
Repair Contracts	20,000	299	
Garbage and Trash Removal	7,282	109	
Snow Removal	3,500	52	
Heating/Cooling Repairs and Maintenance	4,782	71	
Cleaning, Grounds, Maintenance-PR	55,000	821	
Operating and Maintenance Free Rent-PR	-	-	
Security Payroll-PR	-	-	
ity Contracts	5,000	75	
ity Free Rent-PR	-	-	
r Material and Supplies	8,324	124	
le & Maint. Equipment Oper. and Rep.	-	-	
nunity Center Expense	-	-	
Repair & Maintenance Expense	2,500	37	
al Repairs and Maint.	**$124,681**	1,861	3.00%

Taxes and Insurance	Amount	Per Unit	Inflator
Real Estate Taxes	32,306	482	
Less:Abated Taxes	(4,765)	(71)	
Net Real Estate Taxes	**$27,541**	411	3.00%
Property and Liability Insurance	33,400	499	
Fidelity Bond Insurance	1,200	18	
Other Insurance	-	-	
Miscellaneous Taxes, Licenses and Permits	-	-	
Total Other Taxes, Licenses & Permits & Insurance	**$34,600**	516	3.00%
Total Taxes and Insurance	**$62,141**	927	

Property Management Fee	Percent	Amount	PUPY	Inflator	PUPM
Method for calculating Residential PM Fee:		% of EGI			
% of EGI	5.56%	28,449	425		$35.38
Fee PUPM					
Annual Fee					
Commercial Property Management Fee	0.00%	-	-		
Total Property Management Fee		**$28,449**	425	2.00%	

Other Miscellaneous Expenses	Amount	Per Unit	Inflator
Ground Rent	-	-	
Compliance Monitoring	3,530	53	
Services Expenses	-	-	
Other Misc. Expenses	-	-	
Total Misc.Expenses	**$3,530**	53	3.00%

Total Operating Expenses	**$427,273**	6,377
Total Net of Real Estate Taxes	399,732	5,966
Total Net of Real Estate Taxes and Misc Expenses	396,202	5,913

Notes:

Annual Contributions To Reserves	Per Unit Per Annum	Total Per Annum	Inflator
Replacement Reserve	300	20,100	3%
Operating Reserve		0	3%
Other Reserve (specify)		0	3%
Other Reserve (specify)		0	3%

Total Operating Expenses (including Annual Contributions to Reserves)	Total	Per Unit
	447,373	6,677

Cash Flow Contingent Fees, Expenses and Distributions		Amount	Annual Inflator	Accrue	Cap Amount	% Available Cash Flow
Investor Services Fee		5,000	3.0%	Yes		100%
Partnership Administration Fee	3.9% of EGI	20,000	3.0%	Yes		100%
Tenant Services Fee			3.0%	Yes		100%
2nd operating reserve						100%

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Uses of Funds - Project Development Budget

2.45% Project ID# 39357 3/31/21 10:46

Project Name: Angela's House **Sources-Uses Surplus/(Gap):** 0 1.95% of hard costs in bas

Cost Item					Total	Residential Cost Per Unit	Residential Percent of Total	Tax Treatment of Assets: Depreciable	Non Depreciable	Amortized	Expensed	OK ?	Allocation of Depreciable Basis: Residential Acquisition	Residential Rehab / New Construction	Commercial Acquisition	Commercial Rehab / New Construction	OK?	Historic Credit Basis: Residential Historic Eligible %=	Commercial 100.00%
															Commercial %=	0.00%		Commercial %=	0.00%
A. ACQUISITION COSTS		PREPAID LAND LEASE Land Lease?	Choose:																
Purchase Price: Land	Total Cost Land/Build	Notes: Ground le	% Land =	10.0%	20,000	299	0.1%		20,000										
Purchase Price: Buildings			% Commercial =	0	180,000	2,687	0.8%	180,000					180,000		-				
Title Insurance, Recording, Closing Costs						-		-	-				-		-				
Acquisition Legal Fees						-		-	-				-		-				
Demolition: Razing of Buildings						-			-										
Holding Costs						-		-	-				-		-				
Other Acq (Specify:)						-		-	-				-		-				
TOTAL ACQUISITION COSTS					$200,000	2,985	0.9%	180,000	20,000	-	-		180,000		-				
B. CONSTRUCTION / REHABILITATION COSTS																			
Site Work: Off-Site/Non-Depreciable					224,330	3,348	1.0%		224,330										
Site Work: On-Site Improvements-15 Year Property					554,860	8,281	2.4%	554,860						554,860		-			
Demolition: Interior					941,966	14,059	4.1%	934,466	7,500					934,466		-		934,466	-
New Construction: Residential		Notes:				-		-						-					
New Construction: Commercial						-		-								-			
Rehabilitation: Residential		15,234,456 Contract Amount			10,626,756	158,608	46.3%	10,626,756						10,626,756				10,626,756	
Rehabilitation: Commercial		80,000 Furniture & Maintenance equip				-		-								-			-
General Requirements		1,351,916 Contingency			1,123,342	16,766	4.9%	1,095,873	27,469					1,095,873		-		1,046,469	-
Contractor Overhead		16,666,372 TOTAL			293,048	4,374	1.3%	285,882	7,166					285,882		-		272,994	-
Contractor Profit					298,909	4,461	1.3%	291,600	7,309					291,600		-		278,454	-
Payment & Performance Bond					124,000	1,851	0.5%	120,968	3,032					120,968		-		115,514	-
Appliances			% Comm =	0.0%		-		-						-		-			
Furniture, Fixtures and Equipment			% Comm =	0.0%	409,714	6,115	1.8%	402,714	7,000					402,714		-			
Other Constr. (specify):	Sales Tax		% Comm =	0.0%	579,372	8,647	2.5%	-	579,372					-		-		-	-
Other Constr. (specify):	GC Insurance		% Comm =	0.0%	138,158	2,062	0.6%	134,780	3,378					134,780		-		128,704	-
Contractors Contingency						-		-						-		-		-	-
Construction Contingency			% of construction:	8.83%	1,351,916	20,178	5.9%	953,620	398,296					953,620		-		953,620	-
TOTAL CONSTRUCTION COSTS				179,530	$16,666,371	248,752	72.7%	15,401,519	1,264,852	-	-			15,401,519		-		14,356,977	-
C. PROFESSIONAL FEES & OTHER SOFT COSTS																			
Architect Design			% of Construction $	5.8%	x 973,000	14,522	4.2%	973,000						973,000		-		973,000	-
Architect Supervision			% of Construction $	0.0%		-		-						-		-		-	-
Engineering						-		-						-		-		-	-
Geotechnical/Soils Engineering					x 5,000	75	0.0%	5,000						5,000		-		5,000	-
Environmental Site Assessment					x 65,000	970	0.3%	65,000						65,000		-		65,000	-
Survey (Boundary/Topo/As-Built)					x 12,000	179	0.1%	6,000	6,000					6,000		-		6,000	-
Building Permits					x 108,000	1,612	0.5%	108,000						108,000		-		108,000	-
Utility Tap Fees					x 35,000	522	0.2%	-	35,000					-		-		-	-
Impact Fees						-		-						-		-		-	-
Hazard & Liability Insurance (Construction Period)					x 134,864	2,013	0.6%	134,864						134,864		-		134,864	-
Real Estate Taxes/ Fees					x 85,208	1,272	0.4%	69,355			15,853			69,355		-		69,355	-
Market Study					x 7,500	112	0.0%	-	7,500					-		-		-	-
Appraisal					x 6,000	90	0.0%	3,000	3,000					3,000		-		3,000	-
Accounting/Audit					x 25,000	373	0.1%	-	25,000					-		-		-	-
Cost Certification						-		-						-		-		-	-
Legal Fees: Real Estate (Developer)					x 150,000	2,239	0.7%	112,500	37,500					112,500		-		112,500	-
evelopment Consultant Fees						-		-						-		-		-	-
onstruction Management Fees						-		-						-		-		-	-
eveloper Fees			% of total less dev fee	13.15%	x 2,664,872	39,774	11.6%	2,664,872	-	0			-	2,664,872		-		2,664,872	-
eveloper Overhead			% of total less dev fee	0.00%		-		-						-		-		-	-
ft Cost Contingency			% of soft costs:	5.90%	x 113,593	1,695	0.5%	56,825	-	56,769				56,825		-		56,825	
her Soft Cost (specify):	Planning fees				x 36,000	537	0.2%	36,000						36,000		-		36,000	-
her Soft Cost (specify):	energy consultant				x 58,258	870	0.3%	58,258						58,258		-		58,258	-
her Soft Cost (specify):	HTC consultant				x 50,000	746	0.2%	50,000						50,000		-		50,000	-
her Sof																			
TOTAL																			

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Cost Item					Total	Residential Cost Per Unit	Residential Percent of Total	Tax Treatment of Assets: Depreciable	Non Depreciable	Amortized	Expensed	OK ?	Allocation of Depreciable Basis: Residential Acquisition	Residential Rehab / New Construction	Commercial Acquisition	Commercial Rehab / New Construction	OK?	Historic Credit Basis: Residential Historic Eligible %=	Commercial 100.00%
															Commercial %=	0.00%		Commercial %=	0.00%
D. FINANCING COSTS																			
Construction Loan Only (CL)																			
Loan Points/Fees: CL		Choose one:		62%	122,203	1,824	0.5%	75,933			46,270			75,933		-		75,933	-
Loan Inspections: CL		Choose one:			35,994	537	0.2%	35,994						35,994		-		35,994	-
Loan Title & Recording: CL		Choose one:		125,000	62,500	933	0.3%	38,836			23,664			38,836		-		38,836	-
Loan Legal (Bank): CL		Choose one:			47,500	709	0.2%	29,515			17,985			29,515		-		29,515	-
Loan Interest: CL	266 Election?	No	depreciable =	62% x	582,205	8,690	2.5%	361,765	145,551		74,889			361,765		-		361,765	-
Other Loan Cost:		Lender other fees (3rd parties, etc.)			15,000	224	0.1%	9,321			5,679			9,321		-		9,321	-
Bridge/Interim Loan Costs						-		-						-		-		-	-
Permanent Only or Construction/Perm (CL/PL)				% Depreciable															
Loan Points/Fees: CL/PL		Choose one:		0%		-		-		-	-			-		-		-	-
Loan Inspections: CL/PL		Choose one:		0%		-		-		-				-		-		-	-
Loan Mortgage Insurance (MIP)		Choose one:		0%		-		-		-				-		-		-	-
Loan Title & Recording: CL/PL		Choose one:		0%	62,500	933	0.3%	-		62,500	-			-		-		-	-
Loan Legal (Bank): CL/PL		Choose one:		0%		-		-		-	-			-		-		-	-
Loan Interest: CL/PL	266 Election?	No		0%		-		-		-	-			-		-		-	-
Loan Legal (Developer)				0%		-		-		-	-			-		-		-	-
Cost of Issuance (Bonds)				94%		-		-		-	-			-		-		-	-
FHA Fees				0%		-		-		-				-		-		-	-
Ginnie Mae Fees				0%		-		-		-				-		-		-	-
Letter of Credit Fees				0%		-		-		-				-		-		-	-
Credit Report				0%		-		-		-				-		-		-	-
Negative Arbitrage						-					-			-		-		-	-
Other Loan Cost:				0%	0	-		-		-				-		-		-	-
Other Loan Cost:				0%		-		-		-				-		-		-	-
						-													
TOTAL FINANCING COSTS					$927,902	13,849	4.0%	551,363	145,551	62,500	168,488			551,363		-		551,363	-
E. TAX CREDIT & SYNDICATION COSTS																			
Tax Credit Application and Allocation Fees					81,341	1,214	0.4%			81,341									
Tax Credit Monitoring Fees					1,000	15	0.0%			1,000									
Legal/Organizational Fees (Developer)			% Amortized =	0%		-			-	-				-		-		-	-
Legal Fees (Investor)	% Amortized=>		% Amortized =	50%	45,000	672	0.2%		22,500	22,500									
Tax Credit Consultant			% Amortized =	0%		-			-	-									
Other Syndication Costs:			% Amortized =	0%		-			-	-									
TOTAL TAX CREDIT & SYNDICATION COSTS					$127,341	1,901	0.6%	-	22,500	104,841	-			-		-			
F. START-UP COSTS, RESERVES & ESCROWS																			
Leasing/Marketing Expenses					36,000	537	0.2%			36,000									
Tenant Relocation (Basis Eligible)						-		-						-				-	
Tenant Relocation (Non Basis Eligible)			% Amortized =	0%		-			-	-				-		-			
Escrows & Prepaids						-			-										
Rent Up Reserve				x	151,413	2,260	0.7%		151,413										
Operating Reserves (Capitalized)		No. Months OpExp, RR, Must Pay D		2.97 x	115,715	1,727	0.5%		115,715										
Replacement Reserve (Capitalized)						-			-										
Other Reserve:						-			-										
Other Reserve:						-			-										
TOTAL START UP COSTS, RESERVES & ESCROWS					$303,128	4,524	1.3%	-	267,128	36,000	-			-		-			
TAL USES OF FUNDS					$22,929,450	342,231	100.0%	20,650,969	1,834,032	260,110	184,340		180,000	20,470,969	0	0		19,426,427	0

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Calculation of Tax Credits

Project ID# 39357 3/31/21 10:46 AM

Project Name: Angela's House

LIHTC Rehab/New Construction Credits

Total Development Costs		22,929,450
Less:		
Acquisition Costs		200,000
Non Depreciable (non-acquisition)		1,814,032
Amortized		260,110
Expensed		184,340
Commercial		0
Eligible Rehab/N.C. Basis		20,470,968
Less:		
Historic Tax Credits (Residential)		3,885,285
Federal Grants	0	
Other Ineligible Costs	0	
Net Eligible Rehab/N.C. Basis		16,585,683
Adjusted for:		
DDA/QCT Basis Boost		100.00%
Applicable Fraction		100.00%
Qualified Rehab/NC Basis		16,585,683
Tax Credit Rate		9.00%
Calculated Rehab/ NC Credit		**1,492,711**
Amount Projected/ Allocated		**979,268**
Annual Rehab/NC Tax Credit		**$979,268**
Number of Years of Annual Credit:		10
Total Rehab/NC Credits		**$9,792,680**
Unused Tax Credit Basis		5,704,927
Unused Tax Credits		0

Notes:

LIHTC Acquisition Credits

Total Acquisition Costs		200,000
Less:		
Land		20,000
Federal Grants	0	
Other Non-Eligible Costs		0
Eligible Acquisition Basis		180,000
Applicable Fraction		100.00%
Qualified Acquisition Basis		180,000
Tax Credit Rate		0.00%
Calculated Acquisition Credit		**0**
Amount Requested/Allocated		**0**
Annual Acquisition Tax Credit		**$0**
Number of Years of Annual Credit:		10
Total Acquisition Credits		**$0**
Unused Tax Credit Basis		0
Unused Tax Credits		0

CO, NY, UT, MO, HI or GA State Low Income Credits

State of CO, NY, UT,MO, HI or GA only		
Annual State Credit Amount		0
Number of Years of Annual Credit:		0
Total State Low Income Credits		**0**

Federal Historic Tax Credits

Total Costs Eligible for HTC	
Acquisition	Not Eligible
Residential Rehab/ NC	19,426,427
Commercial Rehab/ NC	0
Federal Historic Tax Credit Basis	19,426,427
HTC Rate	20.0%
Historic Tax Credit Amt.	**$3,885,285**

State Historic Tax Credits

Total Costs Eligible for HTC	
Acquisition	Not Eligible
Residential Rehab/ NC	19,426,427
Commercial Rehab/ NC	0
State Historic Tax Credit Basis	19,426,427
HTC Rate	20.0%
Calc. Historic Tax Credit Amt.	**3,885,285**
Amount Requested/Allocated	**3,885,285**
Annual Historic Tax Credit	**3,885,285**

CA State Low Income Credits only

State of CA only	
Calculated State Credit Amount	0
State Credits Allocated	0
Total CA Low Income Credits	**0**

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

FINAL

Sources of Funds - Limited Partner Equity

Project ID# 39357 3/31/21 10:46 AM

Project Name: Angela's House

Sources-Uses Surplus/(Gap): 0 2,412,587

State Equity: 2,835,975
% of Total Equity: 18.61%

Limited Partner Capital Contributions

	Total Credits		Credit Price (Cents/$)		Total LPEquity
LIHTC Acquisition Credits	0				
LIHTC Rehab/New Construction Credits	9,792,680				
Total LIHTC Credits	9,792,680	x	$0.910	=	$8,910,449
Federal Historic Tax Credits	3,885,285	x	$0.900	=	$3,496,408
State Historic Tax Credits	3,885,285	x	$0.730	=	$2,835,975
State Low-Income Housing Tax Credits	0	x		=	$0
Other Credits	0	x		=	$0
Total Limited Partner Equity			Round Total Equity To:	0	$15,242,832

Copy Cell: -

Timing Assumptions

	Date	Months
Partnership Closing Date	March 31, 2021	
Acquisition Placed in Service Date		
Construction Start Date	April 5, 2021	
Date First Building Placed in Service	August 31, 2022	17
Construction Completion Date	August 31, 2022	0
Qualified Occupancy (100% of Tax Credit Uni	March 31, 2023	
Permanent Finance Start Date	October 1, 2022	1
Months during Construction	17.0	18
Months during Lease Up	8.0	

Developer Fee

	Amount
Total Development Fee (and Overhead) Amt.	2,664,872
Less: Development Fee Pd from Equity	2,450,651
Less: Development Fee Pd from Other Sources	0
Development Fee Deferred and Paid From CF	214,221
Percentage of Deferred Fee to Total	8.0%

Notes:

Choose "Percentage ("P") or Amount ("A") method: P

Timing and Amount of LP Capital Contributions

2,088,996

Payment	Project Milestone		Date	Year	Amount	Percent	Cumulative
1	Admission		03/31/21		2,133,996	14.00%	14.00%
2	During Construction		04/01/21		2,591,281	17.00%	31.00%
3	Completion	Conversion	10/01/22		8,679,904	56.94%	87.94%
4	Stabilization / Conversion		07/01/23		857,651	5.63%	93.57%
5	Stabilization / Conversion		07/01/23		735,000	4.82%	98.39%
6	Tax Returns / 8609s		07/01/23		245,000	1.61%	100.00%
7							100.00%
8							100.00%
9							100.00%
10							100.00%
11							100.00%
12							100.00%
13							100.00%
14							100.00%
15							100.00%
TOTAL					$15,242,832		100.00%

Allocation of LP Capital Contributions

	Project Costs	Developer Fee and Overhead	Legal	Lease Up Reserve	Operating Reserve	Replacement Reserve	Other Reserve	Other Reserve	BL P&I	Total	% Dev Fee	% Dev Fee Cumulative
	12,631,466	2,450,651	45,000	0	115,715	0	0	0				
P	1,720,996	368,000	45,000							2,133,996	15.02%	15.02%
P	2,591,281									2,591,281	0.00%	15.02%
P	8,319,189	245,000			115,715					8,679,904	10.00%	25.01%
P	-	857,651								857,651	35.00%	60.01%
P	-	735,000								735,000	29.99%	90.00%
P	-	245,000								245,000	10.00%	100.00%
P	-									0	0.00%	100.00%
P	-									0	0.00%	100.00%
P	-									0	0.00%	100.00%
P	-									0	0.00%	100.00%
P	-									0	0.00%	100.00%
P	-									0	0.00%	100.00%
P	-									0	0.00%	100.00%
P	-									0	0.00%	100.00%
P	-									0	0.00%	100.00%
	$12,631,466	$2,450,651	$45,000	$0	$115,715	$0	$0	$0		$15,242,832	100.00%	
Check:	0	0	0	0	0	0	0	0				

Construction Payments Schedule

2,591,281

Payment		Date	Amount	Cumulative	Percent
First		04/01/21		0	0.00%
Second		05/01/21		0	0.00%
Third		06/01/21		0	0.00%
Fourth	15%	07/01/21	863,760	863,760	33.33%
Fifth		08/01/21		863,760	0.00%
Sixth		09/01/21		863,760	0.00%
Seventh	30%	10/01/21	863,760	1,727,521	33.33%
Eight		11/01/21		1,727,521	0.00%
Ninth		12/01/21		1,727,521	0.00%
Tenth		01/01/22		1,727,521	0.00%
Eleventh		02/01/22		1,727,521	0.00%
Twelfth		03/01/22		1,727,521	0.00%
Thirteen	65%	04/01/22	863,760	2,591,281	33.33%
Fourteen		05/01/22		2,591,281	0.00%
Fifteen		06/01/22		2,591,281	0.00%
Sixteen		07/01/22		2,591,281	0.00%
Seventeen		08/01/22		2,591,281	0.00%
Eighteen		09/01/22		2,591,281	0.00%
Nineteen		10/01/22		2,591,281	0.00%
Twenty		11/01/22		2,591,281	0.00%
Twenty-one		12/01/22		2,591,281	0.00%
Twenty-two		01/01/23		2,591,281	0.00%
Twenty-three		02/01/23		2,591,281	0.00%
Twenty-four		03/01/23		2,591,281	0.00%
Total			2,591,281	2,591,281	100.00%

Quarterly Pay-in Schedule

Year	Quarter	Amount
2021	1	2,133,996
	2	0
	3	863,760
	4	863,760
2022	1	0
	2	863,760
	3	0
	4	8,679,904
2023	1	0
	2	0
	3	1,837,651
	4	0
2024	1	0
	2	0
	3	0
	4	0
2025	1	0
	2	0
	3	0
	4	0
2026	1	0
	2	0
	3	0
	4	0
		15,242,832

Quarterly Pay-in Schedule

Year	Quarter	Amount
2027	1	0
	2	0
	3	0
	4	0
2028	1	0
	2	0
	3	0
	4	0
2029	1	0
	2	0
	3	0
	4	0
2030	1	0
	2	0
	3	0
	4	0
2031	1	0
	2	0
	3	0
	4	0
2032	1	0
	2	0
	3	0
	4	0
		0

Quarterly Pay-in Schedule

Year	Quarter	Amount	
2033	1	0	0.056
	2	0	0.111
	3	0	0.167
	4	0	0.222
2034	1	0	0.278
	2	0	0.333
	3	0	0.389
	4	0	0.444
2035	1	0	0.500
	2	0	0.556
	3	0	0.611
	4	0	0.667
2036	1	0	0.722
	2	0	0.778
	3	0	0.833
	4	0	0.889
2037	1	0	0.944
	2	0	1.000
	3	0	
	4	0	
2038	1	0	
	2	0	
	3	0	
	4	0	
		0	

Sources of Funds - Summary of Project Debt Financing

Project ID# 39357 3/31/21 10:46 AM

Project Name: Angela's House

Sources-Uses Surplus/(Gap): 0

FINAL

Project Loan Information:

Co-first /M | Co-first | 8.0% DDF

	LOAN 1	LOAN 2	LOAN 3	LOAN 4	LOAN 5	LOAN 6	LOAN 7	LOAN 8
Notes:								
Important: Enter Loans in Lien Priority at Sale Lender Name	HCR SHOP	HHAP	HOME	NYSERDA Loan	Deferred Developer Fee			
Financing Source	Govt-State Other	Govt-State Other	Other	Other	Other			
Loan Amount:	3,420,167	3,692,030	300,000	60,200	214,221			
Interest Rate:	0.50%	0.00%	1.00%	0.00%	8.00%			
Mortgage Insurance Premium								
Fixed or Variable	Fixed	Fixed	Fixed	Fixed	Fixed	Fixed	Fixed	Fixed
Term (Years):	50	50	50	50	15			
Amortization	50	50	50	50	15			
Loan Type	Public Must Pay	Contingent	Public Must Pay	Contingent	Deferred Develop. Fee			
Loan Repayment Type	Interest Only	Cash Flow Contingent	Interest Only	Cash Flow Contingent	Cash Flow Contingent			
Loan First Payment Date:	10/1/2022	10/1/2022	10/1/2022	10/1/2022	10/1/2022	10/1/2022	10/1/2022	10/1/2022
No. of Months in First Year:	3	3	3	3	3	3	3	3
Monthly Payment	1,425	0	250	0	0	0	0	0
Annual Payment:	17,101	0	3,000	0	0	0	0	0
MIP Payment (1st Year):	0	0	0	0	0	0	0	0
Non-Recourse Loan?	Non-Recourse	Non-Recourse	Non-Recourse	Non-Recourse	Recourse	Non-Recourse	Non-Recourse	Non-Recourse
Related Party Loan?	Non-Related Party	Non-Related Party	Non-Related Party	Non-Related Party	Related Party	Non-Related Party	Non-Related Party	Non-Related Party
New or Assumed Seller Debt?								
Loan Restrictions								
HUD Deal/Conversion Required	☐	☐	☐	☐	☐	☐	☐	☐

[1] Bellwether Enterprise Real Estate Capital, LLC

CASH FLOW CONTINGENT LOAN OPTIONS (DO NOT COMPLETE CELLS BELOW FOR LOANS THAT ARE "MUST-PAY")

Percent of Cash Flow Available:	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Interest Rate Paid (if different)	0.00%	0.00%	1.00%	0.00%	8.00%	0.00%	0.00%	0.00%
Interest-Only or P&I	P&I	P&I	Interest-Only	P&I	P&I	P&I	P&I	P&I
Compound Interest-See Eff. Int. Calc. for Simple Int.	Compound	Compound	Compound	Compound	Compound	Compound	Compound	Compound
Fixed Payment:								
Accrued Interest During Construction:								
Comments:								
Loan Maturity Due Date	9/30/2072	9/30/2072	9/30/2072	9/30/2072	9/30/2037			

Construction Loan Information

	Bonds/Construction Loan #1 ☑	Construction Loan #2 ☐	Construction Loan #3 ☑
Lender Name:	Evans Bank	HHAP	HOME
Loan Amount:	12,100,000	3,692,030	300,000
Interest Rate:	3.50%	0.00%	0.00%
Rate is based on: (Libor + X bps, etc.)	Fixed	Fixed	Fixed
Term (Months)	24		24
Construction Loan Payoff Date (per draw schedule)	10/1/2022		10/1/2022
Maturity Date (per loan documents)	10/1/2023		4/1/2073
Allowable Extensions (in months)	6.0		0.0

	Construction Loan #4	Construction Loan #5	Construction Loan #6
Lender Name:	NYSERDA Loan		
Loan Amount:	60,200		
Interest Rate:	0.00%		

	Cash Flow Priority
1	Loan 1 - HCR SHOP
2	Loan 3 - HOME
3	Investor Services Fee
4	Loan 5 - Deferred Developer Fee
5	Partnership Administration Fee
6	Loan 2 - HHAP
7	Loan 4 - NYSERDA Loan
8	Gross Income Allocation to GP
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

Maximum Loan Calculator

FIRST MORTGAGE	
Net Operating Income =	64,294
Required DSCR =	1.15
Loan Interest Rate:	0.50%
Loan Amortization:	50
Max. Annual Payment	55,908
Max. Monthly Payment	4,659
Loan Amount:	2,472,912
SECOND MORTGAGE	
Required DSCR =	1.10
Loan Interest Rate:	1.00%
Loan Term:	30
Max. Annual Payment	2,541
Max. Monthly Payment	212
Loan Amount:	65,842

FINAL

Sources and Uses Summary

Project ID# 39357 3/31/21 10:46 AM

Project Name: Angela's House

Permanent Loan Sources						% of Total
Lender Name	**Int. rate**	**Term**	**Amortization**	**Amount**	**Amount/Unit**	**Dev Cost**
HCR SHOP	0.50%	50	50	3,420,167	51,047	15%
HHAP	0.00%	50	50	3,692,030	55,105	16%
HOME	1.00%	50	50	300,000	4,478	1%
NYSERDA Loan	0.00%	50	50	60,200	899	0%
Deferred Developer Fee	8.00%	15	15	214,221	3,197	1%
					0	
					0	
					0	
					0	
					0	
					0	
					0	
					0	

Notes:

Other Sources	Financing Source	Amount		
Sales tax abatment - equity portion	Other	0	0	0%
			0	
			0	
			0	
			0	
			0	
			0	
			0	

LIMITED PARTNER EQUITY	**15,242,832**	227,505	66%
TOTAL SOURCES OF FUNDS:	**22,929,450**	342,231	
TOTAL USES OF FUNDS:	**22,929,450**	342,231	
FUNDING SURPLUS/<GAP>	**0**	0	

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

FINAL

'roject Cash Flow

Project ID# 39357

3/31/21 10:46 AM

roject Name: Angela's House

		TC Yr #	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	0
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
		Year:	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039
ENTAL INCOME																				
ross Potential Rental Income - Tax Credit Units		102%	49,815	530,775	563,102	574,364	585,851	597,568	609,520	621,710	634,144	646,827	659,764	672,959	686,418	700,146	714,149	728,432	743,001	0
ross Potential Rental Income - Non-Tax Credit Units		102%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ross Potential Rental Income - Other (Specify)																				
otal Gross Potential Rental Income			49,815	530,775	563,102	574,364	585,851	597,568	609,520	621,710	634,144	646,827	659,764	672,959	686,418	700,146	714,149	728,432	743,001	0
ther Income - Residential		102%	2,083	5,100	5,202	5,306	5,412	5,520	5,631	5,743	5,858	5,975	6,095	6,217	6,341	6,468	6,597	6,729	6,864	0
Less Econ. Vac. Loss (Yrs 2-16)	Incl Line 10 Income? Y	6.33%	3,284	33,913	35,966	36,685	37,419	38,167	38,930	39,709	40,503	41,313	42,140	42,982	43,842	44,719	45,613	46,525	47,456	0
ross Potential Rental Income - Commercial		102%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less Econ. Vac. Loss (Yrs 2-16)		20.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ffective Gross Income			48,614	501,961	532,338	542,985	553,845	564,922	576,220	587,744	599,499	611,489	623,719	636,193	648,917	661,896	675,134	688,636	702,409	0
XPENSES		Inflator																		
rofessional Fees		103%	4,167	10,300	10,609	10,927	11,255	11,593	11,941	12,299	12,668	13,048	13,439	13,842	14,257	14,685	15,126	15,580	16,047	0
dministrative Expenses		103%	32,167	79,516	81,901	84,358	86,889	89,496	92,181	94,946	97,794	100,728	103,750	106,863	110,069	113,371	116,772	120,275	123,883	0
otal Utilities		103%	38,463	124,910	128,657	132,517	136,493	140,588	144,806	149,150	153,625	158,234	162,981	167,870	172,906	178,093	183,436	188,939	194,607	0
otal Repairs and Maint.		103%	51,950	128,421	132,274	136,242	140,329	144,539	148,875	153,341	157,941	162,679	167,559	172,586	177,764	183,097	188,590	194,248	200,075	0
otal Real Estate Taxes		103%	0	27,541	28,212	28,902	29,614	30,346	31,101	31,878	32,679	33,504	34,354	35,228	36,130	37,057	38,014	38,998	40,168	0
otal Other Taxes and Insurance		103%	14,417	35,638	36,707	37,808	38,942	40,110	41,313	42,552	43,829	45,144	46,498	47,893	49,330	50,810	52,334	53,904	55,521	0
otal Property Management Fee	Incl Line 10 Income? Y		2,703	27,909	29,598	30,190	30,794	31,410	32,038	32,679	33,332	33,999	34,679	35,372	36,080	36,801	37,537	38,288	39,054	0
ther Miscellaneous Expenses		103%	1,471	3,636	3,745	3,857	3,973	4,092	4,215	4,341	4,471	4,605	4,743	4,885	5,032	5,183	5,338	5,498	5,663	0
Total Expenses			145,338	437,871	451,703	464,801	478,289	492,174	506,469	521,186	536,340	551,941	568,002	584,539	601,567	619,098	637,147	655,731	675,018	0
roperty Management Fee as a % of EGI			*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*0.0%*
ET OPERATING INCOME			(96,724)	64,090	80,636	78,184	75,556	72,747	69,751	66,558	63,160	59,549	55,717	51,654	47,350	42,798	37,987	32,906	27,391	0
elease of Unused Residual Reserve Balance					1,639															
cheduled Additions to Residential Replacement Reserve		103%	5,025	20,703	21,324	21,964	22,623	23,301	24,000	24,720	25,462	26,226	27,013	27,823	28,658	29,518	30,403	31,315	32,255	0
cheduled Additions to Operating Reserve		103%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ther Reserve	0	103%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ther Reserve	0	103%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
terim Income from Development	-	0%																		
OI Adjusted For Reserves			(101,749)	43,387	60,950	56,220	52,933	49,446	45,750	41,838	37,698	33,323	28,704	23,831	18,692	13,280	7,584	1,591	(4,864)	0
CR			0.32	1.09	1.13	1.12	1.11	1.10	1.09	1.08	1.07	1.06	1.05	1.04	1.03	1.02	1.01	1.00	0.99	0.00
EBT SERVICE AND CASH FLOW FEES																				
oan 1 - HCR SHOP			4,275	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101
ebt Service Coverage Ratio			(23.80)	2.54	3.56	3.29	3.10	2.89	2.68	2.45	2.20	1.95	1.68	1.39	1.09	0.78	0.44	0.09	(0.28)	0.00
oan 3 - HOME			750	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000
ebt Service Coverage Ratio			(20.25)	2.16	3.03	2.80	2.63	2.46	2.28	2.08	1.88	1.66	1.43	1.19	0.93	0.66	0.38	0.08	(0.24)	0.00
ıvestor Services Fee			0	7,233	5,305	5,464	5,628	5,796	5,970	6,149	6,334	6,524	6,720	3,730	0	0	0	0	0	0
oan 5 - Deferred Developer Fee			0	16,053	35,545	30,656	27,205	23,549	19,679	15,588	11,263	6,698	1,884	0	0	0	0	252,200	0	0
ebt Service Coverage Ratio				1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00					0.01		
artnership Administration Fee			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
oan 2 - HHAP			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ebt Service Coverage Ratio																				
oan 4 - NYSERDA Loan			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ebt Service Coverage Ratio																				
ross Income Allocation to GP			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

FINAL

'roject Cash Flow

Project ID# 39357

3/31/21 10:46 AM

'roject Name: Angela's House

		TC Yr #	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	0
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
		Year:	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039
P Fees as % Effective Gross Income			5.56%	5.56%	5.56%	5.56%	5.56%	5.56%	5.56%	5.56%	5.56%	5.56%	5.56%	5.56%	5.56%	5.56%	5.56%	5.56%	5.56%	0.00%
Self Manage (Y/N)? Yes																				
ISPOSITION OF POSITIVE NET CASH FLOW																				
to Limited Partner: % Distributed:	100%	99.99%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
to General Partner		0.01%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
AYMENT AND DISTRIBUTION OF RESERVES																				
EASE-UP RESERVE																				
ontribution of Capitalized Lease-Up Reserve			151,413																	
ease-Up Period Deficit			106,774	0																
uarantor Contribution			0	0																
ease-Up Reserve Balance Balance Yr2 applied to CF?		Yes	44,639	44,639																
PERATING RESERVE																				
apitalized Contribution from Equity			115,715	43,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
cheduled Additions to Operating Reserve			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ash flow to(from) Operating Reserve			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
terest on Operating Reserve		2.00%	0	2,314	3,221	3,285	3,351	3,418	3,486	3,556	3,627	3,699	3,773	3,849	3,926	3,976	3,919	3,747	3,452	0
perating Reserve Balance			115,715	161,029	164,250	167,535	170,886	174,303	177,789	181,345	184,972	188,671	192,445	196,294	198,811	195,967	187,369	172,606	151,094	0
EPLACEMENT RESERVE	Substantial Rehab																			
apitalized Contribution from Equity			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
cheduled Additions to Replacement Reserve	Use PNOT?		5,025	20,703	21,324	21,964	22,623	23,301	24,000	24,720	25,462	26,226	27,013	27,823	28,658	29,518	30,403	31,315	32,255	0
xpenditures from Replacement Reserve	No		0	0	0	0	0	0	(95,852)	0	0	0	0	0	0	(179,632)	0	0	0	0
terest on Replacement Reserve		2.00%	0	101	517	953	1,412	1,892	2,396	1,007	1,522	2,061	2,627	3,220	3,841	4,491	1,578	2,218	2,889	0
eplacement Reserve Balance			5,025	25,829	47,669	70,586	94,621	119,815	50,360	76,087	103,071	131,359	160,998	192,041	224,540	78,916	110,898	144,431	179,574	0
THER RESERVE -																				
apitalized Contribution from Equity			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
cheduled Additions to Reserve			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
xpenditures from Reserve			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
terest on Reserve		2.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
eserve Balance			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
THER RESERVE -																				
apitalized Contribution from Equity			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
cheduled Additions to Reserve			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
xpenditures from Reserve			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
terest on Reserve		2.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
eserve Balance			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

FINAL

Depreciation, Amortization and Tax Credits

Project ID# 39357 — 3/31/21 10:46 AM

FOR BUILDING BY BUILDING DEPRECIATION SEE BELOW — ACTIVE: No

FOR SOFTCOST ALLOCATION TO BUILDING DEPR, SEE USES TAB (+AA5). — ACTIVE: No

BONUS DEPREC. — ACTIVE: Yes — Year: 2022 — %: 100%

Project Name: Angela's House

Average Placed in Service Date: 8/31/2022

DEPRECIATION SCHEDULE	Start Month in Yr 1	TERM	AMOUNT	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	Total
TC Yr #				0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	
Furniture, Fixtures, Equipment, Appliances - General	8	5	0	0	0	0	0	0	0	0												0
Furniture, Fixtures, Equipment, Appliances - Alternative	8	9	0	0	0	0	0	0	0	0	0	0	0	0	0	0						0
Sitework: On site Improvements Depreciable - General	8	15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sitework: On site Improvements Depreciable - Alternative	8	20	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Furniture, Fixtures, Equipment, Appliances - Bonus	8	1	402,714	402,714	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	402,714
Sitework: On site Improvements Depreciable - Bonus	8	1	554,860	554,860	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	554,860
Real Property Acquisition - General	8	27.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Real Property Acquisition - Alternative	8	30.0	180,000	2,250	5,999	5,999	5,999	5,999	5,999	5,999	5,999	5,999	5,999	5,999	5,999	5,999	5,999	5,999	5,999	5,999	5,999	104,233
Real Property Rehab/NC - General	8	27.5	(0)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Real Property Rehab/NC -Alternative	8	30.0	15,628,109	195,351	520,885	520,885	520,885	520,885	520,885	520,885	520,885	520,885	520,885	520,885	520,885	520,885	520,885	520,885	520,885	520,885	520,885	9,050,396
Replacement Assets or PNOT (7 Year) General	6	5.0	95,852							19,170	30,673	18,404	11,042	11,042	5,521							95,852
Replacement Assets or PNOT (7 Year) Alternative	6	9.0	0							0	0	0	0	0	0	0	0	0	0	0		0
Replacement Assets (14 Year) General	6	5.0	179,632														35,926	57,482	34,489	20,694	20,694	169,285
Replacement Assets (14 Year) Alternative	6	9.0	0														0	0	0	0	0	0
TOTAL			17,041,167	1,155,175	526,884	526,884	526,884	526,884	526,884	546,054	557,557	545,288	537,926	537,926	532,405	526,884	562,810	584,366	561,373	547,578	547,578	10,377,340
CUMULATIVE DEPRECIATION				1,155,175	1,682,059	2,208,943	2,735,827	3,262,711	3,789,595	4,335,649	4,893,206	5,438,493	5,976,420	6,514,346	7,046,751	7,573,635	8,136,445	8,720,811	9,282,185	9,829,762	10,377,340	
Check:			0	3,885,285	Fed HTC Deducted from Deprec Basis																	

