

**HARRIS BEACH** PLLC  
ATTORNEYS AT LAW

December 21, 2023

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**VIA E-MAIL ONLY**

Brian Ivy and Seth Gellis  
Andrews Terrace Community Partners, L.P.  
c/o Conifer Realty  
1000 University Avenue, Suite 500  
Rochester, New York 14607

**Re: County of Monroe Industrial Development Agency ("COMIDA")  
Andrews Terrace Community Partners, L.P. Project located at 125 St. Paul  
Street (a/k/a 91 St. Paul Street) in the City of Rochester, NY**

Gentlemen:

Pursuant to your request, enclosed herewith please find documentation which provides for sales tax exemption for your ongoing project referenced above until the date of December 31, 2026. **Please review the enclosed package carefully to ensure full compliance with State sales tax requirements so you do not jeopardize your Company's benefits.**

**You'll want to pay close attention to the Simplified Instructions #2 for the process to have your ST-60 forms signed.**

If you have any questions regarding the enclosed or otherwise, please feel free to contact me or my paralegal, Lori Palmer at 419-8681.

Very truly yours,



Rachel C. Baranello

RCB/lap  
Enc.  
cc.: COMIDA

## **NOTICE**

**Please be advised NYS has now required IDAs to recapture from the approved project applicant, excess sales tax savings over and above the amount stated in the original sales tax package.**

**Therefore, please examine the amount of sales tax savings carefully because you (as the approved project applicant) will be required to reimburse NYS for any amount received over and above what was stated on the Form ST-60.**

**If you anticipate that your project sales tax amount will exceed the amount initially anticipated, please contact the Executive Director at COMIDA immediately [(585) 753-2000] whereupon the IDA will consider if a revised Form ST-60 can be issued.**

**\*\*\*VERY IMPORTANT\*\*\* - - PLEASE READ THIS SALES TAX EXEMPTION PACKAGE CAREFULLY, PAYING SPECIAL ATTENTION TO THE EXPIRATION DATE AND APPROVED AMOUNT.**

**The value of the sales tax exemption benefits claimed by the Company must not exceed the amount noted on the ST-60 Form.**

**SIMPLIFIED INSTRUCTIONS**

**ANDREWS TERRACE COMMUNITY PARTNERS, L.P.**

December 21, 2023

1. Project Agreement ("Project Agreement") – COPY. Give a copy of fully executed Project Agreement to appointed agents.
2. ST-60 Form which is blank as to "Name of IDA project operator or agent" (Exhibit B to Project Agreement) – MAKE NUMEROUS COPIES OF THIS BLANK FORM. For your self-appointed agents, (A) insert the name, address and tax ID of assigned agent in blank area of form, and (B) place the date you appointed said assigned agent in the 2<sup>nd</sup> set of "boxes" under Project Information where it asks for "Date project operator or agent appointed". Please then submit this form to Lori Palmer via email ([lpalmer@harrisbeach.com](mailto:lpalmer@harrisbeach.com)) for signature by COMIDA. COMIDA will return the signed form to you. Give a copy of this form to the appointed agent, keep a copy for your records and send a copy to the State (address on form) within 30 days of appointment. These directions are to be used by the agent as well when naming sub-agents (if any). ***All agents must have an ST-60 filed with NYS within 30 days of appointment.***
3. Form ST-123 (Exhibit C-1 to Project Agreement) – MAKE NUMEROUS COPIES OF THIS FORM. The Company will use this form to purchase items directly from a vendor. You should fill in the top left side of the form with the respective vendor's name and address and sign and date the bottom of the form. Give a copy of signed form to the vendor and keep a copy for your files.
4. Form ST-123 (Exhibit C-2 to Project Agreement) - MAKE NUMEROUS COPIES OF THIS BLANK FORM – for each agent you appoint, insert the name and address of said agent in the box at the top right; fill in the date you appointed said agent in the box under Project Information where it asks for the date (left side of middle box). Then keep a copy of the form you have filled in for your records and give a copy to your appointed agent. \*\*\*Give a copy of this blank form to appointed agents for them to use when purchasing items from vendors – they should also make numerous copies as they will be required to fill in the vendor's name and address and sign and date the bottom of the form for each of their vendors.
5. Form ST-340 (Exhibit D to Project Agreement) - Must be filled out and mailed by the end of February of each year until the Appointment letter provided by COMIDA expires. Send this form to the State at the address at the bottom of the form, with a copy to COMIDA.
6. Form ST-60 with Direct Appointment box checked (Company's name appears in 2<sup>nd</sup> set of boxes) – keep a copy for your records and use a copy for each direct-vendor purchase. The original has been mailed to the State on your behalf.

**CONTINUED....**

**How to Use the Sales Tax Exemption Package:**

**A. If making a purchase directly from a vendor, you must give the vendor a copy of the Form ST-123 (#3 above) and a copy of the ST-60 initially filed on your behalf by Harris Beach (#6 above). This serves as proof to the vendor that you are exempt from sales tax for this project. The vendor will keep these copies for their files. Remember to keep a copy of the Form ST-123 and a copy of the ST-60 filed on your behalf, in your files.**

**B. When appointing an agent, contractor or subcontractor, you must use the blank Form ST-123 included in this packet (#4 above) [REMEMBER TO MAKE NUMEROUS COPIES OF THIS FORM AS YOU MAY APPOINT MANY AGENTS AND WILL NEED TO DO THIS FOR EACH], fill in the name and address of each agent in the box at the top right of the form and fill in the date of appointment of said agent (bottom left side of middle box).**

**(i) The agent will then use this form [AGENT WILL NEED TO MAKE NUMEROUS COPIES OF THIS FORM AS WELL] when purchasing items directly from vendors by filling in the top left box with the vendor's name and address and signing the bottom of the form. Agents should keep a copy of each ST-123 form they give so they can have for future reference.**

**C. When appointing an agent, contractor or subcontractor, you must fill in the middle section (appearing blank at this time) of the Form ST-60 included in this packet (#2 above), with the agent's, contractor's or subcontractor's information, including their Tax ID number. You must then send the form to Lori Palmer for signature by the Agency. The Agency will sign each form and return to Lori who will then send the signed form to you and then you must mail a copy of this completed form to NYS at the address on that form. This must be done for each agent, contractor or subcontractor you appoint within thirty (30) days of the appointment of said agent. Give your agent, contractor or subcontractor a copy of what you file and keep a copy for your files. You should make extra copies of this blank ST-60 with the middle section blank for future use.**

**D. When your agent, contractor or subcontractor is purchasing directly from a vendor, they must give the vendor a copy of the Form ST-123 the agent/contractor/subcontractor has filled in for that respective vendor (see B(i) above). This Form ST-123 should be the only proof the vendor needs that your agent, contractor or subcontractor is exempt from sales tax for this project. Your agent, contractor or subcontractor should keep copies of these forms for their files and future use.**



## PROJECT AGREEMENT

THIS PROJECT AGREEMENT (hereinafter, the "Project Agreement"), is made as of the 21<sup>st</sup> day of December, 2023, by and between the **COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 50 West Main Street, Rochester, New York 14614 (the "Issuer") and **ANDREWS TERRACE COMMUNITY PARTNERS, L.P.**, a limited partnership formed and existing under the laws of the State of New York with offices at c/o Conifer Realty, LLC, 1000 University Avenue, Suite 500, Rochester, New York 14607 (the "Company").

### WITNESSETH:

WHEREAS, the Issuer was created by Chapter 55 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York (the "State"); and

WHEREAS, the Company has submitted an application (the "Application") to the Issuer requesting the Issuer's assistance with respect to a certain project (the "Project") consisting of: (A) the acquisition of a leasehold interest in an approximately 3.10-acre parcel of land located at 125 St. Paul Street (aka 91 St. Paul Street) in the City of Rochester, Monroe County, New York 14604 (collectively, the "Land"), together with the existing approximately 474,456 square foot, 22-story and 19-story, 526-unit affordable housing complex with approximately 26,366 square feet of balconies and related approximately 96,988 square foot, 2-story parking structure located on the Land (the "Existing Improvements"); (B) the renovation, refurbishment and upgrading of the Existing Improvements, including, but not limited to, (i) new kitchens, bathrooms, flooring, lighting, roof and façade, (ii) upgrades to the HVAC system, balconies and elevators; (iii) repaving of the parking lot and (iv) related amenities and improvements (collectively, the "Improvements"); (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment, fixtures, furniture and other incidental tangible personal property (collectively, the "Equipment", and together with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, by resolution adopted on February 28, 2023 (the "Resolution"), the Issuer authorized the Company to act as its agent for the purposes of undertaking the Project, subject to the Company entering into this Project Agreement; and

WHEREAS, by the Resolution, the Issuer approved certain financial assistance for the benefit of the Company in connection with the Project consisting of: (a) an exemption from all New York State and local sales and use tax for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, renovation or equipping of the Facility, and (b) a partial abatement from real property taxes conferred through a certain payment-in-lieu-of-tax agreement, between the Issuer, the Company and Andrews Terrace Housing Development Fund Corporation (the "HDFC"), as nominee for and on behalf of the Company (the "PILOT Agreement") requiring the Company to make payments-in-lieu-of-taxes for the benefit of each municipality and school district having taxing jurisdiction over the Project (collectively, the sales and use tax exemption benefit and the

partial abatement from real property taxes benefit are hereinafter collectively referred to as, the "Financial Assistance"); and

WHEREAS, pursuant to and in accordance with Sections 859-a and 874 of the Act, the Issuer requires, as a condition and as an inducement for it to provide any Financial Assistance, that the Company enter into this Project Agreement for the purposes of, among other things, to govern the administration of and provide assurances with respect to the provision and recapture of said Financial Assistance upon the terms herein set forth; and

WHEREAS, this Project Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

WHEREAS, no agency appointment of the Company or any subagent thereof, nor any amount of Financial Assistance shall be provided to the Company by the Issuer prior to the effective date of this Project Agreement.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

## ARTICLE I. DEFINITIONS

Section 1.1      Definitions of Terms.      The words and terms as used in this Project Agreement shall have the same meanings as used in **Schedule A** attached hereto and made a part hereof, unless the context or use indicates another or different meaning or intent.