1st Year Depreciation Expensing

Exp. FF&E per unit	6,011
Exp. Site Work per unit	8,281
Total	14,292

AMORTIZATION SCHEDULE		Loan Costs Yr 1	Other Costs Yr 1	Amortize over (yrs)	Amt	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	Total
		3	5																					
Loan Points/Fees: CL/PL	am over loan term			50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Loan Inspections: CL/PL	am over loan term			50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Loan Mortgage Insurance (MIP)	am over loan term			50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Loan Title & Recording: CL/PL	am over loan term			50	62,500	313	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	21,563
Loan Legal (Bank): CL/PL	am over loan term			50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cost of Issuance (Bonds)	am over loan term			50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FHA Fees	am over loan term			50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ginnie Mae Fees	am over loan term			50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Letter of Credit Fees	am over loan term			50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Credit Report	am over loan term			50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Negative Arbitrage	am over loan term			50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Loan Cost:	am over loan term			50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Loan Cost:	am over loan term			50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Tax Credit Fees	am over 15 years			15	82,341	2,287	5,489	5,489	5,489	5,489	5,489	5,489	5,489	5,489	5,489	5,489	5,489	5,489	5,489	5,489	5,489	3,202	0	0	82,341
Legal/Organizational Fees (Develope	am over 15 years			15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Legal Fees (Investor)	am over 15 years			15	22,500	625	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	875	0	0	22,500
Tax Credit Consultant	am over 15 years			15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Leasing/Marketing Expenses	1/2 exp, 1/2 am over 15 year			15	36,000	8,000	11,700	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	700	0	0	36,000
Soft Cost Contingency				15	56,769	1,577	3,785	3,785	3,785	3,785	3,785	3,785	3,785	3,785	3,785	3,785	3,785	3,785	3,785	3,785	3,785	2,208	0	0	56,769
					0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
						0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Expenses during construction (allocate by year incurred)					184,340	184,340	0	0	0	0															184,340
TOTAL					444,450	197,142	23,724	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	8,235	1,250	1,250	403,512
Check:					(0)																				
					444,450																				

TAX CREDIT SCHEDULE		Term	Rate	Allocations	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	Total
Federal Acquisition Tax Credits (4%)		10	0.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0						0
Federal Constr/Rehab Credits (9% or 4%)		10	9.00%	979,268	0	979,268	979,268	979,268	979,268	979,268	979,268	979,268	979,268	979,268	979,268	0	0						9,792,680
Fed Historic Tax Credits		5	20.00%	3,885,285	777,057	777,057	777,057	777,057	777,057	0	0	0	0	0									3,885,285
State Low Income Tax Credits		0	0.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0						0
State Historic Tax Credit		1	20.00%	3,885,285	3,885,285	0	0																3,885,285
Other State Credit (Specify)		0	0.00%	0																			0
Other State Credit (Specify)		0	0.00%	0																			0
Other Fed Credit (Specify)	Solar Tax Credit?	0	0.00%	0		0																	0
Other Fed Credit (Specify)	Solar Tax Credit?	0	0.00%	0	0																		0
TOTAL HOUSING TAX CREDITS				8,749,839	4,662,343	1,756,325	1,756,325	1,756,325	1,756,325	979,268	979,268	979,268	979,268	979,268	979,268	0	0	0	0	0	0	0	17,563,251

Taxable Income, Capital Account and Tax Benefits

Project ID# 39357 — 3/31/2021

Project Name: Angela's House

TC Yr #		0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	0	
TAXABLE INCOME		**2022 1**	**2023 2**	**2024 3**	**2025 4**	**2026 5**	**2027 6**	**2028 7**	**2029 8**	**2030 9**	**2031 10**	**2032 11**	**2033 12**	**2034 13**	**2035 14**	**2036 15**	**2037 16**	**2038 17**	**2039 18**	**Total**
NET OPERATING INCOME		(96,724)	64,090	80,636	78,184	75,556	72,747	69,751	66,558	63,160	59,549	55,717	51,654	47,350	42,798	37,987	32,906	0	0	801,917
Other Taxable Income		0	0																	
Interest on Operating Reserve		0	2,314	3,221	3,285	3,351	3,418	3,486	3,556	3,627	3,699	3,773	3,849	3,926	3,976	3,919	3,747	0	0	53,148
Interest on Replacement Reserve		0	101	517	953	1,412	1,892	2,396	1,007	1,522	2,061	2,627	3,220	3,841	4,491	1,578	2,218	0	0	29,836
Interest on Other Reserve		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Interest on Other Reserve		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Net Inc (including Interest on Reserves)		(96,724)	66,505	84,373	82,422	80,318	78,058	75,633	71,121	68,308	65,310	62,117	58,723	55,117	51,265	43,484	38,871	0	0	884,901
Deductions																				
Interest Paid		5,025	36,154	37,695	36,259	35,100	34,123	33,361	32,848	31,364	26,799	21,984	20,101	20,101	20,101	20,101	20,101	0	0	431,217
Interest Accrued		4,284	1,427	0	0	0	0	0	0	1,257	5,922	11,210	13,991	15,110	16,319	17,624	14,275	0	0	101,419
Mortgage Insurance Premium		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Depreciation (from schedule)		1,155,175	526,884	526,884	526,884	526,884	526,884	546,054	557,557	545,288	537,926	537,926	532,405	526,884	562,810	584,366	561,373	0	0	9,282,185
Amortization and Expense (from Schedule)		197,142	23,724	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	8,235	0	0	401,012
Investor Services Fee		2,083	5,150	5,305	5,464	5,628	5,796	5,970	6,149	6,334	6,524	6,720	6,921	7,129	7,343	7,563	7,790	0	0	97,868
Partnership Administration Fee		8,333	20,600	21,218	21,855	22,510	23,185	23,881	24,597	25,335	26,095	26,878	27,685	28,515	29,371	30,252	31,159	0	0	391,471
Tenant Services Fee		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2nd operating reserve		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total		1,372,043	613,939	604,326	603,686	603,345	603,213	622,491	634,375	622,801	616,490	617,943	614,326	610,963	649,167	673,130	642,934	0	0	10,705,171
Total Taxable Income		(1,468,767)	(547,434)	(519,953)	(521,263)	(523,027)	(525,155)	(546,858)	(563,254)	(554,493)	(551,181)	(555,825)	(555,603)	(555,846)	(597,902)	(629,646)	(604,063)	0	0	(9,820,270)
Effect of Gross Income Allocation to GP																				
Gross Income Allocation to GP (GIA)		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Allocable Income/loss (adjusted for GIA)		(1,468,767)	(547,434)	(519,953)	(521,263)	(523,027)	(525,155)	(546,858)	(563,254)	(554,493)	(551,181)	(555,825)	(555,603)	(555,846)	(597,902)	(629,646)	(604,063)	0	0	(9,820,270)
Allocation of Income/Loss to GP																				
GP Share of GIA		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
GP Share Allocable Income/Loss	0.01%	(147)	(55)	(52)	(52)	(52)	(53)	(55)	(56)	(55)	(55)	(56)	(56)	(56)	(60)	(63)	(60)	0	0	(983)
Reallocated Losses		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
GP Total Income/Loss		(147)	(55)	(52)	(52)	(52)	(53)	(55)	(56)	(55)	(55)	(56)	(56)	(56)	(60)	(63)	(60)	0	0	(983)
Allocation of Income/Loss to LP																				
LP Share Allocable Income/Loss	99.99%	(1,468,620)	(547,379)	(519,901)	(521,211)	(522,975)	(525,103)	(546,803)	(563,197)	(554,437)	(551,126)	(555,770)	(555,548)	(555,790)	(597,842)	(629,583)	(604,002)	0	0	(9,819,287)
Reallocated to GP	Yes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Allocation of Income/Loss to LP		(1,468,620)	(547,379)	(519,901)	(521,211)	(522,975)	(525,103)	(546,803)	(563,197)	(554,437)	(551,126)	(555,770)	(555,548)	(555,790)	(597,842)	(629,583)	(604,002)	0	0	(9,819,287)
Check		*(0)*	*(0)*	*(0)*	*(0)*	*(0)*	*1*	*0*	*(1)*	*(1)*	*0*	*1*	*1*	*(0)*	*(0)*	*0*	*(1)*	*0*	*0*	
Credit Allowable		100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	0%	0%	
L.P. Capital Account Analysis												Final Cr. Yr.								
Net Investment	3,861,517	9,543,664	1,837,651	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	15,242,832
<less> Historic and Energy Credits	(3,884,897)		(776,979)	(776,979)	(776,979)	(776,979)	(776,979)	0	0	0	0									(3,884,897)
<less> Cash Distributed to LP	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<less> Syndication Costs	(22,500)	(22,500)																		(22,500)
<less> Net Allocation to Income/Loss to LP	(9,819,287)	(1,468,620)	(547,379)	(519,901)	(521,211)	(522,975)	(525,103)	(546,803)	(563,197)	(554,437)	(551,126)	(555,770)	(555,548)	(555,790)	(597,842)	(629,583)	(604,002)	0	0	(9,819,287)
Capital Account Balance		11,914,061	12,427,354	11,130,473	9,832,283	8,532,328	7,230,246	6,683,443	6,120,246	5,565,809	5,014,683	4,458,913	3,903,365	3,347,575	2,749,733	2,120,150	1,516,148	0	0	102,546,811

L.P. SHARE OF TAX BENEFITS			**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**	**2034**	**2035**	**2036**	**2037**	**2038**	**2039**	Total
Tax Benefits @	21.00%																				
From Tax Losses	1,935,210		308,410	114,950	109,179	109,454	109,825	110,272	114,829	118,271	116,432	115,736	116,712	116,665	116,716	125,547	132,212	126,840	0	0	2,062,050
Tax Credits																					
Federal Acquisition Tax Credits (4%)			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Federal Constr/Rehab Credits (9% or 4%)			0	979,170	979,170	979,170	979,170	979,170	979,170	979,170	979,170	979,170	979,170	0	0	0	0				9,791,701
Fed Historic Tax Credits	Cap Acct% =	100%	776,979	776,979	776,979	776,979	776,979	0	0	0	0	0	0	0	0	0	0				3,884,897
State Low Income Tax Credits	Net Benefit=	79%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0				0
State Historic Tax Credit	Net Benefit=	79%	3,069,069	0	0	0	0	0	0	0	0	0	0	0	0	0	0				3,069,069
Other State Credit	Net Benefit=	79%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0				0
Other State Credit	Net Benefit=	79%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0				0
Other Fed Credit	Cap Acct% =	100%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0				0
Other Fed Credit	Cap Acct% =	100%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ax Credits	Incl. State?	Y	3,846,048	1,756,149	1,756,149	1,756,149	1,756,149	979,170	979,170	979,170	979,170	979,170	979,170	0	0	0	0	0	0	0	16,745,666
ax Benefits from Credits and Losses			4,154,458	1,871,099	1,865,328	1,865,603	1,865,974	1,089,442	1,093,999	1,097,441	1,095,602	1,094,906	1,095,882	116,665	116,716	125,547	132,212	126,840	0	0	18,807,716
	Temporary DRO		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
t Investment	0	3,861,517	9,543,664	1,837,651	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	15,242,832
ENEFIT	0	(3,861,517)	(5,389,206)	33,448	1,865,328	1,865,603	1,865,974	1,089,442	1,093,999	1,097,441	1,095,602	1,094,906	1,095,882	116,665	116,716	125,547	132,212	126,840	0	0	3,564,884
Quarterly IRR:	6.21%																				

FINAL

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Investment Results After Disposition

Project ID# 39357 3/31/21 10:46 AM

Project Name: **Angela's House**

		Disposition at $1 over Mortgage Balance
Sales Price (computed below)		7,896,884
<less> Outstanding Debt (detail below)		7,896,883
Net Sale Proceeds		$ 1.00
Commission on Sale	3.00%	
<less> Return of Investor Capital		
<less> Priority to Investor to Pay Taxes		
Priority Return to Other Partners		
Net Amount Available for Distribution		
Balance to Investors	99.99%	
Total to Investors		**0**

CALCULATION OF INVESTOR'S SHARE OF TAX CONSEQUENCES

Original Investment <less syndication>		15,220,332
Cumulative Tax Losses (Income)		(9,819,287)
Cash Distributed to Investor		0
Historic and Energy Tax Credit		(3,884,897)
Capital Acct. Balance		1,516,148
<less> Investor Share of Distribution on Sale		
Investor Gain on Sale		(1,516,149)
Investor Tax Upon Sale	21.00%	(318,391)

Outstanding Debt	Original Principal	Accrued Interest/ (Principal Pmts)	Ending Balance
HCR SHOP	3,420,167	0	3,420,167
HHAP	3,692,030	0	3,692,030
HOME	300,000	0	300,000
NYSERDA Loan	60,200	0	60,200
Deferred Developer Fee	214,221	(214,221)	0
	0	0	0
	0	0	0
	0	0	0
	0	0	0
	0	0	0
	0	0	0
	0	0	0
	0	0	0
Investor Services Fee	97,868	(64,852)	33,015
Partnership Administration Fee	391,471	0	391,471
	0	0	0
Total Debt	**8,175,957**	**(279,073)**	**7,896,883**
Total Debt/Unit			**117,864**

Sale at $1.00 over Mortgage Amount	
Total Debt	7,896,883
Plus $1.00	1.00
Sale Price	7,896,884

IRS 704b Projection

Project ID# 39357 3/31/21 10:46 AM

FINAL

Project Name: Angela's House

ASSETS

Land & Non-Depr. Land Items	965,032
Depreciable Assets	20,650,969
Assets	21,616,000
L.P. Percentage	99.99%

Note: Sales tax removed from and non-depreciable construction interest added to land assets

LOAN BALANCES (lien priority)

Year	HCR SHOP	HHAP	HOME	NYSERDA Loan	Deferred Developer Fee	None	None	None	None	None	None	None	None	Total Non-Recourse Liabilities
2022	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2023	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2024	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2025	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2026	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2027	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2028	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2029	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2030	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2031	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2032	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2033	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2034	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2035	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2036	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2037	3,420,167	3,692,030	300,000	60,200	0	0	0	0	0	0	0	0	0	7,472,397
2038	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2039	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Non Recourse Debt/Loan Characteristics (1=Yes)

Lender Name/ Loan Program	Principal	Related Party Loan	Oper Def.
Loan 1 - HCR SHOP	3,420,167	0	0
Loan 2 - HHAP	3,692,030	0	0
Loan 3 - HOME	300,000	0	0
Loan 4 - NYSERDA Loan	60,200	0	0
Loan 5 - Deferred Developer		1	0
Loan 6 -	0	0	0
Loan 7 -	0	0	0
Loan 8 -	0	0	0
Loan 9 -	0	0	0
Loan 10 -	0	0	0
Loan 11 -	0	0	0
Loan 12 -	0	0	0
Loan 13 -	0	0	0
Total	7,472,397		

MINIMUM GAIN CALCULATION

Include OR? Yes Include Other Reserves? Yes

Year	Original Net Assets	Cumulative Additional Assets	Replacement Reserve Balance	Lender Reserve Balance (UW Enters)	Accum. Depreciation	Cumm Reductions Hist. Credit (3,884,897)	Net Assets	Minimum Gain	Change in Min. Gain
2022	21,616,000	0	5,025	115,715	(1,155,175)	0	20,581,565	0	0
2023	21,616,000	0	25,829	161,029	(1,682,059)	(776,979)	19,343,820	0	0
2024	21,616,000	0	47,669	164,250	(2,208,943)	(1,553,959)	18,065,018	0	0
2025	21,616,000	0	70,586	167,535	(2,735,827)	(2,330,938)	16,787,356	0	0
2026	21,616,000	0	94,621	170,886	(3,262,711)	(3,107,918)	15,510,878	0	0
2027	21,616,000	0	119,815	174,303	(3,789,595)	(3,884,897)	14,235,626	0	0
2028	21,616,000	95,852	50,360	177,789	(4,335,649)	(3,884,897)	13,719,455	0	0
2029	21,616,000	95,852	76,087	181,345	(4,893,206)	(3,884,897)	13,191,182	0	0
2030	21,616,000	95,852	103,071	184,972	(5,438,493)	(3,884,897)	12,676,505	0	0
2031	21,616,000	95,852	131,359	188,671	(5,976,420)	(3,884,897)	12,170,566	0	0
2032	21,616,000	95,852	160,998	192,445	(6,514,346)	(3,884,897)	11,666,053	0	0
2033	21,616,000	95,852	192,041	196,294	(7,046,751)	(3,884,897)	11,168,540	0	0
2034	21,616,000	95,852	224,540	198,811	(7,573,635)	(3,884,897)	10,676,672	0	0
2035	21,616,000	275,484	78,916	195,967	(8,136,445)	(3,884,897)	10,145,025	0	0
2036	21,616,000	275,484	110,898	187,369	(8,720,811)	(3,884,897)	9,584,042	0	0
2037	21,616,000	275,484	144,431	172,606	(9,282,185)	(3,884,897)	9,041,439	0	0
2038	0	0	0	0	0	0	0	0	0
2039	0	0	0	0	0	0	0	0	0

REALLOCATION - 704B POTENTIAL LOSS REALLOCATION DUE TO 704(b)

Year	L.P Capital Contribution	Historic and Energy Credit	Syndication Costs	Cash Distributions	Capital Account End of Yr	Initial Allocation to L.P.	Re-Allocation due to Related NR	Potential L.P. Losses	CarryOver Capital or Minimum Gain	Change in Minimum Gain (True N.R.)	Maximum Loss Allocation	Losses Allocated to L.P.	Potential Reallocation to G.P.	Deficit Restoration or Equivalent	Actual Reallocation to G.P.
2022	13,405,181	0	(22,500)	0	11,914,061	(1,468,620)	0	(1,468,620)	0	0	13,382,681	(1,468,620)	0	0	0
2023	1,837,651	(776,979)	0	0	12,427,354	(547,379)	0	(547,379)	11,914,061	0	12,974,733	(547,379)	0	0	0
2024	0	(776,979)	0	0	11,130,473	(519,901)	0	(519,901)	12,427,354	0	11,650,374	(519,901)	0	0	0
2025	0	(776,979)	0	0	9,832,283	(521,211)	0	(521,211)	11,130,473	0	10,353,494	(521,211)	0	0	0
2026	0	(776,979)	0	0	8,532,328	(522,975)	0	(522,975)	9,832,283	0	9,055,303	(522,975)	0	0	0
2027	0	(776,979)	0	0	7,230,246	(525,103)	0	(525,103)	8,532,328	0	7,755,349	(525,103)	0	0	0
2028	0	0	0	0	6,683,443	(546,803)	0	(546,803)	7,230,246	0	7,230,246	(546,803)	0	0	0
2029	0	0	0	0	6,120,246	(563,197)	0	(563,197)	6,683,443	0	6,683,443	(563,197)	0	0	0
2030	0	0	0	0	5,565,809	(554,437)	0	(554,437)	6,120,246	0	6,120,246	(554,437)	0	0	0
2031	0	0	0	0	5,014,683	(551,126)	0	(551,126)	5,565,809	0	5,565,809	(551,126)	0	0	0
2032	0	0	0	0	4,458,913	(555,770)	0	(555,770)	5,014,683	0	5,014,683	(555,770)	0	0	0
2033	0	0	0	0	3,903,365	(555,548)	0	(555,548)	4,458,913	0	4,458,913	(555,548)	0	0	0
2034	0	0	0	0	3,347,575	(555,790)	0	(555,790)	3,903,365	0	3,903,365	(555,790)	0	0	0
2035	0	0	0	0	2,749,733	(597,842)	0	(597,842)	3,347,575	0	3,347,575	(597,842)	0	0	0
2036	0	0	0	0	2,120,150	(629,583)	0	(629,583)	2,749,733	0	2,749,733	(629,583)	0	0	0
2037	0	0	0	0	1,516,148	(604,002)	0	(604,002)	2,120,150	0	2,120,150	(604,002)	0	0	0
2038	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2039	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

FINAL

ALLOCATION OF NET ASSETS

Loan Name		HCR SHOP				HHAP				HOME			
Year	Total Net Assets	Loan Balance	Net Assets	Related Minimum Gain	Unrelated Minimum Gain	Loan Balance	Net Assets	Related Minimum Gain	Unrelated Minimum Gain	Loan Balance	Net Assets	Related Minimum Gain	Unrelated Minimum Gain
2022	20,581,565	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2023	19,343,820	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2024	18,065,018	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2025	16,787,356	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2026	15,510,878	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2027	14,235,626	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2028	13,719,455	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2029	13,191,182	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2030	12,676,505	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2031	12,170,566	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2032	11,666,053	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2033	11,168,540	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2034	10,676,672	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2035	10,145,025	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2036	9,584,042	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2037	9,041,439	3,420,167	3,420,167	0	0	3,692,030	3,692,030	0	0	300,000	300,000	0	0
2038	0	0	0	0	0	0	0	0	0	0	0	0	0
2039	0	0	0	0	0	0	0	0	0	0	0	0	0

ALLOCATION OF NET ASSETS

Loan Name		NYSERDA Loan				Deferred Developer Fee				None			
Year	Remaining Net Assets	Loan Balance	Net Assets	Related Minimum Gain	Unrelated Minimum Gain	Loan Balance	Net Assets	Related Minimum Gain	Unrelated Minimum Gain	Loan Balance	Net Assets	Related Minimum Gain	Unrelated Minimum Gain
2022	13,169,368	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2023	11,931,623	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2024	10,652,821	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2025	9,375,159	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2026	8,098,681	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2027	6,823,429	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2028	6,307,258	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2029	5,778,985	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2030	5,264,308	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2031	4,758,369	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2032	4,253,856	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2033	3,756,343	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2034	3,264,475	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2035	2,732,828	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2036	2,171,845	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2037	1,629,242	60,200	60,200	0	0	0	0	0	0	0	0	0	0
2038	0	0	0	0	0	0	0	0	0	0	0	0	0
2039	0	0	0	0	0	0	0	0	0	0	0	0	0

ALLOCATION OF NET ASSETS

Loan Name		None				None				None			
Year	Remaining Net Assets	Loan Balance	Net Assets	Related Minimum Gain	Unrelated Minimum Gain	Loan Balance	Net Assets	Related Minimum Gain	Unrelated Minimum Gain	Loan Balance	Net Assets	Related Minimum Gain	Unrelated Minimum Gain
2022	13,109,168	0	0	0	0	0	0	0	0	0	0	0	0
2023	11,871,423	0	0	0	0	0	0	0	0	0	0	0	0
2024	10,592,621	0	0	0	0	0	0	0	0	0	0	0	0
2025	9,314,959	0	0	0	0	0	0	0	0	0	0	0	0
2026	8,038,481	0	0	0	0	0	0	0	0	0	0	0	0
2027	6,763,229	0	0	0	0	0	0	0	0	0	0	0	0
2028	6,247,058	0	0	0	0	0	0	0	0	0	0	0	0
2029	5,718,785	0	0	0	0	0	0	0	0	0	0	0	0
2030	5,204,108	0	0	0	0	0	0	0	0	0	0	0	0
2031	4,698,169	0	0	0	0	0	0	0	0	0	0	0	0
2032	4,193,656	0	0	0	0	0	0	0	0	0	0	0	0
2033	3,696,143	0	0	0	0	0	0	0	0	0	0	0	0
2034	3,204,275	0	0	0	0	0	0	0	0	0	0	0	0
2035	2,672,628	0	0	0	0	0	0	0	0	0	0	0	0
2036	2,111,645	0	0	0	0	0	0	0	0	0	0	0	0
2037	1,569,042	0	0	0	0	0	0	0	0	0	0	0	0
2038	0	0	0	0	0	0	0	0	0	0	0	0	0
2039	0	0	0	0	0	0	0	0	0	0	0	0	0

FINAL

ALLOCATION OF NET ASSETS

Loan Name		None				None				None			
Year	Remaining Net Assets	Loan Balance	Net Assets	Related Minimum Gain	Unrelated Minimum Gain	Loan Balance	Net Assets	Related Minimum Gain	Unrelated Minimum Gain	Loan Balance	Net Assets	Related Minimum Gain	Unrelated Minimum Gain
2022	13,109,168	0	0	0	0	0	0	0	0	0	0	0	0
2023	11,871,423	0	0	0	0	0	0	0	0	0	0	0	0
2024	10,592,621	0	0	0	0	0	0	0	0	0	0	0	0
2025	9,314,959	0	0	0	0	0	0	0	0	0	0	0	0
2026	8,038,481	0	0	0	0	0	0	0	0	0	0	0	0
2027	6,763,229	0	0	0	0	0	0	0	0	0	0	0	0
2028	6,247,058	0	0	0	0	0	0	0	0	0	0	0	0
2029	5,718,785	0	0	0	0	0	0	0	0	0	0	0	0
2030	5,204,108	0	0	0	0	0	0	0	0	0	0	0	0
2031	4,698,169	0	0	0	0	0	0	0	0	0	0	0	0
2032	4,193,656	0	0	0	0	0	0	0	0	0	0	0	0
2033	3,696,143	0	0	0	0	0	0	0	0	0	0	0	0
2034	3,204,275	0	0	0	0	0	0	0	0	0	0	0	0
2035	2,672,628	0	0	0	0	0	0	0	0	0	0	0	0
2036	2,111,645	0	0	0	0	0	0	0	0	0	0	0	0
2037	1,569,042	0	0	0	0	0	0	0	0	0	0	0	0
2038	0	0	0	0	0	0	0	0	0	0	0	0	0
2039	0	0	0	0	0	0	0	0	0	0	0	0	0

ALLOCATION OF NET ASSETS

Loan Name		None								
Year	Remaining Net Assets	Loan Balance	Net Assets	Related Minimum Gain	Unrelated Minimum Gain	Year	Cumulative Related Minimum Gain	Change in Related Minimum Gain	Cumulative Unrelated Minimum Gain	Change in Unrelated Minimum Gain
2022	13,109,168	0	0	0	0	2022	0	0	0	0
2023	11,871,423	0	0	0	0	2023	0	0	0	0
2024	10,592,621	0	0	0	0	2024	0	0	0	0
2025	9,314,959	0	0	0	0	2025	0	0	0	0
2026	8,038,481	0	0	0	0	2026	0	0	0	0
2027	6,763,229	0	0	0	0	2027	0	0	0	0
2028	6,247,058	0	0	0	0	2028	0	0	0	0
2029	5,718,785	0	0	0	0	2029	0	0	0	0
2030	5,204,108	0	0	0	0	2030	0	0	0	0
2031	4,698,169	0	0	0	0	2031	0	0	0	0
2032	4,193,656	0	0	0	0	2032	0	0	0	0
2033	3,696,143	0	0	0	0	2033	0	0	0	0
2034	3,204,275	0	0	0	0	2034	0	0	0	0
2035	2,672,628	0	0	0	0	2035	0	0	0	0
2036	2,111,645	0	0	0	0	2036	0	0	0	0
2037	1,569,042	0	0	0	0	2037	0	0	0	0
2038	0	0	0	0	0	2038	0	0	0	0
2039	0	0	0	0	0	2039	0	0	0	0

FINAL

Residual Analysis

3/31/21 10:46 AM

Project Name: Angela's House

Notes:

Term of Income Restrictions: 50
Income Restriction Termination Date: 2072

RENTAL INCOME	Year:	Base	Residual	1 2022	2 2023	3 2024	4 2025	5 2026	6 2027	7 2028	8 2029	9 2030	10 2031	11 2032	12 2033	13 2034	14 2035	15 2036	16 2037	17 2038	18 2039	19 2040	20 2041	21 2042	22 2043	23 2044	24 2045
Gross Potential Rental Income - Tax Credit Units		102%	103%	49,815	535,978	574,197	591,423	609,166	627,441	646,264	665,652	685,622	706,190	727,376	749,197	771,673	794,823	818,668	843,228	868,525	894,581	921,418	949,061	977,532	1,006,858	1,037,064	1,068,176
Gross Potential Rental Income - Non-Tax Credit Units		102%	103%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Gross Potential Rental Income - Other (Specify)				0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								
Gross Potential Rental Income - **MARKET RENTS**			103%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Gross Potential Rental Income				49,815	535,978	574,197	591,423	609,166	627,441	646,264	665,652	685,622	706,190	727,376	749,197	771,673	794,823	818,668	843,228	868,525	894,581	921,418	949,061	977,532	1,006,858	1,037,064	1,068,176
Other Income - Residential		102%	103%	2,083	5,150	5,305	5,464	5,628	5,796	5,970	6,149	6,334	6,524	6,720	6,921	7,129	7,343	7,563	7,790	8,024	8,264	8,512	8,768	9,031	9,301	9,581	9,868
Less Econ Vac Loss (Yrs 2-16) Incl Line 12 Income? Y		6%	5%	2,595	27,056	28,975	29,844	30,740	31,662	32,612	33,590	34,598	35,636	36,705	37,806	38,940	40,108	41,312	42,551	43,827	45,142	46,497	47,891	49,328	50,808	52,332	53,902
Gross Potential Rental Income - Commercial		102%	103%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less Econ Vac Loss (Yrs 2-16) 20%		20%	5%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Effective Gross Income				49,303	514,072	550,527	567,043	584,053	601,575	619,622	638,211	657,357	677,078	697,391	718,312	739,862	762,058	784,919	808,467	832,721	857,703	883,433	909,937	937,235	965,352	994,313	1,024,142
EXPENDITURES	Totals		Inflator																								
Total Professional Fees	10,000	10,000	103%	103%	4,167	10,300	10,609	10,927	11,255	11,593	11,941	12,299	12,668	13,048	13,439	13,842	14,257	14,685	15,126	15,580	16,047	16,528	17,024	17,535	18,061	18,603	19,161	19,736
Total Administrative	77,200	77,200	103%	103%	32,167	79,516	81,901	84,358	86,889	89,496	92,181	94,946	97,794	100,728	103,750	106,863	110,069	113,371	116,772	120,275	123,883	127,599	131,427	135,370	139,431	143,614	147,922	152,360
Total Utilities	121,272	121,272	103%	103%	50,530	124,910	128,657	132,517	136,493	140,588	144,806	149,150	153,625	158,234	162,981	167,870	172,906	178,093	183,436	188,939	194,607	200,445	206,458	212,652	219,032	225,603	232,371	239,342
Total Repairs and Maint	124,681	124,681	103%	103%	51,950	128,421	132,274	136,242	140,329	144,539	148,875	153,341	157,941	162,679	167,559	172,586	177,764	183,097	188,590	194,248	200,075	206,077	212,259	218,627	225,186	231,942	238,900	246,067
Total Real Estate Taxes 32,306	27,541	27,541	103%	103%	11,475	28,367	29,218	30,095	30,998	31,928	32,886	33,873	34,889	35,936	37,014	38,124	39,268	40,446	41,659	42,909	51,842	53,397	54,999	56,649	58,348	60,098	61,901	63,758
Total Other Taxes, Licenses & Permits & Insu	34,600	34,600	103%	103%	14,417	35,638	36,707	37,808	38,942	40,110	41,313	42,552	43,829	45,144	46,498	47,893	49,330	50,810	52,334	53,904	55,521	57,187	58,903	60,670	62,490	64,365	66,296	68,285
Total Property Management Fee	28,449	28,449	103%	103%	2,741	28,562	30,609	31,528	32,473	33,448	34,451	35,485	36,549	37,646	38,775	39,938	41,136	42,370	43,641	44,951	46,299	47,688	49,119	50,593	52,110	53,674	55,284	56,942
Total Misc Expenses	3,530	3,530	103%	103%	1,471	3,636	3,745	3,857	3,973	4,092	4,215	4,341	4,471	4,605	4,743	4,885	5,032	5,183	5,338	5,498	5,663	5,833	6,008	6,188	6,374	6,565	6,762	6,965
Total Expenditures					168,918	439,370	453,720	467,332	481,352	495,794	510,668	525,987	541,766	558,020	574,759	592,001	609,762	628,055	646,896	666,304	693,937	714,754	736,197	758,284	781,032	804,464	828,597	853,455
NET OPERATING INCOME					(119,615)	74,702	96,806	99,711	102,701	105,782	108,954	112,225	115,591	119,059	122,632	126,311	130,100	134,003	138,022	142,163	138,784	142,949	147,236	151,654	156,203	160,888	165,716	170,687
Release of Unused Residual Reserve Balance							1,639																					
Scheduled Additions to Residential Replacement Reserve			103%		5,025	20,703	21,324	21,964	22,623	23,301	24,000	24,720	25,462	26,226	27,013	27,823	28,658	29,518	30,403	31,315	32,255	33,222	34,219	35,245	36,303	37,392	38,514	39,669
Scheduled Additions to Operating Reserve			103%		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Reserve 0			103%		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Reserve 0			103%		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Interim Income from Development																												
NOI Adjusted For Reserves			9%		(124,640)	53,999	77,121	77,747	80,078	82,480	84,954	87,504	90,129	92,833	95,619	98,488	101,442	104,485	107,619	110,848	106,530	109,726	113,017	116,408	119,900	123,496	127,202	131,018
Value Based on Capitalized NOI		Cap Rate:	6.80%		(1,832,941)	794,104	1,134,131	1,143,345	1,177,623	1,212,945	1,249,322	1,286,829	1,325,430	1,365,185	1,406,160	1,448,354	1,491,791	1,536,545	1,582,638	1,630,117	1,566,616	1,613,623	1,662,021	1,711,885	1,763,233	1,816,123	1,870,621	1,926,730
(Plus) Reserves - Include Replacement Reserve (Y/N)? Y		Appraisal Source	hark Knight Frank app		120,740	232,704	261,009	290,803	322,150	355,116	389,770	426,183	464,431	504,590	546,740	590,965	637,352	685,990	736,973	790,397	846,364	904,977	966,345	1,030,581	555,021	609,064	665,849	725,494
Total Market Value		Appraisal Date	3/1/2021		(1,712,201)	1,026,807	1,395,140	1,434,148	1,499,772	1,568,060	1,639,092	1,713,012	1,789,861	1,869,775	1,952,900	2,039,320	2,129,143	2,222,535	2,319,611	2,420,515	2,412,980	2,518,600	2,628,366	2,742,466	2,318,255	2,425,187	2,536,470	2,652,223
Total Outstanding Debt (incl's ISF, PMF & TSF)					7,701,319	7,710,651	7,696,899	7,680,519	7,659,569	7,633,583	7,602,060	7,565,404	7,527,045	7,486,932	7,445,012	7,401,231	7,355,534	7,307,863	7,258,159	7,206,361	7,160,050	7,111,745	7,061,390	7,008,920	6,954,274	6,897,385	6,838,187	6,776,610
Market value less debt					(9,413,520)	(6,683,844)	(6,301,759)	(6,246,371)	(6,159,796)	(6,065,523)	(5,962,969)	(5,852,392)	(5,737,183)	(5,617,157)	(5,492,112)	(5,361,911)	(5,226,390)	(5,085,328)	(4,938,548)	(4,785,846)	(4,747,070)	(4,593,145)	(4,433,023)	(4,266,454)	(4,636,019)	(4,472,199)	(4,301,717)	(4,124,386)
Pass/Fail Test																				FAIL!								

OPERATING RESERVE			115,715	87,639	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							
Capitalized Contribution from Equity																											
Scheduled Additions to Operating Reserve			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cash flow to(from) Operating Reserve			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Interest on Operating Reserve	3.00%		0	3,471	6,205	6,391	6,583	6,780	6,984	7,193	7,409	7,631	7,860	8,096	8,339	8,589	8,846	9,112	9,385	9,667	9,957	10,256	10,563	10,880	11,206	11,543
Operating Reserve Balance			115,715	206,825	213,030	219,421	226,003	232,783	239,767	246,960	254,369	262,000	269,860	277,956	286,294	294,883	303,729	312,841	322,227	331,893	341,850	352,106	362,669	373,549	384,755	396,298	

OTHER RESERVE																											
Capitalized Contribution from Equity			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							
Scheduled Additions to Reserve			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Expenditures from Reserve			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							
Interest on Reserve	3.00%		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Reserve Balance			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

OTHER RESERVE																											
Capitalized Contribution from Equity			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							
Scheduled Additions to Reserve			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Expenditures from Reserve			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							
Interest on Reserve	3.00%		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Reserve Balance			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

TOTAL RESERVE BALANCES PRIOR TO REPL RESV			115,715	206,825	213,030	219,421	226,003	232,783	239,767	246,960	254,369	262,000	269,860	277,956	286,294	294,883	303,729	312,841	322,227	331,893	341,850	352,106	362,669	373,549	384,755	396,298	

REPLACEMENT RESERVE	Substantial Rehab																										
Capitalized Contribution from Equity			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Scheduled Additions to Replacement Reserve	Use PNOT?		5,025	20,703	21,324	21,964	22,623	23,301	24,000	24,720	25,462	26,226	27,013	27,823	28,658	29,518	30,403	31,315	32,255	33,222	34,219	35,245	36,303	37,392	38,514	39,669	
Expenditures from Replacement Reserve	Yes		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	(542,780)			
st on Replacement Reserve	3.00%		0	151	776	1,439	2,141	2,884	3,670	4,500	5,377	6,302	7,278	8,306	9,390	10,532	11,733	12,997	14,327	15,724	17,193	18,735	20,354	5,771	7,065	8,433	
cement Reserve Balance			5,025	25,879	47,979	71,382	96,147	122,332	150,003	179,223	210,062	242,590	276,880	313,010	351,058	391,107	433,244	477,556	524,137	573,084	624,495	678,475	192,352	235,515	281,094	329,196	

Packet Pg. 872
16.1.c
Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

FINAL

Residual Analysis 3/31/21 10:46 AM

Project Name: Angela

Term of Income Restrictions
Income Restriction Termination Date

RENTAL INCOME	25 2046	26 2047	27 2048	28 2049	29 2050	30 2051	31 2052	32 2053	33 2054	34 2055	35 2056	36 2057	37 2058	38 2059	39 2060	40 2061	41 2062	42 2063	43 2064	44 2065	45 2066	46 2067	47 2068	48 2069	49 2070	50 2071	51 2072
Gross Potential Rental Income - Tax Credit Ur	1,100,221	1,133,228	1,167,225	1,202,242	1,238,309	1,275,458	1,313,722	1,353,133	1,393,727	1,435,539	1,478,605	1,522,964	1,568,653	1,615,712	1,664,184	1,714,109	1,765,532	1,818,498	1,873,053	1,929,245	1,987,122	2,046,736	2,108,138	2,171,382	2,236,523	2,303,619	2,372,728
Gross Potential Rental Income - Non-Tax Cre	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Gross Potential Rental Income - Other (Specif																											
Gross Potential Rental Income - **MARKET RE**	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Gross Potential Rental Income	1,100,221	1,133,228	1,167,225	1,202,242	1,238,309	1,275,458	1,313,722	1,353,133	1,393,727	1,435,539	1,478,605	1,522,964	1,568,653	1,615,712	1,664,184	1,714,109	1,765,532	1,818,498	1,873,053	1,929,245	1,987,122	2,046,736	2,108,138	2,171,382	2,236,523	2,303,619	2,372,728
Other Income - Residential	10,164	10,469	10,783	11,106	11,440	11,783	12,136	12,500	12,875	13,262	13,660	14,069	14,491	14,926	15,374	15,835	16,310	16,799	17,303	17,823	18,357	18,908	19,475	20,059	20,661	21,281	21,920
Less Econ Vac Loss (Yrs 2-16) Incl Line 12	55,519	57,185	58,900	60,667	62,487	64,362	66,293	68,282	70,330	72,440	74,613	76,852	79,157	81,532	83,978	86,497	89,092	91,765	94,518	97,353	100,274	103,282	106,381	109,572	112,859	116,245	119,732
Gross Potential Rental Income - Commercial	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less Econ Vac Loss (Yrs 2-16)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Effective Gross Income	1,054,866	1,086,512	1,119,108	1,152,681	1,187,261	1,222,879	1,259,565	1,297,352	1,336,273	1,376,361	1,417,652	1,460,181	1,503,987	1,549,106	1,595,579	1,643,447	1,692,750	1,743,533	1,795,839	1,849,714	1,905,205	1,962,362	2,021,232	2,081,869	2,144,326	2,208,655	2,274,915
EXPENDITURES																											
Total Professional Fees	20,328	20,938	21,566	22,213	22,879	23,565	24,272	25,000	25,750	26,523	27,319	28,139	28,983	29,852	30,748	31,670	32,620	33,599	34,607	35,645	36,714	37,815	38,949	40,117	41,321	42,561	43,838
Total Administrative	156,931	161,639	166,488	171,483	176,627	181,926	187,384	193,006	198,796	204,760	210,903	217,230	223,747	230,459	237,373	244,494	251,829	259,384	267,166	275,181	283,436	291,939	300,697	309,718	319,010	328,580	338,437
Total Utilities	246,522	253,918	261,536	269,382	277,463	285,787	294,361	303,192	312,288	321,657	331,307	341,246	351,483	362,027	372,888	384,075	395,597	407,465	419,689	432,280	445,248	458,605	472,363	486,534	501,130	516,164	531,649
Total Repairs and Maint	253,449	261,052	268,884	276,951	285,260	293,818	302,633	311,712	321,063	330,695	340,616	350,834	361,359	372,200	383,366	394,867	406,713	418,914	431,481	444,425	457,758	471,491	485,636	500,205	515,211	530,667	546,587
Total Real Estate Taxes 32,306	65,671	67,641	69,670	71,760	73,913	76,130	78,414	80,766	83,189	85,685	88,256	90,904	93,631	96,440	99,333	102,313	105,382	108,543	111,799	115,153	118,608	122,166	125,831	129,606	133,494	137,499	141,624
Total Other Taxes, Licenses & Permits & Insu	70,334	72,444	74,617	76,856	79,162	81,537	83,983	86,502	89,097	91,770	94,523	97,359	100,280	103,288	106,387	109,579	112,866	116,252	119,740	123,332	127,032	130,843	134,768	138,811	142,975	147,264	151,682
Total Property Management Fee	58,651	60,410	62,222	64,089	66,012	67,992	70,032	72,133	74,297	76,526	78,821	81,186	83,622	86,130	88,714	91,376	94,117	96,940	99,849	102,844	105,929	109,107	112,381	115,752	119,225	122,801	126,485
Total Misc Expenses	7,174	7,389	7,611	7,839	8,074	8,316	8,565	8,822	9,087	9,360	9,641	9,930	10,228	10,535	10,851	11,177	11,512	11,857	12,213	12,579	12,956	13,345	13,745	14,157	14,582	15,019	15,470
Total Expenditures	879,060	905,431	932,594	960,573	989,390	1,019,071	1,049,644	1,081,133	1,113,567	1,146,976	1,181,386	1,216,828	1,253,333	1,290,931	1,329,660	1,369,551	1,410,636	1,452,954	1,496,544	1,541,439	1,587,681	1,635,311	1,684,370	1,734,900	1,786,948	1,840,555	1,895,772
NET OPERATING INCOME	175,807	181,081	186,513	192,108	197,872	203,808	209,921	216,219	222,706	229,385	236,266	243,353	250,654	258,175	265,919	273,896	282,115	290,578	299,295	308,275	317,524	327,050	336,863	346,970	357,378	368,100	379,143
Release of Unused Residual Reserve Balance																											
Scheduled Additions to Residential Replacem	40,859	42,085	43,347	44,648	45,987	47,367	48,788	50,252	51,759	53,312	54,911	56,559	58,255	60,003	61,803	63,657	65,567	67,534	69,560	71,647	73,796	76,010	78,290	80,639	83,058	85,550	88,117
Scheduled Additions to Operating Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Reserve 0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Reserve 0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Interim Income from Development																											
NOI Adjusted For Reserves	134,948	138,996	143,166	147,460	151,884	156,441	161,133	165,968	170,947	176,073	181,354	186,794	192,399	198,172	204,116	210,239	216,548	223,044	229,735	236,628	243,728	251,040	258,572	266,330	274,320	282,550	291,026
Value Based on Capitalized NOI	1,984,523	2,044,057	2,105,381	2,168,530	2,233,594	2,300,601	2,369,608	2,440,699	2,513,926	2,589,314	2,666,975	2,746,975	2,829,395	2,914,293	3,001,707	3,091,754	3,184,523	3,280,064	3,378,457	3,479,831	3,584,232	3,691,771	3,802,533	3,916,624	4,034,117	4,155,148	4,279,801
(Plus) Reserves - Include Replacement Rese	788,118	853,846	922,809	603,330	667,418	734,807	805,639	880,060	958,221	1,040,280	720,249	798,415	880,623	967,045	1,057,859	1,153,252	1,253,417	879,836	975,791	1,076,712	1,182,809	1,294,304	1,411,423	1,534,405	1,080,445	1,198,409	1,322,477
Total Market Value	2,772,641	2,897,903	3,028,190	2,771,861	2,901,012	3,035,408	3,175,247	3,320,759	3,472,147	3,629,594	3,387,223	3,545,390	3,710,018	3,881,337	4,059,566	4,245,006	4,437,940	4,159,900	4,354,248	4,556,542	4,767,041	4,986,074	5,213,956	5,451,029	5,114,562	5,353,556	5,602,279
Total Outstanding Debt (incl's ISF, PMF & TS	6,712,583	6,646,032	6,576,882	6,505,055	6,430,469	6,353,043	6,272,693	6,189,328	6,102,859	6,013,195	5,920,239	5,823,892	5,724,051	5,620,610	5,513,465	5,402,502	5,287,606	5,168,660	5,045,543	4,918,129	4,786,288	4,649,888	4,508,793	4,362,861	4,211,948	4,055,904	3,894,576
Market value less debt	(3,939,941)	(3,748,129)	(3,548,692)	(3,733,194)	(3,529,458)	(3,317,635)	(3,097,445)	(2,868,569)	(2,630,712)	(2,383,600)	(2,533,015)	(2,278,502)	(2,014,033)	(1,739,273)	(1,453,899)	(1,157,496)	(849,666)	(1,008,760)	(691,295)	(361,586)	(19,247)	336,186	705,163	1,088,168	902,614	1,297,652	1,707,702
Pass/Fail Test																											PASS!