## ARTICLE II. REPRESENTATIONS AND COVENANTS

Section 2.1      Representations and Covenants of the Company.      The Company makes the following representations and covenants in order to induce the Issuer to proceed with the Project/Facility:

(a)      The Company is a limited partnership formed, validly existing and in good standing under the laws of the State of New York, has the authority to enter into this Project Agreement, and has duly authorized the execution and delivery of this Project Agreement.

(b)      Neither the execution and delivery of this Project Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Project Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c)      The Facility and the operation thereof will conform (or be legally non-conforming) with all applicable zoning, planning, and building laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend,

indemnify and hold the Issuer harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this Section 2.1(c).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened in writing against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way materially diminish or materially adversely impact the Company's ability to fulfill its obligations under this Project Agreement.

(e) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility, (ii) that the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company upon receiving any information or notice contrary to the covenants contained in this Section 2.1(e) shall immediately notify the Issuer in writing with full details regarding the same. The Company hereby releases the Issuer from liability with respect to, and agrees to defend, indemnify, and hold harmless the Issuer, its executive director, directors, members, officers, employees, agents (other than the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section 2.1(e) except in the case of its own gross negligence or willful misconduct. In the event the Issuer in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Issuer upon demand.

(f) Any personal property acquired by the Company in the name of the Issuer shall be located in Monroe County, except for temporary periods during ordinary use.

(g) The Company hereby represents to the Issuer that facilities and property that are primarily used in making retail sales of goods and services to customers who personally visit the Facility will not constitute more than one-third (1/3) of the total costs of the Facility, except in accordance with New York General Municipal Law (the "GML") Section 862.

(h) The Company acknowledges and agrees that, except to the extent of bond proceeds (to the extent bonds are issued by the Issuer with respect to the Project), the Issuer shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

(i) The Company covenants and agrees that at all times, it will (i) maintain its existence and not dissolve, (ii) continue to be a limited partnership subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any

other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its property, business or assets. This Project Agreement may not be assigned in whole or part without the prior written consent of the Issuer, which consent shall not be unreasonably withheld, conditioned or delayed, or otherwise in accordance with the Leaseback Agreement.

(j) The Company confirms and acknowledges under the penalty of perjury that as of the date hereof, the Company, as owner, occupant, or operator of the Project receiving Financial Assistance from the Issuer in connection with the Project, is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations. The Company agrees that it will, throughout the term of this Project Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. Notwithstanding the foregoing, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to this Section 2.1(j). In such event, the Company, with the prior written consent of the Issuer (which shall not be unreasonably conditioned, delayed or withheld), may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Issuer shall notify the Company that it must comply with such requirement or requirements.

(k) [Reserved].

### ARTICLE III. GENERAL

Section 3.1 Purpose of Project. The purpose of the Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, renovating, reconstructing, improving, maintaining, equipping and furnishing of the Facility, to advance job opportunities, health, general prosperity and economic welfare of the people of Monroe County, New York, and to specifically promote the investment commitment, employment commitment, and other commitments of the Company contained herein and in the Company's Application.

### ARTICLE IV. FINANCIAL ASSISTANCE AND RECAPTURE OF BENEFITS

Section 4.1 In accordance with the Resolution and the Cost-Benefit Analysis (or such other equivalent document or report, as determined by the Issuer) (the "CBA"), attached hereto as **Exhibit A**, disclosed by the Issuer at its public hearing for the Project (the "Public Hearing"), the Company further: (i) covenants, with respect to the Sales Tax Exemption, that it shall comply with this Project Agreement, specifically, but not limited to, Section 4.3 hereof; and (ii) confirms that the partial real property tax abatement to be provided to the Company shall conform to those disclosed within the CBA at the Public Hearing for the Project and as

contained within the PILOT Agreement, a form of which PILOT Agreement is attached hereto as **Exhibit A**.

Section 4.2            **PILOT Agreement.** The parties hereto have executed or will execute the Lease Agreement, Leaseback Agreement and PILOT Agreement. As provided in the PILOT Agreement, the Company agrees to make certain payments (as described in the PILOT Agreement) in addition to paying all special ad valorem levies, special assessments or special district taxes and service charges against real property in the jurisdiction where the Facility is located.

Section 4.3            **Sales Tax Exemption.**

(a)     The Issuer hereby appoints and confirms its appointment of the Company as the true and lawful agent of the Issuer to undertake the Project. Such appointment was made by the Issuer pursuant to the Resolution. The Issuer agrees to acquire, renovate and equip the Facility based on the Company specifications.

(b)     The Company, as agent of the Issuer, will undertake the Project. The Company hereby agrees to limit its activities as agent of the Issuer under the authority of the Resolution to acts reasonably related to the acquisition, renovation and equipping of the Facility. The right of the Company to act as agent of the Issuer shall expire on the earlier of (x) the completion of the Project, or (y) **December 31, 2026** ("Termination Date"); provided, however, that the Issuer may extend the Company's agent appointment at its discretion upon the written request of the Company if such activities and improvements are not completed by such time, and further provided that the Issuer shall not unreasonably withhold, condition or delay its consent to the extension of such appointment.

(c)     **Issuer's Exempt Status.** The Issuer constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of Sales and Use Taxes. As an exempt governmental entity, no exempt organization identification number has been issued to the Issuer nor is one required. Notwithstanding the foregoing, the Issuer makes no representation to the Company, any Agent (as defined in **Schedule C** attached hereto) or any third party that any Sales Tax Exemption is available under this Project Agreement.

(d)     **Scope of Authorization of Sales Tax Exemption.** The Issuer hereby authorizes the Company, subject to the terms and conditions of this Project Agreement, to act as its agent in connection with the Project for the purpose of effecting purchases and leases of certain items so that such purchases and leases are exempt from the imposition of Sales and Use Taxes. The Issuer's authorization with respect to such Sales Tax Exemption provided to the Company and its Agents pursuant to this Project Agreement shall be subject to the following limitations:

(i)     The Sales Tax Exemption shall be effective only for a term commencing on the date hereof and expiring upon the earliest of (A) the termination of this Project Agreement, (B) the Termination Date, (C) failure of the Company to file Form ST-340, as described in Section 4.5 below, (D) the termination of the Sales Tax Exemption authorization pursuant to Section 6.2 hereof or (E) the date upon which the Company received the Maximum Sales Tax Exemption.

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company is in default under this Project Agreement (or related document) until such default is cured to the reasonable satisfaction of the Issuer.

(iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Project Agreement.

(iv) The Sales Tax Exemption shall only be utilized for items which shall be purchased, incorporated, completed or installed for use only by the Company at the Facility or in connection with the Project (and not with any intention to sell, transfer or otherwise dispose of any such item to a Person as shall not constitute the Company), it being the intention of the Issuer and the Company that the Sales Tax Exemption shall not be made available with respect to any item unless such item is used solely by the Company at the Facility or in connection with the Project.

(v) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility, other than the Company, without the prior written consent of the Issuer.

(vi) By execution by the Company of this Project Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Issuer that the use of the Sales Tax Exemption by the Company or by any Agent is strictly for the purposes stated herein.

(vii) Upon the Termination Date, the Company and each Agent shall cease being agents of the Issuer, and the Company shall immediately notify each Agent in writing of such termination.

(viii) The Company agrees that the aggregate amount of Sales Tax Exemption realized by the Company and by all Agents of the Company, if any, in connection with the Facility shall not exceed in the aggregate the Maximum Sales Tax Exemption.

Section 4.4      Procedures for Appointing Subagents. If the Company desires to seek the appointment of a contractor, a subcontractor or other party to act as the Issuer's agent, including, but not limited, to the individuals and entities described on **Schedule B** attached hereto (a "Subagent") for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this Project Agreement, it must complete the following steps:

(i) The Company shall have the right to amend **Schedule B** hereto from time to time and shall be solely responsible for maintaining an accurate list of all parties acting as agent for the Issuer. The Company's right to appoint Subagents is expressly conditioned upon updating **Schedule B** attached hereto, along with, for each Subagent, the Company's completion and submission of Form ST-60 to the Issuer, attached hereto as **Exhibit B**. An Authorized Representative of the Issuer must sign the Form ST-60 and return the same to the Company. Following receipt of the

signed Form ST-60, the Company must file, with NYS, such Form ST-60 within thirty (30) days of the date that the Issuer appoints a project operator or other person or entity to act as a Subagent of the Issuer for purposes of extending the Sales Tax Exemption to such Subagent. The Company acknowledges and agrees that it shall be the Company's sole and exclusive responsibility to file a completed Form ST-60 with respect to any Subagent and the failure to timely do so could result in an Event of Default and Recapture Event (as hereinafter defined).

(ii) The Company shall ensure that each Subagent shall observe and comply with the terms and conditions of this Project Agreement.

(iii) Form ST-60 Not an Exemption Certificate. The Company acknowledges that the executed Form ST-60 designating the Company or any Subagent as an agent of the Issuer shall not serve as a Sales Tax Exemption certificate or document. Neither the Company nor any other Subagent may tender a copy of the executed Form ST-60 to any person required to collect sales or use tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED BY LAW. IN ADDITION, THE USE BY A SUBAGENT, THE COMPANY, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY-EIGHT AND THIRTY-SEVEN OF THE NEW YORK STATE TAX AND FINANCE LAW (THE "TAX LAW"), THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(iv) Form ST-123 Requirement. As an agent of the Issuer, the Company agrees that it will, and will cause each Subagent to, present to each seller or vendor a completed and signed Form ST-123, attached hereto as **Exhibit C-1**, for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any Subagent, as agent for the Issuer, for the purpose of undertaking the Project. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill or invoice for purchases and indicate on the bill or invoice that the Issuer or Subagent or Company, as project operator of the Issuer, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice should state, "I, [NAME OF COMPANY OR SUBAGENT], certify that I am a duly appointed agent of the COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY and that I am purchasing the tangible personal property or services for use in the Andrews Terrace Project located at 125 St. Paul Street (aka 91 St. Paul Street) in the City of Rochester, New York 14604, IDA Project Number 2602-23-002A". For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described in the prior sentence, an "Invoice Rider" (a copy of which is attached hereto as **Exhibit C-3**) can be utilized for record keeping purposes. The Company shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) years from the

date thereof. For each Subagent the Form ST-123 shall be completed as follows: (i) the "Project Information" section of Form ST-123, attached hereto as **Exhibit C-2**, should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Subagent; and (ii) the date that the Subagent was appointed as indicated on the Form ST-60.

All contracts entered into by the Company and all Subagents thereof as agent for the Issuer shall include the language contained within **Schedule C** attached hereto. **Failure by the Company and/or any Subagent thereof to include such language may disqualify the agent status and Sales Tax Exemption derived by virtue of this Project Agreement. The Company, for itself and on behalf of all duly appointed Subagents, hereby agrees that all contracts entered into by the Company and any Subagents thereof shall be available to the Issuer for inspection and confirmation of the foregoing mandatory language.**

Section 4.5      **Form ST-340 Filing Requirement.**      The Company shall annually file, on or before February 15<sup>th</sup> of each year in which the sales tax exemption is in place, a statement with the State Department of Taxation and Finance (the "Commissioner") and the Issuer on form "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340, a copy of which is attached hereto as **Exhibit D**) regarding the value of Sales Tax Exemption the Company and its Subagents, if any, have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). **Please note, the Company is to report only the Sales Tax Exemption derived as a result of the Issuer's participation in the Project and not those received as a result of other available State exemptions. For the avoidance of doubt, other State exemptions, which the Company should not report on its NYS Form ST-340, include, but are not limited to, exemptions available to certain manufacturers or those exemptions that apply to capital improvements.** The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company's authority to act as agent for the Issuer and/or Recapture of Issuer Benefits as described in Section 4.8 hereof.

Section 4.6      **GML Provisions Relating to Sales Tax Savings.**

(a)      The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, Subagents, persons or entities to comply, with the requirements of GML Sections 875(1) and (3) (the "GML Provisions"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Project Agreement and the GML Provisions, the GML Provisions shall control.

(b)      The Company acknowledges and agrees that pursuant to GML Section 875(3), the Issuer shall have the right to recover, recapture, receive, or otherwise obtain from the Company, Sales Tax Savings taken or purported to be taken by the Company, any Subagent or any other person or entity acting on behalf of the Company to which the Company is not entitled or which are in excess of the Maximum Sales Tax Exemption or which are for property or services not authorized or taken in cases where the Company, any Subagent or any other person or entity acting on behalf of the Company failed to comply with a material term or condition to use property or services in the manner required by this Project Agreement. The Company shall, and shall require each Subagent and any other person or entity acting on behalf of the Company, to cooperate with the Issuer in its efforts to recover, recapture, receive, or otherwise obtain such



Sales Tax Savings and shall promptly pay over any such amounts to the Issuer or any other entity that it requests to receive the Sales Tax Savings. The failure to pay over such amounts to such recipient shall be grounds for the Commissioner to assess and determine Sales and Use Taxes due from the Company under Article 28 of the Tax Law, together with any relevant penalties and interest due on such amounts.

Subject to the provisions of Section 4.6(b) above, in the event that the Company or any Subagent shall utilize the Sales Tax Exemption in violation of the provisions of this Project Agreement, the Company shall promptly deliver written notice of same to the Issuer, and the Company shall, upon demand by the Issuer, pay to or at the direction of the Issuer a return of sales or use tax exemptions in an amount equal to all such unauthorized Sales Tax Savings together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized Sales Tax Exemption was availed of by the Company or any Subagent (as applicable).

(c) Upon request by the Issuer with reasonable written notice to the Company, the Company shall make available at reasonable times to the Issuer and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Subagent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Issuer and/or the Independent Accountant, as shall be necessary (i) to indicate in reasonable detail those costs for which the Company or any Subagent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (ii) to permit the Issuer to determine any amounts owed by the Company under this Section 4.6(c).

Section 4.7            [Reserved].

Section 4.8            Recapture of Issuer Benefits.

(a) It is understood and agreed by the parties hereto that the Issuer is entering into this Project Agreement in order to provide the Financial Assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees that if there shall occur a Recapture Event (as defined below, and for the avoidance of doubt, after all applicable notice and cure periods) after the date hereof, the Company shall pay to the Issuer, or to the State, if so directed by the Issuer (except as otherwise specified below) in writing, on a case-by-case basis, as a return of public benefits conferred by the Issuer, the Recaptured Benefits.

(b) The term "Recaptured Benefits" shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Issuer's participation in the transaction contemplated by this Project Agreement, including, but not limited to:

(i)            [Reserved]; and

(ii)          Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Subagent; and

(iii) real property tax abatements granted pursuant to the PILOT Agreement;

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of Section 4.8(c) below and the declaration of a Recapture Event by written notice from the Issuer to the Company be payable directly to the Issuer or the State of New York if so directed by the Issuer within ten (10) days after the date of such notice. With respect to Section 4.8(b)(iii) above, recapture shall be determined pursuant to Section 6.1 of the PILOT Agreement.

(c) The term "Recapture Event" shall mean any of the following events:

(i) The occurrence and continuation of an Event of Default under this Project Agreement, the Leaseback Agreement and/or the PILOT Agreement which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder, under the Leaseback Agreement or under the PILOT Agreement, as applicable; or

(ii) The Project shall cease to be a "Project" within the meaning of the Act as in effect on the date hereof, through the act of omission of the Company; or

(iii) The Company receives Sales Tax Savings in connection with property or services not authorized by the Issuer as part of the Project; provided, however, that the foregoing shall constitute a Recapture Event with respect to such Sales Tax Savings only; or

(iv) The Company receives Sales Tax Savings in connection with the Project in excess of the Maximum Sales Tax Exemption; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days after written demand from the Issuer to the Company shall constitute a Recapture Event with respect to all Recapture Benefits; or

(v) The Company has made a knowingly material false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, on its application for Financial Assistance and if capable of being cured, is not cured within thirty (30) day so of the Company obtaining knowledge of such event; or

(vi) Failure of the Company to file a copy of the Form ST-340 with the Issuer in compliance with Section 4.5 hereof; or

(vii) Failure of the Company to file the annual report as directed by the Issuer and described herein; or

(viii) Failure of the Company to create or cause to be maintained the number of full-time equivalent ("FTE") jobs at the Facility as provided in the PILOT Agreement, which failure is not reflective of the business conditions of the Company

or the subtenants of the Company, including, without limitation, loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions.

In order to certify and verify the foregoing, the Company shall provide annually, to the Issuer, a certified statement and documentation: (i) enumerating the full-time equivalent jobs retained and the full-time equivalent jobs created as a result of the Financial Assistance, by category, including full-time equivalent independent contractors or employees of independent contractors that work at the project location, (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the Application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and (iii) such other information, as so requested from time to time, to enable the Issuer to assess the progress of the Project toward achieving the investment, job retention, job creation, or other objectives of the Project indicated in the Application for Financial Assistance.