PASS - 30 years before end of 75 year land lease
LAND LEASE PREPAID

OPERATING RESERVE																											
Capitalized Contribution from Equity																											
Scheduled Additions to Operating Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cash flow to(from) Operating Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Interest on Operating Reserve	11,889	12,246	12,613	12,991	13,381	13,783	14,196	14,622	15,061	15,512	15,978	16,457	16,951	17,459	17,983	18,523	19,078	19,651	20,240	20,847	21,473	22,117	22,780	23,464	24,168	24,893	25,640
Operating Reserve Balance	408,187	420,433	433,046	446,037	459,418	473,201	487,397	502,019	517,079	532,591	548,569	565,026	581,977	599,436	617,420	635,942	655,020	674,671	694,911	715,758	737,231	759,348	782,129	805,592	829,760	854,653	880,293
OTHER RESERVE																											
Capitalized Contribution from Equity																											
Scheduled Additions to Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Expenditures from Reserve																											
Interest on Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Reserve Balance	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OTHER RESERVE																											
Capitalized Contribution from Equity																											
Scheduled Additions to Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Expenditures from Reserve																											
Interest on Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Reserve Balance	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL RESERVE BALANCES PRIOR TO R	408,187	420,433	433,046	446,037	459,418	473,201	487,397	502,019	517,079	532,591	548,569	565,026	581,977	599,436	617,420	635,942	655,020	674,671	694,911	715,758	737,231	759,348	782,129	805,592	829,760	854,653	880,293
REPLACEMENT RESERVE																											
Capitalized Contribution from Equity	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Scheduled Additions to Replacement Reserve	40,859	42,085	43,347	44,648	45,987	47,367	48,788	50,252	51,759	53,312	54,911	56,559	58,255	60,003	61,803	63,657	65,567	67,534	69,560	71,647	73,796	76,010	78,290	80,639	83,058	85,550	88,117
Expenditures from Replacement Reserve				(391,811)							(406,151)							(478,717)							(583,050)		
st on Replacement Reserve	9,876	11,398	13,002	14,693	4,719	6,240	7,848	9,547	11,341	13,234	15,231	5,150	7,002	8,959	11,028	13,213	15,519	17,952	6,155	8,426	10,829	13,367	16,049	18,879	21,864	7,521	10,313
cement Reserve Balance	379,931	433,414	489,763	157,294	208,000	261,607	318,243	378,042	441,142	507,688	171,680	233,389	298,646	367,608	440,439	517,310	598,396	205,165	280,880	360,953	445,578	534,955	629,294	728,812	250,685	343,756	442,185

Packet Pg. 873
16.1.c
Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

FINAL

Residual Analysis	Project ID# 39357				3/31/21 10:46 AM
Project Name:	**Angela**				
Term of Income Restrictions					
Income Restriction Termination Date					
RENTAL INCOME	**52 2073**	**53 2074**	**54 2075**	**55 2076**	**56 2077**
Gross Potential Rental Income - Tax Credit Ur	0	0	0	0	0
Gross Potential Rental Income - Non-Tax Cre	0	0	0	0	0
Gross Potential Rental Income - Other (Specif					
Gross Potential Rental Income - **MARKET RE**	3,248,423	3,345,875	3,446,251	3,549,639	3,656,128
Total Gross Potential Rental Income	3,248,423	3,345,875	3,446,251	3,549,639	3,656,128
Other Income - Residential	22,577	23,254	23,952	24,671	25,411
Less Econ Vac Loss (Yrs 2-16) Incl Line 12	163,550	168,456	173,510	178,715	184,077
Gross Potential Rental Income - Commercial	0	0	0	0	0
Less Econ Vac Loss (Yrs 2-16)	0	0	0	0	0
Effective Gross Income	3,107,450	3,200,674	3,296,694	3,395,595	3,497,462
EXPENDITURES					
Total Professional Fees	45,153	46,508	47,903	49,340	50,820
Total Administrative	348,590	359,048	369,819	380,914	392,341
Total Utilities	547,598	564,026	580,947	598,375	616,326
Total Repairs and Maint	562,985	579,875	597,271	615,189	633,645
Total Real Estate Taxes 32,306	230,287	237,195	244,311	251,640	259,189
Total Other Taxes, Licenses & Permits & Insu	156,232	160,919	165,747	170,719	175,841
Total Property Management Fee	172,774	177,957	183,296	188,795	194,459
Total Misc Expenses	0	0	0	0	0
Total Expenditures	2,063,619	2,125,528	2,189,294	2,254,972	2,322,621
NET OPERATING INCOME	1,043,831	1,075,145	1,107,399	1,140,623	1,174,841
Release of Unused Residual Reserve Balance					
Scheduled Additions to Residential Replacem	90,760	93,483	96,287	99,176	102,151
Scheduled Additions to Operating Reserve	0	0	0	0	0
Other Reserve 0	0	0	0	0	0
Other Reserve 0	0	0	0	0	0
Interim Income from Development					
NOI Adjusted For Reserves	953,071	981,662	1,011,112	1,041,447	1,072,690
Value Based on Capitalized NOI	14,015,748	14,436,212	14,869,295	15,315,392	15,774,851
(Plus) Reserves - Include Replacement Res	1,452,912	1,589,982	1,733,969	1,885,164	1,328,360
Total Market Value	15,468,660	16,026,193	16,603,264	17,200,556	17,103,211
Total Outstanding Debt (incl's ISF, PMF & TS	3,720,167	3,720,167	3,720,167	3,720,167	3,720,167
Market value less debt	11,748,493	12,306,026	12,883,097	13,480,389	13,383,044
Pass/Fail Test					

OPERATING RESERVE					
Capitalized Contribution from Equity					
Scheduled Additions to Operating Reserve	0	0	0	0	0
Cash flow to(from) Operating Reserve	0	0	0	0	0
Interest on Operating Reserve	26,409	27,201	28,017	28,858	29,723
Operating Reserve Balance	906,701	933,902	961,919	990,777	1,020,500
OTHER RESERVE					
Capitalized Contribution from Equity					
Scheduled Additions to Reserve	0	0	0	0	0
Expenditures from Reserve					
Interest on Reserve	0	0	0	0	0
Reserve Balance	0	0	0	0	0
OTHER RESERVE					
Capitalized Contribution from Equity					
Scheduled Additions to Reserve	0	0	0	0	0
Expenditures from Reserve					
Interest on Reserve	0	0	0	0	0
Reserve Balance	0	0	0	0	0
TOTAL RESERVE BALANCES PRIOR TO R	906,701	933,902	961,919	990,777	1,020,500
REPLACEMENT RESERVE					
Capitalized Contribution from Equity	0	0	0	0	0
Scheduled Additions to Replacement Reserve	90,760	93,483	96,287	99,176	102,151
Expenditures from Replacement Reserve					(715,509)
t on Replacement Reserve	13,266	16,386	19,682	23,161	26,832
ement Reserve Balance	546,210	656,080	772,049	894,387	307,860

Packet Pg. 874

16.1.c

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Taxable Income, Capital Account and Tax Benefits

Project ID# 39357

3/31/2021

Project Name: Angela's House

TC Yr #		0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	0	
TAXABLE INCOME		**2022 1**	**2023 2**	**2024 3**	**2025 4**	**2026 5**	**2027 6**	**2028 7**	**2029 8**	**2030 9**	**2031 10**	**2032 11**	**2033 12**	**2034 13**	**2035 14**	**2036 15**	**2037 16**	**2038 17**	**2039 18**	**Total**
NET OPERATING INCOME		(96,724)	58,054	68,032	58,745	48,905	38,492	27,476	15,833	3,533	(9,450)	(23,149)	(37,596)	(52,823)	(68,862)	(85,750)	(103,525)	0	0	(158,809)
Other Taxable Income		0	0																	
Interest on Operating Reserve		0	2,314	3,221	3,285	3,351	3,418	3,365	3,071	2,518	1,687	557	(892)	(2,682)	(4,838)	(7,383)	(10,344)	0	0	647
Interest on Replacement Reserve		0	101	521	966	1,437	1,936	2,464	1,051	1,601	2,183	2,799	3,450	4,138	4,864	1,739	2,470	0	0	31,720
Interest on Other Reserve		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Interest on Other Reserve		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Net Inc (including Interest on Reserves)		(96,724)	60,468	71,773	62,995	53,693	43,846	33,305	19,955	7,652	(5,580)	(19,793)	(35,037)	(51,368)	(68,836)	(91,394)	(111,398)	0	0	(126,442)
Deductions																				
Interest Paid		5,025	29,916	38,194	30,671	20,101	20,101	20,101	20,101	20,101	20,101	20,101	20,101	20,101	20,101	20,101	20,101	0	0	345,017
Interest Accrued		4,284	7,665	0	7,169	18,313	19,778	21,360	23,069	24,914	26,907	29,060	31,385	33,895	36,607	39,536	32,024	0	0	355,964
Mortgage Insurance Premium		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Depreciation (from schedule)		1,155,175	526,884	526,884	526,884	526,884	526,884	546,597	558,425	545,809	538,239	538,239	532,561	526,884	565,797	589,144	564,240	0	0	9,295,530
Amortization and Expense (from Schedule)		197,142	23,724	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	13,224	8,235	0	0	401,012
Investor Services Fee		2,083	5,150	5,305	5,464	5,628	5,796	5,970	6,149	6,334	6,524	6,720	6,921	7,129	7,343	7,563	7,790	0	0	97,868
Partnership Administration Fee		8,333	20,600	21,218	21,855	22,510	23,185	23,881	24,597	25,335	26,095	26,878	27,685	28,515	29,371	30,252	31,159	0	0	391,471
Tenant Services Fee		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2nd operating reserve		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total		1,372,043	613,939	604,825	605,266	606,659	608,968	631,133	645,566	635,717	631,090	634,221	631,877	629,748	672,442	699,819	663,549	0	0	10,886,863
Total Taxable Income		(1,468,767)	(553,471)	(533,052)	(542,271)	(552,966)	(565,122)	(597,828)	(625,611)	(628,065)	(636,670)	(654,014)	(666,914)	(681,116)	(741,277)	(791,213)	(774,947)	0	0	(11,013,305)
Effect of Gross Income Allocation to GP																				
Gross Income Allocation to GP (GIA)		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Allocable Income/loss (adjusted for GIA)		(1,468,767)	(553,471)	(533,052)	(542,271)	(552,966)	(565,122)	(597,828)	(625,611)	(628,065)	(636,670)	(654,014)	(666,914)	(681,116)	(741,277)	(791,213)	(774,947)	0	0	(11,013,305)
Allocation of Income/Loss to GP																				
GP Share of GIA		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
GP Share Allocable Income/Loss	0.01%	(147)	(55)	(53)	(54)	(55)	(57)	(60)	(63)	(63)	(64)	(65)	(67)	(68)	(74)	(79)	(77)	0	0	(1,101)
Reallocated Losses		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
GP Total Income/Loss		(147)	(55)	(53)	(54)	(55)	(57)	(60)	(63)	(63)	(64)	(65)	(67)	(68)	(74)	(79)	(77)	0	0	(1,101)
Allocation of Income/Loss to LP																				
LP Share Allocable Income/Loss	99.99%	(1,468,620)	(553,416)	(532,998)	(542,216)	(552,911)	(565,066)	(597,768)	(625,549)	(628,002)	(636,607)	(653,949)	(666,847)	(681,048)	(741,203)	(791,134)	(774,869)	0	0	(11,012,203)
Reallocated to GP	Yes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Allocation of Income/Loss to LP		(1,468,620)	(553,416)	(532,998)	(542,216)	(552,911)	(565,066)	(597,768)	(625,549)	(628,002)	(636,607)	(653,949)	(666,847)	(681,048)	(741,203)	(791,134)	(774,869)	0	0	(11,012,203)
Check		*(0)*	*0*	*(1)*	*(1)*	*0*	*1*	*(0)*	*1*	*0*	*1*	*(0)*	*(0)*	*0*	*(0)*	*0*	*(1)*	*0*	*0*	
Credit Allowable		100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	0%	0%	
L.P. Capital Account Analysis												Final Cr. Yr.								
Net Investment	3,861,517	9,543,664	1,837,651	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	15,242,832
<less> Historic and Energy Credits	(3,884,897)		(776,979)	(776,979)	(776,979)	(776,979)	(776,979)	0	0	0	0									(3,884,897)
<less> Cash Distributed to LP	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<less> Syndication Costs	(22,500)	(22,500)																		(22,500)
<less> Net Allocation to Income/Loss to LP	(11,012,203)	(1,468,620)	(553,416)	(532,998)	(542,216)	(552,911)	(565,066)	(597,768)	(625,549)	(628,002)	(636,607)	(653,949)	(666,847)	(681,048)	(741,203)	(791,134)	(774,869)	0	0	(11,012,203)
Capital Account Balance		11,914,061	12,421,317	11,111,339	9,792,144	8,462,253	7,120,208	6,522,440	5,896,891	5,268,889	4,632,282	3,978,333	3,311,486	2,630,438	1,889,235	1,098,101	323,232	0	0	96,372,650

L.P. SHARE OF TAX BENEFITS		2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	Total
Tax Benefits @	21.00%																			
From Tax Losses	2,149,838	308,410	116,217	111,930	113,865	116,111	118,664	125,531	131,365	131,880	133,687	137,329	140,038	143,020	155,653	166,138	162,722	0	0	2,312,560
Tax Credits																				
Federal Acquisition Tax Credits (4%)		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Federal Constr/Rehab Credits (9% or 4%)		0	979,170	979,170	979,170	979,170	979,170	979,170	979,170	979,170	979,170	979,170	0	0	0	0	0	0	0	9,791,701
Fed Historic Tax Credits	Cap Acct% = 100%	776,979	776,979	776,979	776,979	776,979	0	0	0	0	0	0	0	0	0	0	0	0	0	3,884,897
State Low Income Tax Credits	Net Benefit= 79%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
State Historic Tax Credit	Net Benefit= 79%	3,069,069	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3,069,069
Other State Credit	Net Benefit= 79%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other State Credit	Net Benefit= 79%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Fed Credit	Cap Acct% = 100%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Fed Credit	Cap Acct% = 100%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Tax Credits	Incl. State? Y	3,846,048	1,756,149	1,756,149	1,756,149	1,756,149	979,170	979,170	979,170	979,170	979,170	979,170	0	0	0	0	0	0	0	16,745,666
Tax Benefits from Credits and Losses		4,154,458	1,872,366	1,868,079	1,870,014	1,872,260	1,097,834	1,104,701	1,110,535	1,111,050	1,112,857	1,116,499	140,038	143,020	155,653	166,138	162,722	0	0	19,058,226
	Temporary DRO	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ct Investment	0 3,861,517	9,543,664	1,837,651	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	15,242,832
BENEFIT	0 (3,861,517)	(5,389,206)	34,715	1,868,079	1,870,014	1,872,260	1,097,834	1,104,701	1,110,535	1,111,050	1,112,857	1,116,499	140,038	143,020	155,653	166,138	162,722	0	0	3,815,394
ct Quarterly IRR:	6.29%																			

FINAL

FINAL

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'roject Cash Flow

Project ID# 39357

3/31/21 10:48 AM

'roject Name: Angela's House

	TC Yr #	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	0
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	Year:	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039
ENTAL INCOME																			
ross Potential Rental Income - Tax Credit Units	103%	49,815	535,978	574,197	591,423	609,166	627,441	646,264	665,652	685,622	706,190	727,376	749,197	771,673	794,823	818,668	843,228	868,525	0
ross Potential Rental Income - Non-Tax Credit Units	103%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ross Potential Rental Income - Other (Specify)																			
otal Gross Potential Rental Income		49,815	535,978	574,197	591,423	609,166	627,441	646,264	665,652	685,622	706,190	727,376	749,197	771,673	794,823	818,668	843,228	868,525	0
ther Income - Residential	103%	2,083	5,150	5,305	5,464	5,628	5,796	5,970	6,149	6,334	6,524	6,720	6,921	7,129	7,343	7,563	7,790	8,024	0
Less Econ. Vac. Loss (Yrs 2-16) Incl Line 10 Income? Y	4.00%	2,595	21,645	23,180	23,875	24,592	25,329	26,089	26,872	27,678	28,509	29,364	30,245	31,152	32,087	33,049	34,041	35,062	0
ross Potential Rental Income - Commercial	102%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less Econ. Vac. Loss (Yrs 2-16)	20.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ffective Gross Income		49,303	519,483	556,322	573,011	590,202	607,908	626,145	644,929	664,277	684,206	704,732	725,874	747,650	770,079	793,182	816,977	841,486	0
XPENSES	Inflator																		
rofessional Fees	103%	4,167	10,300	10,609	10,927	11,255	11,593	11,941	12,299	12,668	13,048	13,439	13,842	14,257	14,685	15,126	15,580	16,047	0
dministrative Expenses	103%	32,167	79,516	81,901	84,358	86,889	89,496	92,181	94,946	97,794	100,728	103,750	106,863	110,069	113,371	116,772	120,275	123,883	0
otal Utilities	103%	38,463	124,910	128,657	132,517	136,493	140,588	144,806	149,150	153,625	158,234	162,981	167,870	172,906	178,093	183,436	188,939	194,607	0
otal Repairs and Maint.	103%	51,950	128,421	132,274	136,242	140,329	144,539	148,875	153,341	157,941	162,679	167,559	172,586	177,764	183,097	188,590	194,248	200,075	0
otal Real Estate Taxes	103%	0	27,541	28,212	28,902	29,614	30,346	31,101	31,878	32,679	33,504	34,354	35,228	36,130	37,057	38,014	38,998	40,168	0
otal Other Taxes and Insurance	103%	14,417	35,638	36,707	37,808	38,942	40,110	41,313	42,552	43,829	45,144	46,498	47,893	49,330	50,810	52,334	53,904	55,521	0
otal Property Management Fee Incl Line 10 Income? Y		2,741	28,883	30,931	31,859	32,815	33,800	34,814	35,858	36,934	38,042	39,183	40,359	41,569	42,816	44,101	45,424	46,787	0
ther Miscellaneous Expenses	103%	1,471	3,636	3,745	3,857	3,973	4,092	4,215	4,341	4,471	4,605	4,743	4,885	5,032	5,183	5,338	5,498	5,663	0
Total Expenses		145,376	438,845	453,036	466,471	480,310	494,564	509,245	524,366	539,941	555,984	572,507	589,526	607,057	625,113	643,710	662,866	682,751	0
roperty Management Fee as a % of EGI		*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*5.6%*	*0.0%*
ET OPERATING INCOME		(96,073)	80,638	103,286	106,541	109,891	113,344	116,900	120,564	124,336	128,222	132,225	136,348	140,593	144,967	149,471	154,111	158,736	0
elease of Unused Residual Reserve Balance				2,290															
cheduled Additions to Residential Replacement Reserve	103%	5,025	20,703	21,324	21,964	22,623	23,301	24,000	24,720	25,462	26,226	27,013	27,823	28,658	29,518	30,403	31,315	32,255	0
cheduled Additions to Operating Reserve	103%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ther Reserve 0	103%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ther Reserve 0	103%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
terim Income from Development -	0%																		
OI Adjusted For Reserves		(101,098)	59,935	84,251	84,577	87,269	90,042	92,899	95,843	98,874	101,996	105,212	108,525	111,935	115,449	119,068	122,796	126,481	0
CR		0.33	1.13	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.18	1.18	1.18	1.18	1.18	1.18	1.18	1.18	0.00
EBT SERVICE AND CASH FLOW FEES																			
oan 1 - HCR SHOP		4,275	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101	17,101
ebt Service Coverage Ratio		(23.65)	3.50	4.93	4.95	5.10	5.27	5.43	5.60	5.78	5.96	6.15	6.35	6.55	6.75	6.96	7.18	7.40	0.00
oan 3 - HOME		750	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000
ebt Service Coverage Ratio		(20.12)	2.98	4.19	4.21	4.34	4.48	4.62	4.77	4.92	5.07	5.23	5.40	5.57	5.74	5.92	6.11	6.29	0.00
ıvestor Services Fee		0	7,233	5,305	5,464	5,628	5,796	5,970	6,149	6,334	6,524	6,720	6,921	7,129	7,343	7,563	7,790	8,024	0
oan 5 - Deferred Developer Fee		0	32,601	58,846	59,012	61,540	64,145	3,384	0	0	0	0	0	0	0	0	0	0	0
ebt Service Coverage Ratio			1.00	1.00	1.00	1.00	1.00	3.15											
artnership Administration Fee		0	0	0	0	0	0	63,444	69,593	58,478	26,095	26,878	27,685	28,515	29,371	30,252	31,159	32,094	0
oan 2 - HHAP		0	0	0	0	0	0	0	0	13,961	49,276	51,514	53,818	56,190	58,635	61,153	63,746	66,263	0
ebt Service Coverage Ratio										1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	
oan 4 - NYSERDA Loan		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ebt Service Coverage Ratio																			
ross Income Allocation to GP		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
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		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
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Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Exhibit I

INVESTOR SERVICES AGREEMENT

THIS INVESTOR SERVICES AGREEMENT (this "***Agreement***"), dated and effective as of the 31st day of March, 2021, is made by and between ANGELA'S HOUSE LLC, a limited liability company formed under the laws of the State of New York (the "***Company***") and WINCOPIN CIRCLE LLLP, a Maryland limited liability limited partnership (the "***Servicer***").

RECITALS

The Company was formed for the purpose of acquiring, owning, developing, constructing and/or rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of a sixty-seven (67) unit residential project in one (1) building located in Cheektowaga, New York (the "***Project***"). The Company is operating by a First Amended and Restated Operating Agreement to which this Agreement is attached as an Exhibit and made a part thereof (the "***Operating Agreement***").

The Company desires that the Servicer provide certain services with respect to the operation of the Company.

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

1. **Appointment and Term.** The Company hereby retains the Servicer to provide services to the Company as herein contemplated. The term of this Agreement shall begin on the date hereof and shall end on the earlier of the termination of the Company or the date on which neither the Servicer nor any of its assigns continues to be the Investor Member of the Company.

2. **Authority and Obligations.** Subject to the provisions of the Operating Agreement, the Servicer shall have the authority and obligation to:

(a) Review and comment each year on the content and format of reports to be provided by the Company to the Investor Member in order to assist the Company in providing useful, timely and appropriate information to the Investor Member; and

(b) Take such other actions as it deems appropriate and as authorized or contemplated by the Operating Agreement in order to promote efficient communications and favorable relationships between the Company and the Investor Member.

3. **Investor Services Fee.** For services performed under this Agreement, beginning in the later of (i) 2022, or (ii) the first calendar year the Company receives rental income (the "***Initial Year***"), the Company shall pay the Servicer, over the term of this Agreement, an annual Investor Services Fee of Five Thousand Dollars ($5,000). The Investor Services Fee for the Initial Year shall be prorated for the number of months the Company has rental income. For each year after 2022, the fee shall increase at the rate of three percent (3%) per year. The Investor Services Fee shall be paid from Cash Flow available for payment of such fee pursuant to Exhibit A-4 or Capital Proceeds under Section 8.02 of the Operating Agreement. If Cash Flow is not sufficient

to pay the fee provided above, then any unpaid fees shall accrue without interest and shall be payable out of the next available Cash Flow or Capital Proceeds.

4. **Operating Agreement.** Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Operating Agreement.

5. **Burden and Benefit.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. No party may assign this Agreement without the consent of the other party; *provided, however*, that the Servicer may assign this Agreement to a successor Investor Member or an Affiliate of Enterprise.

6. **Severability of Provisions.** Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

7. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

8. **Defined Terms.** Except as expressly provided herein, terms used in this Agreement with initial capital letters shall have the meanings set forth in the Operating Agreement.

9. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York, without regard to principles of conflicts of laws.

10. **Headings.** All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision of this Agreement.

11. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

12. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

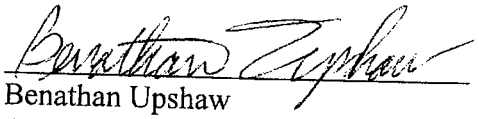
[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

The parties hereto have executed this Investor Services Agreement as of the date first above written.

ANGELA'S HOUSE LLC,
a New York limited liability company

By: Angela's House MM LLC,
a New York limited liability company

By: 
Benathan Upshaw
Authorized Signatory

WINCOPIN CIRCLE LLLP,
Servicer

By: Wincopin GP, LLC,
General Partner

By: _____
Name: _____
Title: _____

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By: _____
Benathan Upshaw
Authorized Signatory

WINCOPIN CIRCLE LLLP,
Servicer

By: Wincopin GP, LLC,
General Partner

By: Stephanie L. Shack
Name: Stephanie L. Shack
Title: Senior Vice President

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Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Exhibit J

RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF FIRST REFUSAL AGREEMENT (this "***Agreement***"), dated and effective as of the 31st day of March, 2021, is made by and between ANGELA'S HOUSE LLC, a limited liability company formed under the laws of the State of New York (the "***Company***"), and DELTA DEVELOPMENT OF WESTERN NEW YORK, INC., a New York not-for-profit corporation (the "***Purchaser***").

RECITALS

The Company was formed for the purpose of acquiring, owning, developing, constructing and/or rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of a sixty-seven (67) unit residential project in one (1) building located in Cheektowaga, New York (the "***Project***"). The Company is operating by a First Amended and Restated Operating Agreement to which this Agreement is attached as an Exhibit and made a part thereof (the "***Operating Agreement***").

The Company desires to give, grant, bargain, sell, and convey to Purchaser certain rights to purchase the Property, as more particularly described on the attached Schedule A, on the terms and subject to the conditions set forth herein.

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

1. **Right of First Refusal.** After the end of the Compliance Period, provided that there is no Removal Default with respect to the Managing Member, the Company will not sell the Project or any portion thereof to any Person without first offering the Project for a period of ninety (90) days to Purchaser (if it then qualifies as an organization described in Section 42(i)(7)(A) of the Code) or another organization described in Section 42(i)(7)(A) of the Code (the "***Buyout***"), at a price (the "***Buyout Price***") equal to the sum of (i) the principal amount of all outstanding indebtedness secured by the Project, all other loans from the Managing Member or its Affiliates, and any accrued interest on any of such debts, and (ii) all federal, State, and local taxes attributable to such sale, including those incurred or to be incurred by the partners of the Investor Member; *provided, however,* that such right of first refusal shall comply with Section 42(i)(7) of the Code, as amended, and as reasonably interpreted by the Limited Partner. All costs of the Buyout including any filing fees, shall be paid by Purchaser. In the event that Purchaser does not purchase the Company Property on the terms set forth above, then the right of first refusal granted herein shall lapse. The right of first refusal granted hereunder is intended to satisfy the requirements of Section 42(i)(7) of the Code and shall be interpreted consistently therewith. In the event the Purchaser has not exercised the Right of First Refusal within one (1) year after the end of the Compliance Period, the Right of First Refusal shall terminate.

2. **Operating Agreement.** Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Operating Agreement. The occurrence of a Removal Default by the Managing Member under the Operating Agreement shall constitute a default by the Purchaser and the Company shall have no further obligations under this Agreement.

Upon the removal of the Managing Member in accordance with the Operating Agreement, at the election of the Investor Member, this Agreement shall terminate and the Company shall have no further obligations hereunder.

3. **Burden and Benefit.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. No party may assign this Agreement without the consent of the other party.

4. **Severability of Provisions.** Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

5. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

6. **Defined Terms.** Except as expressly provided herein, terms used in this Agreement with initial capital letters shall have the meanings set forth in the Operating Agreement.

7. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York, without regard to principles of conflicts of laws.

8. **Binding Agreement.** This Agreement shall be binding on the parties hereto, and their heirs, executors, personal representatives, successors and assigns.

9. **Headings.** All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision of this Agreement.

10. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

11. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

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The parties hereto have executed this Right of First Refusal Agreement as of the date first above written.

ANGELA'S HOUSE LLC,
a New York limited liability company

By: Angela's House MM LLC,
a New York limited liability company

By: _____
Benathan Upshaw
Authorized Signatory

DELTA DEVELOPMENT OF WESTERN NEW YORK, INC.,
a New York not-for-profit corporation

By: _____
Steven Timmel
Authorized Signatory

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

SCHEDULE A

Legal Description

[Attached]

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

SCHEDULE A
(continued)

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Cheektowaga, County of Erie and State of New York, being part of Lot 33, Township 11, Range 7 of the Holland Land Company Survey (so-called), bounded and described as follows:

BEGINNING AT A POINT on the west line of Lot 33 at a distance of 51.87 feet northerly measured along the west line of said Lot 33 from its intersection with the north line of Doat Street; said west line of Lot 33 being also the west line of the Town of Cheektowaga and the east line of the City of Buffalo;

RUNNING THENCE: Northerly, along the west line of Lot 33 and the division line between the Town of Cheektowaga and the City of Buffalo, a distance of 615.61 feet to a point;

RUNNING THENCE: Easterly, at an interior angle of 90°-09'-00" with the last described line, a distance of 173.24 feet to a point;

RUNNING THENCE: Southerly, at an interior angle of 89°-49'-30" with the last described line, a distance of 345.81 feet to a point;

RUNNING THENCE: Easterly, at an interior angle of 270°-04'-49" with the last described line, a distance of 55.03 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 82.92 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 15.05 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 45.46 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 27.35 feet to a point;

RUNNING THENCE: Southerly, at an interior angle of 270°-50'-55" with the last described line, a distance of 226.24 feet to a point on the north line of Parcel No. 1 as shown on Map No. SK 219-14 for lands conveyed to the County of Erie for the reconstruction of Doat Street, C.R. No. 107 by deed recorded in the Erie County Clerk's Office in Liber 8039 of Deeds at Page 523;

RUNNING THENCE: Northwesterly, along the north line of Doat Street and along a non-tangent curve to the right having a radius of 1112.92 feet, a distance of 55.28 feet to a point of tangency;

RUNNING THENCE: Northwesterly, along the north line of Doat Street, a distance of 99.30 feet to an angle point;

RUNNING THENCE: Northwesterly, along the north line of Doat Street, at an interior angle of 170°-16'-55" with the last described line, a distance of 3.16 feet to a point;

RUNNING THENCE: Northerly, at an exterior angle of 69°-55'-38" with the last described line, a distance of 56.82 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 34.15 feet to the POINT OR PLACE OF BEGINNING.

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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Exhibit K

CONSTRUCTION REPORT

ANGELA'S HOUSE LLC

This report is to be completed with each construction draw request and sent to: ecapital@enterprisecommunity.com, with a copy to your assigned Asset Manager, regardless of whether draws require equity installments.

ATTACH CURRENT DRAW REQUEST as outlined in Exhibit A-1, Second Installment, including the following: AIA G702 and 703, change orders, lien waivers, draw schedule, detail support for soft costs, and required reporting items.

The Managing Member hereby certifies that the following representations and warranties remain true, correct, and not misleading as of the date set forth below.

1. All improvements constructed or to be constructed are in compliance with the Project and/or the Loan Documents,

2. All work will be completed by the construction Completion Date as shown in Exhibit H – Projections, or if amended by change order approved under Section 5.13, a revised completion date of **/**/****.

3. All change orders have been submitted and approved by the Investor Member as required in Section 5.13 of the Agreement,

4. The remaining funds to be advanced, from all sources, are adequate to pay the remaining costs of the Project until the Stabilization Date,

5. No defaults (or event that with the giving of notice or passage of time or both, would constitute a default) has occurred and is continuing under the Loan Documents, the Project Documents (including the construction contract) or the Agreement; and all these documents remain in full force and effect,

6. No material changes have been made to the Project Documents (including the Plans and Specifications) that have not been approved by the Investor Member,

7. The Project is free and clear of mechanic's liens and the Investor Member has been provided with any notices relating to potential liens,

8. All prior requisitions have been funded and payments have been made to the appropriate vendors/suppliers,

9. No additional funding sources have been added to the project budget unless approved in advance by the Investor Member,

10. All documents required by Section 13.03 of the Agreement to be provided to the Investor Member as of the date of this report have been delivered to the Investor Member.

COMPLETED BY:

Name: _____ Phone: _____

Title: _____ Email: _____

Date: _____

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Exhibit L

INSURANCE REQUIREMENTS

A. Construction Phase

1. *Owner's Commercial General Liability (Bodily Injury and Property Damage) Insurance* of the real estate development class in amounts not less than $1,000,000 per occurrence, $2,000,000 in the aggregate, and $5,000,000 umbrella for structures with 1-10 stories or $10,000,000 umbrella for structures with 11 or more stories. A per location aggregate endorsement should be included on an unlimited basis for any policy that has multiple locations. Maximum deductible is $10,000 and the deductible should be issued on a per occurrence basis in lieu of a per claim basis. Policy shall not contain an exclusion for loss or damage caused by assault and battery or firearms. Policy shall not contain an exclusion for loss or damage caused by mold, fungus, moisture, microbial contamination, or pathogenic organisms, unless such insurance without the exclusions is either unavailable or is not available at a reasonable cost and the potential risk for loss or damage is minimal. Policy must be primary and provide that any such insurance maintained by Investor Member or any other additional insured is excess and non-contributory. Company and insurers must waive their rights of subrogation against Investor Member. Company is to be named as a Named Insured. Investor Member is/are to be named as Additional Insured(s) via CG 2026, CG 2027, or carrier's equivalent.
2. *General Contractor's Commercial General Liability (including Broad Form Property Damage) and Property Damage Insurance* of the construction exposure class in the same amounts set forth above. Automobile liability insurance with a $1,000,000 combined single limit per accident for owned, hired and non-owned autos, Employer's Liability with a $1,000,000 limit, and workers' compensation in the statutory amount. A per location aggregate endorsement should be included on an unlimited basis for any policy that has multiple locations. Maximum deductible is $10,000 and the deductible should be issued on a per occurrence basis in lieu of a per claim basis. Completed operations coverage should be maintained a minimum of three years after project completion. Policy must be primary and provide that any such insurance maintained by Investor Member or any other additional insured is excess and non-contributory. General Contractor and insurers must waive their rights of subrogation against Company and Investor Member. Company and Investor Member are to be named as Additional Insureds via CG 2026, CG 2027, CG 2010 AND 2037 or carrier's equivalent.

3. *All-Risk Builder's Risk Insurance* ("All-Risk" or "Special" form, NOT "NAMED PERIL" POLICY; Non-Reporting, completed value form). Full limits of insurance coverage must be purchased to include and not be limited to the perils of sinkhole (see C.1), windstorm and, if applicable, named storm (see C.2), flood (see C.3), and earthquake (see C.4) and any other applicable insurance based upon the exposures to the location as well as those found in the "Special" form. The policy shall provide 100% replacement cost coverage in an amount equal to completed construction value, including all development costs, and soft cost coverage, a permission to occupy endorsement, an agreed amount endorsement calculated in accordance with the methodology set forth in the attached worksheet, and a

Waiver of Coinsurance or Agreed Amount clause. For rehabilitation projects, the building acquisition cost is to be included in the Builder's Risk policy. Maximum deductible is $10,000, but may be higher on a case-by-case basis. [FOR REHAB: Ordinance & Law coverage to be purchased with limits equal to the total building value of all locations on the policy for Coverage A, while Coverage B & C each must have a sublimit equal to 10% based upon the total building value of all buildings on the policy.] Company and insurers must waive their rights of subrogation against Investor Member. Company is to be named as a Named Insured. Investor Member is/are to be named as Additional Insured(s)/Additional Named Insured(s) *as well as* Loss Payee with respect to the building].

4. *Architect's [and Engineer's] Errors and Omissions Insurance* in amounts not less than $1,000,000 on Projects. Architect [and Engineer] shall maintain coverage for a minimum of three years after the Completion Date. Investor Member to be Certificate Holder at address listed below.

[5. [FOR OCCUPIED REHAB: *Rental Interruption Insurance* in amounts required by all lenders, but not less than the equivalent of twelve (12) months gross rental income on an actual loss sustained basis. Additionally, a 90-day extended period of indemnity must be included.]

B. Permanent Insurance (after construction)

1. *Owner's Commercial General Liability* (Bodily Injury, Property Damage, Personal Injury, Contractual Liability, Products/Completed Operations and Medical Expense) Insurance in amounts not less than $1,000,000 per occurrence, $2,000,000 in the aggregate, and $5,000,000 umbrella for structures with 1-10 stories or $10,000,000 umbrella for structures with 11 or more stories. A per location aggregate endorsement should be included on an unlimited basis for any policy that has multiple locations. Maximum deductible is $10,000 and the deductible should be issued on a per occurrence basis in lieu of a per claim basis. Coverage shall also include coverage of $5,000 per person, per occurrence limited for medical expenses. Commercial general liability policy shall not contain an exclusion for loss or damage caused by assault and battery or firearms. Policy shall not contain an exclusion for loss or damage caused by mold, fungus, moisture, microbial contamination, or pathogenic organisms, unless such insurance without the exclusions is either unavailable or is not available at a reasonable cost and the potential risk for loss or damage is minimal. Policy will not contain an exclusion for the driveway or sidewalk easements. Policy must be primary and provide that any such insurance maintained by Investor Member or any other additional insured is excess and non-contributory. Company and insurers must waive their rights of subrogation against Investor Member. Company is to be named as a Named Insured. Investor Member is/are to be named as Additional Insured(s) via CG 2026, CG 2027, or carrier's equivalent.
2. *Owner's Property Insurance* ("All-Risk" or "Special" form, NOT "NAMED PERIL" POLICY) on buildings and personal property in an amount not less than the full insurable replacement value of such buildings and personal property (with annual adjustments for such replacement value), and shall include a Waiver of Coinsurance or Agreed Amount

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clause. Full limits of insurance coverage must be purchased to include and not be limited to the perils of sinkhole (see C.1), windstorm and, if applicable, named storm (see C.2), flood (see C.3), and earthquake (see C.4), as well as fire, explosion, theft and other casualty coverage and any other applicable insurance based upon the exposures to the location as well as those found in the "Special" form. Maximum deductible is $10,000, but may be higher on a case-by-case basis. Ordinance & Law coverage to be purchased with limits equal to the total building value of all locations on the policy for Coverage A, while Coverage B & C each must have a sublimit equal to 10% based upon the total building value of all buildings on the policy. The Investor Member must be made aware of and must provide written consent approving any and all policies that include sharing of limits of insurance with other properties when a defined loss limit is in place that has a lower limit of insurance than the collective insured value of all locations insured on the policy. The property insurance policy shall not contain an exclusion for loss or damage caused by mold, fungus, moisture, microbial contamination or pathogenic organisms, unless such insurance without the exclusions is either unavailable or is not available at a reasonable cost and the potential risk for loss or damage is minimal. Company and insurers must waive their rights of subrogation against Investor Member. Company is to be named as a Named Insured. Investor Member is/are to be named as Additional Insured(s)/Additional Named Insured(s) via CP 1219 or carrier's equivalent *as well as* Loss Payee with respect to the Building via CP 1218 or carrier's equivalent.

3. *Rental Interruption Insurance* in amounts required by all lenders, but not less than the equivalent of twelve (12) months gross rental income on an actual loss sustained basis. Additionally, a 90-day extended period of indemnity must be included.

4. *Equipment Breakdown Coverage*, in form and amount deemed necessary by all lenders and acceptable to the Investor Member with no co-insurance provisions (such amount to equal at least full replacement cost of the building that houses the equipment), is required for projects (i) which have any centralized HVAC equipment is in operation at the project and (ii) which contain boilers or other pressure-fired vessels that are required to be regulated by the state in which the property is located. Maximum deductible is $10,000.

C. Catastrophic Risk and Additional Insurance Coverage

1. *Sinkhole/Mine Subsidence Insurance* in an amount equal to 100% replacement cost if the project is located in an area that is prone to sinkhole/mine subsidence.
2. *Windstorm Coverage* if "all-risk" property damage insurance excludes wind-related events in an amount equal to 100% of replacement cost. Maximum deductible is 5% of the total insured value and the deductible shall be applied on a per building basis (in lieu of a per location basis). The policy shall be written on a per occurrence form. Required in special hazard areas (ZONE III, IV or carrier's equivalent; *Named Storm* required in coastal counties listed by NOAA Office of Coastal Management).

3. *Flood Insurance* in an amount equal to 100% of the full replacement cost using insurance available through NFIP and, if necessary, excess coverage if the project is located in a Special Flood Hazard Area. Maximum deductible is 2% of the total insured value per building. Proper evidence of flood insurance coverage is either: an actual flood insurance

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policy that shows the flood risk zone is insured or a flood insurance declaration page that includes the flood risk zone on the flood hazard determination form. Investor Member shall have the right to procure Flood Insurance for the Company if the Managing Member fails to provide proof of adequate coverage, and Managing Member shall reimburse the Investor Member for any sums expended to put such coverage in place. This is required even if improvements are scheduled to be demolished.

4. *Earthquake coverage* – Property specific seismic reports are required for all projects located in Zones 3 or 4. If the seismic Scenario Expected Loss (SEL) using a probabilistic 475-year Design Basis Earthquake event (DBE) is 20% or greater before construction, the planned construction/retrofit should seek to bring the projected seismic SEL-DBE as low as economically feasible below 20%. Projects with post-renovation SEL-DBE higher than 40% will be considered only on an exception basis.

   During construction, all projects with seismic SEL-DBE rating 20% or higher pre-construction must carry earthquake insurance. Earthquake coverage must be replacement cost times the SEL-DBE percentage times 150%. [VERIFY THE REQUIREMENTS OF THE FUND WHICH MAY VARY FROM THIS PROVISION. SOME FUNDS REQUIRE 100% OF REPLACEMENT COST DURING CONSTRUCTION AS WELL AS POST-COMPLETION.] The maximum deductible is 5% of the required insurance amount, but may be higher on a case-by-case basis.

   All projects with seismic SEL-DBE rating 20% or higher post construction must carry earthquake insurance. Earthquake coverage must be equal to the replacement cost times the SEL-DBE percentage times 150%. The maximum deductible is 5% of replacement cost, but may be higher on a case-by-case basis.

D. Management Agent's Insurance

1. A commercial general liability policy with minimum limits of One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in the aggregate, and $5,000,000 umbrella for structures with 1-10 stories or $10,000,000 umbrella for structures with 11 or more stories. A per location aggregate endorsement should be included on an unlimited basis for any policy that has multiple locations. Company shall be named as an additional insured via form CG 2026 or 2027 or carrier's equivalent.

2. A fidelity bond or employee dishonesty policy in an amount equal to the gross potential income of the Project for three (3) months, in order to protect Company against misapplication of Project funds by Management Agent and/or its employees. Company shall be named as a loss payee.

3. Comprehensive automotive liability insurance for all owned, hired and non-owned vehicles operated by Management Agent's off-site employees with minimum limits of One Million Dollars ($1,000,000) combined single limits per occurrence for bodily injury and property damage and physical damage (collision and comprehensive) liability.

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4. Insurance for statutory workers' compensation and other employee benefits required by all applicable laws (in regard to lost wages and medical cost reimbursement) with respect to Management Agent's corporate employees.

5. Employer's liability insurance for an amount not less than Two Million Dollars ($2,000,000) covering claims and suits by or on behalf of employees and others, not otherwise covered by statutory workers' compensation insurance with an umbrella in an amount not less than Five Million Dollars ($5,000,000).

Management Agent shall obtain the foregoing from a responsible insurance company reasonably satisfactory to Company and to Company Lenders. Management Agent shall furnish Company a certificate of insurance evidencing such coverage and providing thirty (30) days prior written notice of cancellation, non-renewal or any material change in coverage, ten (10) days for non-payment of premium.

E. Evidence of Insurance

Insurance coverage must be evidenced by Certificates of Insurance and properly endorsed policies certified as true and correct by the insurance agent, but may not be evidenced solely by Certificates and Enterprise reserves the right to be provided with binders, endorsements, and full policy copies as it deems necessary. All Liability insurance to be evidence on form ACORD 25; all Property/Builder's Risk/Catastrophic Perils to be evidenced on form ACORD 28. All evidence of insurance must satisfy the following requirements:

1. **Angela's House LLC** should be the NAMED insured.

2. **Wincopin Circle LLLP and its successors, assigns and transferees (Investor Member) and M&T Bank Affordable Housing Fund III LLLP (and/or subsequently specified investor(s))** should be named as an additional insured(s) and should appear in the certificate holder box with the following address:

   c/o Enterprise Community Asset Management, Inc.
   70 Corporate Center
   11000 Broken Land Parkway, Suite 700
   Columbia, MD 21044
   Attention: Asset Management
   enterprisecerts@traxlertong.com]

3. Policies must be written with an A.M. Best rated company of "A VIII" or better.

4. All binders and policies should contain a cancellation clause stating that the policy will not be canceled without at least **thirty (30)** days prior written notice to the Investor Member, ten (10) days for non-payment of premium. No policy can be cancelled without the prior written consent of the Investor Member. Investor Member will require a copy of any Reinstatement Notice, if applicable.

5. Certificates must document the amount of all deductibles.

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6. All binders and policies must be accompanied by evidence of premium payment.

7. At least seven (7) days prior to the expiration of the applicable policy, Managing Member shall provide Investor Member the required evidence of coverage to reflect that such policy has been renewed (or replaced, as applicable).

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Builder's Risk Insurance
Replacement Cost Worksheet

A.	***Completed Construction Value***		
	Site Work	$ XXXX	
	New Construction (residential)	$ XXXX	
	New construction (commercial)	$ XXXX	
	Rehabilitation (residential)	$ XXXX	
	Rehabilitation (commercial)	$ XXXX	
	General Requirements	$ XXXX	
	Contractor Overhead	$ XXXX	
	Contractor Profit	$ XXXX	
	Furniture, Fixtures, Equipment	$ XXXX	
	Construction Contingency	$ XXXX	
	Other (specify) _____	$ XXXX	
	Subtotal		$ XXXXXX
B.	***Plus Building Acquisition***		
	Rehab Projects only	$ XXXX	
	Subtotal		$ XXXXXX
C.	***Plus Soft Cost Coverage***		
	Architect Design (to the extent needed to reconstruct)	$ XXXX	
	Architect Supervision (100%)	$ XXXX	
	Construction Management Fees	$ XXXX	
	Hazard and Liability Insurance	$ XXXX	
	Real Estate Taxes/Fees	$ XXXX	
	Legal Fees: Real Estate Development	$ XXXX	
	Soft Cost Contingency	$ XXXX	
	Construction Period Interest	$ XXXX	
	Other (specify)_____	$ XXXX	
	Subtotal		$ XXXXXX
	Total Replacement Cost		$ XXXXXX

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Exhibit M

TRANSFER AGREEMENT

THIS TRANSFER AGREEMENT (the "***Agreement***") dated as of the date set forth below (the "***Effective Date***"), by and among WINCOPIN CIRCLE LLLP, a Maryland limited liability limited partnership (the "***Assignor***"), ANGELA'S HOUSE LLC, a New York limited liability company (the "***Company***"), ANGELA'S HOUSE MM LLC, a New York limited liability company, in its capacity as the managing member of the Company (the "***Managing Member***"), and M&T BANK AFFORDABLE HOUSING FUND III, LLLP, a Maryland limited liability limited partnership (the "***Assignee***").

RECITALS

WHEREAS, Assignor serves as Investor Member in the Company pursuant to the First Amended and Restated Operating Agreement of the Company dated as of the 31st day of March, 2021 (the "***Operating Agreement***");

WHEREAS, Assignor wishes to assign its Investor Member interest (the "***IM Interest***") to the Assignee;

WHEREAS, Article X of the Operating Agreement specifically contemplates the transfer by Assignor of the IM Interest to Assignee and acknowledges the consent of all Members thereto;

WHEREAS, Article X of the Operating Agreement acknowledges that the Assignee, as transferee of the IM Interest pursuant to this Transfer Agreement, shall be automatically substituted as the Investor Member of the Company on the Effective Date;

WHEREAS, Assignor wishes to assign the IM Interest to the Assignee, as of the Effective Date, and the Assignee wishes to accept such assignment of the IM Interest for the consideration and upon the terms and conditions hereinafter set forth above;

WHEREAS, the Assignee is willing to undertake all of the obligations of Assignor under the Operating Agreement and exhibits thereto, including its rights and obligations under the Investor Services Agreement attached as Exhibit I to the Operating Agreement, relating to the IM Interest (the "***IM Obligations***"); and

WHEREAS, the Company and the Managing Member desire to acknowledge such undertaking of the IM Obligations by the Assignee and to release the Assignor from the IM Obligations.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration hereinafter described, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

Capitalized terms used but not defined herein shall have the respective meanings attributed thereto in the Operating Agreement.

Assignor hereby assigns to Assignee and Assignee hereby accepts from Assignor, all of Assignor's right, title and interest in and to the IM Interest, consisting of Assignor's right to allocations of profits, gain, income and losses and Credits and all items entering into the computation thereof, and to distributions of cash, however denominated, under the Operating Agreement with respect to the IM Interest.

In consideration of the assignment effected hereby, Assignee hereby assumes and agrees to discharge all of the IM Obligations. In addition, Assignee shall promptly reimburse Assignor for all Capital Contributions heretofore made by Assignor to the Company in its capacity as Investor Member and for such other expenditures heretofore incurred by Assignor relating to its acquisition of the IM Interest as Assignor and Assignee shall mutually determine.

The Company and the Managing Member hereby (i) acknowledge the assignment of the IM Interest and assumption by the Assignee of the IM Obligations pursuant to this Agreement and (ii) agree to release Assignor from the IM Obligations. The Managing Member hereby acknowledges and confirms the admission of the Assignee for all purposes as a Substitute Investor Member under Article X of the Operating Agreement.

By its execution hereof, the Assignee hereby agrees to become a Substitute Investor Member of the Company and, subject to the foregoing provisions of this Agreement, agrees to be bound (to the same extent as Assignor was bound) by the Project Documents and by the provisions of the Operating Agreement and exhibits thereto as they relate to the IM Interest.

The parties hereto hereby confirm the continuing validity and enforceability of the Operating Agreement and each of the exhibits thereto, acknowledging that the Assignee shall succeed to all rights and obligations of Assignor thereunder with respect to the IM Interest as of the Effective Date. This provision shall be construed to amend the Operating Agreement and each of the exhibits thereto to the extent necessary to give effect to the provisions of this Agreement. Without limitation of the foregoing, Exhibit A to the Operating Agreement is hereby amended by the Revised Exhibit A attached hereto.

The parties agree that the assignment of the IM Interest and the other transactions effected hereby shall be effective for all purposes as of the Effective Date. The Managing Member hereby confirms that any and all third-party approvals to the effectiveness of the transactions described in this Agreement have been obtained.

In accordance with Article X of the Operating Agreement, the parties hereto agree to cooperate in good faith to effect any further amendments to the Operating Agreement, exhibits thereto or Project Documents and to take such other steps as may be necessary or appropriate in order to more fully reflect and further evidence the assignment of the IM Interest and the other transactions effected hereby. In this regard, the Investor Services Agreement, attached as Exhibit I to the Operating Agreement, is hereby amended to replace the Assignor as the Servicer with the Assignee.

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This instrument may be executed in several counterparts and all counterparts so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties have not signed the original or the same counterpart.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

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The undersigned have caused this Agreement to be executed as of the Effective Date set forth at the foot of Revised Exhibit A attached to this Agreement.

ASSIGNOR:

WINCOPIN CIRCLE LLLP

By: Wincopin GP, LLC,
General Partner

By: Stephanie L. Shack
Name: Stephanie L. Shack
Title: Senior Vice President

ASSIGNEE:

M&T BANK AFFORDABLE HOUSING FUND III, LLLP

By: Enterprise GP, LLC,
General Partner

By: Stephanie L. Shack
Name: Stephanie L. Shack
Title: Senior Vice President

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

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GENERAL PARTNER:

ANGELA'S HOUSE MM LLC,
a New York limited liability company

By: _____
Benathan Upshaw
Authorized Signatory

COMPANY:

ANGELA'S HOUSE LLC,
a New York limited liability company

By: Angela's House MM LLC,
a New York limited liability company

By: _____
Benathan Upshaw
Authorized Signatory

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Revised Exhibit A
to Exhibit M

Members; Percentage Interests;
Capital Contribution Commitments

	Percentage Interests	Capital Contributions*
Managing Member:		
Angela's House MM LLC	0.01%	$100
Investor Member:		
M&T Bank Affordable Housing Fund III, LLLP EIN: 30-1198081	99.99%	$15,242,832
TOTALS	**100%**	**$15,242,932**

* The Capital Contribution of the Investor Member will be paid in Installments as described on the following page upon the last to occur of the receipt and approval by the Investor Member, to the satisfaction of the Investor Member, of all conditions for such Installment and the date associated with such Installment. Each Additional Capital Contribution is due on the later of the scheduled due date or twenty (20) days (ten (10) days for Additional Capital Contributions made prior to the Completion Date) after receipt and approval by the Investor Member of an Additional Capital Contribution Notice given by the Managing Member, including the Notice Certifications in the exact form attached as Exhibit A-7, in accordance with Section 3.02(c). In addition, the amounts of the Capital Contributions are subject to adjustment as provided in this Agreement.

The EFFECTIVE DATE of this Transfer Agreement is _____, 202__.

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Management Plan

Project Information

Name:	Angela's House
Owner:	Angela's House LLC
Address:	600 Doat St., Cheektowaga, NY 14211
County:	Erie
DHCR project:	20190373
Number of Units:	67
Type of Structure:	Apartment Complex

1. RESPONSIBILTY OF OWNER AND DELEGATION OF AUTHORITY TO MANAGEMENT AGENT

a. The Owner, Developer and Management Agent for the property have developed and will adhere to management requirements that are designed to:

i. Meet the statutory provisions of the programs

ii. Protect the State's investment in the units

iii. Establish a level of accountability which can be verified by NYS DHCR

iv. Provide a basis for ensuring the future viability of the project.

b. Management Agent, Delta Development of WNY, Inc, will be used to oversee the operations of the property. Delegation of the duties and responsibilities of the Management Agent will be spelled out in a Management Agreement that will be reviewed and approved by DHCR and the Owner of the project.

c. An identity of interest relationship not exist between the Owner of the project and the Management Agent. An affiliate of the Owner of the project is also the Management Agent.

d. On-site staff, whose wages and benefits will be a cost of the project, will directly oversee the daily operations of the site. Any on site staff will report to and be directly responsible to a Property Manager assigned to the project. With the exception of specific, project related expenses approved in advance by the DHCR, the cost of the Property Manager's wages and benefits will be an expense of the Management Agent and included in the monthly management fee charged for services pursuant to the approved Management Fee.

e. The Management Agent shall consult the Owner for any expenditure over $5,000 except for regular mortgage and escrow payments, regular utility and insurance costs, approved budgetary items or except for a situation that calls for an immediate answer or a decision that has to be made in an emergency. The Owner and tax credit syndicator must approve the annual budget that will

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prepared by the Management Agent. The Owner, or their designated representative, must also be contacted in the event of a legal dispute, charge of discrimination, or significant environmental or life safety problem involving the site.

f. The Executive Director of the Management Agent is the key contact person for the Agent. The key contact person will be involved in decisions associated with the above referenced issues. There are no singularly incurred operating expenses to the Owner and the Management Agent which are divided between both parties.

g. All decisions involving required reports by DHCR, all management related matters including reserve personnel administration, community relations, and employee terminations, will be made by the Management Agent. Owner's approval is required on financial matters as approved in the annual operating budget. All decisions regarding financing, refinancing, real estate tax appeals, and sale of the project will be made by the Owner with the prior approval of the HTFC.

h. Property, Hazard, fidelity and liability insurance coverage for this project and for all projects managed by the Management Agent, may be bid out as a group policy in order to minimize the cost to the protects. The amount of the annual premium charged to the project is based upon an underwriter's allocation of cost as provided by the insurance consultant who places the group policy.

2. PERSONNEL POLICY AND STAFFING

a. All hiring will be in conformance with federal, state and local laws pertaining to equal opportunity. Hiring will be done on the basis of capabilities and potential.

b. The project is planned to be staffed as:

1. Property Manager
2. Site Manager at 28 hours per week
3. Maintenance Technician(s) at 56 hours per week

c. The Management Agent's Executive Director through his/her Property Manager will direct the onsite staff in discharging their duties who, in turn, reports directly to the Owner/General partner of the project. Decisions regarding personnel policy and conditions of employment will be made by the Property Manager, who will hire the Site Manager and all other personnel associated with the project.

d. The Property Manager will train site staff and maintenance workers on the property in the appropriate methods for completing their job responsibilities. In this endeavor, the Property Manager may use personal training, written texts and handbooks, and training as appropriate. Cost of such training, as approved by DHCR, will be borne by the project. All employees will be subject to a three-month probationary period (90 Calendar days) during which time they will be expected to learn and demonstrate competence in the applicable DHCR regulations and good management practice.

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3. PLANS AND PROCEDURES FOR MARKETING UNITS, ACHIEVING AND MAINTAINING FULL OCCUPANCY, AND MEETING THE AFFIRMATVE FAIR HOUSING MARKETING PLAN

a. The Agent shall rent apartment units only to tenants incompliance with the tenant income limitations and other restrictions set forth in the applicable documentation and agreements between the Owner and DHCR relating the allocation to the Owner Of Low-income Housing Credits pursuant to Section 42 of the Internal Revenue Code of 1996 (the 'Code") and in Section 42 of the Code as well as applicable requirements in connection with the Housing Trust Fund financing and Section 8 Housing Assistance payment Contract . The Agent shall not charge rent to tenants greater than that of the set aside income adjusted for family size, as set forth in Code Section 42 (g), except as permitted by law in connection with the Low Income Housing Credit and the Agent shall maintain occupancy of all units in the Housing Complex on a non-transient: basis , except as may be otherwise permitted by Code Section 42.

b. The intent of the marketing plan will be to reach those low-income and minority persons who are least likely to apply (LLA) for housing at the project without special outreach efforts. These outreach efforts will include conversations or meetings with and letters to area agencies and social organizations known to have an affiliation with minorities or the underprivileged. These communications will inform the organization of the existence and availability of the housing units and will encourage clients of the organization to apply for Housing. All communications with LLA groups will be documented accordingly.

c. The Management Agent will work to maintain the highest occupancy possible by facilitating above-referenced employee training program and administering the above-referenced marketing program.

d. The project will be advertised by signs at the site, handout brochures or fliers made available to interested parties, and newspaper advertisements and articles in local and regional papers. Irrespective of the project's occupancy level, the Agent will continue to follow the Affirmative Fair Housing Marketing Plan (AFHMP) approved for this project and to continue to advertise throughout the compliance period in order to provide the community an opportunity to apply for the project and to provide the project with an active waiting list.

e. The project will take reasonable steps to ensure effective communication with applicants, tenants, and members of the public that have sight or hearing impairments. These steps will include, but not be limited to the following:

i. In the event a sight impaired applicant or current tenant requires special devices to review documents associated with services applying for or leasing an apartment unit management will work with the applicant to ensure that all documents can be reviewed and understood.

ii. Permit tenants with handicaps to use assistive devices and service animals.

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iii. Include evidence of Management's willingness to take the above referenced steps in ads or brochures or communications about the project.

f. The project will make reasonable accommodation to allow the apartment units to be fully enjoyed by tenants with disabilities or handicaps. The accommodations will include but not be limited to the following: Paddle type faucet handles and door knobs, stoves with front mounted controls, entry buzzers and smoke detectors for the hearing in-paired, specific assignment of handicap parking spaces, and the addition of as-needed railings and grab rails. These accommodations will be made without any required payment on the part of the tenant.

g. In the event that a disabled tenant or applicant requests or requires a structural modification to an apartment unit to allow it to be fully usable, management request occupant to supply it with the needed technical data and plans which would be needed to receive local code approval to complete the change. Management will review the plan and confirm if the tenant has the financial ability to pay for the required structural changes or has assistive funding available from service agencies that aid handicapped individuals. If dependable tenant funding is available, and if Management determines that the Structural change will not impose a significant administrative or financial burden on the project, it will approve of the structural change at the tenant's expense. Management may require prior written agreement that the unit be returned to original condition upon termination of the lease with the handicapped tenant if, in its sole opinion, Management believes that the accommodations made would be an imposition rather than an accommodation to any subsequent tenant. The agreement relative to the change be writing, approved by a DHCR representative, and retained with the tenant's file.

h. The project wait list will conform to DHCR requirements as outlined in section 7.00 of the Project Operating and Management Requirements or any subsequent modifications thereof.

i. All tenants at the project will receive a move-in inspection form that records the condition of their specific apartment at the initiation of their lease term. This form will be used as a basis to determine the amount of damage charges, if any, which must be assessed against the tenant for unusual wear and tear, at the time of lease termination. After move-in, an annual inspection of each occupied unit will be conducted and documented. At least 24 hour's notice must be given to tenants prior to any inspection except in the case of an emergency that threatens the safety of the building or the safety of tenant or tenants. A copy of the standard form is attached and a part of this document as Attachment 5.

j. All tenants will receive an orientation interview with the Rental Manager when the lease is signed. The Rules and Regulations attached as Attachment 3 will be discussed and the tenant be presented with copies of any documents, booklets, or fliers that might prove helpful. At or prior to move-in, each new tenant will be visited by the Rental Manager to conduct a move-in inspection of the unit. At that time, the tenant will have an opportunity to ask questions about the system for requesting service and the Rental Manager can determine if any special accommodations are needed to provide fully acceptable housing.

k. The project Rental Manager will be assigned the responsibility to determine tenant or applicant eligibility.

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l. The Project wait list procedure is in Section 4.(a) below. The wait list is maintained in chronological order of receipt and if applicable a notation for frail elderly applicants.

m. Available apartments will be offered to the qualified applicant who is chronologically first on the Project wait list, except in that the tenant selection may be postponed until applicants for occupancy are available whose occupancy will allow borrowers to meet 21 units rented to frail elderly.

4. PROCEDURES POR DETERMINING ELIGIBILITY CERTIFYING AND RECERTIFYING INCOMES.

a. All applications, including ineligible unacceptable applications, will be kept on file for inspection and review by the Regulatory Agency at the site office. All ineligible or unacceptable applicant files will be subject to review if the prospective tenant raises a question. Once a completed application is received and assets and income are verified, the tenant's name will be placed on the appropriate waiting list. Date and time will be recorded on the waiting list when the application is received. The tenant will be notified in writing when their application is accepted or rejected. The list will be of the type that eliminates any opportunity to adjust the chronological order of the applicants. The list will be kept at the office and will be available for inspection.

b. The Property Manager assigned to the subject property will receive training in the requirements of operating a rental assisted property and certifying and recertifying tenants before he is assigned to the site. The training will consist of handbooks, policy and procedure manuals, support documents and interviews with other experienced managers. Property Managers will attend available seminars and courses offered in the area to remain current with the administrative and regulatory requirements of the property. Site Rental Managers will undergo the same type training to ensure that they remain knowledgeable about appropriate operational procedures for the property.

5. LEASING AND OCCUPANCY POLICIES

a. Management will use its best efforts to avoid overcrowding within the rental units. At the time of this plan, the guidelines in effect are as follows:

No. Units		Min Occupants	Max Occupants
65	1 BR	1	2
2	2 BR	2	4

The above occupancy standards will serve as general guidelines. With DHCR approval, management may assign a larger or smaller unit than the household needs all of the following conditions are met.

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i. No household, otherwise eligible and having the number of members appropriate to the unit, is available to occupy the unit and management has made a diligent effort to reach tenants who qualify for the larger or smaller unit.

ii. The tenant agrees to transfer to the first correctly sized unit if and when it becomes available in the project.

b. Admission criteria for selecting tenants for occupancy will be as follows:

The prospective tenant must be income qualified according to the then current guidelines.

The prospective tenant must demonstrate that they have the ability to assure responsibility for adhering to lease terms.

The prospective tenant must demonstrate the ability to adjust to reasonable standards of living.

The prospective tenant must demonstrate the ability to pay rent and possess a favorable rent payment history and a favorable credit history. The Rental Manager will take into account extenuating circumstances, when reviewing credit history.

c. The Project Rental Manager assigned to the subject property will receive training in the administrative requirements of operating a DHCR rental assisted property as they pertain to lease provisions, prohibitions, occupancy standards, and admissions policies before she is assigned to the Rental Manager will maintain a consistently high degree of knowledge, skill and ability in the above areas.

d. When non-English speaking or reading persons apply for or rent an apartment, as-needed provisions will be made to provide readers or translators to assure that such persons understand the lease agreements or established rules and regulations.

6. RENT COLLECTION POLICIES AND PROCEDURES

a. Rent at the site is due and payable in advance, on the first day of the month. Tenants are allowed a fifth day grace period before the imposition of late payment penalties. Any rent or charge unpaid as of the fifth day of the month by 12:00 noon are subject to the $25.00 penalty, unless special arrangements have previously been made approved in writing by the Management Agent.

b. All rents payments are to be made at the project Rental Office. A rent payment drop box will be provided and clearly marked to accommodate payments after normal working hours. The Rental Manager is responsible for posting a rent receipt ledger card and establishing the tenant's rent payment history.

c. Collections will normally be made by check or money order. Collections of all types will be deposited on a regular basis in such a manner that no significant amount of checks or orders are left in the project rental office.

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d. The amount of the security deposit should the net tenant contribution for one month or basic rent, whichever is greater. The Rental Manager allows tenants to pay the required Security deposit installments if the tenant unable to pay the entire amount at the time of lease signing. Security deposits are deposited with a local bank in separate accounts under the tenant's name and social security number. The bank controls the account, provides accounting records of same, and returns the security deposit to the operating account. Payment is then made to the tenant at the account at the request of the Manager. All interest earned on the security deposit except for 1% per year is returned to the tenant at lease termination providing the apartment has not sustained any damage and providing the tenant is not in default of any required rental payments. Security deposit interest is paid to the tenant at the termination the lease, unless the tenant opts to receive it on an annual basis.

7. PROCEDURES POR REQUESTING AND IMPLEMENTING A RENT INCREASE

a. Whenever a rent increase or utility allowance adjustment is being requested, tenants will be notified in writing of the proposed change and a copy of the tenant notice will be posted on the community bulletin board.

b. Management Agent central office administrative personnel will process any requests for changes in the occupancy charges.

c. Basic rent may not be adjusted without the prior written approval of the DHCR/HTFC. The Management Agent will submit a rent increase request to the local Asset Manager assigned to the project by the NYS Division of Housing and Community Renewal (DHCR). The Agent will provide an operating budget with sufficient documentation that justifies the rent increase request and any additional documents that will be required by the Asset Manager his/her review of the rent increase request.

8. PLANS AND PROCEDURES FOR CARRYING OUT AN EFFECTIVE MAINTENANCE, REPAIR, AND REPLACEMENT PROGRAM

a. A preventative maintenance program will be established to prevent serious mechanical failures and physical deterioration of the building.

b. As-built plans and specifications as well as a copy of the General Contractor's warranty binder will be kept at the site office. Central Office personnel or construction advisors will be responsible to update these plans whenever modifications to the project are made.

c. Appliances and mechanical equipment will be checked on an as-needed basis, but no less than annually and always upon unit turn over. Service will be provided on an as-needed basis or on a regular, cycle basis, as suggested by the manufacturer of the equipment.

d. Safety checks of fire alarms, smoke detectors and sprinkler systems will be done at apartment turnover or annually for each unit and common space. A qualified technician will check the fire extinguishers and all safety systems at least annually. Outside lighting and potentially hazardous

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conditions such as ice and snow accumulation will be checked on a regular basis and attended to in an expeditious fashion.

e. Apartments will be inspected for damage and redecoration needs at the time of lease termination and at least once annually as described Section 3 (i) of this Plan. Repairs and redecoration be completed on an as-needed basis prior to occupancy by a new tenant.

f. Major exterior projects will be undertaken on an as-needed basis. The intent will be to keep the painted surfaces from deteriorating prior to their full estimated useful life. Major interior painting will be done between apartment occupancy changes if needed.

g. Exterior repairs will be completed on an as-needed basis. Grounds care will be completed on a weekly basis during the growing season. Additional grounds work will be completed on a seasonal basis, as conditions require.

h. Garbage and trash will be removed the project on a weekly basis, or as conditions require.

i. Common area clean up, including halls, community rooms, laundry rooms, parking lots, etc. will be performed on a regular weekly and as-needed basis. The stated intent of the janitorial program will be to address problem conditions as quickly possible after they arise, and to maintain a structured cleaning program which ensures that all areas of the project are inspected and cleaned on a regular basis.

j. Maintenance service requests (Work Orders) are submitted by the tenants as conditions warrant. Service requests are submitted in writing or via the telephone to the Rental Manager. Service requests are routinely attended to within 48 hours of their submission. When special conditions or a lack of appropriate repair parts postpones completion of the required service, effected tenant will be notified and advised of the estimated service date.

k. Invoices for property operations are processed on a bi-weekly basis. Accommodations are made to process payments on a special basis if needed to avoid late payment charges or penalties.

l. The project operating budget will be completed during the third quarter of the current fiscal year for the subsequent fiscal year. Budgeting forms and guidelines will be adhered to so that the approved budget is a realistic and cost-efficient financial plan for the project.

m. Major replacement or repair items will normally be funded from project replacement reserves. Prior to initiation of major replacement or repair work, an outline of the work and an estimate of cost along with bids will be submitted to DHCR for approval. Once the work item (s) and their cost have written approval, the work will be initiated, completed and inspected. Upon completion of the pre-approved work, replacement reserve funds will be released for payment. The management agent will establish a file with the appropriate documentation that includes the work specifications, the competitive bids, work specs, approvals, withdrawals and vendor payments for on all replacement reserve work items.

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9. PLANS AND PROCEDURES FOR PROVIDING SUPPLEMENTAL SERVICES.

a. Centrally-located coin operated laundry machines will be available on site for use by the tenants.

b. The laundry machines will be operated by route operators contracted by the project. The contract will specify the current rate of return to the owner and the route operators (generally 60/40 respectively) for the project. The term and maintenance of the equipment will also be clearly spelled out in the contract.

c. The cost of or replacing the equipment will be the responsibility of the route operator at no cost to the project.

10. PLANS FOR ACCOUNTING, RECORDKEEPING, AND MEETING DHCR REPORTING REQUIREMENTS

a. All monthly and annual reports required by DHCR will be prepared and submitted by an assigned administrative assistant at the Managing Agent's central office. The books and records of the project will generally be kept on an accrual basis as prepared or approved by the accountants servicing the books and records of the property. All mandatory records will be kept in accordance with generally accepted accounting practices and designated accounts shall be set up for project operations. The account, as per the Management Agreement shall be: Tax and Insurance Escrow, Security Deposit Account, General Operating Account, Operating Reserve Account and Replacement for Reserve Account. All reports will be filed in a timely manner as may be required. The computerized accounting system shall be on an accrual basis and monthly financial reports shall be produced for the Owner showing detail of all deposits and expenses. The Controller for Delta, INSERT NAME, will oversee all project records and supervise in the preparation of al financial reports, mortgage payments, worksheets and annual reports as may be required by regulatory agencies.

b. Reserve funds will be maintained separate and apart those of other projects owned or managed by the Owner.

c. The project bookkeeping chart of accounts and bank accounts will be fully compatible with the requirements of subsection 7.03 of the Project Operating and Management Requirements.

d. Quarterly and annual financial reports required by DHCR will be prepared by the Management Agent's central office Administrative Manager, unless they require the assistance or approval of an independent accountant.

e. The firm or individual engaged to perform the annual audit or verification of review will not be associated with the project, other than to prepare the audit or review.

f. The project will utilize as many forms and records as are needed to ensure that the project is operated in an appropriate fashion. The records will be retained for the full term of any rental assistance contract and as further required by law.

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g. Individual folders will be kept for resident by the Management Agency at the site office and will contain completed resident applications, verification of income and assets, lease agreement, security deposit data, service requests and correspondence. All tenant files shall be retained for a minimum of 10 years from the vacate date so as to exceed LIHTC requirements. Initial certifications for the first credit year will be archived for the term of the compliance period, plus six years as required by LIHTC rules.

RECORDS MAINTAINED ON SITE BY THE PROJECT STAFF	RECORDS MAINTAINED BY THE MANAGEMENT AGENT
rental applications	approved budget
income verifications	management plan
lease and payment history	management agreement
tenant files	Employee records
tenant correspondence	duplicate set of
qualifying move-ins	files for initial qualifying tenants
tenant rent roll	certificate of occupancy
monthly rental vouchers	legal communications
apartment inspection forms	insurance policies
completed service requests	tax information
energy audit information	paid bills
preventative maintenance checklists	aged accounts receivable
affirmative fair housing info	accounting records
marketing/outreach documentation	bank statements
Service contracts and insurance info	partnership docs
wait list	regulatory agreements
site accident reports	
income verifications	

11. ENERGY CONSERVATION MEASURES AND PRACTICES

a. Residents will be reminded of the importance of energy usage and the relationship of increased energy costs to increased rent through the tenant newsletter, fliers, and community presentations. An energy audit acceptable to DHCR will be conducted every five years or as otherwise required by the Regulatory Agency.

b. During the move-in interview, tenants will be instructed in appropriate energy conservation practices that they should follow to minimize the amount of energy used on the project. Information regarding energy efficiency practices Will be retained in the project management office and made available to the tenants.

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c. Management will control the heat and lights and water used in the community room or in the common areas of the project. To reduce energy costs at the project, management will investigate the usage of, and if appropriate and affordable, utilize the following to promote energy efficiency:

i. energy efficient lighting
ii. water saver shower heads, toilet tanks, aerators
iii. added insulation
iv. interior storm shields
v. caulking and weather- stripping as appropriate
vi. energy efficient boilers and water heaters
vii. utility timers and photoelectric cells
viii. night set-back thermostats

d. Whenever an energy audit carried out, management will review the findings and if any corrective measures are in order and affordable Management will avail itself of the services of consultants and inducements offered by the utility companies in this regard. Energy efficiency measures will be discussed no less than annually when the projected budget is prepared and submitted to DHCR for approval. The Property Manager assigned to the project will be the person to discuss the viability of any of the energy conservation measures.

12. PLANS FOR A TENANT ORGANIZATION AND RELATIONSHIP WITH MANAGEMENT

a. Management encourages and supports appropriate tenant organizations and groups. Management addresses the issue of establishing and maintaining tenant organizations when it meets with the tenants during organized gatherings or through tenant newsletters. Should a tenant association (TA) be organized, Management will request proof of annual elections and update the TA's contact list and list of board members.

b. Both the Rental Manager and the Property Manager shall be knowledgeable of DHCR Tenant Grievance and Appeals Procedures. Copies of the procedures will be kept at the site office and made available to the tenants. The Rental Manager will post a copy of the procedure in a conspicuous place such as the bulletin board in the community room or the mailroom at the project.

13. TERMINATION OF LEASES OR OCCUPANCY AGREEMENTS AND EVICTIONS

a. The Management Agent is responsible for knowing State and Local laws and DHCR's regulations regarding termination of leases, evictions and occupancy agreements. At the time of occupancy, all lease provisions will be clearly explained to the residents. The term of all leases shall be twelve (12) months. The resident may give 30 days notice to management for good cause. Should an eviction be necessary, all data backing up this decision will have been documented in the resident file. Management may terminate the lease for good cause which includes one or more substantial violations or repeated minor violations as well as for misrepresentations by the resident in regard to rent, income or eligibility. The lease agreement shall clearly outline provisions and procedures for residents giving notice to vacate and/or the Management Agent's eviction of the

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resident. To the extent necessary and expedient, the Property Manager and Rental Manager assigned to the project will also be knowledgeable about the regulations.

b. The Rental Manager and project's Property Manager will be knowledgeable about State and local laws and DHCR regulations relative to the giving of notices to tenants when a termination of lease, or an eviction is proposed.

14. SECURITY SERVICING

a. The Executive Director of Management Agent and his/her property Management Specialist are responsible to know the DHCR requirements related to Fidelity Bond coverage and to acquire same.

b. The Executive Director of Management Agent and his/her property Management Specialist are responsible to know the DHCR requirements related to property, hazard, fidelity and liability insurance and to acquire same.

15. MANAGEMENT AGREEMENT

A copy of the current Management Agreement is a. attached and made a part of this Management Plan as exhibit C.

16. MANAGEMENT COMPENSATION

Management services are provided by a qualified Management Company contracted by General Partner for the project. The fee is paid monthly. Specific terms of the management fee are spelled out in the attached Management Agreement. The management fee and the Management Agreement may be changed if requested by the Management Agent and approved by DHCR. Currently the fee is equal to 6% of gross receipts.