(d) In the event any payment owing by the Company under this Section shall not be paid upon demand of the Issuer, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Issuer (except as otherwise specified above).

(e) The Issuer shall be entitled to deduct all reasonable out of pocket expenses of the Issuer, including, without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 4.8, from amounts received by the Issuer pursuant to this Section 4.8.

Notwithstanding anything to the contrary contained herein, the provisions of this Section 4.8 shall survive termination of this Agreement, for any reason whatsoever.

## ARTICLE V. INSURANCE

Section 5.1 Insurance Required. Effective as of the date hereof and until the expiration or termination of the right of the Company to act as agent of the Issuer hereunder, the Company shall maintain, or cause to be maintained by its subagent or subcontractors, certain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type, and paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company; or as an alternative to the foregoing, the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well, provided a periodic appraisal is performed and provided to the Issuer.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Issuer or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 7.1 hereof) and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than **\$1,000,000** per accident or occurrence on account of personal injury, including death resulting therefrom, **\$1,000,000** per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than **\$3,000,000**, protecting the Company against any loss or liability or damage for personal injury or property damage. Such primary general liability insurance may have a \$500,000 self-insured retention and such excess liability policy may have a commercially reasonable deductible.

Section 5.2            Additional Provisions Respecting Insurance. (a) **All insurance required by Section 5.1(c) hereof shall name the Issuer as an additional insured.** All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide (i) for payment of the losses of the Company and the Issuer as their respective interest may appear, and (ii) that the insurance company shall endeavor to give thirty (30) days' prior written notice or such other notice as the policy provides for, of the cancellation thereof to the Company and the Issuer.

(b) All such certificates of insurance of the insurers indicating that such insurance is in force and effect, and all policies (if applicable), shall be deposited with the Issuer on the date hereof. Prior to the expiration of any such policy evidenced by said certificates, the Company shall furnish the Issuer with evidence that the policy has been renewed or replaced or is no longer required by this Project Agreement.

## ARTICLE VI. EVENTS OF DEFAULT AND REMEDIES

Section 6.1            The following shall each be "Events of Default" under this Project Agreement:

- (a) the failure by the Company to observe and perform any covenant contained in Sections 2.1(e), 2.1(g), 2.1(i), 2.1(j), 2.1(k), 4.3, 4.5, 4.6, 4.7, 5.1, 5.2, 7.1 and 7.6 hereof;
- (b) the failure by the Company to pay the Recapture Benefits on the date due;
- (c) the occurrence and continuation of a Recapture Event;

(d) there exists and continues beyond any applicable notice and cure period, the occurrence of an Event of Default under the Leaseback Agreement or the PILOT Agreement;

(e) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within ninety (90) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; or the commencement by the Company (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor, or such case or proceeding is consented to by the Company or remains undismissed for ninety (90) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors.

Notwithstanding anything to the contrary contained herein, the provisions of this Section 6.1 shall survive termination of this Agreement, for any reason whatsoever.

#### Section 6.2      Remedies on Default.

(a) Whenever any Event of Default shall have occurred and be continuing, the Issuer may take, to the extent permitted by law, any one or more of the following remedial steps:

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all due and owing Recapture Benefits and (B) all other payments due under this Project Agreement; or

(ii) terminate this Project Agreement and the Sales Tax Exemption authorization; or

(iii) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements and covenants of the Company under this Project Agreement.

(b) No action taken pursuant to this Section 6.2 (including termination of the Project Agreement) shall relieve the Company from its obligation to make all payments required by the Leaseback Agreement, the PILOT Agreement or Recapture Benefits.

Notwithstanding anything to the contrary contained herein, the provisions of this Section 6.2 shall survive termination of this Agreement, for any reason whatsoever.

Section 6.3      Remedies Cumulative. No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedy, but each and

every such remedy shall be cumulative and in addition to every other remedy given under this Project Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right and power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article VI it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Project Agreement.

Section 6.4      Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Project Agreement and the Issuer should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, within thirty (30) days of written demand therefor, pay to the Issuer the reasonable fees of such attorneys and such other expenses so incurred.

## ARTICLE VII. MISCELLANEOUS

Section 7.1      Hold Harmless Provision. The Company hereby releases the Issuer from, agrees that the Issuer shall not be liable for, and agrees to indemnify, defend and hold the Issuer and its executive director, directors, members, officers, employees, agents (other than the Company), representatives, successors and assigns harmless from and against, any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company of this Project Agreement or (ii) liability arising from or expense incurred by the Issuer's financing, acquiring, renovating, equipping, owning and leasing of the Facility, including, without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Issuer, or any of its executive director, directors, members, officers, agents (other than the Company) or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Issuer or any other person or entity to be indemnified.

Section 7.2      This Project Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

Section 7.3      All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, or by a nationally-recognized overnight courier, addressed as follows:

To the Issuer: County of Monroe Industrial Development Agency  
50 West Main Street, Suite 1150  
Rochester, New York 14614  
Attn: Executive Director  
E-mail: [anajliss@monroecounty.gov](mailto:anajliss@monroecounty.gov)

With a copy to: Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Attn: Rachel C. Baranello, Esq.  
E-Mail: [rbaranello@harrisbeach.com](mailto:rbaranello@harrisbeach.com)

To the Company: Andrews Terrace Community Partners, L.P.  
c/o Conifer Realty, LLC  
1000 University Ave., Suite 500  
Rochester, New York 14607  
Attention: Brian Ivy  
Telephone: (585) 324-0500  
Email: [bivy@coniferllc.com](mailto:bivy@coniferllc.com)

With a copy to: Levitt & Boccio, LLP  
423 West 55<sup>th</sup> Street, 8<sup>th</sup> Floor  
New York, New York 10019  
Attention: Eleor Cohen, Esq.  
E-Mail: [ecohen@levittboccio.com](mailto:ecohen@levittboccio.com)

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

Section 7.4 This Project Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Monroe County, New York.

Section 7.5 The warranties, representations, obligations and covenants of the Company under this Project Agreement shall be absolute and unconditional and shall remain in full force and effect during the term of this Project Agreement, shall be deemed to have been relied upon by the Issuer, and shall survive the delivery and termination of this Project Agreement to the Issuer, regardless of any investigation made by the Issuer. This Project Agreement shall survive any termination or expiration of the Leaseback Agreement or the PILOT Agreement. Notwithstanding the foregoing, such warranties, representations, obligations and covenants of the Company, shall only survive until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought.

Section 7.6 By executing this Project Agreement, the Company covenants and agrees to pay all out-of-pocket and reasonable fees, costs and expenses incurred by the Issuer (a) for legal services including, but not limited to, those provided by the Issuer's general counsel and bond/transaction counsel, (b) for other consultants retained by the Issuer, if any, in connection with the Project and deemed necessary to obtain; and (c) with respect to Issuer's enforcement of any Event of Default or failure to comply with the terms of this Project Agreement (including reasonable attorneys' fees). The Company further covenants and agrees that the Company is liable for payment to the Issuer of all charges referred to above, as well as all other actual costs and expenses incurred by the Issuer in undertaking the Project notwithstanding the occurrence of any of (i) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) if applicable, the inability of the Company to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

*[Remainder of This Page Intentionally Left Blank]*



*[Signature Page to Project Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of the day and year first above written.

**COUNTY OF MONROE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Name: Ana J. Liss  
Title: Executive Director

**BENEFICIAL OWNER:**

**ANDREWS TERRACE COMMUNITY PARTNERS, L.P., a**  
New York limited partnership

By: Andrews Terrace GP, LLC, a New York limited liability company,  
its general partner

By: Andrews Terrace Co-MM, LLC, a New York limited liability company, its co-  
managing member

By: Conifer Realty, LLC, a New York limited liability company, its  
sole member

By: \_\_\_\_\_  
Name: Brian Ivy  
Title: Senior Vice President

By: CPP – Andrews Terrace GP, LLC, a California limited liability company, its  
co-managing member

By: WNC Development Partners 4, LLC, a California limited liability  
company, its managing member

By: \_\_\_\_\_  
Name: Seth Gellis  
Title: Authorized Signatory

*[Signature Page to Project Agreement]*

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**COUNTY OF MONROE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: Ana J. Liss  
Title: Executive Director

**BENEFICIAL OWNER:**

**ANDREWS TERRACE COMMUNITY PARTNERS, L.P., a**  
New York limited partnership

By: Andrews Terrace GP, LLC, a New York limited liability company,  
its general partner

By: Andrews Terrace Co-MM, LLC, a New York limited liability company, its co-  
managing member

By: Conifer Realty, LLC, a New York limited liability company, its  
sole member

By:  \_\_\_\_\_  
Name: Brian Ivy  
Title: Senior Vice President

By: CPP – Andrews Terrace GP, LLC, a California limited liability company, its  
co-managing member

By: WNC Development Partners 4, LLC, a California limited liability  
company, its managing member

By: \_\_\_\_\_  
Name: Seth Gellis  
Title: Authorized Signatory

*[Signature Page to Project Agreement]*

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DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: Ana J. Liss  
Title: Executive Director

**BENEFICIAL OWNER:**

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New York limited partnership

By: Andrews Terrace GP, LLC, a New York limited liability company,  
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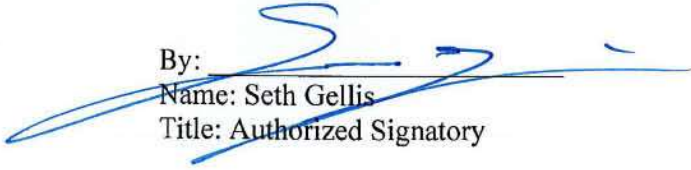
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By: Conifer Realty, LLC, a New York limited liability company, its  
sole member

By: \_\_\_\_\_  
Name: Brian Ivy  
Title: Senior Vice President

By: CPP – Andrews Terrace GP, LLC, a California limited liability company, its  
co-managing member

By: WNC Development Partners 4, LLC, a California limited liability  
company, its managing member

By:   
Name: Seth Gellis  
Title: Authorized Signatory

## **SCHEDULE A**

### **SCHEDULE OF DEFINITIONS**

"**Authorized Representative**" means, in the case of the Issuer, the Executive Director, the Deputy Director, the Chairman or the Vice Chairman and such additional persons as, at the time, are designated to act on behalf of the Issuer; and in the case of the Company, the members and such additional persons as, at the time, are designated to act on behalf of the Company.