HFA Termination Clause: If the Agency notifies the Owner of reasons for which it is not satisfied with the management of the project, and such deficiency is not remedied in a reasonable time thereafter, then, at the Agency's request, the Agency shall offer the management agent the opportunity to cure such dissatisfaction. If such cure is not accomplished within thirty (30) days and the Agency requests a termination of the managing agent, the Owner shall engage a replacement managing agent subject to the Approval by the Agency which shall not be unreasonably withheld or delayed.

17. ON-SITE MANAGEMENT

a. The project Rental Manager and Maintenance Technician will live within a reasonable distance from the property so that he/she can respond to emergency situations and perform the following management duties and responsibilities.

b. The Rental Manager is responsible for assuring that the tenants receive prompt, efficient courteous, and quality service. In order to execute this responsibility, the Rental Manager should

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supervise the general administration and physical operation of the property. The Rental Manager should provide direction to and assurance that the rental program properly executed; assure the provision and maintenance of efficient mechanical operations, adequate buildings and equipment; and responsible for the employment of good tenant relations.

c. The Rental Manager should perform the following duties:

i. Regularly inspect the building and grounds, noting physical appearance of property, deterred maintenance, other related data.

ii. Inform the Property Manager of observed deferred maintenance and property deficiencies in writing noting specific locations, conditions, and recommendations for corrective measures.

iii. Establish a rental office procedure with the approval of the Property Manager.

iv. Interview all potential tenants and help select those that qualify.

v. Confer with the Property Manager on all evictions, lease violations, and special arrangements.

vi. Be responsible for all job duties, explain employee duties responsibilities, and inform operation staff of policies and procedures.

d. The Maintenance Technician will receive general supervision and direction from the Rental Manager. The Maintenance Technician shall comply with established policies and operational procedures.

e. The Maintenance Technician should perform the following duties:

i. The Maintenance Technician responsible for Operating and maintaining the electrical and mechanical equipment used to c. provide services for the property and assume the provision and maintenance of efficient building heat and air-conditioning functions including maintenance, repairs, and other related services.

ii. Prepare monthly reports based upon weekly inspections, outlining property conditions, including cleaning of buildings and grounds, and a summary of maintenance operations.

iii. Maintain heaters, air conditioners, and other equipment in the buildings, to assure continuous services, and that the operating safely and equipment efficiently; determine by inspection that all control equipment is operating properly; check such items as circuit, switches, relays and starters, connections and filters for mechanical and electrical faults, signs of wear, dirt, overloading, and other indications OE trouble; and perform such preventive maintenance as lubricating motor bearings and replacing

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brushes and filters. The emergency call system will be physically inspected at least bi-annually in addition to electronically monitored from an external monitoring station.

iv. Perform all necessary maintenance and repairs on the apartments, common areas and parking lots, including routine service calls as well as turnover, cleaning, painting, and snow removal, mow lawns, trim edges, clip shrubs, and weed flowerbeds.

v. Periodically inspect building and grounds to determine necessary preventive maintenance needed and consult with the Property Manager regarding such conditions.

vi. Maintain files containing written records of maintenance services, equipment readings, operating manuals, inventory, and a library consisting of pertinent data relating to equipment and building fixtures.

vii. Responsible to perform the duties required to keep the grounds in attractive, well-maintained condition and to provide adequate and efficient housekeeping functions which assure cleanliness of all building halls, basements, stairways, trash and other public areas.

viii. All public areaways, stairways, halls, laundry rooms, building entrances and trash must be swept daily.

ix. The washers and dryers in laundry rooms are to be dusted and wet rag cleaned once a week.

x. ALL light fixtures, including high hanging globes and wall-mounted globes are to be dusted regularly and cleaned of insects, etc.

xi. Mailbox fronts and public walls or halls must be cleaned regularly as required and the trash room walls, including trash door areas will be scrubbed and maintained.

xii. Perform other related duties as assigned.

f. The site Rental Manager and Maintenance Superintendent will live off site.

g. The project office will be opened approximately 28 hours per week. The specific office hours will be posted on the front of the rental office and will be made known to prospective tenants via a recorded telephone message.

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EXHIBIT D
PROMISSORY NOTE

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PROMISSORY NOTE
between ANGELA'S HOUSE LLC
and the Amherst-Cheektowaga-
Tonawanda HOME Consortium
Angela's House Apartments
2020 HOME# M20-DC360511

FOR VALUE RECEIVED, Angela's House LLC, a limited liability company formed and existing under and by virtue of the laws of the State of New York with a place of business located at 221-10 Jamaica Avenue LL1, Queens Village, New York 11428 (herein called "Borrower") promises to pay the TOWN OF CHEEKTOWAGA, a municipal corporation of the State of New York as a member of the Amherst-Cheektowaga-Tonawanda HOME Consortium, having an office located at Cheektowaga Town Hall, 3301 Broadway Street, Cheektowaga, New York 14227 and the TOWN OF AMHERST, as a municipal corporation of the State of New York as lead Authorizing Official for the Amherst-Cheektowaga-Tonawanda HOME Consortium, with principal offices located at 5583 Main Street, Williamsville, New York 14221 (herein called "Lender"), the principal sum of Three Hundred Thousand United States Dollars ($300,000.00) (the "Loan").

The Loan shall bear interest at the fixed rate of 0% per year (the "Construction Loan Rate"), during the period commencing upon the date hereof and ending on the date that the Angela's House project has closed on all permanent period financing (the "Construction Period" or "Construction Loan Term"), and at the fixed rate of 1% simple interest per year (the "Permanent Loan Rate") commencing on the Permanent Loan Commencement Date as described below. The term of the Loan shall commence on the date hereof and end on the date that is 600 months or 50 years after the Permanent Loan Commencement Date as described below (the "Term").

There shall be no principal or interest payable during the Construction Period. During the Construction Loan Term, which shall not extend beyond twenty-four months from the date hereof or such longer period as the term of that certain construction loan from Evans Bank, N.A. to the Borrower in connection with the project shall be extended, interest shall accrue at the Construction Loan Rate and this Note shall be with recourse to the Borrower.

From the date the project has closed on all permanent period financing including the HTF Loan (as defined in the Loan Agreement) which is estimated to occur approximately 24 months after the date hereof ("Permanent Loan Commencement Date") until maturity, simple interest shall accrue at the Permanent Loan Rate, and the Note shall become non-recourse to the Borrower.

One percent (1%) per annum interest only payments shall be due on each annual anniversary of the Permanent Loan Commencement Date.

Interest shall be calculated on a 365-day basis.

All accrued interest and unpaid Principal shall be due and payable at the end of the Term ("Maturity Date").

Any prepayment shall be without penalty or premium to Borrower.

All such Loan payments shall be applied first to the payment of accrued interest to the date of payment and the balance shall be applied toward the reduction and payment of principal. Any prepayment in part shall be deemed to apply to the last maturing installment of the Loan.

If the Loan shall be prepaid in full, Lender agrees to promptly execute such instruments of release as may be necessary to discharge any liens securing this Note.

A late charge of five percent (5%) of the total annual payment shall be due if payment is received later than thirty (30) days after the due date.

In conjunction with the Loan, Borrower has executed and delivered to Lender a Loan Agreement (as defined in that certain Building Loan Contract, dated as of the date hereof, between Lender and Borrower) and other documents (the "Loan Documents"). This Note is evidence of the Borrower's obligation to comply with the requirements as set forth in the Loan Documents. Repayment of this Note is secured by a security interest as evidenced by a subordinate leasehold mortgage dated as of the date hereof.

If material default be made in any condition of or in the performance of any covenant or agreement in the terms and conditions of the Loan Documents or any other agreement or obligation between Lender and Borrower beyond all applicable notice and cure periods, or in the event that any representation made by Borrower to Lender in compliance with or in reference to this Note be false or misleading in any material respect, or in the event of default in the payment of any principal or interest of this Note for more than 30 days after Borrower receives notice of such default, then the whole unpaid principal of this Note shall at once become due and payable at the option of Lender upon 10 days written notice to Borrower.

Borrower agrees that if Lender uses attorneys to collect the aforementioned indebtedness that Borrower will pay, in addition to the indebtedness and unpaid interest, all the actual, reasonable costs and disbursements of Lender's attorneys together with their reasonable fees.

The makers, sureties, endorsers, and guarantors of this Note hereby severally waive presentment for payment, notice for non-payment, protest and notice of protest, and diligence in bringing suit against any party, and do hereby consent that the time of payment of all or any part of said amount may be extended from time to time without notice thereof.

Borrower hereby waives trial by jury in any litigation in any court in connection with the Note or any other Loan Documents of the Loan, including without limitation, the validity, interpretation, collection or enforcement thereof.

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Lender's rights hereunder are expressly subject and subordinate to the rights of Evans Bank, N.A. ("Evans"), New York State Homeless Housing and Assistance Corporation ("HHAC") and Housing Trust Fund Corporation ("HTFC", together with Evans and HHAC the "Senior Lenders" and each a "Senior Lender") related to that certain construction loan from Evans in the principal amount of up to $12,100,000 (inclusive), construction/permanent loan from HHAC in the principal amount of $3,692,030 and permanent loan from HTFC in the principal amount of up $3,420,1667 (inclusive). Lender shall not pursue any remedies against Borrower or accept a prepayment of principal hereunder without the express written consent of the Senior Lenders. This provision is intended to benefit the Senior Lenders and may not be modified or removed without the express written consent of Senior Lenders, for so long as any obligations of Borrower to such Senior Lender remain outstanding.

The proceeds from the Loan shall be used by Borrower for the purposes specified in the Loan Agreement of even date, by and between Borrower and Lender.

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IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed and delivered as of the date first written above.

BORROWER (Beneficial Ground Lessee):

ANGELA'S HOUSE LLC
a New York limited liability company

By: _____
Name: Benathan Upshaw
Title: Authorized Signatory

STATE OF NEW YORK) SS:
COUNTY OF ERIE)

On the _____ day of _____, 20_____, before me, the undersigned, a notary public in and for the said County of Erie, personally appeared **Benathan Upshaw**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted executed the instrument.

_____
Notary Public

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EXHIBIT E
LEASEHOLD MORTGAGE

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This instrument was prepared by:
Town of Cheektowaga Law Dept.
3301 Broadway – Town Hall – Rm. 206
Cheektowaga, New York 14227

LEASEHOLD MORTGAGE/MORTGAGE AND SECURITY INSTRUMENT

THIS LEASHOLD MORTGAGE / MORTGAGE AND SECURITY AGREEMENT (the "Mortgage") is made and entered into as of **March ____, 2021** by and among **Angela's House Housing Development Fund Corporation** (the "HDFC") a New York not-for-profit corporation formed pursuant to Article XI of the Private Housing Finance Law and Section 402 of the Not-for-Profit Corporation Law having its principal office at 525 Washington Street, Buffalo, New York 14203, **Angela's House LLC** (the "LLC" or "Borrower") a limited liability company formed under the laws of the State of New York having its principal office at 221-10 Jamaica Avenue LL1, Queens Village, New York 11428, (HDFC and LLC collectively referred to as the "Mortgagor") and the **Town of Cheektowaga**, as a municipal corporation of the State of New York as a member of the **Amherst-Cheektowaga-Tonawanda HOME Consortium** and the **Town of Amherst**, as a municipal corporation of the State of New York acting as lead Authorizing Official for the Amherst-Cheektowaga-Tonawanda HOME Consortium, with principal offices located at 3301 Broadway, Cheektowaga, NY 14227 and 5583 Main Street, Williamsville NY 14221, respectively (herein after referred to as "Lender")

Any capitalized term used herein but not defined shall have the meaning ascribed to such term in the Loan Agreement (as hereinafter defined).

WITNESSETH:

WHEREAS, Borrower is justly indebted to Lender in the principal amount of **THREE HUNDRED THOUSAND AND 00/100 DOLLARS ($300,000.00)** (the "Loan"), or such portion thereof that has been disbursed from time to time under the provisions of that certain Loan Agreement of even date herewith between Borrower and Lender (hereinafter, together with any and all extensions, revisions, modifications or amendments hereafter made, referred to as the "Loan Agreement"), such indebtedness being evidenced by the Note and payable to Lender with interest thereon as provided in the Promissory Note (the loan and any and all amounts advanced by Lender to LLC and/or Mortgagor in connection with the Note are hereby referred to collectively as the "Obligations"); and

WHEREAS, Borrower desires to secure the obligations, including, but not limited to the obligations (i) to pay the interest on the Note in accordance with the respective terms thereof, including any and all extensions, modifications, and renewals thereof and substitution therefor, and (ii) to pay, repay or reimburse Lender for all other amounts owing under any of the Note, including all indemnified losses (not defined) and default costs (not defined).

NOW, THEREFORE, for and in consideration of Lender making the Loan and to secure the prompt payment and performance of the obligations, Borrower does hereby irrevocably CONVEY, WARRANT, GRANT, BARGAIN, SELL, ASSIGN, TRANSFER, PLEDGE and set over unto Lender, and the successors and assigns of Lender, all of Borrower's interest in and to the following

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described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, including replacements and additions thereto (hereinafter referred to collectively as the "Mortgaged Property":

(a) All those certain tracts, pieces or parcels of land, and interests in land, located in the Town of Cheektowaga, County of Erie, State of New York, as more particularly described in *Exhibit A* attached hereto and by this reference made a part hereof (the "Land");

(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus, which are of or shall be attached to said buildings, structures, or improvements, and all furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property of every kind and nature whatsoever now or hereafter owned by Borrower and located in, on or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Mortgaged Property, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions or proceeds from a permitted sale of any of the foregoing, and all building material and supplies of every kind now or hereafter placed or located on the Land (collectively "Improvements"), all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Mortgaged Property as between the parties hereto and all Persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage; provided that Mortgaged Property shall exclude all personal property owned by tenants;

(c) All easements, rights of way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber, and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Mortgaged Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now or owned or hereafter acquired by Borrower.

(d) All rents, issues, profits, revenues and proceeds from any sale or other disposition of the Mortgaged Property, or any part thereof, from time to time accruing (including without limitation all payments under leases, ground leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits and escrow funds), and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same.

(e) All leases presently existing or hereafter made, whether written or verbal, or any letting of, or agreement for the use of occupancy of, any part of the Mortgaged Property, and each modification, extension, renewal and guarantee thereof (collectively, the "Assigned Leases"), including, without limitation, all the rents, issues, and profits now due and which may hereafter become due under or by virtue of the Assigned Leases, together with all claims and rights to the payment of money

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at any time arising in connection with any rejection or breach of any of the Assigned Leases under Bankruptcy Law, including without limitation, all rights to recover damages arising out of such breach or rejection, all rights to charges payable by a tenant or trustee in respect of the leased premises following the entry of an order for relief under Bankruptcy Law in respect of a tenant and all rentals and charges outstanding under the Assigned Lease as of the date of entry of such order for relief;

(f) All of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to any of the foregoing.

TO HAVE AND TO HOLD the Mortgaged Property and all parts, rights, members and appurtenances thereof, to the use and benefit of Lender and the successors, successors in title and assigns of Lender, forever, and Borrower covenants that Borrower is lawfully seized and possessed of the Borrower's leasehold interest in the Mortgaged Property as aforesaid and has good right to convey the same, that the same is unencumbered except for the matters expressly set forth in *Exhibit A-1* hereto (the "Permitted Exceptions"), and Borrower does hereby warrant and will forever defend the Borrower's leasehold title thereto against claims of all Persons claiming or to claim the same or any part thereof by, through or under the Borrower, but not otherwise, and except as to the Permitted Exceptions set forth in *Exhibit A-1*).

The lien of this Mortgage automatically will attach to any further, greater, additional or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time hereafter acquired by the Borrower by whatsoever means and without any further action or filing or recording on the part of the Borrower or Lender or any other Persons.

BORROWER HEREBY COVENANTS AND AGREES WITH LENDER AS FOLLOWS:

Article II

Article II.1 Payment and Performance of Loan Documents. Borrower will perform, observe and comply with all the provisions hereof, and of each of the other Loan Documents, including, but not limited to, the due and punctual payment of the interest amount due under the Note, together with the interest thereon, and all other sums of money required to be paid by Borrower pursuant to any one or more of the Loan Documents.

Article II.2 Ground Lease Agreement

(a) Borrower shall promptly:

(1) Perform, observe and comply with all of the obligations, covenants and agreements required to be performed, observed and complied with by the lessee under the Ground Lease and do all things necessary to preserve and to keep unimpaired its rights thereunder;

(2) Notify Lender of any default by Borrower under the Ground Lease in the performance or observance of any of the covenants or agreements on the part of the Borrower to be performed or observed thereunder or the giving of any notice by the lessor under the Ground Lease to

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Borrower (A) claiming such a default or (B) of such lessor's intention to exercise any remedy reserved to the lessor thereunder; and

(3) Cause a copy of each such notice given by such lessor to Borrower to be delivered to Lender.

(b) Borrower covenants, represents and warrants to Lender that so long as this Mortgage remains unsatisfied, it will comply with all the obligations required on its part to be performed under the Ground Lease. In the event Borrower fails or refuses to perform any of its obligations under the Ground Lease, Lender may, but shall not be obligated to, perform any and all obligations of Borrower under the Ground Lease, including, but not limited to, the payment of any or all rent and other sums due from Borrower thereunder. Any costs or expenses incurred by Lender in performing the obligations of Borrower under the Ground Lease, including any rent or other sums paid by Lender, shall constitute part of the obligations and shall be secured hereby.

(c) If Borrower shall fail to perform, observe or comply with any of the obligations, covenants or agreements required to be performed, observed or complied with by it under the Ground Lease, including, without limitation, payment of all rent and other charges due thereunder, Lender, after five (5) business days' notice (except in emergencies or in situations where a failure sooner to perform or observe the same may result in a forfeiture under the Ground Lease) may, but shall not be obligated to, take such action as is appropriate to cause such covenant, agreements or obligations promptly to be performed, observed or complied with on behalf of Borrower, including, but not limited to, the payment of any or all rent and other sums due from Borrower thereunder, but no action so taken by Lender shall release Borrower from any of its obligations under this Mortgage. Upon receipt by Lender from the Lessor under the Ground Lease of any notice of default that continues beyond all applicable notice and cure periods by Borrower thereunder, Lender may reasonably rely thereon and take any such action as aforesaid to cure such default even though the existence of such default or the nature thereof may be questioned or denied by Borrower or by any party on behalf of Borrower. Any costs or expenses incurred by Lender in taking any action as provided for in this paragraph, including any rent or other sums paid by Lender, shall constitute part of the obligation and shall be secured hereby.

(d) Borrower shall not surrender its leasehold estate under the Ground Lease, nor terminate or cancel the Ground Lease, and Borrower shall not materially modify, change, supplement, alter or amend the Ground Lease either orally or in writing, and any attempt on the part of the Borrower to exercise any such right without the consent of Lender shall be null and void, unless required to do so by the Senior Lenders or Investor Member.

(e) The fee title to the properties demised by the Ground Lease and the leasehold estate shall not merge, but always shall remain separate and distinct, notwithstanding the union of such estates either in the Lessor or in the Lessee under the Ground Lease or in a third party by purchase or otherwise.

(f) Borrower shall give Lender prompt notice of commencement of any arbitration or appraisal proceeding pursuant to the Ground Lease. Lender shall have the right to intervene and participate

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in any such proceeding and Borrower shall confer with Lender and its attorneys and experts and cooperate with them to the extent Lender deems reasonably necessary for the protection of the Lender. Upon the request of Lender, Borrower shall exercise all rights of arbitration or appraisal conferred upon it by the Ground Lease, subject to the rights of the Senior Lenders. If at the time, any such proceeding shall be commenced, Borrower shall be in default in the performance or observance of any covenant or agreement contained in the Ground Lease, or in this Mortgage, on the part of the Borrower to be performed or observed, beyond any applicable grace period, Lender shall have, and is hereby granted, the sole and exclusive right to designate and appoint on behalf of Borrower the arbitrator(s) or appraiser(s) in such proceedings, subject to the rights of the Senior Lenders.

(g) Borrower shall use its reasonable efforts to obtain from the lessor under the Ground Lease and deliver to Lender, within twenty (20) days after demand by Lender, a statement in writing certifying that the Ground Lease is unmodified and in full force and effect (or if modified, stating the modifications) and the dates to which the rent and other charges, if any, have been paid in advance, and stating whether or not, to the best knowledge of the signer of such certificate, Borrower is in default in the performance of any covenant or agreement contained in the Ground Lease, and, if so, specifying each such default of which the signer may have knowledge.

(h) intentionally omitted.

(i) Borrower promptly shall notify Lender of any change made pursuant to the Ground Lease in rent payable by the lessee thereunder, and in the event that any proceeds of insurance on any part of the Mortgaged Property, or any proceeds of any award for the taking by eminent domain of any part of the Mortgaged Property, shall be deposited with any person pursuant to the requirements of the Ground Lease, Borrower promptly shall notify Lender of the name and address of such persons and the amount so deposited.

Article II.3 Security Agreement. With respect to all personal property owned by the Borrower and located at the Land (the "Personal Property") constituting part of the Mortgaged Property which is subject to the provisions of Article 9 of the Uniform Commercial Code as enacted in the State of New York (the "UCC"), this mortgage is hereby made and declared to be a security agreement encumbering each and every item of such Personal Property in compliance with the provisions of the UCC, and Borrower hereby grants to Lender a security interest in said Personal Property. Borrower authorizes Lender to file a financing statement or statements reciting this mortgage to be a security agreement affecting all of such Personal Property. The remedies for any violation of the covenants, terms, and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default, shall be (a) as prescribed herein or in any other Loan Document with respect thereto, or (b) as prescribed by applicable Law, including the UCC, all at Lender's sole election. Borrower agrees that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Lender that everything used in connection with the production of income from the Mortgaged Property or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings both legal and equitable shall be regarded as part of the real estate conveyed hereby

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regardless of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain items capable of being thus identified in an Exhibit to this Mortgage, or (iii) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (A) the proceeds of any fire and/or hazard insurance policy, or (B) any award in eminent domain proceedings for taking or for loss of value, or (C) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to a lease or otherwise, shall not in any way alter any of the rights of Lender as determined by this instrument or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement(s) is solely for the protection of Lender in the event any court shall at any time hold, with respect to the foregoing items (A), (B), or (C), that notice of Lender's priority of interests, to be effective against a particular class of persons, must be filed in the UCC records. This Mortgage may be filed as a financing statement in any office where Lender deems such filing necessary or desirable and Borrower will promptly upon demand reimburse Lender for the costs therefor.

Article II.4 Use of Mortgaged Property. Borrower shall at all times operate the Mortgaged Property as an affordable housing project for senior citizens age 55 and older. Borrower shall not be permitted to alter or change the use of the Mortgaged Property without the prior written consent of Lender.

Article II.5 Conveyance of Mortgaged Property. Except as otherwise expressly permitted by the Loan Agreement, Borrower shall not directly or indirectly encumber (by liens, junior mortgage, or otherwise), pledge, convey, transfer or assign any or all of its interest in the Mortgaged Property without written prior consent of Lender.

Article II.6 Acquisition of Collateral. Except as otherwise expressly permitted by the Loan Agreement, Borrower shall not acquire any Personal Property subject to any Lien taking precedence over the Lien of this Mortgage.

Article II.7 Insurance.

(a) Borrower will take out and continuously maintain in effect, or cause, or cause to be taken out and thereafter continuously maintained in effect, the insurance required by the Ground Lease to be maintained by lessee under the Ground Lease. All such insurance policies shall name as additional insured Lender as its interest shall appear. All certificates evidencing the insurance so required to be carried by the Ground Lease and this Mortgage shall be deposited with Lender. Prior to the expiration or cancellation of any such policy, Borrower will furnish to Lender evidence satisfactory to Lender that such policy has been renewed or replaced by another policy.

(b) The Mortgagor shall keep the Land and improvements thereon insured against each risk to which the Land and the improvements thereon may from time to time be subject (including, but not limited to, fire, vandalism and other risks covered by all risk insurance; if requested by the Mortgagee, earthquake; if the Land or any portion thereof are located in an area identified as an area having special flood hazards and in which flood insurance has been made available, flood; and loss of rents by reason of such risks) for the benefit of the Mortgagee. Such insurance shall be provided in such amounts, for such periods, in such form, with such special endorsements, on such terms and by such companies and against such risks as shall be satisfactory to the Mortgagee. Without limiting the generality of the preceding two sentences, each policy pursuant to which

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such insurance is provided shall contain a mortgagee clause, in form and substance satisfactory to the Mortgagee, (a) naming the Mortgagee as mortgagee and (b) providing that (i) all moneys payable pursuant to such insurance shall be payable to the Mortgagee, subject to the rights of the Senior Lender, (ii) such insurance shall not be affected by any act or neglect of any Mortgagor or the Mortgagee, any occupancy, operation or use of the Land or the improvements thereon or any portion thereof for purposes more hazardous than permitted by the terms of such policy, any foreclosure or other proceeding or notice of sale relating to the Land or improvements thereon or any portion thereof or any change in the title to or ownership of the Land or the improvements thereon or any portion thereof and (iii) such policy and such mortgagee clause may not be canceled or amended except upon thirty (30) days' prior written notice to the Mortgagee. The Mortgagor hereby assigns and shall deliver each policy pursuant to which any such insurance is provided to the Mortgagee. The acceptance by the Mortgagee of such policies from any Mortgagor shall not be deemed or construed as an approval by the Mortgagee of the form, sufficiency or amount of such insurance. The Mortgagee does not in any way represent that such insurance, whether in scope or coverage or limits of coverage, is adequate or sufficient to protect the business or interest of any Mortgagor. In the event of the foreclosure of this Mortgage, or a transfer of title to the Land or the improvements thereon in extinguishment of the indebtedness, all right, title and interest of the Mortgagor in and to any such policies then in force shall pass to the purchaser or grantee of the Land or improvements thereon. All the provisions of this Section 2 and any other provisions of this Mortgage pertaining to insurance which may be required under this Mortgage shall be construed with Section 254, Subdivision 4 of the New York Real Property Law, but, said Section 254 to the contrary notwithstanding, the Mortgagor consents that the Mortgagee may, without qualification or limitation by virtue of said Section 254, retain and apply the proceeds of any such insurance in satisfaction or reduction of the indebtedness subject to the rights of the Senior Lenders, whether or not then due and payable, or it may pay the same, wholly or in part, to any Mortgagor for the repair or replacement of the Land or improvements thereon or for any other purpose satisfactory to the Mortgagee, without affecting the lien of this Mortgage for the full amount of the Indebtedness before the making of such payment.

Article III

Article III.1 Events of Default.

(a) An event of default ("Event of Default") will have occurred any of the following happen in regard to either Mortgagor:

(1) The Borrower fails to pay when due and within thirty (30) days after a notice of default is given to Borrower by Mortgagee whether by acceleration or otherwise the indebtedness or any portion thereof;

(2) The Mortgagor breaches or is in default under this Mortgage (including but not limited to any default in the payment of any amount the Mortgagor is obligated to pay pursuant to this Mortgage or in the performance of any obligation of the Mortgagor pursuant to this Mortgage or under any other agreement with the Mortgagee, which default continues for thirty (30) days after a notice of default is given to the Mortgagor and Borrower's investor member by Mortgagee provided that if any such failure concerning a non-monetary

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covenant or condition is susceptible to cure and cannot reasonably be cured within said thirty (30) day period, then Mortgagor shall have an additional thirty (30) day period to cure such failure and no Event of Default shall be deemed to exist hereunder so long as (x) Mortgagor commences such cure within the initial thirty (30) day period and diligently and in good faith pursues such cure to completion within such resulting sixty (60) day period from the date of Mortgagee's notice. Mortgagee agrees that Borrower's investor member, or its designee, may, but shall not be obligated to, cure any default under this Mortgage on behalf of Borrower, and that such cure will be accepted or rejected on the same terms as if made by Borrower itself.;

(3) The Mortgagor is dissolved, suspends its present business, agrees to a merger or other absorption or to transfer or otherwise dispose of substantially all of its assets, generally fails to pay its debts as they become due, fails to pay, withhold or collect any tax as required by law, has served or filed against its assets any lien or has entered against it or its assets any judgment, order or award;

(4) A receiver or similar trustee is appointed for the Mortgagor or its assets (with its consent);

(5) Any representation or warranty made in this Mortgage or related documents or other statements provided by the Mortgagor proves to have been incorrect or misleading in any material respect;

(6) The Mortgagor is in default under the terms of the Loan Agreement between the Borrower and Mortgagee of even date herewith after expiration of all applicable notice and cure periods.

(b) After the occurrence of an Event of Default that continues beyond any applicable notice and cure periods, Mortgagee, at its sole election, may declare all or any part of any indebtedness not paid on demand to be immediately due and payable without demand or notice of any kind (except notice described in Section 7 of the Loan Agreement). All or any part of any indebtedness not payable on demand shall be immediately due and payable, without demand or notice of any kind, upon the commencement of any Mortgagor's bankruptcy if voluntary and upon the lapse of ninety (90) days without dismissal if involuntary. The provisions of this paragraph are not intended in any way to affect any rights of Mortgagee with respect to any Indebtedness which may now or hereafter be payable on demand.

(c) Upon the happening of an Event of Default that continues beyond any and all applicable notice and cure periods, whether or not foreclosure proceedings have been instituted, Mortgagor shall, upon demand, surrender possession of its interest to the Mortgaged Property to Mortgagee. If Mortgagor remains in possession of the Mortgaged Property after the happening of an Event of Default that continues beyond any and all applicable notice and cure periods and after demand being made by the Lender, the possession shall be as subtenant of Mortgagee and Mortgagor agrees to pay in advance upon demand to Mortgagee a reasonable monthly rental for the Mortgaged Property or portion so occupied. Mortgagee may dispossess, by summary proceedings

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or otherwise, any subtenant or Mortgagor defaulting in the payment of rent. If a receiver is appointed, this covenant shall inure to the benefit of such receiver. Notwithstanding any provision of law to the contrary, Mortgagee may, at its option, foreclose this Mortgage subject to the rights of tenants of the Mortgaged Property which are subordinate to the lien of this Mortgage and the rights of the Senior Lenders.

(d) If the indebtedness, as evidenced by the Note or other written instrument shall exceed the amount secured by this Mortgage, or as evidenced by a combination of same that singularly, or in part collectively may be less than said secured amount but combined exceed said secured amount, Mortgagee, in any foreclosure hereof, shall have the right to sue and collect the excess in the same action as commenced for the foreclosure hereof, and recover a money judgment for said excess with all the rights attendant thereto, including, without limitation, the issuance of an execution to the Sheriff for collection thereof, and Mortgagor hereby waives any defense based upon a claim that in doing so, Mortgagee is splitting its cause of action if it seeks to foreclose this Mortgage for part of the indebtedness and recover at law for another part.

(e) Upon the happening of an Event of Default beyond the expiration of all applicable notice and cure periods, Mortgagee or its agents may pursue, take or refrain from pursuing any remedy for collection of the Indebtedness, including foreclosure of this Mortgage, subject to the rights of the Senior Lenders.

(f) Mortgagee may, either with or without entry or taking possession of the Mortgaged Property as provided in this Mortgage or otherwise, personally or by its agents or attorneys, and without prejudice to the right to bring an action of foreclosure, sell the Mortgaged Property or any part thereof pursuant to any procedures provided by applicable law including, without limitation, the procedures set forth in Article 14 of the New York Real Property Actions and Proceedings Law (and any amendments or substitute statutes in regard thereto), and all estate, right, title interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by applicable law. Any reference in this Mortgage to an action or right of the Mortgagees in regard to or in connection with a "foreclosure proceeding" shall be deemed to include a sale and/or proceeding under this subsection.

Article III.2 Rights and Remedies.

(a) If an Event of Default shall have occurred and continue beyond the expiration of any and all notice and cure periods, then in addition to the rights and remedies provided for under any other Loan Document or under the applicable law, at the option of Lender and subject to the rights of the Senior Lenders, this Mortgage may be foreclosed in any manner now or hereafter provided by New York State law, and to the extent provided or allowed by New York State law, Lender, or its agent, may sell the Mortgaged Property or any part of the Mortgaged Property at one or more public sales, as may be required, in which the Land or any part of the Land is situated, after having first given notice of the time, place and terms of sale as required by applicable New York State law(s). At any such sale Lender may execute and deliver to the purchaser a conveyance of the Mortgaged Property or any part of the Mortgaged Property. Lender shall have the right to enforce

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any of its remedies set forth herein without notice to Borrower, except for such notice as may be required by law. In the event of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Mortgaged Property may be sold as an entirety or in separate parcels and in such manner or order as Lender in its sole discretion may elect, and if Lender so elects, Lender may sell the Personal Property at one or more separate sales in any manner permitted by the UCC, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until the entire Mortgaged Property is sold or the obligations are paid in full. If the obligations are now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Lender at its option may exhaust the remedies granted under any of said security instruments or this Mortgage either concurrently, independently, and in such order as Lender and applicable law(s) may determine and/or apply.

Said sale may by adjourned by Lender, or its agent, and reset at a later date without additional publications; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set.

(b) In the event of any sale of the Mortgaged Property as authorized by this Section, all prerequisites of such sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment or nonperformance of the obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

Article III.3 Expenses. The Borrower shall pay to the Mortgagee or its agents on demand all actual, reasonable costs and expenses (including but not limited to reasonable attorneys' fees and disbursements for outside counsel) incurred by the Mortgagee or its agents in connection with the indebtedness including without limitation costs of collection, of preserving or exercising any right or remedy of the Mortgagee or its agents under this Mortgage or any related security agreement or guaranty, of workout or bankruptcy proceedings by or against any Mortgagor, of defending against any claim asserted as a direct or indirect result of the indebtedness or of performing any obligation of any Mortgagor pursuant to this Mortgage or otherwise (including but not limited to payment of any amount any Mortgagor is obligated to pay pursuant to Sections 2, 6, 8 or 16 of this Mortgage and performance of any obligation of any Mortgagor pursuant to Section 23 or 26 of this Mortgage). Each such cost and expense shall constitute part of the indebtedness and be secured by this Mortgage and may be added to the judgment in any suit brought by the Mortgagee or its agents against any Mortgagor on this Mortgage.

Article III.4 Appointment of Receiver. In addition to any other remedy, upon the occurrence of any Event of Default that continues beyond all applicable notice and cure periods, the Mortgagee, in any action to foreclose this Mortgage, shall be entitled, without notice or demand and without regard to the adequacy of any security for the indebtedness or the solvency or insolvency of any person liable for the payment thereof, to the appointment of a receiver of the rents, issues and profits of the Mortgaged Property.

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Article III.5 Sale In One Or More Parcels. In case of a foreclosure sale, the Mortgaged Property may be sold in one or more parcels, any provision of any statute, regulation or other law to the contrary notwithstanding.

Article III.6 Purchase by Lender. Upon any foreclosure sale or sale of all or any portion of the Mortgaged Property under the power herein granted, Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the obligations as a credit to the purchase price.

Article III.7 Borrower as Tenant Holding Over. In the event of any such foreclosure sale or sale under the powers herein granted, Borrower (if Borrower shall remain in possession) and all Persons holding under Borrower shall be deemed tenants holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to the provisions of law applicable to tenants holding over.

Article III.8 Waiver of Appraisement, Valuation, Etc. Borrower agrees to the full extent permitted by law, that in case of an Event of Default that continues beyond all applicable notice and cure periodson the part of Borrower hereunder, neither Borrower nor anyone claiming through or under Borrower will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Borrower, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

Article III.9 Waiver of Homestead. Borrower hereby waives and renounces all homestead and exemption rights provided for by the Constitution of the laws of the United States and of any state, in and to the Mortgage Property as against the collection of obligations, or any part thereof.

Article III.10 Leases. Lender, at its option, is authorized to foreclose this Mortgage subject to rights of any and all liens superior to its own interest herein, in law, at equity or by statute, to said Lender's rights under this Mortgage and the rights of any subtenants of the Mortgaged Property, and the failure to make any such subtenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceeding instituted by Lender to collect the sums secured hereby.

Article III.11 Discontinuance of Proceedings. In case Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then in every such case, Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred.

Article III.12 Remedies Cumulative. All rights and remedies of the Mortgagee under this Mortgage and its other agreements with Mortgagor are cumulative, and no right or remedy shall be exclusive of

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any other right or remedy. No single, partial or delayed exercise by the Mortgagee or its agents of any right or remedy shall preclude full and timely exercise by the Mortgagee or its agents at any time of any right or remedy of the Mortgagee without notice or demand, at the Mortgagee's sole option. No course of dealing or other conduct, no oral agreement or representation made by the Mortgagee or its agents or usage of trade shall operate as a waiver of any right or remedy of the Mortgagee. No waiver of any right or remedy of the Mortgagee shall be effective unless made specifically in writing by the Mortgagee.

Article III.13 Suits to Protect the Mortgaged Property. Lender shall have the power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the liens of this Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the rents; (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would materially impair the security hereunder or be prejudicial to the interest of the Lender.

Article III.14 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Borrower under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

Article IV

Article IV.1 Successors and Assigns. This Mortgage shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title, and assigns. Whenever a reference is made in this Mortgage to "Borrower" or "Lender" such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-in-title, and assigns of Borrower or Lender, as the case may be, but shall not imply any permission to make or permit any transfer which is otherwise prohibited.

Article IV.2 Terminology. All personal pronouns used in this Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Title and Articles are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references herein to Articles, Sections or subparagraphs shall refer to corresponding Articles, Sections or subparagraphs of this Mortgage unless specific reference is made to Articles, Sections or subparagraphs of another document or instrument.

Article IV.3 Severability; Complete Agreement. If any provision of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. This Mortgage, the Note, the other Loan Documents, and any other instruments executed in connection herewith constitute the full and complete agreement of the parties and supersede all prior negotiations,

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correspondence, and memoranda relating to the subject matter hereof, and this Mortgage may not be amended except by a writing signed by the parties hereto.

Article IV.4 Applicable Law. This Mortgage shall be interpreted, construed and enforced according to the laws of the State of New York.

Article IV.5 Notices. All notices provided for herein shall be given and deemed received when given and received in accordance with the terms of the Loan Agreement.

Article IV.6 Assignment. This Mortgage is assignable by Lender and any assignment of this Mortgage by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender.

Article IV.7 Future Advances. Upon request of Borrower, Lender, at Lenders option so long as this Mortgage secures indebtedness held by Lender, may make future advances to Borrower. Such future advances, with interest thereon, shall be secured hereby if made under the terms of this Mortgage or the Note, or if made pursuant to any other promissory note, instrument or agreement stating that sums advanced thereunder are secured thereby.

Article IV.8 Alterations, Demolition, or Removal. Other than the improvements contemplated in the plans and specifications to be submitted to and approved by the Lender, no building, structure, other improvement, fixture or equipment or other personal property constituting any portion of the Premises shall be removed, demolished or substantially altered without the prior written consent of the Mortgagee.

Article IV.9 Waste and Change In Use. No Mortgagor shall commit any intentional waste on the Premises or make any change in the use of the Premises which may in any way increase any ordinary fire, environmental or other risk arising out of construction or operation.

Article IV.10 Maintenance and Repairs. Upon construction completion, the Mortgagor shall keep and maintain all buildings, structures, other improvements, fixtures and equipment and other personal property constituting any portion of the Premises and the sidewalks and curbs abutting the Premises in good order and rentable and tenantable condition and state of repair. Except as otherwise set forth herein, in the event that the Premises or any portion thereof shall be damaged or destroyed by fire or any other casualty, or in the event of the condemnation or taking of any portion of the Premises as a result of any exercise of the power of eminent domain, the Mortgagor shall promptly restore, replace, rebuild or alter the same as nearly as possible to the condition immediately prior to such fire, other casualty, condemnation or taking without regard to the adequacy of any proceeds of any insurance or award received. The Mortgagor shall give prompt written notice to the Mortgagee of any such damage or destruction or of the commencement of any condemnation or eminent domain proceeding affecting the Land or real estate portion of the Mortgaged Property..

Article IV.11 Existence and Authority. If Mortgagor is a corporation, partnership or a limited liability company (i) so long as this Mortgage remains in effect, Mortgagor will do all things necessary to preserve and keep in full force and effect the existence, franchises, rights and privileges of Mortgagor as a business or stock corporation, a partnership (limited or general) or as a limited liability company, under the laws of the state of its organization and (ii) if a corporation, warrants that neither

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its certificate of incorporation, nor any amendment thereto, nor its by-laws, requires the consent of shareholders to the execution and delivery of this Mortgage, and that the execution and delivery of this Mortgage have been duly authorized by its Board of Directors; (iii) if a limited liability company, warrants that the execution and delivery of this Mortgage has been duly authorized by the members of the limited liability company and no other action is required under its articles of organization or the operating agreement and (iv) if a partnership, warrants that the execution and delivery of this Mortgage has been duly authorized by its partners and no other action is required under its partnership agreement. Mortgagor shall take all necessary steps to preserve its corporate, partnership or limited liability company existence (as the case may be) and its right to conduct business in all states in which the nature of its business or ownership of its property requires such qualification. Mortgagor shall engage only in the business conducted by it on the date of this Agreement.

Article IV.12 Taxes and Assessments. The LLC shall pay all taxes or payments in lieu of taxes, general and special assessments and other governmental impositions with respect to the Premises before the end of any applicable grace period. Upon request by the Mortgagee, the LLC shall promptly deliver to the Mortgagee receipted bills showing payment of all such taxes or payments in lieu of taxes, assessments and impositions within the applicable grace period.

Article IV.13 No Transfer. With the exception of "Permitted Transfers" as that term is defined in the Loan Agreement, no Mortgagor shall, without the Mortgagee's prior written consent, sell, convey or transfer their interest in the Ground Lease or any portion thereof or any interest therein, or contract to do so.

Article IV.14 No Secondary Financing or Other Liens. No Mortgagor shall, without the Mortgagee's prior written consent, mortgage, pledge, assign, grant a security interest in or cause any other lien or encumbrance to be made or permit any other lien or encumbrance to exist upon the Mortgaged Property or any portion thereof except for (a) taxes and assessments not yet delinquent, (b) any mortgage, pledge, security interest, assignment or other lien or encumbrance to the Mortgagee and (c) any mortgage, pledge, security interest, assignment or other lien or encumbrance set forth below in Exhibit A-1.

Article IV.15 Notices. Each notice to, and each demand upon, any Mortgagor by the Mortgagee relating to this Mortgage shall be in writing and served in person or by certified mail/return receipt requested or by overnight mail via a nationally recognized carrier.

Article IV.16 Notice of Non-Compliance. Mortgagor shall notify Mortgagee in writing of any failure by Mortgagor to comply with any provision of the Note, the Mortgage or any document executed in connection therewith immediately upon learning of such non-compliance, or if any representation, warranty or covenant contained in such document is no longer true. Mortgagor shall also immediately notify Mortgagee in writing if there is any material adverse change in any of the information or financial statements supplied to Mortgagee or its agents to induce Mortgagee to extend credit to Mortgagor or if such information or financial statement is required under this Mortgage or any other document executed in connection therewith.

Article IV.17 Environmental Representations, Warranties, and Indemnification. Except as otherwise disclosed to Mortgagee in writing or in the Environmental Reports (as hereinafter defined), Mortgagor represents and warrants, and continues to represent and warrant as long as this Mortgage

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is in effect, to the Mortgagee that (a) the Mortgagor and the Land and improvements thereon are in compliance with each statute, regulation or other law and each judgment, order or award of any court, agency or other governmental authority or of any arbitrator (individually an "Environmental Requirement") relating to the protection of any water, water vapor, land surface or subsurface, air, fish, wildlife, biota or other natural resources or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of any chemical, natural or synthetic substance, waste, pollutant or contaminant (collectively "Regulated Materials"), (b) no Mortgagor has been charged with, or has received any notice that such Mortgagor is under investigation for, the failure to comply with any Environmental Requirement, nor has any Mortgagor received any notice that such Mortgagor has or may have any liability or responsibility under any Environmental Requirement with respect to the Land, the improvements thereon or otherwise, (c) the Land and improvements thereon have never, to the knowledge of such Mortgagor, been used for (i) the storage, treatment, generation, transportation, processing, handling, production or disposal of Regulated Materials, except as permitted by law, (ii) a landfill or other waste disposal site or (iii) military purposes, (d) no underground storage tanks are located at the Land, (e) the environmental media at the Premises do not contain Regulated Materials beyond any legally permitted level, (f) there has never been any release, threatened release, migration or uncontrolled presence of any Regulated Materials on, at or from the Land and (g) no Mortgagor has received any substantiated or credible notice of any such release, threatened release, migration or uncontrolled presence. No Mortgagor shall cause or permit the Land to be used in any way that would result in any of the representations and warranties contained in the preceding sentence to be false or misleading at any future time. To the extent any such representation or warranty at any time is or becomes false or misleading, the Mortgagor shall promptly notify the Mortgagee thereof. The Mortgagor shall, at such Mortgagor's own cost and expense, conduct and complete all investigations, studies, sampling and testing with respect to the Land and improvements thereon reasonably requested by the Mortgagee. The Mortgagor shall promptly furnish to the Mortgagee copies of all such investigations, studies, samplings and tests. The Mortgagor shall (a) conduct and complete all such investigations, studies, samplings and testing, and all remedial, removal and other actions necessary with respect to the Land and/or improvements thereon, in accordance with all applicable Environmental Requirements and promptly furnish to the Mortgagee copies of all documents generated in connection therewith and (b) defend, reimburse, indemnify and hold harmless the Mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, the violation of, or other liability or responsibility under, any Environmental Requirements, or the release, threatened release, migration or uncontrolled presence of any Regulated Materials on, at or from the Land including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, reasonable court costs and litigation expenses. In the event this Mortgage is foreclosed, or the Mortgagors tender a deed in lieu of foreclosure which the Mortgagee agrees to accept, the Mortgagor shall be responsible to deliver the Land and improvements thereon to the Mortgagee free of any and all Regulated Materials other than any that are (a) normally used in such Mortgagor's business and (b) located and maintained thereon in compliance with all applicable Environmental Requirements and in a condition that conforms with all applicable Environmental Requirements. The provisions of this section shall be in addition to any and all other obligations and liabilities any Mortgagor may have to the Mortgagee at common law or any other agreement with Mortgagee, and shall survive the transactions contemplated in this Mortgage and the termination of this Mortgage. Environmental Reports shall include: Phase I Environmental Site Assessment; Lead

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Risk Assessment; Asbestos Report, and any and all other environmental reports that have been provided to the Mortgagee by the Mortgagor or a related party of the Mortgagor.

Notwithstanding the foregoing, the Mortgagor shall not have an indemnification liability if the violation of the Environmental Laws or the presence of the Environmental Hazards is due to the gross negligence or willful misconduct of Mortgagee or arises after the effective date of the Mortgagor's sale, transfer or assignment of its ownership interest in the Land.

Article IV.18 Compliance With Laws. The Mortgagor represents and warrants to the Mortgagee, and continues to represent and warrant as long as this Mortgage is in effect, as follows:

(a) upon construction completion, the building, structures and other improvements constituting any portion of the Mortgaged Property shall be in substantial compliance with all applicable statutes, regulations and other laws (including, without limitation, all applicable zoning, building, fire and health codes and ordinances and the Americans With Disabilities Act of 1990) and all applicable deed restrictions, if any and is not and shall not be used for any illegal purpose;

(b) such compliance is based solely upon the Mortgagor's leasehold ownership of the Land and not upon title to or interest in any other property. The Mortgagor shall comply with or cause compliance with all statutes, regulations and other laws (including, without limitation, all applicable zoning, building, fire and health codes and ordinances and the Americans With Disabilities Acts of 1990), all other requirements of all governmental authorities whatsoever having jurisdiction over or with respect to the Land and improvements thereon or any portion thereof or the use or occupation thereof and with all applicable deed restrictions, if any; provided, however, that any Mortgagor may postpone such compliance if and so long as the validity or legality of any such requirement or restriction shall be contested by such Mortgagor, with diligence and in good faith, by appropriate legal proceedings and the Mortgagee is satisfied that such non-compliance will not impair or adversely affect the value of its security.

Article IV.19 Certain Rights and Obligations.

(a) Mortgagee or its agents may take such action as Mortgagee or its agents deem appropriate to protect the Mortgaged Property or the status or priority of the lien of this Mortgage, including, but not limited to: entry upon the Land to protect the Land and improvements thereon from deterioration or damage, or to cause the Land and improvements thereon to be put in compliance with any governmental, insurance rating or contract requirements; payment of amounts due on liens having priority over this Mortgage; payment of any tax or charge for purposes of assuring the priority or enforceability of this Mortgage; obtaining insurance on the Land and improvements thereon; or commencement or defense of any legal action or proceeding to asset or protect the validity or priority of the lien of this Mortgage. On demand, Mortgagor shall reimburse Mortgagee or its agents for all actual, reasonable expenses in taking any such action, and the amount thereof shall be secured by this Mortgage and shall, to the extent permitted by law, be in addition to the maximum amount of the indebtedness evidenced by the Note.

(b) If any default shall be made in the payment of any indebtedness, this Mortgage shall remain valid, binding and enforceable: (i) without deduction by reason of any setoff, defense or counterclaim of Mortgagor; (ii) without requiring protest or notice of nonpayment or notice of default to Mortgagor, or to any other person; (iii) without demand for payment or proof of such demand; (iv) without

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requiring Mortgagee to resort first to Mortgagor or to any other guaranty or any collateral which Mortgagee may hold; (v) without requiring notice of acceptance hereof or assent hereto by Mortgagee; and (vi) without requiring notice that any indebtedness has been incurred or of the reliance by Mortgagee upon this Mortgage; all of which Mortgagor hereby waives.

(c) The enforceability of this Mortgage shall not be affected by: (i) any failure to perfect or continue the perfection of any security interest in or other lien on any collateral securing payment of the Indebtedness; (ii) the invalidity, unenforceability or loss or change in priority of any such security interest or other lien; (iii) any failure to protect, preserve or insure any such collateral; (iv) any compromise of any obligation of the Mortgagor; or (v) the invalidity or unenforceability of any of the Indebtedness; all of which Mortgagor hereby waives.

(d) If Mortgagee shall receive from or on behalf of Mortgagor any sum less than the full amount then due and payable, Mortgagee may, but shall not be obligated to, accept the same and, if it elects to accept any such payment, it may without waiving any event of default: (i) apply such payment on account of the Indebtedness or any amount payable hereunder, or (ii) hold same or any part thereof, without liability for interest in a special account and from time to time apply same or any part thereof as specified in subsection (i) of this subsection.

Article IV.20 Lien Law Covenant. The Mortgagor shall receive the advances secured by this Mortgage and shall hold the right to receive such advances as a trust fund in accordance with the provisions of Section 13 of the New York Lien Law.

Article IV.21 Application of and Interest on Condemnation Award. In the event of any eminent domain proceedings resulting in condemnation of the Mortgaged Property or any part thereof, Mortgagor shall have the right to rebuild, subject to the rights of the Senior Lenders, the improvements located on the Land, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds are sufficient to keep the indebtedness in balance and rebuild the improvements in a manner that provides adequate security to Mortgagor for repayment of the indebtedness or if such proceeds are insufficient then Mortgagor shall have funded any deficiency, (b) Mortgagee shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the Loan Documents. If the condemnation affects only part of the Land and/or improvements thereon and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the indebtedness, subject to the right of the Senior Lenders, in a manner that provides adequate security to Mortgagee for repayment of the remaining balance of the indebtedness.

Article IV.22 Estoppel Statement. Upon request by the Mortgagee, the Mortgagor shall furnish to the Mortgagee within five (5) days if such request is made in person or within ten (10) days if such request is otherwise made a written statement duly acknowledged of the amount of the indebtedness and whether any offsets or defenses exist against the indebtedness.

Article IV.23 Right To Inspect and Examine. Upon request by the Mortgagee or its agents with reasonable prior notice and subject to the rights of tenants, the Mortgagor shall permit the Mortgagee and each officer, employee, accountant, attorney and other agent of the Mortgagee to enter and inspect

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the Mortgaged Property and to examine, audit, copy and extract such copies of each record of any Mortgagor relating to the Mortgaged Property or any portion thereof.

Article IV.24 Further Assurances, Promptly upon request by the Mortgagee, the Mortgagor shall execute and deliver each writing, and take each other action, that the Mortgagee shall deem reasonably necessary at the sole option of the Mortgagee (a) to perfect or accomplish any lien or security interest granted, or assignment made, pursuant to this Mortgage; (b) otherwise to accomplish any purpose of this Mortgage; (c) in connection with any transaction contemplated by this Mortgage; or (d) in connection with the Mortgaged Property or any portion thereof.

Article IV.25 Litigation. Mortgagor shall promptly notify Mortgagee in writing of any litigation, proceeding, or counterclaim against, or of any investigation of, Mortgagor if: (i) the outcome of such litigation, proceeding, counterclaim, or investigation may materially and adversely affect the finances or operations of Mortgagor or its interest to, or the value of, any assets secured by the Mortgage or (ii) such litigation, proceeding, counterclaim, or investigation questions the validity of the Mortgage, the Note or any document executed in connection therewith including any guaranties or any action taken, or to be taken, pursuant to any such documents. Mortgagor shall furnish to Mortgagee such information regarding any such litigation, proceeding, counterclaim, or investigation as Mortgagee shall request.

Article IV.26 Covenants Shall Run With The Land. The covenants contained in this Mortgage shall run with the land and bind the Mortgagor, each successor and assign of the Mortgagor and each subsequent owner of the Mortgagor's leasehold interest, encumbrancer, tenant and subtenant of the Land or any portion thereof, and shall inure to the benefit of, and be enforceable by, the Mortgagee and each successor and assign of the Mortgagee.

Article IV.27 Consent To Jurisdiction. In any action or other legal proceeding relating to the Note, the guaranty or this Mortgage, the Mortgagor (i) consents to the personal jurisdiction of any State or federal court located in Erie County, New York, (ii) waives objection to the laying of venue, and (iii) waives personal service of process and subpoenas and consents to service of process and subpoenas by registered mail directed to such Mortgagor at the last address shown in the Mortgagee's records relating to this Mortgage, with such service to be deemed completed five (5) days after mailing, or as otherwise provided by the laws of the State of New York or the United States.

Article IV.28 Term; Survival. The term of this Mortgage shall continue until the indebtedness evidenced by the Note and any other Loan Documents has been fully paid. The Mortgagor's obligation to pay the costs and expenses hereunder shall survive the term of this Mortgage. Each of the Mortgagor's representations, warranties, covenants and agreements shall survive during the term of this Mortgage and shall be presumed to have been relied upon by the Mortgagee. If after receipt of any payment of all or any part of the indebtedness, Mortgagee is for any reason compelled to surrender such payment to any person or entity because such payment is determined to be void or voidable as a preference, impermissible set-off, or a diversion of trust funds, or for any other reason, this Mortgage shall continue in full force notwithstanding any contrary action which may have been taken by Mortgagee in reliance upon such payment, and any such contrary action so taken shall be without prejudice to Mortgagee's rights under this Mortgage and shall be deemed to have been conditioned upon such payment having become final and irrevocable. Upon the satisfaction of all of the obligations under the Loan Documents and the repayment in full of the Loan, the Mortgagee, upon demand from

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the Mortgagor, shall promptly provide any documentation needed to evidence and effectuate the termination of this Mortgage.

Article IV.29 Miscellaneous. This Mortgage is absolute and unconditional and it along with the Note, the Loan Agreement, and all collateral documents including without limitation security agreements and guarantees contains the entire agreement between the Mortgagee and each Mortgagor with respect to the indebtedness, and supersedes every course of dealing, other conduct, oral agreement and representation previously made by the Mortgagee and its agent in their capacity as agent for Mortgagee. No change in this Mortgage shall be effective unless made in a writing duly executed by the Mortgagee and Mortgagor. This Mortgage shall be governed by the laws of the State of New York, without regard to its principles of conflict of laws. This Mortgage is a binding obligation enforceable against the Mortgagor and its successors and assigns and shall inure to the benefit of the Mortgagee and its successors and assigns. Any reference herein to "Mortgagee" shall be deemed to include and apply to every subsequent holder of this Mortgage and any reference herein to "Mortgagor" shall be deemed to include and apply to every subsequent owner of the Premises and every person liable upon the Indebtedness, unless the language or circumstances clearly requires the contrary. Further, the term "Mortgagor" shall include any successor entities to which all or substantially all of the business or assets of Mortgagor shall have been transferred; Each provision of this Mortgage shall be interpreted as consistent with existing law and shall be deemed amended to the extent necessary to comply with any conflicting law. If a court deems any provision invalid, the remainder of this Mortgage shall remain in effect. Section headings are for convenience only. It is the intent of the Mortgagor and the Mortgagee that the provisions of this Mortgage, other than those included in the New York statutory form of mortgage, shall be construed as affording to the Mortgagee rights additional to, and not exclusive of, the rights conferred under the provisions contained in such statutory form. Without limiting the generality of any reference hereunder to an agent of the Mortgagee, any right or remedy granted to the Mortgagee under this Mortgage, including, without limitation, the right to be reimbursed for expenses under Article IV.25, shall inure to the benefit of and be enforceable by both the Mortgagee and its agents.

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IN WITNESS WHEREOF, the undersigned have caused this Mortgage to be duly executed and delivered as of the date first written above.

HDFC (Fee Owner):

ANGELA'S HOUSE HOUSING DEVELOPMENT FUND CORPORATION
a New York not-for-profit corporation

By: _____
Name: Steven Timmel
Title: Authorized Signatory

STATE OF NEW YORK)
COUNTY OF ERIE)

On this _____ day of _____, Two Thousand and Twenty One, before me, the undersigned, a Notary Public in and for said State, personally appeared **Steven Timmel,** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

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BORROWER (Beneficial Owner):

ANGELA'S HOUSE LLC
a New York limited liability company

By: _____
Name: Benathan Upshaw
Title: Authorized Signatory

STATE OF NEW YORK)
COUNTY OF ERIE)

On this _____ day of _____, Two Thousand and Twenty One, before me, the undersigned, a Notary Public in and for said State, personally appeared **Benathan Upshaw**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

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EXHIBIT A

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Cheektowaga, County of Erie and State of New York, being part of Lot 33, Township 11, Range 7 of the Holland Land Company Survey (so-called), bounded and described as follows:

BEGINNING AT A POINT on the west line of Lot 33 at a distance of 51.87 feet northerly measured along the west line of said Lot 33 from its intersection with the north line of Doat Street; said west line of Lot 33 being also the west line of the Town of Cheektowaga and the east line of the City of Buffalo;

RUNNING THENCE: Northerly, along the west line of Lot 33 and the division line between the Town of Cheektowaga and the City of Buffalo, a distance of 615.61 feet to a point;

RUNNING THENCE: Easterly, at an interior angle of 90°-09'-00" with the last described line, a distance of 173.24 feet to a point;

RUNNING THENCE: Southerly, at an interior angle of 89°-49'-30" with the last described line, a distance of 345.81 feet to a point;

RUNNING THENCE: Easterly, at an interior angle of 270°-04'-49" with the last described line, a distance of 55.03 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 82.92 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 15.05 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 45.46 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 27.35 feet to a point;

RUNNING THENCE: Southerly, at an interior angle of 270°-50'-55" with the last described line, a distance of 226.24 feet to a point on the north line of Parcel No. 1 as shown on Map No. SK 219-

14 for lands conveyed to the County of Erie for the reconstruction of Doat Street, C.R. No. 107 by deed recorded in the Erie County Clerk's Office in Liber 8039 of Deeds at Page 523;

RUNNING THENCE: Northwesterly, along the north line of Doat Street and along a non-tangent curve to the right having a radius of 1112.92 feet, a distance of 55.28 feet to a point of tangency;

RUNNING THENCE: Northwesterly, along the north line of Doat Street, a distance of 99.30 feet to an angle point;

RUNNING THENCE: Northwesterly, along the north line of Doat Street, at an interior angle of 170°-16'-55" with the last described line, a distance of 3.16 feet to a point;

RUNNING THENCE: Northerly, at an exterior angle of 69°-55'-38" with the last described line, a distance of 56.82 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 34.15 feet to the POINT OR PLACE OF BEGINNING, containing 2.893 Acres, be the same, more or less.

SUBJECT to easements, rights of way and restrictions or record.

BEING AND INTENDED TO BE a portion of lands conveyed to Felician Sisters of North America Real Estate Trust by deed recorded in the Erie County Clerk's Office in Liber 11182 of Deeds at Page 7392.

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EXHIBIT A-1

Permitted Exceptions

This mortgage is a subordinate mortgage.

(a) The lien of this Mortgage shall be subordinate to and subject to the terms and provisions of one or more mortgages in first lien position securing a construction loan from Evans Bank, National Association ("Evans"), a national banking association, to the Borrower in the aggregate approximate principal amount of up to $12,100,000 and construction/permanent loan from New York State Homeless Housing and Assistance Corporation ("HHAC") in the principal amount of $3,692,030 (collectively the "Senior Loans"), and any refinancing's of the foregoing mortgage loans, and any regulatory agreements required by the New York Division of Housing and Community Renewal ("DHCR") in connection with the tax credits awarded to the Project ("Regulatory Agreements"). Mortgagee expressly acknowledges and agrees that this mortgage is, and all of the Mortgagee's rights hereunder are, subject and subordinate to (a) the Senior Loans and Regulatory Agreements and (b) all loan and security and other documents related thereto collectively, the "Senior Documents"). The subordination of this mortgage to the Senior Documents shall be self-operative, and shall not require any further writing or confirmation hereof. Such subordination is expressly for the benefit of Evans, HHAC and DHCR, and may not be modified or terminated without the express written consent of Evans, HHAC and DHCR.

Notwithstanding any provisions set forth herein or as provided by law, no prepayment of principal, interest or any other amounts due on the Note evidencing the Loan shall be made by Mortgagor to the Mortgagee or accepted or retained by the Mortgagee until the mortgages of the Senior Loans have been released of record; provided, however, that any required payments of interest due under the Note and this mortgage may be paid during such period of time that no default exists under the Senior Loans.

Notwithstanding any provisions set forth therein or as provided by law, the Mortgagee shall not take any action to collect or accelerate the payment of the Note or exercise any remedy or remedies with respect to collection of the Note, either at law or in equity, by judicial proceedings or otherwise, including but not limited to commencement or institution or foreclosure proceedings or otherwise, lawsuits, bankruptcy filings, reorganization or receivership filings by or against the Mortgagor unless and until First Mortgage Lender has filed the foreclosure action on the First Mortgage. If First Mortgage Lender files a foreclosure action and the Mortgagee then files its legal action but thereafter First Mortgage Lender dismisses its foreclosure action, the Mortgagee shall then dismiss its pending lawsuit or other legal actions

(b) The lien of this Mortgage shall be subordinate to and subject to the terms and provisions of a mortgage in co-first lien position securing a permanent loan from the New York State Housing Trust Fund Corporation, to the Borrower in the aggregate approximate principal amount of up to $3,420,167 (inclusive) (the "HTF Loan") and all other documents, terms and conditions related to the HTF Loan, as well as any regulatory agreements required by the New York Division of Housing and Community Renewal in connection with the tax credits awarded to the Project.

(c) Mortgagee acknowledges that Mortgagor and New York State Division of Housing and Community Renewal intend to enter into, or concurrently with the execution and delivery of the Loan Documents are entering into, an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended. Mortgagee agrees to subordinate the Indebtedness and Mortgagee's rights under the Loan Documents executed in conjunction therewith to the relevant provisions of said extended use agreement. This subordination is being made in consideration of the allocation of tax credits to the Premises, absent which the development of the Premises would not occur, and this mortgage loan would not be made.

(d) All items included in title policy no. 2013-4742EC issued by Chicago Title Insurance Company.

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EXHIBIT F

BUILDING LOAN CONTRACT

LIEN LAW SECTION 22 AFFIDAVIT

RECORDING RECEIPT

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RECORD & RETURN TO:
John M. Dudziak, Cheektowaga Town Attorney
3301 Broadway Street
Cheektowaga, NY 14227

Rec.$
RT$
ST$

BUILDING LOAN CONTRACT

THIS CONTRACT made this day of March, 2021, by and between Angela's House LLC, of 221-10 Jamaica Avenue LL1, Queens Village, New York 11428, party of the first part (hereinafter referred to as "Borrower") and the TOWN OF CHEEKTOWAGA, as a municipal corporation of the State of New York as a member of the Amherst-Cheektowaga-Tonawanda HOME Consortium, with principal offices located at 3301 Broadway, Cheektowaga, NY 14227 and the TOWN OF AMHERST, as a municipal corporation of the State of New York acting as lead Authorizing Official for the Amherst-Cheektowaga-Tonawanda HOME Consortium, with principal offices located at 5583 Main Street, Williamsville NY 14221, collectively (herein after referred to as "Lender")

WITNESSETH:

WHEREAS, the Borrower has applied to the Lender for a loan of THREE HUNDRED THOUSAND AND 00/100 UNITED STATES DOLLARS ($300,000.00), to be evidenced by the Promissory Note of the Borrower (the "Note" or "Promissory Note") and a Mortgage from the Borrower and Angela's House Housing Development Fund Corporation (the "HDFC") to the Town of Cheektowaga (the "Mortgage"), both dated as of the date hereof, duly executed and acknowledged, for the payment of said amount, or so much thereof as shall, at any time, be advanced by the holder of said Note and Mortgage, with interest upon each amount so advanced, from the day when such advance is or shall be made to the date of payment, at the fixed rate of interest of 0% per year during the construction period and at the rate of 1% simple interest per annum after permanent conversion; and

WHEREAS, said Leasehold Mortgage is to be a valid lien upon the premises described in "Schedule A", annexed hereto and made a part hereof (the "Premises"), subordinate only to mortgages of primary financing of the Project and all Permitted Exceptions described in the Mortgage; and

WHEREAS, Borrower is to rehabilitate, erect and/or place on said premises the building and/or improvements described in "Schedule B", hereto annexed hereto and made a part hereof; and

WHEREAS, the Lender is to advance the sum of **THREE HUNDRED THOUSAND AND 00/100 UNITED STATES DOLLARS ($300,000.00)** in installments as provided in this contract to apply to the cost of constructing/rehabilitating and completing the buildings and/or

improvements about to be erected or placed upon said premises by the Borrower.

NOW, THEREFORE, in consideration of the premises and of the sum of **ONE DOLLAR ($1.00)** by each of the parties to the other in hand paid, the receipt of which is hereby acknowledged, and in accordance with the provisions of Chapter 38 of the laws of the State of New York for the year 1909 entitled "An Act in relation to liens, constituting Chapter Thirty-three of the

Consolidated Laws", and the various acts amendatory thereof and supplementary thereto, the parties do hereby mutually covenant and agree as follows:

1. The Borrower covenants and agrees that the Mortgage will be duly executed and acknowledged by all parties necessary to make it a valid lien on the said premises (subordinate only to mortgages of primary financing of the project and all Permitted Exceptions described in the Mortgage) for all of the advances to be made, and that it will be delivered to the Lender prior to the making of any advance; that the Loan Agreement, dated as of the date hereof, between the Lender and the Borrower (the "Loan Agreement"), Promissory Note and Mortgage shall be in form approved by the Lender; that the terms of payment of the amount secured by said Promissory Note and Mortgage shall be as set forth in a copy of such Promissory Note annexed hereto as "Schedule C" and made a part hereof; and that all buildings, structures and personal property located at the Premises and owned by the Borrower and/or HDFC, and each and every fixture, article and improvement located at the Premises and owned by the Borrower and/or HDFC, now or hereafter attached to or placed in or upon said buildings or premises, to be used in connection therewith, shall form a part of the mortgaged premises and property, to be covered by, and be subject to, the lien of said Mortgage given to secure the advances herein provided for.

2. The Borrower further covenants and agrees that it will commence and will continue with all reasonable speed the rehabilitation, construction and/or completion of the buildings and/or improvements to be erected or placed by it upon said Premises strictly in accordance with any building restrictions, zoning ordinance, approval and building ordinance affecting said Premises, and substantially in accordance with any plans and specifications to be submitted to and to be approved by the Lender in its sole but reasonable discretion and to be filed in, and duly approved by, all departments, boards and bureaus of the State of New York, Town of Amherst, and Town of Cheektowaga, as applicable to the Premises, and the requirements of the Loan Agreement; and substantially in accordance with the plans and specifications of such construction described in Schedule B hereof; and that it anticipates that it will complete the same on or before the ___ day of March 2023.

3. The Lender covenants and agrees that it will, except as otherwise provided in this Contract, advance upon said Promissory Note and Mortgage the sum agreed therein in installments in such amounts and at such times as the Lender in its sole but reasonable discretion shall, having in mind its own interests, deem safe and proper, provided, however that such advances shall not exceed the amounts set forth in Schedule E annexed hereto and made a part hereof at the various stages of completion contemplated by such Schedule E, unless Lender shall

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determine that advances in excess of those set forth in said Schedule E are in Lender's best interest. No assignment of the Borrower's interest in this Contract, or of any of the funds to be advanced hereunder, shall be binding upon the Lender unless the Lender shall have given its prior written consent thereto. The Lender shall have the right to make advances directly to the Borrower or, at its option, to an assignee of the Borrower, irrespective of actual or constructive notice of any such assignment, and any advance made pursuant to any assignment shall not be deemed a consent to such assignment, with respect to any further advances which may thereafter be made.

4. The making of any advance or any part of an advance shall not be deemed an approval or acceptance by the Lender of the work theretofore done. The Lender may make advances or parts of any advances after the happening of any of the events specified herein as relieving the Lender from making advances without thereby waiving the right to demand payment of the indebtedness evidenced and secured by said Promissory Note and Mortgage and without thereby waiving any other rights, powers or remedies of the Lender and without becoming liable to make any other or further advance or advances. No advance shall be due unless all work usually done at the stage of construction when the advance is made payable shall, in the reasonable judgment of the Lender, have been completed in a good and workmanlike manner, and all materials and fixtures usually furnished and installed at that time shall have been furnished and installed and the quality thereof is reasonably satisfactory to the Lender; but before they become due, if the Lender deems it advisable so to do, and all such advances or payments shall be deemed to have been made in pursuance of this Contract.

5. The Borrower further covenants and agrees that the Lender may deduct from any advance to be made under this Contract or under said Promissory Note and Mortgage any and all amounts necessary for the payment of any actual, reasonable expenses described in Section 6 below that Borrower fails to pay when due (and that remain unpaid after expiration of all applicable notice and cure periods) relating to the examination and insurance of the title to said Premises and property, or incurred in the procuring and making of said loan, or in the appraisals of said Premises or property, or in the inspections to be made during construction, or in the payment of any encumbrance, tax, assessment or other charge, or lien, upon said Premises or property, all sums contemplated to be expended as set forth in Schedule D hereof, and any and all other amounts necessary for the cost of improvement, as defined by existing law and may apply such amounts in making the said payments.

6. The Borrower further covenants and agrees as follows:

a. That, at the time of the recording of said Mortgage, the Borrower shall pay all charges for the examination and insurance of title, surveys and drawings of papers, and shall also pay all recording and filing fees and mortgage tax and any other taxes or fees, as applicable, incidental to or required for such filing and recording.

b. That, at the time said advances are respectively made, said Borrower shall, at its own expense, have the tax and title searches of said Premises continued to show that there

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are no unbonded or uninsured mechanics' liens, conditional sales contracts or otherwise or any change in title subsequent to recording of said Mortgage except for the additional financing of the Project as set forth in the Mortgage.

c. That at the time of any advance, said Borrower shall, if required by the Lender, present to Lender any or all of the following:

(1) intentionally omitted;

(2) Requisitions for any such advance the voucher or such other similar forms as Lender shall require together with supporting schedules showing in detail the amounts expended and the purposes for which such amounts were expended since the last advance;

(3) Borrower's affidavit stating, if that be the fact, that all contractors, subcontractors, laborers, suppliers and other persons who have furnished labor, services or materials in connection with the buildings and/or improvements have been paid in full for work performed through the period covered under the applicable application and certificate for payment, or, if the fact be otherwise, showing the name of each contractor, subcontractor, laborer, supplier or other person who has not been paid in full, and the amount due or to become due to each for labor, services or material furnished;

(4) Agreed statements of account (in form and substance reasonably satisfactory to the Lender) from each contractor, subcontractor, laborer, or supplier showing the amount due for work or materials furnished, and, its sole option and election, the Lender may pay such contractors, subcontractors, laborers, or suppliers directly and require a release from each such contractor, subcontractor, laborer, or supplier of his lien rights to the date of such payment.

d. That Borrower hereby authorizes Lender or any representatives selected by Lender including any inspecting engineers or architects which Lender may retain to inspect the buildings and/or improvements at any time during the course of construction upon reasonable notice to Borrower. In the event Lender shall retain inspecting engineers, architects or other persons not in the direct employ of Lender for the purpose of inspection, review of any requisition for an advance or for advice with respect to any aspect of construction, Borrower shall promptly reimburse Lender for any reasonable expenses incurred by Lender in such retention. Notwithstanding the foregoing, and in satisfaction of this Section 6(d), Lender agrees to rely on the results of the inspector engaged by Evans Bank, N.A. and/or the project's tax credit investor in order to avoid generating additional cost to the Borrower.

e. That as said building and improvements progress, the Borrower shall have the same

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insured from time to time by such companies, in forms, kinds and amounts as may be reasonably required by or satisfactory to the Lender and in a sum amounting to not less than the full insurable value of the security at the time of the final advance, and shall have the insurance immediately delivered over to the Lender with proper New York standard mortgagee clause or clauses payable to the Lender attached as security for said Loan.

f. That the Lender may, at any time, release portions of the Premises and property upon the receiving what in the opinion of the Lender is a proper payment on account of the mortgage debt.

g. That the Lender may require ten (10) days' notice in writing from the Borrower before an advance shall be called for.

h. That the Lender may cause said Loan to be made by some other party, and in such event, the Note and Mortgage shall then run to such party, and the provisions of this Contract shall apply to such Note and Mortgage, and, if the Loan shall be so made, it shall be deemed a compliance by the Lender with this Contract. Lender shall promptly notify Borrower in writing of any assignment or other change in Lender, and shall provide copies of such proposed documentation noting such assignment and to be recorded or entered into between assignee, Lender and/or the Borrower and/or HDFC.

i. That the Lender may assign this Contract and the said Note and Mortgage and cause the assignee to make any advances not made at the time of such assignment, and all of the provisions of this Contract shall continue to apply to said Loan and to said Note and Mortgage. Lender shall promptly notify Borrower in writing of any assignment or other change in Lender, and shall provide copies of such proposed documentation noting such assignment and to be recorded or entered into between assignee, Lender and/or the Borrower and/or HDFC.

j. That the Lender may extend the time of payment of the principal secured by said Note and Mortgage, and any extension so granted shall be deemed made in pursuance of this Contract and not to be a modification hereof.

k. intentionally omitted.

l. Subject to the rights of the holders of the Senior Loans (as defined in the Mortgage), that, if the construction of said building or improvements, in the reasonable judgment of the Lender, be, at any time, discontinued or not commenced or carried on with reasonable dispatch for a period of ninety (90) or more days except in the event of an Unavoidable Delay provided that such Unavoidable Delay does not exceed one

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hundred eighty (180) days; the Lender may, at its option, enter upon and take possession of said premises and complete the said building and improvements in such manner as it may deem best, and may, at its option, protect said premises and property from depredation, the weather or other hazards; and may, at its option, purchase materials, fixtures and equipment, (and may utilize all such materials, fixtures and equipment located upon the mortgaged premises), employ workmen and enter into such contracts or arrangements as may be necessary, in the judgment of the Lender, to complete said building and improvements to its satisfaction; all at the sole expense of the Borrower. "Unavoidable Delay" shall mean any delay in the construction of the Project, caused by natural disaster, fire, earthquake, floods, explosion, extraordinary adverse weather conditions, inability to procure or a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market, failure of transportation, strikes or lockouts, pandemic or any other occurrence outside of Borrower's reasonable control.

m. That all sums deducted, applied, paid or expended by the Lender, as provided for in this Contract, or in order to complete said building and improvements, or in order to remedy any default or neglect on the part of the Borrower, shall, at the option of the Lender, be, and be deemed to be, advances to the Borrower, and secured by said Note and Mortgage (even if such advances shall exceed the face amount of such Promissory Note and Mortgage), and may be applied, at the option of the Lender, to any advance or advances thereafter to be made.

n. That, in the event of the Borrower parting with, or being in any way divested of its title to said Premises and property, the Lender may, at its option, continue to make advances under this Contract and said Note and Mortgage, subject to all of the terms, covenants, conditions, provisions and agreement hereof or thereof, to such party or parties as may succeed to the title to said premises and property; and all sums so advanced by the Lender shall be, and be deemed to be, advances under this Contract, and said Note and Mortgage and shall be secured by said Note and Mortgage.

o. That a receipt for any advance may be made by any one of the parties constituting the Borrower, if more than one party shall be deemed to be the Borrower hereunder, with the same effect as if any such receipt were signed by all of such parties.

p. The Borrower does hereby assign to the Lender and grant to the Lender a subordinate security interest in and to all present and future plans, specifications, contracts and subcontracts for construction, marketing, management, emergency services and architectural services, licenses, permits, exemptions, consents, bonds, undertakings, books and records relating to the project, and any other agreements to which the Borrower, applying to, connected with or in any manner related to the construction and completion of the buildings and/or improvements referred to in Schedule B hereof. Lender, at its option, may exercise all rights of Borrower thereunder for the purpose of completing such buildings and/or improvements as

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contemplated by paragraph 6(1) hereof.

7. The Borrower, pursuant to the provisions of Section 13 of the Lien Law, hereby covenants that it will receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of improvement, and that the Borrower will apply the same first to the payment of the cost of improvement before using any part of the total of the same for any other purpose.

8. The Borrower further covenants and agrees to make a commercially reasonable effort to fully observe, keep, perform, comply with, execute and fulfill, in good faith, all of the terms, covenants, conditions, provisions and agreements contained in this Contract and in said Loan Agreement, Note and Mortgage on its part to be observed, kept, performed, complied with, executed or fulfilled; and not to do any act or thing prohibited hereby or thereby; and not to materially deviate from, or make any material alterations, changes, modifications or additions in or to, said plans and specifications in the construction and completion of said building and improvements, without first obtaining the Lender's written consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed.

9. Upon the occurrence of any of the following events beyond the expiration of all applicable notice and cure periods, all obligations on the part of the Lender to make said loan, or to make any further advance or advances, shall, if the Lender shall so elect, cease and terminate, and the said Note and Mortgage shall, at the option of the Lender and subject the rights of the holders of the Senior Loans (as defined in the Mortgage), become immediately due and payable, anything in this Contract or in said Note and Mortgage to the contrary notwithstanding (but the Lender may make a further advance or advances after such occurrence, without becoming liable to make any other advance or advances and without being deemed to have waived any of its rights accruing as a result of the occurrence of such events):

a. If the Mortgage offered by the Borrower shall not give to the Lender a valid lien for the indebtedness to be secured thereby on the Premises and property above described subordinate only to the mortgages of the primary financing for the project and other Permitted Exceptions defined in the Mortgage.

b. If the loan is to be advanced in more than one payment, and at the time any payment is requested, an encumbrance or lien shall have arisen after the making of the preceding payment, except as permitted in the Loan Agreement, Promissory Note and/or Mortgage.

c. Except as permitted in the Loan Agreement, Promissory Note and/or Mortgage, if the Borrower, without the written consent of the Lender being first had and obtained, shall assign or transfer this Contract, or any interest therein; or assign or transfer any of said advances, or any of the moneys to be advanced under or secured by this Contract

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

or said Promissory Note and Mortgage; or convey or encumber, in any way whatsoever, said Premises or property, excluding the Permitted Exceptions.

d. If any materials, fixtures, equipment or other articles of personal property owned by the Borrower and/or HDFC and located at the Premises and used in the construction of the building or improvements, or appurtenant thereto, or placed in said building, be not purchased so that the ownership thereof will vest in the Borrower free from any security interest, title retention device, equipment lease or other encumbrance, on delivery at the premises, subject to any liens under the Permitted Exceptions against said materials, fixtures, equipment or other articles of personal property; or if the Borrower shall make any conditional purchases of, or execute any security agreement on, any such materials, fixtures, equipment or other articles of personal property, except as permitted in the Loan Agreement, Promissory Note and/or Mortgage.

e. If any unbonded or uninsured mechanic's liens or liens of any nature whatsoever (other than additional financing for the Project as set forth in the Mortgage) affecting the Premises appear of record, other than said Mortgage and the Permitted Exceptions; or if there be any change in title to the Premises, subsequent to the recording of said Mortgage, except as permitted in the Loan Agreement, Promissory Note and/or Mortgage.

f. If the work on the said building or improvements shall cease for a period of 90 consecutive days at any time, except in the event of an Unavoidable Delay.

g. If the Borrower does not permit the Lender or its representatives to enter upon said Premises and inspect the building and improvements thereon at all reasonable times with reasonable notice and subject to the rights of tenants.

h. If the Borrower shall fail to observe, keep, perform, comply with, execute and fulfill any of the material terms, covenants, conditions, provisions or agreements contained in the said Loan Agreement, Promissory Note and Mortgage and/or this Contract.

i. Upon the occurrence of any events which pursuant to the terms and provisions of the Promissory Note and Mortgage would be deemed an event of default thereunder or would otherwise give Lender the option of declaring the unpaid principal balance evidenced and secured by said Mortgage Note and Mortgage to be immediately due and payable, subject to the rights of the holders of the Senior Loans.

j. If the Borrower shall make a general assignment for the benefit of creditors or shall voluntarily file or suffer the filing of a petition for relief under the Bankruptcy Code or any other statute relating to the relief of debtors.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

k. If the improvements on said Premises or any building or structure which may be erected thereon encroach upon the street or upon adjoining premises and violate building restrictions or zoning law restrictions.

l. If construction is not completed by twenty-four months from the date hereof, subject to Unavoidable Delay not to exceed 180 days, and full disbursement of all loan proceeds except for any amounts required to be held back is not made by such date.