"**Independent Accountant**" shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Issuer (such approval not to be unreasonably withheld or delayed).

"**Lease Agreement**" shall mean that certain Lease Agreement, dated as of December 1, 2023 [or such other reasonable date] by and among the Company, the HDFC and the Issuer, as amended from time to time.

"**Leaseback Agreement**" shall mean that certain Lease Agreement, dated as of December 1, 2023 [or such other reasonable date] by and among the Company, the HDFC and the Issuer, as amended from time to time.

"**Maximum Sales Tax Exemption**" shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Company and all Subagents acting on behalf the Company are permitted to receive under this Project Agreement, which shall equal **\$5,921,624**, or such maximum dollar amount as may be determined by the Issuer pursuant to such additional documents as may be required by the Issuer for such increase.

"**Prime Rate**" means (i) if no lender, the rate designated by The Wall Street Journal from time to time as its "prime rate", or (ii) if a lender exists, the rate designated by the lender from time to time as its "prime rate".

"**Sales Tax Exemption**" shall mean an exemption from Sales and Use Taxes resulting from the Issuer's participation in the Facility.

"**Sales and Use Taxes**" shall mean local and State sales and compensating use taxes and fees imposed pursuant to Article 28 of the New York State Tax Law, as the same may be amended from time to time.

"**Sales Tax Savings**" shall mean all Sales Tax Exemption savings relating to Sales and Use Taxes realized by or for the benefit of the Company, including any savings realized by any Subagent, pursuant to this Project Agreement.

"**State Sales and Use Taxes**" shall mean sales and compensating use taxes and fees imposed by Article 28 of the New York State Tax Law but excluding such taxes imposed in a city by Section 1107 or 1108 of such Article 28, as the same may be amended from time to time.

**SCHEDULE B**

**LIST OF APPOINTED AGENTS<sup>1</sup>**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_

---

<sup>1</sup> FOR EACH AGENT APPOINTED BY THE COMPANY, A NYS FORM ST-60 MUST BE COMPLETED AND FILED BY THE COMPANY WITH THE NYS DEPARTMENT OF TAXATION AND FINANCE IDA UNIT INDICATING THE APPOINTMENT OF SUCH AGENT OF THE COMPANY.

## **SCHEDULE C**

### **MANDATORY AGENT AND SUBAGENT CONTRACT LANGUAGE**

"This contract is being entered into by **[NAME OF COMPANY OR NAME OF SUBAGENT]** (the "Agent"), as agent for and on behalf of the **COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY** (the "Issuer"), in connection with a certain project of the Issuer for the benefit of **ANDREWS TERRACE COMMUNITY PARTNERS, L.P.**, consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 125 St. Paul Street (aka 91 St. Paul Street) in the City of Rochester, New York 14604 (the "Premises"). The acquisition of the machinery, equipment and building materials to be incorporated and installed in the Premises and all services and rentals of equipment related to the acquisition, renovation and equipping of the Project shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions set forth in, and the Agent hereby represents that this contract is in compliance with the terms of, the Project Agreement by and between Andrews Terrace Community Partners, L.P. and the Issuer, dated as of December 21, 2023. This contract is non-recourse to the Issuer, and the Issuer shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

**EXHIBIT A**

**COST BENEFIT ANALYSIS AND FORM OF PILOT AGREEMENT**

**[Attached]**

Monroe County Industrial Development Agency  
MRB Cost Benefit Calculator

Date February 28, 2023  
Project Title Andrews Terrace  
Project Location 125 St. Paul Street



Economic Impacts

Summary of Economic Impacts over the Life of the PILOT

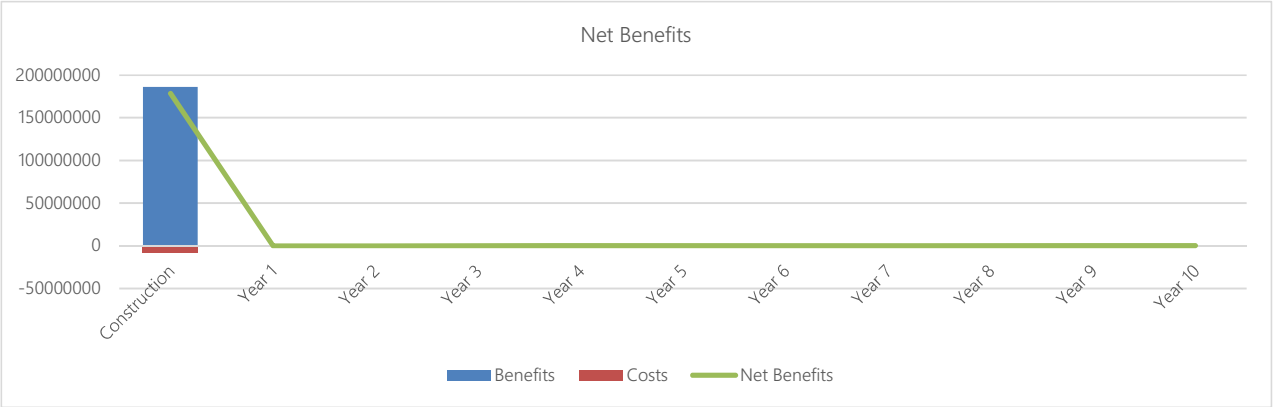
Project Total Investment  
\$357,825,806

Temporary (Construction)			
	Direct	Indirect	Total
Jobs	1374	983	2358
Earnings	\$118,379,304	\$57,274,399	\$175,653,703
Local Spend	\$286,260,645	\$170,534,238	\$456,794,883

Ongoing (Operations)			
Aggregate over life of the PILOT			
	Direct	Indirect	Total
Jobs	1	1	2
Earnings	\$482,878	\$542,171	\$1,025,049

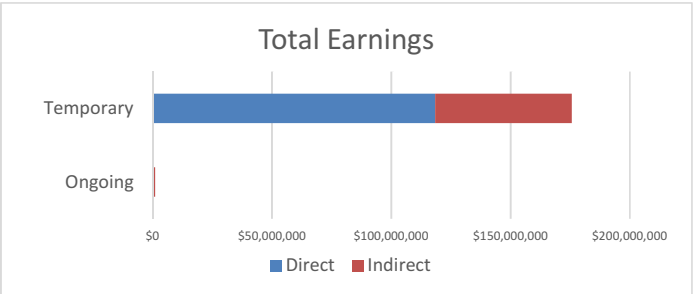
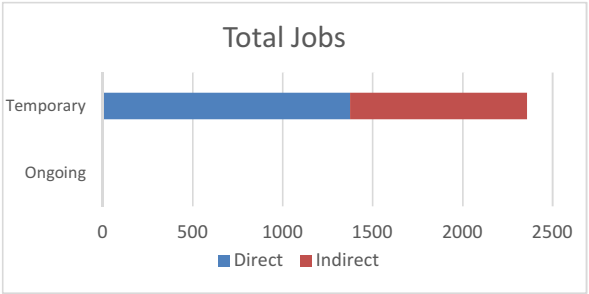
Figure 1



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

Figure 2

Figure 3





## Fiscal Impacts



Cost-Benefit Analysis Tool powered by MRB Group

### Estimated Costs of Exemptions

	Nominal Value	Discounted Value*
Property Tax Exemption	\$5,533,934	\$5,533,934
Sales Tax Exemption	\$5,921,623	\$5,921,623
Local Sales Tax Exemption	\$2,960,812	\$2,960,812
State Sales Tax Exemption	\$2,960,812	\$2,960,812
Mortgage Recording Tax Exemption	\$1,447,500	\$1,447,500
Local Mortgage Recording Tax Exemption	\$481,404	\$481,404
State Mortgage Recording Tax Exemption	\$962,808	\$962,808
<b>Total Costs</b>	<b>\$12,903,057</b>	<b>\$12,903,057</b>