10. A true statement under oath, verified by the Borrower, as required by Section 22 of the Lien Law of the State of New York, as amended, is attached hereto, marked "Schedule D" and made a part of this Contract.

11. The Borrower hereby expressly assumes all risk of delay or impossibility of performance due to or caused by inability or failure to procure sufficient or necessary labor, supplies, materials, fixtures, equipment or other articles of property for the construction, placing and completion of the building and improvements, or any part thereof, provided for in this Contract, or any delay or impossibility of performance due to or caused by any present or future Presidential, Federal, State or Municipal Law, Proclamation, Executive Order, Statute, Ordinance, Rule or Regulation, and the Borrower hereby expressly covenants and agrees that except as otherwise set forth herein, no such delay or impossibility of performance shall in any way alter, vary, waive, annul or affect any of the rights, powers, options or remedies of the Lender under this Contract and said Promissory Note and Mortgage, or any of them.

12. The Lender shall not be liable to contractors, subcontractors, laborers, suppliers or other persons for goods or services delivered or performed by them with respect to the acquisition, construction, reconditioning or installation of the buildings and/or improvements or for any debts or claims accruing in favor of any such parties and against the Borrower, or otherwise, or against the buildings and/or improvements. Neither the Borrower not its contractors shall be deemed to be the agent of the Lender for any purpose whatsoever.

13. All inspection services rendered by or to the Lender and all reviews and approvals by the Lender of all plans, specifications, cost estimates, construction contracts, supply contracts, permits, licenses and any other agreements relating to the building and/or improvements to be completed by Borrower are solely for Lender's own information and protection. Lender's inspections, reviews, approvals, advancement of funds hereunder, as well as any certificates of completion and satisfaction with respect to Borrower's obligations under this Contract which may be executed by Lender, shall not give rise to any liability on the part of Lender to Borrower or to any third party with respect to any defects or errors in goods, materials, or construction, or with respect to any design failure, inadequacy, defect or error in such plans, specifications, cost estimates or contracts or with respect to any structural defect, inadequacy or failure of the building and/or improvements as completed to properly function for their intended purpose or for any other purpose.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

14. Borrower hereby grants to Lender a subordinate security interest to the extent of Borrower's interest in and to all building materials, fixtures, equipment and articles of personal property manufactured for, purchased for, or delivered to the mortgaged premises or otherwise acquired by Borrower for the purpose of incorporation in the buildings and/or improvements contemplated by this Contract as additional security for the payment of the indebtedness on the part of Borrower to Lender contemplated herein and in the Promissory Note and Mortgage between Borrower and Lender to the extent Borrower has the ability to do so and does hereby authorize Lender to utilize and incorporate all such building materials, fixtures, equipment and articles of personal property that the Borrower has an interest in, in the completion of such buildings and/or improvements as contemplated by paragraph 6(1) hereof.

15. It is further mutually covenanted and agreed that this Contract shall bind and enure to the benefit of the parties hereto and their respective heirs, distributees, executors, administrators, successors and assigns, except as otherwise expressly provided for in this Contract. If more than one party shall be the Borrower hereunder, all of the terms, covenants, conditions, provisions and agreements contained in this Contract shall be their joint and several obligations and in that event the relative words herein shall be read as if written in the plural. If any party hereto shall be of the male of female sex, the relative words herein shall be read as if written in the masculine or feminine gender.

16. It is further mutually covenanted and agreed that this Contract embodies the whole Contract of the parties; that there are no promises, terms, conditions or obligations referring to the subject matter other than those contained herein or in said Loan Agreement, Promissory Note and Mortgage executed between the Borrower and Lender on the date hereof; that no variation or modification of this Contract shall be valid unless in writing executed with the same formalities as this Contract; and that this Contract cannot be changed orally.

[Remainder of Page Intentionally Left Blank]

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

LENDER: Amherst-Cheektowaga-Tonawanda HOME Consortium

_____ _____

Diane Benczkowski, Supervisor — Date
Town of Cheektowaga

_____ _____

Brian J. Kulpa, Supervisor — Date
Town of Amherst

BORROWER (Beneficial Owner):

ANGELA'S HOUSE LLC
a New York limited liability company

By: _____
Name: Benathan Upshaw
Title: Authorized Signatory

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Final Signatory Page
Loan Agreement
Angela's House/Amherst HOME

STATE OF NEW YORK)
COUNTY OF ERIE)

On this _____ day of _____,Two Thousand and Twenty-One, before me, the undersigned, a Notary Public in and for said State, personally appeared **Diane Benczkowski**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF ERIE)

On this _____ day of _____,Two Thousand and Twenty-One, before me, the undersigned, a Notary Public in and for said State, personally appeared **Brian J. Kulpa**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF ERIE)

On this _____ day of _____,Two Thousand and Twenty-One, before me, the undersigned, a Notary Public in and for said State, personally appeared **Benathan Upshaw**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Cheektowaga, County of Erie and State of New York, being part of Lot 33, Township 11, Range 7 of the Holland Land Company Survey (so-called bounded and described as follows:

BEGINNING AT A POINT on the west line of Lot 33 at a distance of 51.87 feet northerly measured along the we line of said Lot 33 from its intersection with the north line of Doat Street; said west line of Lot 33 being also the we line of the Town of Cheektowaga and the east line of the City of Buffalo;

RUNNING THENCE: Northerly, along the west line of Lot 33 and the division line between the Town c Cheektowaga and the City of Buffalo, a distance of 615.61 feet to a point;

RUNNING THENCE: Easterly, at an interior angle of 90°-09'-00" with the last described line, a distance of 173.2 feet to a point;

RUNNING THENCE: Southerly, at an interior angle of 89°-49'-30" with the last described line, a distance of 345.8 feet to a point;

RUNNING THENCE: Easterly, at an interior angle of 270°-04'-49" with the last described line, a distance of 55.0 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 82.92 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 15.05 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 45.46 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 27.35 feet to a point;

RUNNING THENCE: Southerly, at an interior angle of 270°-50'-55" with the last described line, a distance of 226.2 feet to a point on the north line of Parcel No. 1 as shown on Map No. SK 219-14 for lands conveyed to the Count of Erie for the reconstruction of Doat Street, C.R. No. 107 by deed recorded in the Erie County Clerk's Office i Liber 8039 of Deeds at Page 523;

RUNNING THENCE: Northwesterly, along the north line of Doat Street and along a non-tangent curve to the rigl having a radius of 1112.92 feet, a distance of 55.28 feet to a point of tangency;

RUNNING THENCE: Northwesterly, along the north line of Doat Street, a distance of 99.30 feet to an angle poin

RUNNING THENCE: Northwesterly, along the north line of Doat Street, at an interior angle of 170°-16'-55" with th last described line, a distance of 3.16 feet to a point;

RUNNING THENCE: Northerly, at an exterior angle of 69°-55'-38" with the last described line, a distance of 56.8 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 34.15 feet to the POINT O

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

PLACE OF BEGINNING, containing 2.893 Acres, be the same, more or less.

SUBJECT to easements, rights of way and restrictions or record.

BEING AND INTENDED TO BE a portion of lands conveyed to Felician Sisters of North America Real Estat Trust by deed recorded in the Erie County Clerk's Office in Liber 11182 of Deeds at Page 7392.

SCHEDULE B

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Sixty-seven residential rental units together with all landscaping, site improvements, and all other improvements as set forth in the plans and specifications approved with Site Plan Approval and Building Permits issued by the Lender, including all materials, labor, services, professional fees, etc. necessary therefore.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

SCHEDULE C
PROMISSORY NOTE

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

SCHEDULE D

LIEN LAW SECTION 22 AFFIDAVIT

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

Benathan Upshaw, the authorized signatory of Angela's House LLC, being duly sworn, deposes and says:

1. That there is $0.00 being paid or to be paid by the Borrower to the Lender as consideration for the loan described in said Building Loan Contract and that all other expenses incurred or to be incurred in connection with said loan are as follows:

DESCRIPTION	AMOUNT
Examination and insurance of title, $ 0.00 recording fees, and lender attorney's fees	
Mortgage tax $ 0.00	
Architects, site planning, and engineering fees	$ 0.00
TOTAL	$ .00

2. Therefore, the net sum available to the Borrowers for the cost of improvements is $300,000.00, less such amounts as may become due or payable for insurance premiums, taxes, assessments, water rents and sewer rents accruing during the making of the improvement.

3. This statement is made pursuant to section 22 of the Lien Law of the State of New York.

4. The facts herein stated are true to the knowledge of the deponent.

_____

Sworn to before me this _____ of _____, 2021.

_____
Notary Public

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

SCHEDULE E
ADVANCES

Advances under this Building Loan Contract shall be at Lender's sole discretion and shall be made only upon Borrowers performing and observing all terms and conditions heretofore set forth in this Contract, and the Loan Agreement, and upon Borrower complying with the following conditions prior to each advance:

1. Borrower shall furnish to Lender certifications, requisitions, and such other evidence and documentation as Lender may reasonably require showing the percentage, amount and value of work completed (exclusive of value of materials stored on the premises), and the amount of non-HOME funds already contributed to the Project, together with such additional documentation as may be required by the Lender pursuant to paragraph 6(c) hereof. Such certifications shall contain such detail as Lender shall reasonably require.

2. All advances as hereinafter provided shall be based upon Lender's appraisal of the value of the work completed and shall be made as follows:

FIRST ADVANCE. All advances from Lender to Borrower shall be based on, and made after, the payment or reimbursement requests for labor and material costs incurred by the Borrower in the completion of the Project as may be submitted from time to time by the Borrower to the Lender as a voucher and upon all the other terms and conditions as stated in the Loan Agreement.

3. Notwithstanding the foregoing, at the discretion of the Lender, the schedule of advances may be revised to provide for monthly advances on or about the first (1st) day of each month after the month of first advance, or on such other date as shall be determined by the Lender. The amount of each advance each month shall be 90% of the value of the work (exclusive of value of materials stored on the premises) as appraised by the Lender to have been completed on the project since the date of last advance.

4. No advance shall be due if the amount of such advance together with the total amount of prior advancements exceeds 75% of the Lender's appraisal value of the project (exclusive of value of materials stored on the premises).

5. In the event the draw schedule is on a monthly schedule, the monthly advancements shall continue on the first (1st) day of each month until Lender shall have advanced the amount of the expenses set forth in Schedule D together with 90% of the difference between the total of such expenses the amount of loan herein contemplated.

6. The final advance under any draw schedule shall be made only when all of the following events have occurred to the satisfaction of Lender:

a. The buildings and/or improvements are entirely completed in substantial accordance with the plans and specifications.

b. Borrower shall furnish Lender with an unconditional Certificate of Occupancy or completion from the appropriate municipal or governmental authority having jurisdiction thereof.

c. Borrower shall furnish Lender with the Certificate of the general contractor, the project architect or the inspecting engineer or any or all of them in the event there shall be such supervisory authorities involved in the construction of such buildings and/or improvements as to final completion of the project in all respects in compliance with all provisions of the plans and specifications therefor.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

NOTICE OF LENDING
(Pursuant to Section 73 of the Lien Law)

Name and address of person making advance:

Amherst-Cheektowaga-Tonawanda HOME Consortium
c/o Town of Cheektowaga
Office of Community Development
275 Alexander Avenue
Cheektowaga, NY 14211

Name and address of person to whom or on whose behalf advances are to be made:

Angela's House LLC
221-10 Jamaica Avenue LL1
Queens Village, New York 11428

Real Property involved for which advances are made:

600 Doat Street, Cheektowaga, NY 14211 (SBL# 101.52-1-1/A)

Date(s) and advances made prior to filing of this Notice: None

Maximum balance of advances outstanding to be permitted by the lender: $300,000

Date of Termination Notice: March [__], 2023 (closing date +2 years)

Dated: .....
Filed by: Town of Cheektowaga

By: .....

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

On the _____ day of _____, in the year 2021, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the persons on behalf of whom the individual acted, executed the instrument.

_____
Notary Public

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT G

RESTRICTIVE COVENANT

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

RECORD & RETURN TO:
John M. Dudziak, Cheektowaga Town Attorney
3301 Broadway Street
Cheektowaga, NY 14227

Rec.$
RT$
ST$

RESTRICTIVE COVENANT

RE: Angela's House - 2020 HOME M20-DC360511

THIS CONVEYANCE is made this ____ day of April, Two Thousand Twenty-One, between Angela's House LLC, a limited liability company formed and existing under and by virtue of the laws of the State of New York, having its principal office at 221-10 Jamaica Avenue, LL1, Queens Village, New York, 11428, (herein after the Borrower), Angela's House Housing Development Fund Corporation, a not-for-profit corporation formed and existing under the laws of the State of New York, having its principal address at 525 Washington Street, Buffalo, New York 14203 (the "HDFC," and together with the Borrower, collectively the "Grantor") and the Town of Cheektowaga, a municipal corporation of the State of New York, as a member of the Amherst-Cheektowaga-Tonawanda HOME Consortium, with principal offices located at 3301 Broadway Street, Cheektowaga, New York, 14227 and the Town of Amherst, a municipal corporation of the State of New York acting as lead Authorizing Official for the Amherst-Cheektowaga-Tonawanda HOME Consortium, with principal offices located at 5583 Main Street, Williamsville, NY 14221, (hereinafter the Grantee).

WHEREAS, the Consortium receives an Entitlement HOME Investment Partnerships Program Grant from the U.S. Department of Housing and Urban Development; and

WHEREAS, the Town of Cheektowaga awarded HOME funds to the Borrower for costs in connection with the construction of three (3) out of sixty-seven (67) residential units at 600 Doat Street, Cheektowaga, NY 14211, which property is described in Schedule A attached hereto and made a part hereof (the "Premises"); and

WHEREAS, HUD requires that HOME-assisted units in a rental housing project must be occupied only by households that are eligible as low-income families and must meet the requirements set forth in 24 CFR 92 to qualify as affordable housing, and for the periods specified in the aforementioned regulation; and

WHEREAS, 24 CFR 92.252 requires that the affordability requirements be imposed by deed restrictions or covenants running with the land;

WHEREAS, failure to meet the affordability requirements as outlined in 24 CFR 92.252 (e) shall result in the Grantor repaying the full value of the loan made by HUD and Grantee;

NOW, THEREFORE, WITNESSETH, that the Grantor, in consideration of One Dollar and other good and valuable consideration paid by the Grantee, its successors and/or assigns do hereby grant unto the Grantee, its successors and assigns forever, the following restrictive covenant:

For a period of the greater of twenty (20) years or the repayment of the loan, but in no event greater than fifty (50) years from Project Completion (as defined in that certain Loan Agreement, dated as of the date hereof, between Borrower and Grantee), three (3) of the rental units on the Premises which were constructed and/or rehabilitated with the use of HOME funds shall meet the affordability requirements set forth in 24 CFR 92.252. In the event of a foreclosure or deed in lieu of foreclosure which results in termination of this restrictive covenant, the affordability restrictions set forth in this restrictive covenant shall be revived in the following circumstances: If, during the original affordability period set forth in this restrictive covenant any of the following obtains an ownership interest in the property:

(a) the owner of the leasehold interest in the Premises before the foreclosure or deed in lieu of foreclosure; or

(b) any entity that includes the former leasehold owner or any of its directors, officers, or employees; or

(c) or any person or entity that has or had any family or business ties with the former leasehold owner or any of its directors, officers or employees.

This Restrictive Covenant is intended to run with the Land and may be enforced by the Town of Cheektowaga against the Grantor, or any of the successors-in interest to the Grantor or all or any portion of the Premises.

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Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

IN WITNESS THEREOF, this Instrument has been duly executed by the Grantor as of the date first written above.

ANGELA'S HOUSE LLC
a New York limited liability company

By: _____
Name: Benathan Upshaw
Title: Authorized Signatory

STATE OF NEW YORK:
COUNTY OF ERIE : SS:

On the _____ day of _____, in the year 2021, before me, the undersigned, a Notary Public in and for said state, personally appeared **Benathan Upshaw**, to me personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
NOTARY PUBLIC

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

ANGELA'S HOUSE HOUSING DEVELOPMENT FUND CORPORATION
a New York not-for-profit corporation

By: _____
Name: Steven Timmel
Title: Authorized Signatory

STATE OF NEW YORK)
COUNTY OF ERIE)

On this _____ day of _____, Two Thousand and Twenty One, before me, the undersigned, a Notary Public in and for said State, personally appeared **Steven Timmel,** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Town of Cheektowaga

_____

By: Diane Benczkowski
Title: Town of Cheektowaga Supervisor

STATE OF NEW YORK :
COUNTY OF ERIE : SS:

On the _____ day of _____, in the year 2021, before me, the undersigned, a Notary Public in and for said state, personally appeared **Diane Benczkowski**, to me personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

NOTARY PUBLIC

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Amherst-Cheektowaga-Tonawanda HOME Consortium
By: Town of Amherst, as Lead Authorizing Official

_____

By: Brian J. Kulpa
Title: Town of Amherst Supervisor

STATE OF NEW YORK :
COUNTY OF ERIE : SS:

On the _____ day of _____, in the year 2021, before me, the undersigned, a Notary Public in and for said state, personally appeared **Brian J. Kulpa**, to me personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

NOTARY PUBLIC

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Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Cheektowaga, County of Erie and
State of New York, being part of Lot 33, Township 11, Range 7 of the Holland Land Company Survey (so-called), bounded and described as follows:

BEGINNING AT A POINT on the north line of Doat Street at its intersection with the west line of Lot 33, said west line of Lot 33 being also the west line of the Town of Cheektowaga and the east line of the City of Buffalo;

RUNNING THENCE: Northerly, along the west line of Lot 33 and the division line between the Town of Cheektowaga and the City of Buffalo, a distance of 667.48 feet to a point;

RUNNING THENCE: Easterly, at an interior angle of 90°-09'-00" with the last described line, a distance of 173.24 feet to a point;

RUNNING THENCE: Southerly, at an interior angle of 89°-49'-30" with the last described line, a distance of 345.81 feet to a point;

RUNNING THENCE: Easterly, at an interior angle of 270°-04'-49" with the last described line, a distance of 55.03 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 82.92 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 15.05 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 45.46 feet to a point;

RUNNING THENCE: Westerly, at right angles to the last described line, a distance of 27.35 feet to a point;

RUNNING THENCE: Southerly, at an interior angle of 270°-50'-55" with the last described line, a distance of 57.55 feet to a point;

RUNNING THENCE: Easterly, at right angles to the last described line, a distance of 36.68 feet to a point;

RUNNING THENCE: Southerly, at right angles to the last described line, a distance of 173.49 feet to a point on the north line of Parcel No. 1 as shown on Map No. SK 219-14 for lands conveyed to the County of Erie for the reconstruction of Doat Street, C.R. No. 107 by deed recorded in the Erie County Clerk's Office in Liber 8039 of Deeds at Page 523;

RUNNING THENCE: Northwesterly, along the north line of Doat Street and along a non-tangent curve to the right having a radius of 1112.92 feet, a distance of 92.27 feet to a point of tangency;

RUNNING THENCE: Northwesterly, along the north line of Doat Street, a distance of 99.30 feet to an angle point;

RUNNING THENCE: Northwesterly, along the north line of Doat Street, at an interior angle of 170°-16'-55" with the last described line, a distance of 18.79 feet to an angle point;

RUNNING THENCE: Westerly, along the north line of Doat Street, at an interior angle of 201°-16'-46" with the last described line, a distance of 19.47 feet to the POINT OR PLACE OF BEGINNING.

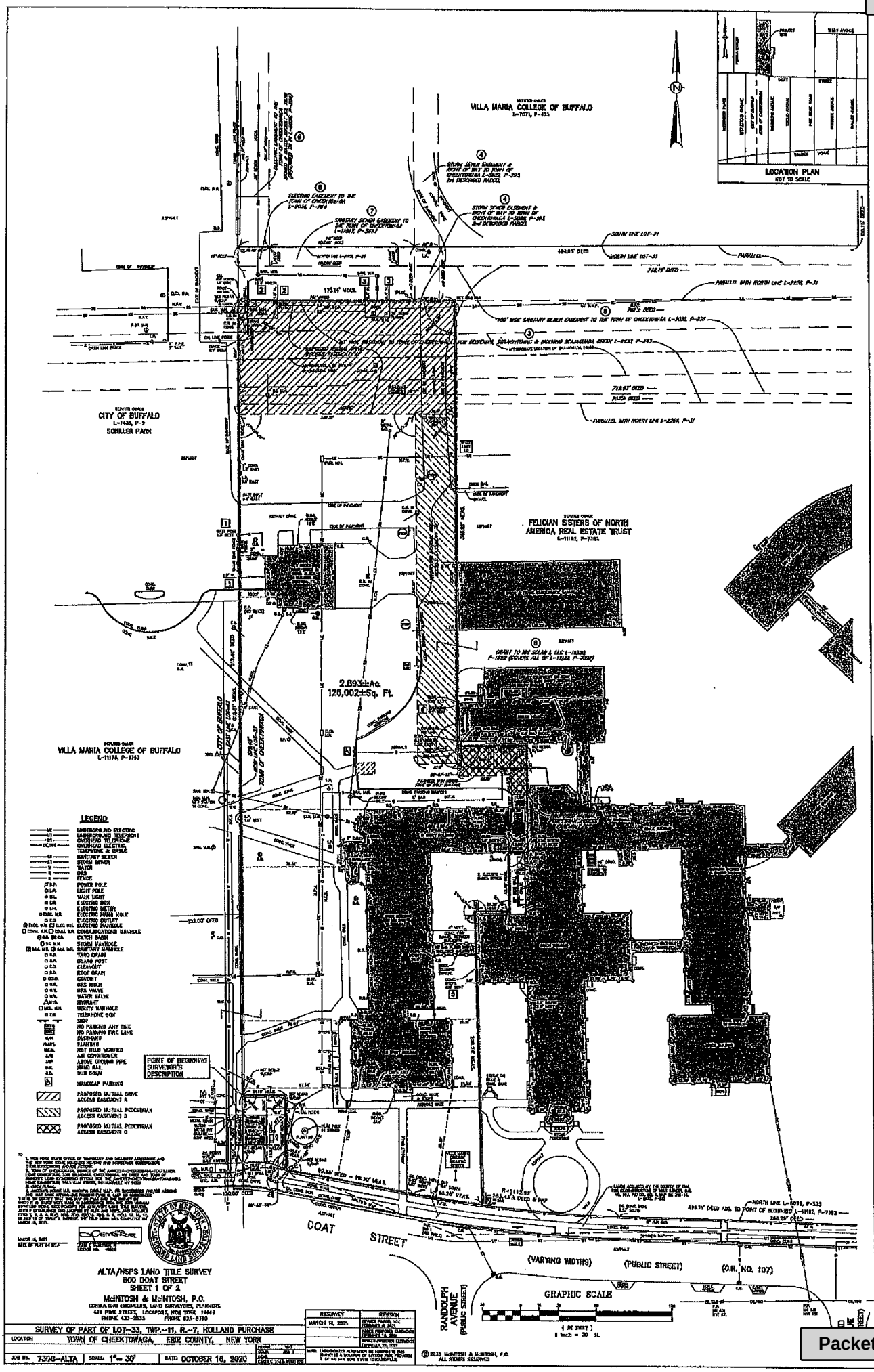
For Conveyancing Only
Together with all right, title and interest of, in and to any streets and roads abutting the above described premises. Our Policy of Title Insurance includes such buildings and improvements thereon which by law constitute real property, unless specifically excepted therein.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT H

SURVEY

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's



Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

L-11182, P-7392
RECORD DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situated in the Town of Cheektowaga, County of Erie and State of New York, being part of Lot 33 and Lot 44, Township 11, Range 7 of the Holland Land Company's Survey, also situated in the City of Buffalo, County of Erie and State of New York, being part of Lot 45, Township 11, Range 7 of the Holland Land Company's Survey, bounded and described as follows:
BEGINNING at the intersection of the northerly line of Goat Street and the westerly line of Pine Ridge Road, thence westerly along the said northerly line of Goat Street 332.62 feet to an angle point in Goat Street, also being the easterly point of lands conveyed to the County of Erie recorded in Liber 8236 of Deeds at Page 822; thence easterly along the northerly line of said Liber 8236 of Deeds at Page 822, 384.12 feet to a point of curve; thence northerly along a curve having a radius of 3118.92 feet, also being the northerly line of said Liber 8236 of Deeds at Page 822, 183.43 feet to a point of compound curve; thence continuing easterly along said northerly line of Liber 8236 of Deeds at Page 822, 83.56 feet; thence continuing easterly along said northerly line of Goat Street 137.00 feet; thence northerly parallel to the easterly line of Parole Street, 105.00 feet; thence westerly parallel to the northerly line of Goat Street, 34.00 feet; thence northerly parallel to the easterly line of Parole Street, 38.00 feet; thence easterly parallel to the northerly line of Goat Street, 153.00 feet to the westerly line of Lot 43, Township 11, Range 7 and the westerly line of the City of Buffalo; thence northerly along said westerly line of Lot 43, Township 11, Range 7, 317.46 feet to the northwest corner of Lot 43, Township 11, Range 7, also being the westerly line of land conveyed by Liber 7091 of Deeds at Page 433; thence easterly along the northerly line of Lot 43, Township 11, Range 7, 484.00 feet; thence northerly parallel to the westerly line of Lot 34, Township 11, Range 7, 113.13 feet; thence easterly parallel to the northerly line of Pennock Place 281.31 feet to the westerly line of Pine Ridge Road; thence westerly along said westerly line of Pine Ridge Road, 913.57 feet to an angle in said westerly line of Pine Ridge Road; thence westerly along the westerly line of Pine Ridge Road, 774.77 feet to the point or place of beginning.

SURVEYOR'S DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Cheektowaga, County of Erie and State of New York, being part of Lot 33, Township 11, Range 7 of the Holland Land Company Survey (as-surveyed), hereinafter more particularly described as follows:
BEGINNING AT A POINT on the west line of Lot 33 at a distance of 31.57 feet northerly measured along the west line of said Lot 33 from its intersection with the north line of Goat Street; said west line of Lot 33 being also the west line of the Town of Cheektowaga and the east line of the City of Buffalo;
RUNNING THENCE Northerly, along the west line of Lot 33 and the division line between the Town of Cheektowaga and the City of Buffalo, a distance of 819.61 feet to a point;
RUNNING THENCE Easterly, at an interior angle of 90°-58'-30" with the last described line, a distance of 173.24 feet to a point;
RUNNING THENCE Southerly, at an interior angle of 88°-58'-30" with the last described line, a distance of 310.81 feet to a point;
RUNNING THENCE Easterly, at an interior angle of 270°-01'-00" with the last described line, a distance of 84.00 feet to a point;
RUNNING THENCE Southerly, at right angles to the last described line, a distance of 82.97 feet to a point;
RUNNING THENCE Westerly, at right angles to the last described line, a distance of 58.00 feet to a point;
RUNNING THENCE Southerly, at right angles to the last described line, a distance of 43.56 feet to a point;
RUNNING THENCE Westerly, at right angles to the last described line, a distance of 27.16 feet to a point;
RUNNING THENCE Southerly, at an interior angle of 270°-54'-55" with the last described line, a distance of 254.34 feet to a point on the north line of Parcel No. 1 as shown on Map No. SR 218-14 for lands conveyed to the County of Erie for the reconstruction of Goat Street, C.H. No. 107 by deed recorded in the Erie County Clerk's Office in Liber 8039 of Deeds at Page 251;
RUNNING THENCE Northwesterly, along the north line of Goat Street and along a non-tangent curve to the right having a radius of 1197.92 feet, a distance of 53.28 feet to a point of tangency;
RUNNING THENCE Northwesterly, along the north line of Goat Street, a distance of 88.30 feet to an angle point;
RUNNING THENCE Northwesterly, along the north line of Goat Street, at an interior angle of 178°-11'-26" with the last described line, a distance of 3.10 feet to a point;
RUNNING THENCE Northerly, at an interior angle of 89°-52'-35" with the last described line, a distance of 58.53 feet to a point;
RUNNING THENCE Westerly, at right angles to the last described line, a distance of 34.15 feet to the POINT OR PLACE OF BEGINNING, containing 2.892 Acres, be the same, more or less.
SUBJECT to easements, rights of way and restrictions of record.
BEING AND INTENDED TO BE a portion of lands conveyed to Felician Sisters of North America Real Estate Trust by deed recorded in the Erie County Clerk's Office in Liber 11182 at Deeds at Page 7392.

NOTES CORRESPONDING TO SCHEDULE B
CHICAGO TITLE INSURANCE COMPANY TITLE NO. 2513-476260
ORDER (ARREN) NCVTB2213000
DATED AUGUST 17, 2090

(3) EASEMENT GRANTED TO TOWN OF CHEEKTOWAGA BY INSTRUMENT DATED JULY 8, 1938, AND RECORDED MARCH 12, 1937, IN LIBER 3833 OF DEEDS, PAGE 343. AFFECTS SURVEYED PREMISES AND IS PARTIALLY PLOTTED HEREON.

(4) EASEMENT AGREEMENT BY BETWEEN THE TOWN OF CHEKTOWAGA AND THE FELICIAN SISTERS OF THE ORDER OF ST. FRANCIS, OHIO, DATED FEBRUARY 14, 1950, AND RECORDED MARCH 24, 1952, IN LIBER 3085 OF DEEDS, AT PAGE 382. DOES NOT AFFECT SURVEYED PREMISES BUT IS PARTIALLY PLOTTED HEREON.

(5) AGREEMENT MADE BETWEEN THE ORDER OF FELICIAN SISTERS OF ST. FRANCIS AND THE TOWN OF CHEEKTOWAGA DATED AUGUST 22, 1814, AND RECORDED JULY 7, 1965 IN LIBER 8038 OF DEEDS, AT PAGE 556. PARTIALLY AFFECTS SURVEYED PREMISES AND IS PARTIALLY PLOTTED HEREON.

(6) EASEMENT AGREEMENT ASSIGNMENT MADE BETWEEN THE ORDER OF FELICIAN SISTERS OF ST. FRANCIS AND THE TOWN OF CHEEKTOWAGA DATED SEPTEMBER 24, 1973, AND RECORDED JULY 7, 1965, IN LIBER 8038 OF DEEDS, AT PAGE 564. DOES NOT AFFECT SURVEYED PREMISES BUT IS PARTIALLY PLOTTED HEREON.

(7) EASEMENT GRANTED TO THE TOWN OF CHEEKTOWAGA BY INSTRUMENT DATED JANUARY 15, 1963, AND RECORDED JANUARY 28, 2003 IN LIBER 10017 OF DEEDS, AT PAGE 8693. DOES NOT AFFECT SURVEYED PREMISES BUT IS PLOTTED HEREON.

(8) NOTICE OF GRANT MADE BY FELICIAN SISTERS OF NORTH AMERICA REAL ESTATE TRUST AND ITS SOLAR I, LLC BY INSTRUMENT DATED JUNE 6, 2018, AND RECORDED OCTOBER 16, 2019 IN LIBER 11320 OF DEEDS, AT PAGE 1682. AFFECTS SURVEYED PREMISES AND IS SHOWN HEREON. GRANT IS BLANKET IN NATURE, NO SPECIFIC WIDTH OR LOCATION DESCRIBED.

NOTES

1) REFERENCE MAP: SURVEY PREPARED BY McINTOSH & McINTOSH, P.C. DATED AUGUST 15, 2008 AND REVISED AS JOB NO. 7398-A
2) REFERENCE MAP: TOPOGRAPHICAL PREPARED BY McINTOSH & McINTOSH, P.C. DATED AUGUST 24, 2006, LAST REVISED MARCH 28, 2018 AND REVISED AS JOB NO. 7398
3) SBL: PART OF TOWN OF CHEEKTOWAGA TAX MAP NOS. 101.92-1-1 & 101.44-7-3
4) PREMISES IS ZONED RES – RESIDENTIAL SENIOR CITIZEN DISTRICT
FRONT YARD – 20 FEET
SIDE YARD – 1 FOOT +/- PER ZBA OF 9/17/2021 (NO PERMITTED)
REAR YARD – NOT LESS THAN 25 FEET OR A DISTANCE EQUAL TO 1/2 THE HEIGHT OF THE PRINCIPAL BUILDING, WHICHEVER IS GREATER.
MAXIMUM BUILDING HEIGHT OF BUILDINGS. THE MAXIMUM HEIGHT OF A BUILDING AT ANY POINT SHALL BE 60 FEET EXCLUSIVE OF ELEVATOR TOWERS, CHIMNEYS, ANTENNAS AND THE LIKE. ALL ROOFTOP MECHANICALS SHALL BE SCREENED WITH MATERIAL SIMILAR TO THAT OF THE PRINCIPAL STRUCTURE.
AREA SURROUNDING BUILDING AT 900 GOAT STREET IS ZONED OF – COMMUNITY FACILITIES DISTRICT
FRONT YARD – 50 FEET
SIDE YARD – 1 FOOT +/- PER ZBA OF 9/17/2021 (NO ABUTTING A NONRESIDENTIAL DISTRICT PERMITTED)
REAR YARD – ABUTTING A NONRESIDENTIAL DISTRICT: 15 FEET
ABUTTING A RESIDENTIAL DISTRICT: 30 FEET
MAXIMUM HEIGHT OF STRUCTURES. THE MAXIMUM HEIGHT OF A STRUCTURE SHALL BE 60 FEET.
ZONING INFORMATION BASED ON LETTER FROM TOWN OF CHEEKTOWAGA OFFICE OF BUILDING AND PLANNING INSPECTIONS DATED MARCH 10, 2021 AND BY TOWN OF CHEEKTOWAGA ZONING BOARD OF APPEALS DECISION DATED FEBRUARY 17, 2021.
5) PREMISES IS LOCATED IN ZONE X, COMMUNITY NO. 360131, PANEL 318 OF 807, MAP SUFFIX K, EFFECTIVE DATE JUNE 7, 2018.
6) AT THE TIME OF THE ALTA SURVEY THERE WAS NO OBSERVABLE EVIDENCE OF EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS.
7) AT THE TIME OF THE ALTA SURVEY THERE WAS NO OBSERVABLE EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION OR REPAIRS.
8) SQUARE FOOTAGE FOR BUILDINGS SHOWN REFLECT ONLY THAT IS WITHIN THE BUILDING FOR THE CURRENT PROJECT AREA.
9) REFERENCE MAP: MAP ENTITLED "MAP OF SURVEY" PREPARED BY LAWRENCE J. TYDALL P.E. PE DATED JANUARY 28, 2000, LAST REVISED NOVEMBER 10, 2005 AND MODIFIED AS JOB NO. 05083
10) NOTE TO THE CLIENT, INSURER, AND LENDER – WITH REGARD TO TABLE A, ITEM 11 INFORMATION FROM THE SOURCES CHECKED MAY BE CONSIDERED BY OBSERVED EVIDENCE OF UTILITIES PURSUANT TO SECTION 5.E.IV. TO DEVELOP A VIEW OF THE UNDERGROUND UTILITIES. HOWEVER, LACKING EXCAVATION, THE EXACT LOCATION OF UNDERGROUND FEATURES CANNOT BE ACCURATELY COMPLETELY, AND RELIABLY DEPICTED. IN ADDITION, IN SOME JURISDICTIONS, 811 OR SIMILAR UTILITY LOCATE REQUESTS FROM SURVEYORS MAY BE IGNORED OR RESULT IN INCOMPLETE RESPONSES. IN SUCH CASE THE SURVEYOR SHALL NOTE ON THE PLAT OR MAP HOW THIS AFFECTED THE SURVEYOR'S ASSESSMENT OF THE LOCATION OF THE UTILITIES. WHERE ADDITIONAL OR MORE DETAILED INFORMATION IS REQUIRED, THE CLIENT IS ADVISED THAT EXCAVATION MAY BE NECESSARY.

STATEMENT OF ENCROACHMENTS

1. THE SOUTHWEST CORNER OF A CHAIN LINK FENCE LOCATED ALONG THE WEST LINE OF THE SURVEYED PREMISES, 4.5' NORTH OF THE SOUTHWEST CORNER THEREOF, ENCROACHES 1.0' WEST ONTO THE ADJOINING PROPERTY. A BASE POST AT THE NORTHWEST CORNER OF THE FENCE ENCROACHES 1.5' WEST ONTO THE ADJOINING PROPERTY.
2. A CONCRETE WALL LOCATED AT THE NORTHWEST CORNER OF THE SURVEYED PREMISES ENCROACHES 13.8' NORTH ONTO THE ADJOINING PROPERTY. THE NORTHEAST CORNER OF A CONCRETE PAD LOCATED 12' EAST OF THE CONCRETE WALL ENCROACHES 1.8' NORTH ONTO THE ADJOINING PROPERTY.
3. THE NORTH EDGE OF A CONCRETE PAD LOCATED ALONG THE NORTH LINE OF THE SURVEYED PREMISES, 103.8' EAST OF THE NORTHWEST CORNER THEREOF, ENCROACHES 0.4' NORTH ONTO THE ADJOINING PROPERTY.
4. THE NORTHWEST CORNER OF AN OVERHANG IN THE WEST SIDE OF A GABLED HOUSE LOCATED ALONG THE EAST SIDE OF THE SURVEYED PREMISES, ENCROACHES 0.4' WEST ONTO THE SURVEYED PREMISES.
5. A SET OF CONCRETE STEPS LOCATED ALONG THE EAST LINE OF SURVEYED PREMISES, 8.3' SOUTH OF THE SECOND FLOOR ENCLOSED WALKWAY, ENCROACHES 0.6' WEST ONTO THE SURVEYED PREMISES.

TABULATION OF PARKING

1 – STANDARD SPACE
1 – HANDICAP SPACE
2 – TOTAL SPACES

STATE OF NEW YORK — LICENSED LAND SURVEYOR

SURVEY	REVISION
MARCH 15, 2021	ADDED PARCEL 900 GOAT STREET & MAP

NOTE: UNAUTHORIZED ALTERATION OR ADDITION TO THIS SURVEY IS A VIOLATION OF SECTION 7209, SUBDIVISION 2 OF THE NEW YORK STATE EDUCATION LAW.