### State and Local Benefits

	Nominal Value	Discounted Value*
<b>Local Benefits</b>	<b>\$177,915,503</b>	<b>\$177,789,901</b>
To Private Individuals	<u>\$176,678,752</u>	<u>\$176,554,022</u>
Temporary Payroll	\$175,653,703	\$175,653,703
Ongoing Payroll	\$1,025,049	\$900,320
Other Payments to Private Individuals	\$0	\$0
To the Public	<u>\$1,236,751</u>	<u>\$1,235,878</u>
Increase in Property Tax Revenue	\$0	\$0
Temporary Jobs - Sales Tax Revenue	\$1,229,576	\$1,229,576
Ongoing Jobs - Sales Tax Revenue	\$7,175	\$6,302
Other Local Municipal Revenue	\$0	\$0
<b>State Benefits</b>	<b>\$9,187,295</b>	<b>\$9,180,809</b>
To the Public	<u>\$9,187,295</u>	<u>\$9,180,809</u>
Temporary Income Tax Revenue	\$7,904,417	\$7,904,417
Ongoing Income Tax Revenue	\$46,127	\$40,514
Temporary Jobs - Sales Tax Revenue	\$1,229,576	\$1,229,576
Ongoing Jobs - Sales Tax Revenue	\$7,175	\$6,302
<b>Total Benefits to State &amp; Region</b>	<b>\$187,102,799</b>	<b>\$186,970,710</b>

### Benefit to Cost Ratio

	Benefit*	Cost*	Ratio
Local	\$177,789,901	\$8,976,150	20:1
State	\$9,180,809	\$3,923,620	2:1
<b>Grand Total</b>	<b>\$186,970,710</b>	<b>\$12,899,769</b>	<b>14:1</b>

\*Discounted at 2%

### Additional Comments from IDA

0

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

Yes

**COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**ANDREWS TERRACE COMMUNITY PARTNERS, L.P.**

**AND**

**ANDREWS TERRACE HOUSING DEVELOPMENT FUND CORPORATION**

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**PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

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**Tax Map No.**

106.79-1-64

**Affected Tax Jurisdictions:**

County of Monroe  
City of Rochester

**Dated as of December 1, 2023**

## PAYMENT IN LIEU OF TAX AGREEMENT

**THIS PAYMENT IN LIEU OF TAX AGREEMENT** (the "PILOT Agreement") made as of December 1, 2023, is by and between the **COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 50 West Main Street, Rochester, New York 14614 (the "Issuer"), and **ANDREWS TERRACE COMMUNITY PARTNERS, L.P.**, a limited partnership duly formed and existing under the laws of the State of New York with offices at c/o Conifer Realty, LLC, 1000 University Ave., Suite 500, Rochester, New York 14607 (the "Beneficial Owner"), and **ANDREWS TERRACE HOUSING DEVELOPMENT FUND CORPORATION**, a housing development fund company formed pursuant to Article XI of the Private Housing Finance Law of the State of New York with offices at c/o Conifer Realty, LLC, 1000 University Ave., Suite 500, Rochester, New York 14607 (the "HDFC" and, collectively with the Beneficial Owner, the "Company").

### WITNESSETH:

**WHEREAS**, the Issuer was created by Chapter 55 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

**WHEREAS**, the Company has requested the Issuer to assist in a certain project (the "Project") consisting of: (A) the acquisition of a leasehold interest in an approximately 3.10-acre parcel of land located at 125 St. Paul Street (aka 91 St. Paul Street) in the City of Rochester, Monroe County, New York 14604 (collectively, the "Land"), together with the existing approximately 474,456 square foot, 22-story and 19-story, 526-unit affordable housing complex with approximately 26,366 square feet of balconies and related approximately 96,988 square foot, 2-story parking structure located on the Land (the "Existing Improvements"); (B) the renovation, refurbishment and upgrading of the Existing Improvements, including, but not limited to, (i) new kitchens, bathrooms, flooring, lighting, roof and façade, (ii) upgrades to the HVAC system, balconies and elevators; (iii) repaving of the parking lot and (iv) related amenities and improvements (collectively, the "Improvements"); (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment, fixtures, furniture and other incidental tangible personal property (collectively, the "Equipment", and together with the Land, the Existing Improvements and the Improvements, the "Facility"); and

**WHEREAS**, the Issuer has agreed to lease the Facility to the Company; and

**WHEREAS**, pursuant to a certain Project Agreement, dated December 21, 2023 (the "Project Agreement"), the Issuer has appointed the Beneficial Owner as its agent for the purpose of undertaking the Project; and

**WHEREAS**, in order to induce the Company to acquire, renovate and equip the Facility, the Issuer is willing to take a leasehold interest in the Land and the Facility pursuant to a certain Lease Agreement, dated as of December 1, 2023 (the "Lease Agreement"), and thereafter lease said Facility back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, dated as of December 1, 2023 (the "Leaseback Agreement"); and

**WHEREAS**, pursuant to Section 874(1) of the Act, the Issuer is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision other than special ad valorem levies, special assessments and service charges against real property, which are or may be imposed for special improvements or special district improvements; and

**WHEREAS**, the Issuer and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the County of Monroe (the "County") and the City of Rochester (the "City" and, collectively with the County, the "Affected Tax Jurisdictions").

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

**Section 1 - Payment in Lieu of Ad Valorem Taxes.**

1.1 A. Subject to the completion and filing by the taxable status date (**February 1, 2024**) (the "Taxable Status Date" or the "Effective Date") of New York State Form RP-412-a "Application For Real Property Tax Exemption" (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law (the "RPTL") and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County and City. The Company shall provide to the Issuer with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Issuer, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Issuer, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Issuer, and releases the Issuer from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Issuer to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee/PILOT Payments. The Company shall remit payment to the applicable Affected Tax Jurisdiction in accordance with instructions provided on the applicable invoice. The Company shall make all payments due hereunder without further notice or invoicing from the Issuer, any Affected Tax Jurisdiction or any other party.

(i) The Company agrees to pay the PILOT Payment (as hereinafter defined) annually to the City, as a payment in lieu of taxes, within thirty (30) days of receipt of the

invoice for payment of taxes (the "Payment Date"), commencing on [May 15, 2023 and continuing each May 15 thereafter]. The period of Shelter Rent (as defined below) benefits under this PILOT Agreement shall be thirty (30) years from the Effective Date (the "PILOT Term"). The PILOT Payment shall be made to the City, in arrears, pursuant to the terms and conditions of the invoice the City shall send to the Company on an annual basis. The City shall distribute to the County its respective pro rata share of the PILOT Payment pursuant to Section 858(15) of the General Municipal Law.

(ii) (a) For purposes of this PILOT Agreement, each payment hereunder ("PILOT Payment") shall be an amount equal to Shelter Rent multiplied by ten percent (10%). The term "Shelter Rent" shall mean the total rents received from the occupants of the Facility minus the cost of providing electricity, gas, heat and other utilities but shall not include (a) the cost of any insurance in connection with the Facility or (b) any utility or related costs incurred by any tenants or other occupants residing at the Facility.

(b) The PILOT Payment shall be calculated on a calendar year.

(c) The PILOT Payments required hereunder shall be made in arrears to the City Assessor each May 15 during the term hereof. In order to calculate the PILOT Payments, the Company agrees to provide annual audited financial statements to the City by March 15 of each year of the PILOT Term.

1.2 Allocation. If the Issuer shall receive any amounts hereunder, the Issuer shall remit such monies to the Affected Tax Jurisdictions within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Issuer's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the City shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County and special district purposes, the tax rates used to determine the allocation of the PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT Payment due date.

1.4 Valuation of Future Additions to the Facility. In the event that any structural addition shall be made to the building or buildings included in the Facility, or any additional building or improvement shall be constructed on the Land (such structural additions, buildings and improvements being referred to hereinafter as "Future Addition"), the Company agrees to make additional payments in lieu of taxes to the Affected Tax Jurisdictions in amounts equal to the then current ad valorem tax rates which would be levied upon or with respect to the Future Addition by the Affected Tax Jurisdictions if the Future Addition were owned by the Company exclusive of the Issuer's leasehold interest multiplied by the assessment or assessments established for that tax year by the appropriate Affected Tax Jurisdiction.

1.5 Period of Benefits. The Shelter Rent benefits provided for herein shall commence from the Effective Date and continue for the PILOT Term of thirty (30) years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods

provided for herein, unless the period is extended by amendment to this PILOT Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

**Section 2 - Special District Charges, Special Assessments and other Charges.** Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.

**Section 3 - Transfer of Facility.** In the event that the Facility is transferred from the Issuer to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section 1 herein, or this PILOT Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Premises had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

**Section 4 - Assessment Challenges.**

4.1 The Company shall have all of the rights and remedies of a taxpayer with respect to any proposed assessment or change in assessment of the Facility by any of the Affected Tax Jurisdictions. The Company shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments, and (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

**Section 5 - Changes in Law.** To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final

judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

### **Section 6 - Events of Default.**

6.1 If payments are not made as provided for herein, the Issuer and/or Affected Tax Jurisdictions, individually or collectively, shall be entitled to pursue any and all remedies afforded them at law or in equity.

Notwithstanding anything contained herein to the contrary, upon the occurrence of (i) the sale or closure of the Facility; (ii) a significant unapproved change in use of the Facility; (iii) a significant reduction in employment at the Facility; (iv) the Company abandons or otherwise vacates the County of Monroe; (v) the failure by the Company to make any payments required under this PILOT Agreement; or (vi) the breach of covenants (after any applicable notice and cure period) or event of default (singularly or collectively an "Event of Default") under the Project Agreement or the Leaseback Agreement, the Issuer shall have the right to recapture real property tax abatements provided hereunder pursuant to the following schedule:

<b>Year of Recapture</b>	<b>Percent of Recapture, Applicable to Current Year and All Prior Years</b>
1	100%
2	100%
3	100%
4	75%
5	75%
6	75%
7	50%
8	50%
9	50%
10	50%
11	25%
12	25%
13	25%
14	25%
After year 15	At Issuer's Discretion, 25% or Less

Any such recapture is at the sole and exclusive discretion of the Issuer. The Issuer shall notify the Company in writing of such Event of Default and of its intent to recapture the PILOT benefits (or any portion thereof). For purposes of this Section only, a "significant reduction in employment" shall mean more than twenty percent (20%) of the employment as stated in the Company's Application, to wit, 10. Any and all recaptured payments received pursuant to this provision shall be remitted to the Taxing Jurisdictions on a pro rata basis within sixty (60) days of receipt of payment.

Notwithstanding anything to the contrary contained herein, the provisions of this Section 6.1 shall survive termination of this PILOT Agreement, for any reason whatsoever.

6.2 If payments pursuant to Section 6.1 herein are not made by the due dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows: With respect to payments to be made pursuant to Section 6.1 herein, if said payment is not received by the due date defined in Section 6.1 herein, the Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus a late payment penalty, in an amount equal to one percent (1%) of the amount due per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, the Company shall pay, in addition to said payment, the greater of the applicable penalties and interest hereunder, or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

**Section 7 - Assignment.** No portion of any interest in this PILOT Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Issuer, which shall not be unreasonably withheld or delayed.

**Section 8 - Miscellaneous.**

8.1 This PILOT Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

8.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Issuer: County of Monroe Industrial Development Agency  
50 West Main Street  
Rochester, New York 14614  
Attn: Executive Director  
Email: [analiss@monroecounty.gov](mailto:analiss@monroecounty.gov)

With a Copy to: Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Attn: Rachel C. Baranello, Esq.  
Email: [rbaranello@harrisbeach.com](mailto:rbaranello@harrisbeach.com)

To the Company: Andrews Terrace Community Partners, L.P.  
Andrews Terrace Housing Development Fund Corporation  
c/o Conifer Realty, LLC  
1000 University Ave., Suite 500



Rochester, New York 14607  
Attention: Brian Ivy  
Email: [bivy@coniferllc.com](mailto:bivy@coniferllc.com)

And to: Andrews Terrace Community Partners, L.P.  
c/o Community Preservation Partners, LLC  
17782 Sky Park Circle  
Irvine, California 92614  
Attention: John Fraser and Seth Gellis  
Email: [jfraser@cpp-housing.com](mailto:jfraser@cpp-housing.com) and [sgellis@cpp-housing.com](mailto:sgellis@cpp-housing.com)

And to: Andrews Terrace MTE LP  
Mailcode: OH-01-27-0761  
127 Public Square, 7<sup>th</sup> Floor  
Cleveland, Ohio 44114  
Attention: Aset Management

With a copy to: Levitt & Boccio, LLP  
425 West 55<sup>th</sup> Street, 8<sup>th</sup> Floor  
New York, New York 10019  
Attention: Eleor Cohen, Esq.  
Email: [ecohen@levittboccio.com](mailto:ecohen@levittboccio.com)

To the Historic Tax  
Credit Investor: Chase Community Equity, LLC  
c/o JPMorgan Chase Bank, N.A.  
10 S. Dearborn, 19<sup>th</sup> Floor  
Mail Code: IL1-0953  
Chicago, Illinois 60603-5506  
Attention: HTC Asset Management  
Facsimile: (312) 325-5050  
Email: [cdb.htc.assetmanagement@chase.com](mailto:cdb.htc.assetmanagement@chase.com)  
Project Name: Andrews Terrace (NY)

And to: Chase Community Equity, LLC  
c/o JPMorgan Chase Bank, N.A.  
300 S. Grand, Suite 300  
Los Angeles, California 90071  
Attention: Timothy C. Karp  
Telephone: (213) 621-8404  
Email: [timothy.c.karp@chase.com](mailto:timothy.c.karp@chase.com)  
Project Name: Andrews Terrace (NY)

With a copy to: Buchalter, a Professional Corporation  
1000 Wilshire Boulevard, Suite 1500  
Los Angeles, California 90017  
Attention: C. Tyler Ohanian, Esq.

Telephone: (213) 891-5041  
Email: [tohanian@buchalter.com](mailto:tohanian@buchalter.com)  
Project Name: Andrews Terrace (NY) (JO732-0118)

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8.3 This PILOT Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Monroe County, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Issuer hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Issuer by the Company. Neither member of the Issuer nor any person executing this PILOT Agreement on its behalf shall be liable personally under this PILOT Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Issuer, or of any successor or political subdivision, either directly or through the Issuer or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this PILOT Agreement.

8.5 Benefit Period. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than thirty (30) consecutive years. The Company agrees that it will not seek any tax exemption for the Facility which would provide benefits for more than thirty (30) consecutive years. Notwithstanding the foregoing, nothing contained in this PILOT Agreement shall render the Company ineligible for a continued tax exemption under Real Property Tax Law Section 485-b or any other applicable statute if this PILOT Agreement is terminated prior to its expiration.

8.6 Job Requirement.

(A) The Company shall maintain its present impacted job level of ten (10) full-time jobs at the Facility and the Company must create one (1) new full-time/full-time equivalent job(s) at the Facility in three (3) years and maintain those full-time/full-time equivalent job(s) at the Facility for the balance of the thirty (30) year term hereof. The benefits provided for herein and the three-year job creation period commence when the Facility is substantially complete such that it is reassessed by the City Assessor at full value for the Facility.

(B) Compliance Report. The Company shall report its compliance with these provisions as requested by the Issuer.

(C) Job Failure. If the one (1) new full-time/full-time equivalent job(s) is not created at the Facility by the end of the three (3) year period or not continuously maintained at the Facility during the balance of the term hereof, the exemption schedule will revert back to Section 485-b of the New York Real Property Tax Law and the Company agrees to pay in any year for which the job creation requirements are not met (a "Disqualifying Year"), as an additional payment in lieu of taxes, an amount equal to the difference between the tax benefits received in years one through the Disqualifying Year under this PILOT Agreement and the tax benefits which would have been received in years one through the Disqualifying Year under Section 485-b of the New York Real Property Tax Law. Under extenuating circumstances, the Issuer Board may waive the above penalties after reviewing a written request from the Company for waiver of the penalties.

(D) Waiver Process. The payments required hereunder for any non-compliance shall be paid by the Company to any and all Affected Tax Jurisdictions whether or not billed. However, if the Company has made a good faith effort to achieve the job creation requirement, it may apply in writing for relief from the obligation for repayment of taxes abated, based on a showing of unforeseen economic circumstances, fiscal hardship, or other good cause. Application for relief from the repayment obligation shall be made to the Issuer, which shall examine the application and grant relief, in whole or in part, from the repayment obligation or grant an alternate schedule for attaining the job creation requirement.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the parties hereto have executed this PILOT Agreement as of the day and year first above written.

**COUNTY OF MONROE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: Ana J. Liss  
Title: Executive Director

**BENEFICIAL OWNER:**

**ANDREWS TERRACE COMMUNITY PARTNERS, L.P., a**  
New York limited partnership

By: Andrews Terrace GP, LLC, a New York limited liability company,  
its general partner

By: Andrews Terrace Co-MM, LLC, a New York limited liability company, its co-  
managing member

By: Conifer Realty, LLC, a New York limited liability company, its  
sole member

By: \_\_\_\_\_  
Name: Brian Ivy  
Title: Senior Vice President

By: CPP – Andrews Terrace GP, LLC, a California limited liability company, its  
co-managing member

By: WNC Development Partners 4, LLC, a California limited liability  
company, its managing member

By: \_\_\_\_\_  
Name: Seth Gellis  
Title: Authorized Signatory

**HDFC:**

**ANDREWS TERRACE HOUSING  
DEVELOPMENT FUND CORPORATION**, a New  
York nonprofit corporation

By: \_\_\_\_\_

Name: Brian Ivy

Title: Vice President

DRAFT

**EXHIBIT B**

**FORM OF NYS FORM ST-60 TO BE COMPLETED BY COMPANY AND FILED WITH  
THE NYS TAX DEPARTMENT IDA UNIT FOR EACH OF ITS SUBAGENTS WITHIN  
THIRTY (30) DAYS OF APPOINTMENT**