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ALTA/NSPS LAND TITLE SURVEY
600 GOAT STREET
SHEET 2 OF 2

McINTOSH & McINTOSH, P.C.
CONSULTING ENGINEERS, LAND SURVEYORS, PLANNERS
420 PINE STREET, LOCKPORT, NEW YORK 14094
PHONE 433-2835 FAX 433-0360

LOCATION: SURVEY OF PART OF LOT-33, TWP.-11, R.-7, HOLLAN
TOWN OF CHEEKTOWAGA, ERIE COUNTY, N

JOB NO. 7398-ALTA | SCALE: 1"=20' | DATE: OCTOBER 16, 2020

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT I

BUDGET

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Applicant Name: **Angela's House LLC**
Project Name: **Angela's House**

Date: 3.30.21
Exhibit 3 Development Budget
SHARS # 20190373
page 1
4/27/20

ALL PROJECT FUNDING SOURCES MUST BE LISTED ON THIS PAGE

RESIDENTIAL Financial Sources (tab 1.1 Residential)

A. Construction Cost Basis

1. Is total construction cost based upon a guaranteed price contract? (Yes/No): Yes
2. Select the wage rate that the total construction cost figure was based on: Market Rate (not prescribed by law)
3. Tax Credit Funding Request Amount:
   - 9% Low Income Housing Credit (LIHC): $979,268 — LIHC Pay-in: $0.9100
   - State Low Income Housing Credit (SLIHC): $0 — SLIHC Pay-in:

B. Funding Sources

(source codes listed at cell W1)

1. Construction Financing Sources

A. Source Code	B. Source Name	C. Amount of Funds	D. Assist Type	E. Financing Term (months)	F1. Interest Rate %	F2. Estimated Interim Interest	G. Lien Position	H. Regulatory Term (years)
4001	Evans Bank	$12,097,774	Loan	24	3.500%	582,205	1	na
4002	LIHTC Equity - HCR LIHTC Tax Credit	2,730,041	Equity	na	na		na	50
4003	HTC Equity - Federal	1,076,690	Equity	na	na		na	5
4003	HTC Equity - State	873,546	Equity	na	na		na	5
5000	HHAP	3,692,030	Loan	24	0.000%		2	30
3000	Tn of Cheektowaga HOME Funds/Dev Equity	300,000	Loan	24			3	
4006	Deferred Developer Fee	1,998,654	Other	na	na		na	na
4007	Deferred Cap Reserves / Work Cap	115,715	Other	na	na		na	na
	TOTAL	$22,884,450				582,205		

2. Permanent Financing Sources

A. Source Code	B. Source Name	C. Amount of Funds	D. Assist Type	E. Financing Term (months)	F. Interest Rate %	G. Lien Position	H. Regulatory Term (years)
4002	LIHTC Equity - HCR LIHTC Tax Credit	$8,865,448	Equity	na	na	na	50
4003	HTC Equity - Federal	3,496,409	Equity	na	na	na	5
4003	HTC Equity - State	2,835,975	Equity	na	na	na	5
5000	HHAP	3,692,030	Loan	600	0.000%	1	30
SHOP	Supportive Housing Opportunities	3,420,167	Loan	600	0.500%	1	40
3000	Tn of Cheektowaga HOME Funds/Dev Equity	300,000	Loan	600	1.000%	2	30
4006	Deferred Developer Fee - Excess Cash Flow	91,302	Other	180	na	na	na
4006	Deferred Developer Fee - Equity Shortfall	45,000	Equity	na	na	na	na
5010	Dev Loan - NYSERDA Incentive	60,200	Loan	600	0.000%	3	na
4006	Deferred Developer Fee - Sales Tax Shortfall	77,919	Other	180	na	na	na
	TOTAL	$22,884,450					

Angela's House

Date: 3.30.21

C. Residential Financial Sources

Hard Costs	4002	4003	4003	5000	SHOP	3000	4006	4006	5010	4006				
Acquisition Costs	Equity - HCR LIHTC Tax Credit	HTC Equity - Federal	HTC Equity - State	HHAP	Supportive Housing Opportunities	Cheektowaga HOME Funds/Dev Equity	Deferred Developer Fee - Excess Cash Flow	Deferred Developer Fee - Equity Shortfall	Dev Loan - NYSERDA Incentive	Developer Fee - Sales Tax Shortfall	C. Total	Ineligible Basis	Eligible Basis	**Acquisition Costs**
Building	200,000										200,000	200,000	0	Building
Land											0	0	0	Land
Total Acquisition Costs	200,000	0	0	0	0	0	0	0	0	0	200,000	200,000	0	**Total Acquisition Costs**
Construction Costs														**Construction Costs**
Site Work		1,026,907									1,026,907	371,835	655,072	Site Work
Off Site Work											0	0		Off Site Work
Demolition		686,151									686,151	47,600	638,551	Demolition
Environmental Remediation		295,915									295,915	0	295,915	Environmental Remediation
Other Construction 579,372		579,372									579,372	579,372	0	Other Construction
Subtotal Site Prep	0	2,588,345	0	0	0	0	0	0	0	0	2,588,345	998,807	1,589,538	**Subtotal Site Prep**
Residential		688,441	2,835,975	3,626,030	3,420,167	300,000			60,200		10,930,813	774	10,930,039	Residential
Community Service Facility											0	0	0	Community Service Facility
Other Non-residential space											0	0	0	Other Non-residential space
General Contractor's Insurance											0	0		General Contractor's Insurance
Subtotal-Contractor's Cost	0	688,441	2,835,975	3,626,030	3,420,167	300,000	0	0	60,200	0	10,930,813	774	10,930,039	**Subtotal-Contractor's Cost**
Contingent Hard Costs													0	**Contingent Hard Costs**
General Conditions	641,559	219,623									861,182	68,592	792,590	General Conditions
Builder's Overhead	293,048										293,048	7,166	285,882	Builder's Overhead
Builder's Profit	298,909										298,909	7,309	291,600	Builder's Profit
Performance Bond Premium	262,159										262,159	6,411	255,748	Performance Bond Premium
Contingency	1,351,916										1,351,916	198,296	1,153,620	Contingency
Total Hard Costs	2,847,591	3,496,409	2,835,975	3,626,030	3,420,167	300,000	0	0	60,200	0	16,586,372	1,287,355	15,299,017	**Total Hard Costs**

Angela's House

Date:

B. Residential Financial Sources

Soft Costs	4002	4003	4003	5000	SHOP	3000	4006	4006	5010	4006				
	Equity - HCR LIHTC Tax Credit	HTC Equity - Federal	HTC Equity - State	HHAP	Supportive Housing Opportunities	Cheektowaga HOME Funds/Dev Equity	Deferred Developer Fee - Excess Cash Flow	Deferred Developer Fee - Equity Shortfall	Dev Loan - NYSERDA Incentive	Developer Fee - Sales Tax Shortfall	TOTAL	Ineligible Basis	Eligible Basis	Soft Costs
Accounting and Cost Certification	25,000										25,000	25,000	0	Accounting and Cost Certification
Appraisal(s)	6,000										6,000	3,000	3,000	Appraisal(s)
Architecture/Engineering Fee	973,000										973,000	0	973,000	Architecture/Engineering Fee
Permits and Expediting	108,000										108,000	0	108,000	Permits and Expediting
Environmental Phase I & II	65,000										65,000	0	65,000	Environmental Phase I & II
Soil Borings/Geotechnical	5,000										5,000	0	5,000	Soil Borings/Geotechnical
Insurance	134,864										134,864	0	134,864	Insurance
Taxes	85,208										85,208	15,853	69,355	Taxes
Developer's Allowance											0	0		Developer's Allowance
Market Study	7,500										7,500	7,500	0	Market Study
Permits / Fees											0	0		Permits / Fees
Survey	12,000										12,000	6,000	6,000	Survey
Title & Recording	125,000										125,000	23,664	101,336	Title & Recording
Relocation Expenses											0	0		Relocation Expenses
LIHTC/SLIHC Application Fees	3,000										3,000	3,000	0	LIHTC/SLIHC Application Fees
Credit Allocation Fee 78,341	78,341										78,341	78,341	0	Credit Allocation Fee
Other DHCR/HCR Fees	1,000										1,000	1,000	0	Other DHCR/HCR Fees
Other Soft Cost-identify belo 369,671	369,671										369,671	40,679	328,992	Other Soft Costs - identify below
Soft Cost Contingency	113,592										113,592	56,767	56,825	Soft Cost Contingency
Working Capital Soft Costs														Working Capital Soft Costs
Initial operating deficit	151,413										151,413	151,413	0	Initial operating deficit
Supplemental Management Fee	11,000										11,000	11,000	0	Supplemental Management Fee
Marketing	25,000										25,000	25,000	0	Marketing
Maintenance/Equipment 80,000	14,000			66,000							80,000	40,000	40,000	Maintenance/Equipment
$267,413 **Soft Cost Subtotal 1**	**2,313,589**	**0**	**0**	**66,000**	**0**	**0**	**0**	**0**	**0**	**0**	**2,379,589**	**488,217**	**1,891,372**	**Soft Cost Subtotal 1**
Lender Fees & Interest														**Lender Fees & Interest**
Bank Construction Int 582,205	582,205										582,205	220,440	361,765	Construction Interest - Bank
Construction Interest-Subsidy Loans											0	0		Construction Interest - Subsidy Loa
Construction /Perm Loan Origination	122,203										122,203	46,270	75,933	Construction /Perm Loan Originati
Bank Construction Monitor	35,994										35,994	0	35,994	Bank Construction Monitor
Soft Cost Subtotal 2	**740,402**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**740,402**	**266,710**	**473,692**	**Soft Cost Subtotal 2**
Legal Fees														**Legal Fees**
Sponsor Legal Fees	150,000										150,000	37,500	112,500	Sponsor Legal Fees
Bank Legal Fees	47,500										47,500	17,985	29,515	Bank Legal Fees
Soft Cost Subtotal 3	**197,500**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**197,500**	**55,485**	**142,015**	**Soft Cost Subtotal 3**
Total Softs Costs	**3,251,491**	**0**	**0**	**66,000**	**0**	**0**	**0**	**0**	**0**	**0**	**3,317,491**	**810,412**	**2,507,079**	**Total Softs Costs**
LIHC/SLIHC Developer's Fee	2,450,651						91,302	45,000		77,919	**2,664,872**	0	**2,664,872**	LIHC/SLIHC Developer's Fee
													14.51%	
Capitalized Operating Reserve	115,715										115,715	115,715	0	Capitalized Operating Reserve
Capitalized Replacement Reserve	0										0	0	0	Capitalized Replacement Reserve
											0			
Total Project Cost (lines 52+71+114+115+117+118)	**8,865,448**	**3,496,409**	**2,835,975**	**3,692,030**	**3,420,167**	**300,000**	**91,302**	**45,000**	**60,200**	**77,919**	**22,884,450**	**2,413,482**	**20,470,968**	**Total Project Cost** (sum lines 87+96+115+117+119+120)
Syndication/Partnership Costs		$45,000												Syndication/Partnership Costs

Fees are **not** included above in "Table B. Funding Sources" or "Table C. Residential Financial Sources"

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Applicant Name: **Angela's House LLC** Date: 3.30.21

Project Name: **Angela's House**

Exhibit 3 Development Budget - Residential Detail

SHARS # (if assigned) 20190373

Complete the Tables below if you entered amounts in: Line 23 (Other Soft Costs - enter details in Table A)
Line 29 (Other Construction Costs - enter details in Table B)
Line 46 (Purchase of Maintenance & Other Equipment - enter details in Table C)
Line 47 (Other Working Capital - enter details in Table D)

C. Line 58 Other Construction Costs - Description of Costs	$ Amount	Ineligible Basis	Eligible Basis
Sales Tax if Exemption Application is not Granted Prior to Closing	$579,372	$579,372	$0
		0	
		0	
		0	
		0	
		0	
Total	**$579,372**	**$579,372**	**$0**

A. Line 95 Other Soft Costs - Description of Costs	$ Amount	Ineligible Basis	Eligible Basis
Utility hookup fees	$35,000	$35,000	$0
Third Party Inspections	175,413	0	175,413
Planning Fees	36,000	0	36,000
HTC Consultant	50,000	0	50,000
Energy Consultant	58,258	0	58,258
Other Lender's Fees i.e. appraisal, flood, env, etc.	15,000	5,679	9,321
		0	
		0	
		0	
		0	
		0	
		0	
		0	
		0	
		0	
		0	
Total	**$369,671**	**$40,679**	**$328,992**

B. Line 101 Maintenance/Equipment - Description of Costs	$ Amount	Ineligible Basis	Eligible Basis
Snowblower and tools, Common area furniture, décor and appliances	$14,000	$0	$14,000
Furniture to serve Homeless Units	66,000	4,798	61,202
		0	
Total	**$80,000**	**$4,798**	**$75,202**

EXHIBIT J
SCHEDULE

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

RP OAK HILL BUILDING COMPANY INC.

Attachment "D" - Schedule Dated 2/15/21

Angela's House - Tentative Construction Schedule

	2021											2022				
	April	May	June	July	Agust	Sept	October	Nov	Dec	January	February	March	May	June	July	August
Interior Work																
Sixth Floor																
Demo/abatement																
Framing																
Plaster Repair																
M/E/P/FP rough-in																
Spray foam																
Trash Chute																
Drywall/plaster																
Painting																
Wood flooring																
Carpet/VCT																
Millwork/Cabinets/Counters																
M/E/P/FP finish																
Doors/frames/hardware																
Specialties/appliances																
Fifth Floor																
Demo/abatement																
Framing																
Plaster Repair																
M/E/P/FP rough-in																
Spray foam																
Trash Chute																
Drywall/plaster																
Painting																
Wood flooring																
Carpet/VCT																
Millwork/Cabinets/Counters																
M/E/P/FP finish																
Doors/frames/hardware																
Specialties/appliances																
Fourth Floor																
Demo/abatement																
Framing																
Plaster Repair																
M/E/P/FP rough-in																
Spray foam																
Trash Chute																
Drywall/plaster																
Painting																
Wood flooring																
Carpet/VCT																
Millwork/Cabinets/Counters																
M/E/P/FP finish																
Doors/frames/hardware																
Specialties/appliances																
Third Floor																
Demo/abatement																
Framing																
Plaster Repair																
M/E/P/FP rough-in																
Spray foam																
Trash Chute																
Drywall/plaster																

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

RP OAK HILL
BUILDING COMPANY INC.

Angela's House - Tentative Construction Schedule

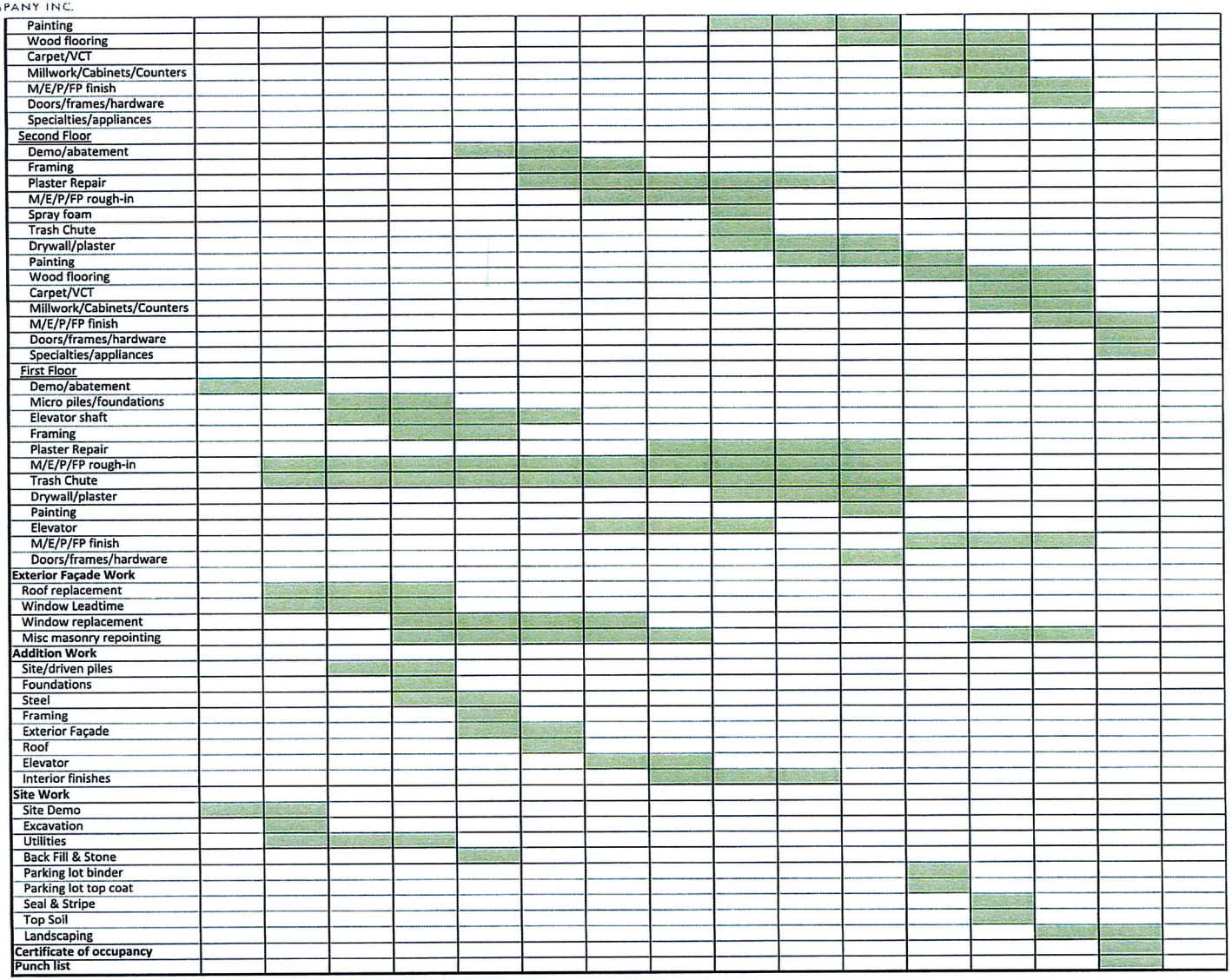


EXHIBIT K

AFFIRMATIVE MARKETING GUIDELINES

MINORITY & WOMEN'S BUSINESS OUTREACH GUIDELINES

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Affirmative Marketing Guidelines

Affirmative marketing requirements and procedures must include:

- Methods of informing the public and potential owners or tenants about Federal fair housing laws and the Town's affirmative marketing policy (e.g., the use of Equal Housing Opportunity logotype or slogan in press releases and solicitations for tenants and buyers, and written communication to housing and community groups);

- Requirements and practices to be instituted to carry out the affirmative marketing procedures and requirements (e.g., use of commercial media, newsletters, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

- Procedures to be used to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of worship, employment centers, housing counseling agencies, social service organizations);

- Records that will be kept describing actions taken to affirmatively market units and records to assess the results of these actions; and

- A description of how the HOME-funded agency will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Minority/Women's Business Outreach Guidelines

All HOME-funded agreements require that agencies make good faith efforts to involve minority and women-owned businesses in the preservation, development, and management of affordable housing in compliance with 24 CFR 92.351 (b). In particular, qualified minority business enterprises and women business enterprises in the market area shall be informed of opportunities when competitive procurement processes for services and goods are being undertaken.

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT L
HOME RENT LIMITS
HOME INCOME THRESHOLDS

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

HOME RENT LIMITS

The U.S. Department of Housing and Urban Development publishes Rent Limits annually for determination of HOME rent thresholds.

Rent limits change annually for up to date information go to:

https://www.huduser.gov/portal/datasets/HOME-rent-limits.html

LOW- AND MODERATE-INCOME THRESHOLDS

The U.S. Department of Housing and Urban Development publishes income limits annually for determination of low- and moderate-income households.

Income limits change annually for up to date information go to:

https://www.huduser.gov/portal/datasets/il.html

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT M

FEDERAL REGULATIONS

24 CFR 84.21, "Standards for financial management systems"

OMB CIRCULAR A-122, "COST PRINCIPLES FOR NON-PROFIT ORGANIZATIONS"

Find at http://www.whitehouse.gov/omb/circulars/a122/a122.html

And applicable provisions at 24 CFR Part 84: Sections 84.2, 84.5, 84.13 through 84.16, 84.21, 84.22, 84.26 through 84.28, 84.30, 84.31, 84.34 through 84.37, 84.40 through 84.48, 84.51, 84.60 through 84.62, 84.72, and 84.73.

Find at https://www.hud.gov/sites/documents/DOC_36446.doc

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2 CFR Part 200 Subpart F, "AUDIT REQUIREMENTS"

Find at https://www.ecfr.gov/cgi-bin/text-idx?SID=43e0fdeacc41a6f9b1989e1836d106ec&mc=true&node=sp2.1.200.f&rgn=div6

HUD's regulations for the HOME program are located at 24 CFR Part 92, paragraphs 92.1 through 92.552.

Find at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title24/24cfr92_main_02.tpl

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Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT N
SECTION 3

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

SECTION 3 COMPLIANCE

The work to be performed under this contract may be subject to the requirements of SECTION 3 of the Housing & Urban Development Act of 1968, as amended. The objective of SECTION 3 is to ensure that opportunities for training and employment generated by federal assistance shall, to the greatest extent feasible, be given to low-income persons and to businesses that provide economic opportunities for these persons. This means that preference for training and jobs resulting from covered projects is to be given to low income persons (called Section 3 residents) and to businesses that provide such opportunities (called Section 3 businesses). **PLEASE REVIEW THE FOLLOWING INFORMATION CAREFULLY AND COMPLETE AND SUBMIT ALL REQUIRED FORMS WITH YOUR BID.**

THRESHOLD: This project is a Section 3 covered project if the value of this contract on which you are bidding is $100,000 or more.

Definitions

"Section 3 Resident" means any lower income individual residing in Erie County or neighborhood where the project is located whose household income does not exceed 80% of the area median income by household size as defined and published by the U.S. Department of Housing & Urban Development as follows:

Income Limits

1 Person.....$44,200

2 Persons.....$50,500

3 Persons..... $56,800

4 Persons..... $63,100

5 Persons..... $68,150

6 Persons..... $73,200

7 Persons.....$78,250

8 Persons..... $83,300

"Section 3 Business" means any business concern:

(1) that is 51% or more owned by a Section 3 resident(s) or;

(2) whose permanent, full-time employees include persons at least 30% of whom are currently Section 3 residents, or within three years of the date of first employment with the business concerns were Section 3 residents, or;

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

(3) that provides evidence of a commitment to subcontract in excess of 25% of the dollar aware of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "Section 3 business concern".

Preference is given to Section 3 Business Concerns which will hire new, full-time, permanent employees in conjunction with this project.

Section 3 Goals: Contractors / Subcontractors Affirmative Action Requirements

Numeric Goals for meeting the greatest extent feasible requirement:

- For training and employment opportunities resulting from Section 3-covered housing assistance, a commitment to employ 10% of the aggregate number of new hires each year over the duration on the Section 3 project.

- For training and employment opportunities resulting from Section 3-covered community development assistance, a commitment to employ 30% of the aggregate number of new hires for a one-year period.

- For contracts awarded in connection with Section 3-covered project, a commitment to award at least 10% of the total dollar amount of contracts for building trades work and at least 30% of the total dollar amount of all other Section 3-covered contracts.

Contractors, subcontractors, and sub-recipients must use positive efforts to meet the Section 3 goals; such efforts will include but not be limited to the following:

✓ Publicize vacant/new employment positions by contacting appropriate labor Unions and the New York State Employment Office. The attached form must be utilized for this purpose and a copy sent to the Town of Cheektowaga Office of Community Development.

✓ Send solicitation letters by certified mail inviting quotes or proposals from individual Section 3 businesses. (1) Solicitation letters will reference the work to be subcontracted; (2) the solicitation letter will be sent in a timely manner so as to allow Section 3 businesses adequate opportunity to develop quotes or proposals for submission to the contractor; (3) solicitation letters shall include the bid date and a response due date (copies of all correspondence shall be forwarded to the Town and kept on file).

The Town will require an employment and business hiring report on forms provided by the Community Development Office to be included with the request for final payment. This report will include the following information:

1) The total number of persons hired (if any) who are Section 3 residents;

2) The total dollar value of the specific contract (including change orders, etc.);

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

3) A statement showing total amounts subcontracted to Section 3 area businesses (this should not be less than 10% of the total value of the contract).

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

DOES THE CONTRACTOR CLAIM SECTION 3 CONTRACTOR STATUS? If Yes, please indicate the basis for claiming Section 3 Status from the choices below:

_____ (1) 51% or more owned by Section 3 resident. If you picked this selection, please complete, sign, and attach a copy of the income survey to this page and submit it with your proposal. Please note that you may be required to verify this information and produce additional documentation of Section 3 status, such as tax returns and other income information. Copies of these documents may also be obtained directly from the U.S. Government.

_____ (2) Indicate either (a) or (b):

(a) 30% or more of full-time, permanent employees are currently Section 3 residents, or;

(b) 30% of permanent, full-time employees were Section 3 residents within the past three years.

If you have selected this choice, please note that in doing so, you also certify that you have on file in your business office income certification from your employees documenting compliance with this requirement. Please note that your employees who claim Section 3 resident status may be required to verify their household income and produce additional income documentation. You are responsible for such documentation.

_____ (3) Provide evidence of a commitment to contract in excess of 25% of the dollar award of all subcontracts to businesses that meet the definition of either (1) or (2) above.

_____ NO, I do not claim status as a Section 3 Business Concern.

Will you hire new, full-time, permanent employees to carry-out this project?

_____ YES. If Yes, how many such employees will be hired? _____

Of these, how may will be Section 3 residents? _____

Note that at least 10% of new hires must be Section 3 Residents. Also note that you will be required to maintain on file documentation of new employees' household income status.

_____ NO.

_____ _____

Company Name Signature

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

LIST OF APPLICANTS FOR SECTION 3 CONTRACTORS

NAME	ADDRESS	PHONE NO.	JOB DESIRED	REFERRED BY& DATE

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

SECTION 3 CLAUSE

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance of HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and locations of the person (s) taking applications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Company Name_____

Address_____

Date_____

Project Number_____

_____
Official Signature

_____
Type/Printed

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT O
TAX SEARCHES AND RECEIPTS

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT P
OPINION OF BORROWER'S ATTORNEY

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT Q

SETTLEMENT STATEMENT

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT R

IRAN DIVESTMENT ACT CERTIFICATION

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

IRAN DIVESTMENT ACT CERTIFICATION

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a provision was added to the State Finance Law (SFL), Section 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will develop a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). This list is posted on the OGS website.

By submitting a response to this solicitation, or by assuming the responsibility under a Contract/Lease awarded hereunder, Bidder/Contractor/Vendor (or any assignee) certifies that it will not utilize on such Contract/Lease any subcontractor that is identified on the prohibited entities list.

Additionally, Bidder/Contractor/Vendor is advised that any Bidder/ Contractor/Vendor seeking to renew or extend a Contract/Lease (or assume responsibility of a Contract/Lease awarded must certify at the time the Contract/Lease is renewed, extended or assigned that it is not included on the prohibited entities list.

During the term of the Contract/Lease, should the Town of Cheektowaga (Town) receive information that a person is in violation of the above-referenced certification, the Town will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the Town shall take such action as appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Contractor/Vendor in default.

The Town reserves the right to reject any Contract/Lease or request for assignment for an entity that appears on the prohibited entities list prior to the award of a Contract/Lease, and to pursue a responsibility review with respect to any entity that is awarded a Contract/Lease and appears on the prohibited entities list after Contract/Lease award.

Company Name: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

Sworn To Before Me This _____ Day of _____, 2021

_____

Notary Public

Revised 4.2017

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

EXHIBIT S
INTERCREDITOR AGREEMENT

Attachment: Angela's House Loan Agmt-FINAL with non-closing Exhibits 4.19 (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Guide for Review of Owner, Developer, Sponsor Written Agreements			
Participating Jurisdiction (PJ): Town of Cheektowaga, of the Amherst-Cheektowaga-Tonawanda HOME Consortium			
Staff Consulted: Rachel Straker, Cheektowaga Community Development Director			
Project Address: Angela's House 600 Doat Street Cheektowaga, NY 14211		**Agreement Date:** TBD – preliminary review for compliance **Amount:** $300,000.00	
Name(s) of Reviewer(s):	Laurie Stillwell, Amherst Community Development Director	**Date:**	4/14/2021

NOTE: All questions that address requirements contain the citation for the source of the requirement (statute, regulation, NOFA, or grant agreement). If the requirement is not met, HUD must make a finding of noncompliance. All other questions (questions that do not contain the citation for the requirement) do not address requirements, but are included to assist the reviewer in understanding the participant's program more fully and/or to identify issues that, if not properly addressed, could result in deficient performance. Negative conclusions to these questions may result in a "concern" being raised, but not a **"finding."**

Instructions: This Exhibit is designed to review the PJ's written agreement for compliance with HOME regulatory requirements covering written agreements with Owners, Developers, or Sponsors. Follow the sampling guidance in Section 7-4 of the introduction to this Chapter.

Questions:

1.

a. Was a written agreement executed between the PJ and the Owner, Developer or Sponsor? [24 CFR 92.504(b)]	☐ Yes	☐ No	☒ N/A
Describe Basis for Conclusion: This is a preliminary review for compliance with HUD HOME Investments Partnerships Program compliance and requirements for the execution of the Loan agreement. The Agreement will be executed at closing, prior to expenditure of funds.			
b. Specify whether the written agreement is with an Owner, Developer or Sponsor.			
Describe Basis for Conclusion: Agreement is between the Town of Cheektowaga and an Owner-Developer entity: Angela's House, LLC.			

2.

Does the written agreement describe the use of HOME funds? [24 CFR 92.504(c)(3)(i)]	☒ Yes	☐ No	☐ N/A
Describe Basis for Conclusion:			

Attachment: LS - HUD Regulatory Review of Angela's House Loan Agreement (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

A loan towards "hard costs", which are defined by HUD as construction or rehabilitation, of a currently vacant building to create 67 affordable apartments. Three of the units will be considered floating Home units for the purposes of this project.

3.

Is there a schedule for the completion of tasks? [24 CFR 92.504(c)(3)(i)]	Yes	No	N/A
Describe Basis for Conclusion: Yes			

4.

Is there a budget for the project? [24 CFR 92.504(c)(3)(i)]	Yes	No	N/A
Describe Basis for Conclusion: Yes			

5.

Do the statement of work, the schedule, and budget contain sufficient detail to provide a sound basis for the PJ to effectively monitor performance under the agreement? [24 CFR 92.504(c)(3)(i)]	Yes	No	N/A
Describe Basis for Conclusion: Yes			

6.

a. Does the agreement specify its duration? [24 CFR 92.504(c)(3)(ix)]	Yes	No	N/A
Describe Basis for Conclusion: Yes, ~~however~~ the loan term is 50 years with the affordability period being 50 years. okay			
b. If the housing assisted under the agreement is rental housing, is the agreement in effect through the affordability period required by the PJ under 24 CFR 92.252? [24 CFR 92.504(c)(3)(ix)]	Yes	No	N/A
Describe Basis for Conclusion:			

Attachment: LS - HUD Regulatory Review of Angela's House Loan Agreement (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

The affordability period matches the term of the loan.

[24 CFR 92.504(c)(3)(ix)]
(ix) Duration of the agreement. The agreement must specify the duration of the agreement. If the housing assisted under this agreement is rental housing, the agreement must be in effect through the affordability period required by the participating jurisdiction under § 92.252. If the housing assisted under this agreement is homeownership housing, the agreement must be in effect at least until completion of the project and ownership by the low-income family.

	Yes	No	N/A
c. If the housing assisted under the agreement is homeownership housing, is the agreement in effect at least until completion of the project and ownership by the low-income family? [24 CFR 92.504(c)(3)(ix)]	☐	☐	☒
Describe Basis for Conclusion:			

7.

	Yes	No	N/A
Does the agreement require that housing assisted with HOME funds meets: • the affordability requirements of 24 CFR 92.252 or 24 CFR 92.254 (as applicable); and • require repayment of funds if the housing does not meet the affordability requirements for the specified time period? [24 CFR 92.504(c)(3)(ii)]	☒	☐	☐
Describe Basis for Conclusion: Yes to both, provisions are reflected in the loan agreement language.			

Attachment: LS - HUD Regulatory Review of Angela's House Loan Agreement (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

8.

If the Owner, Developer, or Sponsor is undertaking rental projects, does the agreement establish the initial rents and the procedures for rent increases? [24 CFR 92.504(c)(3)(ii)]	Yes ☒	No ☐	N/A ☐
Describe Basis for Conclusion: Yes, agreement outlines various scenarios in which rent can be adjusted within HUD regulations.			

9.

If the Owner, Developer, or Sponsor is undertaking homeownership projects for sale to homebuyers in accordance with 24 CFR 92.254(a), does the agreement set forth the resale or recapture requirements, which must be imposed on the housing? [24 CFR 92.504(c)(3)(ii)]	Yes ☐	No ☐	N/A ☒
Describe Basis for Conclusion:			

10.

Does the agreement require compliance with all HOME program requirements in 24 CFR Part 92, Subpart F, as applicable in accordance with the type of project assisted? [24 CFR 92.504(c)(3)(iii)]	Yes ☒	No ☐	N/A ☐
Describe Basis for Conclusion: **Maximum Per Unit Subsidy Limit** for Buffalo Niagara Statistical Area: 1 Bedroom = $175,752 & 2 Bedroom = $213,718 (Each Unit = $100,000) **Property Standards =** Yes, sufficiently referenced **Qualification of Affordable Housing =** Yes, sufficient provisions included **Tenant Protections & Selection** = Yes, sufficient provisions included **Equal Participation of Faith Based** = Yes, change of use requires agreement by both parties. **Elder Cottage –** Not Applicable			

11.

Does the agreement require that the housing meet the property standards in 24 CFR 92.251 and the lead hazard control requirements in 24 CFR 92.355 upon project completion? [24 CFR 92.504(c)(3)(iv)]	Yes ☒	No ☐	N/A ☐
Describe Basis for Conclusion: Yes, and Cheektowaga has cleaned up the confusing language at the beginning 5.12.			

Attachment: LS - HUD Regulatory Review of Angela's House Loan Agreement (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

12.

	Yes	No	N/A
Does the agreement require Owners of rental housing assisted with HOME funds to maintain the housing in compliance with 24 CFR 92.251 for the duration of the affordability period? [24 CFR 92.504(c)(3)(iv)]	☒	☐	☐
Describe Basis for Conclusion: Yes, this is provided for in 5.12			

13.

	Yes	No	N/A
If the project contains 5 or more HOME-assisted units, does the written agreement specify the Owner's, Developer's, or Sponsor's affirmative marketing responsibilities as enumerated pursuant to 24 CFR 92.351? [24 CFR 92.504(c)(3)(v)(A)]	☐	☐	☒
Describe Basis for Conclusion:			

14.

	Yes	No	N/A
a. Does the agreement require the Owner, Developer, or Sponsor to meet all federal requirements and nondiscrimination established in 24 CFR 92.350? [24 CFR 92.504(c)(3)(v)(B)]	☒	☐	☐
b. If the agreement specifies that any displacement, relocation, and acquisition requirements are being imposed by the PJ, are such requirements consistent with 24 CFR 92.353? [24 CFR 92.504(c)(3)(v)(c)]	☐	☐	☒
c. Does the agreement specify the labor requirements prescribed in 24 CFR 92.354? [24 CFR 92.504(c)(3)(v)(D)]	☐	☐	☒
d. Does the agreement specify the conflict of interest provisions prescribed in 24 CFR 92.356(f)? [24 CFR 92.504(c)(3)(v)(E)]	☒	☐	☐
Describe Basis for Conclusion: a. is provided for throughout section 5.10 c. is only applicable for 12+ units assisted with HOME funds d. is provided for in section 5.10(o)			

15.

	Yes	No	N/A
Does the agreement specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the PJ in meeting its record keeping and reporting requirements? [24 CFR 92.504(c)(3)(vi)]	☒	☐	☐
Describe Basis for Conclusion: Section 5.12 Records to be Maintained.			

Attachment: LS - HUD Regulatory Review of Angela's House Loan Agreement (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

16.

	Yes	No	N/A
Does the agreement provide for a means of enforcement of the affordable housing requirements by the PJ for the intended beneficiaries? [24 CFR 92.504(c)(3)(vii)]	☒	☐	☐

Describe Basis for Conclusion:
Yes, there are instances of Default outlined and require payback of the HUD funds.

17.

	Yes	No	N/A
If the housing is rental housing, are the affordability requirements in 24 CFR 92.252 enforced by deed restrictions? [24 CFR 92.504(c)(3)(vii)]	☒	☐	☐

Describe Basis for Conclusion:
Yes, see attached. In this case it's described as a restrictive covenant. The Long-term Ground Lease is correctly structured.

18.

	Yes	No	N/A
Does the agreement specify remedies for breach of the agreement? [24 CFR 92.504(c)(3)(vii)]	☒	☐	☐

Describe Basis for Conclusion:
Yes provided for in Section 7. Default

19.

	Yes	No	N/A
Does the agreement specify that the Owner, Developer, or Sponsor may not request disbursement of funds under the agreement: • until the funds are needed for payment of eligible costs; and • that requests must be limited to the amount needed? [24 CFR 92.504(c)(3)(viii)]	☒	☐	☐

Describe Basis for Conclusion:
Yes, however the language references Advances, but the Advances section in the Building Loan is correctly structured. Cheektowaga corrected.
Final Underwriting addresses actual amount needed.

Attachment: LS - HUD Regulatory Review of Angela's House Loan Agreement (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

20.

Does the agreement, where applicable, include the conditions prescribed in 24 CFR 92.257 for the use of HOME funds by religious organizations? [24 CFR 92.504(c)(3)(x)]	☐ Yes	☐ No	☒ N/A
Describe Basis for Conclusion: N/A			

21.

If the Owner, Developer, or Sponsor is a Community Housing Development Organization (CHDO) and is using set-aside funds under 24 CFR 92.300, does the agreement include the appropriate provisions prescribed in 24 CFR 92.300 and 24 CFR 92.301? [24 CFR 92.504(c)(3)(xi)]	☐ Yes	☐ No	☒ N/A
Describe Basis for Conclusion: N/A			

22.

Was the written agreement executed by the PJ and the Owner. Developer, sponsor before the project was funded in IDIS? (Compare the dated signatures on the written agreement to the Initial Funding Date on the View Activity Screen in IDIS.) [24 CFR 92.502(b)]	☒ Yes	☐ No	☐ N/A
Describe Basis for Conclusion: The loan agreement will be executed prior to project set-up in IDIS.			

Attachment: LS - HUD Regulatory Review of Angela's House Loan Agreement (RES-2021-374 : To Authorize the Supervisor to Sign Angela's

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 04/19/21 07:00 PM
Department: Town Clerk
DOC ID: 23171

COMMUNICATION 2021-49

APPROVED

Request for Public Hearing to Reclassify 2402 North Forest Road

Suspension to Town Board Agenda Item April 19, 2021

TO: **Amherst Town Board**
FROM: **Sean W. Hopkins, Partner, Hopkins, Sorgi & McCarthy PLLC**
DATE: **April 19, 2021**
RE: **Request to Schedule Public Hearing - Application to Reclassify 2402 North Forest Road**

See the letter attached with the details of the Public Hearing request and the reclassifying related to the property at 2402 North Forest Road.

4/19/2021
A motion to approve was made by Deputy Supervisor Berger, seconded by Councilmember Bucki and unanimously approved 5-0.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Jacqualine Berger, Deputy Supervisor
SECONDER:	Deborah Bruch Bucki, Councilmember
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

April 17, 2021

Kathy Cooper, Deputy Town Clerk
Town of Amherst Town Clerk's Office
5583 Main Street
Williamsville, NY 14221

Re: Request to Schedule Public Hearing - Application to Reclassify 1.53 Acres of 2402 North Forest Road from OB to NCD-GC and Amendment #74 of the Audubon Development Plan [Z-2021-02]
Applicant/Project Sponsor: 2402 North Forest Road, LLC
File 10003.48

Dear Kathy:

This letter is being submitted on behalf of 2402 North Forest Road, LLC ("Applicant") to request that the Town Board adopt a resolution via suspension of rules during its upcoming meeting on Monday, April 19th in connection with the pending request to reclassify/rezone a portion of 2402 North Forest Road ("Project Site") from OB to NCD-GC to Amend the Audubon Development Plan.

The request to reclassify/rezone the Project Site is being sought by the Applicant because the Project Site is zoned OB per a decision issued by the Town Board on October 15, 1984 despite the fact the Town's official Zoning Map indicates the Project Site is currently zoned NCD-GC.

During its meeting on Thursday, April 15th, the Planning Board held a public hearing and adopted a resolution by a unanimous vote recommending that the Town Board approve the requested reclassification/rezoning of the Project Site from OB to NCD-GC and an amendment to the Audubon Development Plan

It would be appreciated if the public hearing can be scheduled for the meeting of the Town Board to be held on **Monday, May 17th at 7:00 p.m.**

Please feel free to contact me at 510-4338 or via e-mail at shopkins@hsr-legal.com if you have any questions this letter.

Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

cc: Brian J. Kulpa, Supervisor

HOPKINS SORGI & MCCARTHY PLLC
Attorneys at Law
5500 Main Street, Suite 343 • Williamsville, New York 14221
Direct: 716-510-4338 • E-mail: shopkins@hsr-legal.com • www.hsr-legal.com

Attachment: Cooper-Ltr-Request to Schedule Public Hearing-04-17-21 (COM-2021-49 : Request for Public Hearing 2402 North Forest Road)

Jacqualine Berger, Deputy Supervisor
Deborah Bruch Bucki RN PhD, Councilmember
Shawn Lavin, Councilmember
Michael Szukala, Councilmember
Ellen Kost, AICP, Assistant Planning Director
Paul Bliss, 2402 North Forest Road, LLC [Via e-mail and mail]
Jon Barniak, Carmina Wood Morris DPC [Via e-mail]
Christopher Wood, P.E., Carmina Wood Morris [Via e-mail]
David Sutton, R.A., Sutton Architecture PLLC [Via e-mail]

Attachment: Cooper-Ltr-Request to Schedule Public Hearing-04-17-21 (COM-2021-49 : Request for Public Hearing 2402 North Forest Road)