**[See Attached Page]**



# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

**ST-60**  
(1/18)

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only****IDA information**

Name of IDA	IDA project number (use OSC numbering system for projects after 1998)		
County of Monroe Industrial Development Agency	2602-23-002B		
Street address	Telephone number		
50 West Main Street, Suite 1150	(585 ) 753-2000		
City	State	ZIP code	Email address (optional)
Rochester	NY	14614	

**Project operator or agent information**

Name of IDA project operator or agent	Mark an <b>X</b> in the box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or Social Security number	
Street address	Telephone number	Primary operator or agent?	
	( )	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City	State	ZIP code	Email address (optional)

**Project information**

Name of project			
Andrews Terrace Community Partners, L.P. Project			
Street address of project site		**and any lands located in the City of Rochester and occupied by license or easement during renovation or improved by third parties for the benefit of the Project	
125 St. Paul Street (aka 91 St. Paul Street)**			
City	State	ZIP code	Email address (optional)
Rochester (City)	NY	14604	
Purpose of project			
The renovation of two buildings comprising an aggregate approximately 474,456 square feet of space, being used as a 526-unit affordable housing complex together with an approximately 96,988 sq. ft. parking structure (collectively, the "Existing Improvements") located at 125 St. Paul Street (aka 91 St. Paul Street) in the City of Rochester, New York 14604 (the "Land"); including but not limited to, new kitchens, bathrooms, flooring, lighting and HVAC upgrades (collectively, the "Improvements"); and the acquisition and installation therein, thereon or thereabout of various machinery, equipment and related personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility").			

Description of goods and services intended to be exempted from New York State and local sales and use taxes			
Goods and services, inclusive of fuel and utilities, whether the goods and services are purchased or rented, and notwithstanding that they continue to constitute personal property or the item is used after the completion of the project, or the item is geographically located outside the legal boundaries of the project facility; provided there is a reasonable basis to acquire the item to benefit the project.			
Date project operator or agent appointed (mmddyy)	Date project operator or agent status ends (mmddyy)	123126	Mark an <b>X</b> in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax:		All Agents, All In 74,020,298.00	Estimated value of New York State and local sales and use tax exemption provided: All Agents, All In 5,921,624.00

<b>Certification:</b> I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.			
Print name of officer or employee signing on behalf of the IDA		Print title	
Ana J. Liss		Executive Director	
Signature		Date	Telephone number
			( 585 ) 753-2000

## Instructions

### When to file

An IDA must file this form within 30 days of the date they appoint any project operator or other person as agent of the IDA, for purposes of extending any sales and use tax exemptions.

### Requirements to file

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA should not file this form if they do not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, they must, within 30 days of the change, file a new form with the new information.

### If the information on this form changes

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA, within 30 days, must send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. They must attach to the letter a copy of the form it originally filed. The IDA should not send a letter for a form that is not valid merely because the *Completion date of project* has passed.

### Mailing instructions

Mail completed form to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0866**

**Private delivery services** – See Publication 55, *Designated Private Delivery Services*.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our website at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features

### Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service



**EXHIBIT C-1**

**NYS FORM ST-123  
FOR  
COMPANY**

**[See Attached Page]**

**IDA Agent or Project Operator  
Exempt Purchase Certificate****Effective for projects beginning on or after June 1, 2014****ST-123**  
(7/14)

This certificate is not valid unless all entries have been completed.

**Note:** To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller	Name of agent or project operator <b>Andrews Terrace Community Partners, L.P.</b>		
Street address	Street address <b>c/o Conifer Realty, 1000 University Avenue, Suite 500</b>		
City, town, or village	City, town, or village	State	ZIP code
	<b>Rochester</b>	<b>NY</b>	<b>14607</b>
Agent or project operator sales tax ID number (see instructions)			

Mark an **X** in one: ☐ Single-purchase certificate ☐ Blanket-purchase certificate (valid only for the project listed below)**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

**Project information**

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA <b>County of Monroe Industrial Development Agency</b>		
Name of project <b>Andrews Terrace Community Partners, L.P. Project</b>		IDA project number (use OSC number) <b>2602-23-002B</b>
Street address of project site <b>125 St. Paul Street (aka 91 St. Paul Street)**</b>		
<b>**and any lands located in the City of Rochester and occupied by license or easement during renovation or improved by third parties for the benefit of the Project</b>		
City, town, or village <b>Rochester (City)</b>	State <b>NY</b>	ZIP code <b>14604</b>
Enter the date that you were appointed agent or project operator (mm/dd/yy) ..... <b>12 / 21 / 23</b>		Enter the date that agent or project operator status ends (mm/dd/yy) ..... <b>12 / 31 / 26</b>

**Exempt purchases**(Mark an **X** in boxes that apply)☐ A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project☐ B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project☒ C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter **N/A**.

*Industrial development agencies and authorities (IDAs)* are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our Web site at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features



**Sales Tax Information Center:**

(518) 485-2889

To order forms and publications:

(518) 457-5431



**Text Telephone (TTY) Hotline**

(for persons with hearing and speech disabilities using a TTY):

(518) 485-5082

**EXHIBIT C-2**

**NYS FORM ST-123  
FOR  
SUBAGENTS OF COMPANY**

**[See Attached Page]**

**IDA Agent or Project Operator  
Exempt Purchase Certificate****Effective for projects beginning on or after June 1, 2014****ST-123**  
(7/14)

This certificate is not valid unless all entries have been completed.

**Note:** To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller	Name of agent or project operator
Street address	Street address
City, town, or village                      State              ZIP code	City, town, or village                      State              ZIP code
Agent or project operator sales tax ID number (see instructions)	

Mark an **X** in one:    ☐ Single-purchase certificate            ☐ Blanket-purchase certificate (valid only for the project listed below)**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

**Project information**

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA		
County of Monroe Industrial Development Agency		
Name of project	IDA project number (use OSC number)	
Andrews Terrace Community Partners, L.P. Project	2602-23-002B	
Street address of project site                      **and any lands located in the City of Rochester and occupied by license or easement during renovation or improved by third parties for the benefit of the Project		
125 St. Paul Street (aka 91 St. Paul Street)**		
City, town, or village	State	ZIP code
Rochester (City)	NY	14604
Enter the date that you were appointed agent or project operator (mm/dd/yy) .....	/	/
Enter the date that agent or project operator status ends (mm/dd/yy) .....	12	/ 31 / 26

**Exempt purchases**(Mark an **X** in boxes that apply)☐ A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project☐ B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed projectN/A ☐ C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter **N/A**.

*Industrial development agencies and authorities (IDAs)* are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

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*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

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- get information and manage your taxes online
- check for new online services and features



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**Text Telephone (TTY) Hotline**

(for persons with hearing and speech disabilities using a TTY):

(518) 485-5082

**EXHIBIT C-3**

**INVOICE RIDER FORM**

I, \_\_\_\_\_ *{Print Name}*,  
the \_\_\_\_\_ *{Title}* of \_\_\_\_\_ *{Name of Agent or Subagent}* certify that I am a duly appointed agent of the County of Monroe Industrial Development Agency (the "Issuer") and that I am purchasing the tangible personal property or services for use in the following Project and that such purchases qualify as exempt from sales and use taxes under the Project Agreement, dated as of December 21, 2023, by and between the Issuer and Andrews Terrace Community Partners, L.P.

Name of the Project: Andrews Terrace Community Partners, L.P. Project

Street address of the Project Site: 125 St. Paul Street (aka 91 St. Paul Street),  
City of Rochester,  
Monroe County, New York 14604

IDA OSC project number: 2602-23-002A

**EXHIBIT D**

**NYS FORM ST-340 TO BE COMPLETED BY THE COMPANY AND FILED  
ANNUALLY WITH THE NYS TAX DEPARTMENT IDA UNIT NO LATER THAN  
FEBRUARY 15<sup>TH</sup> OF EACH YEAR**

**[See Attached Page]**





# Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

**ST-340**  
(1/18)

For period ending December 31, \_\_\_\_\_ (enter year)

**Project information**

Name of IDA agent/project operator Andrews Terrace Community Partners, L.P.		Employer identification number (EIN) 92-3453064	
Street address c/o Conifer Realty, 1000 University Avenue, Suite 500		Telephone number ( 212 ) 801-3763	
City Rochester		State NY	ZIP code 14607
Name of IDA County of Monroe Industrial Development Agency	Name of project Andrews Terrace Community Partners, L.P. Project		IDA project number 2602-23-002B
Street address of project site 125 St. Paul Street (aka 91 St. Paul Street)			
City Rochester (City)		State NY	ZIP code 14604
Date project began 122123		Completion date of project 123126      Actual <input type="checkbox"/> Expected <input type="checkbox"/>	
Total sales and use tax exemptions (actual tax savings; not total purchases) .....			\$

**Representative information** (not required)

Authorized representative, if any	Title
Street address	Telephone number (     )
City	State      ZIP code

**Certification**

I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.		
Print name of officer, employee, or authorized representative		Title of person signing
Signature		Date

**If you do not** annually file a complete report, **we may remove** your authority to act as an IDA agent/project operator.

Mail completed report to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0866**

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

# Instructions

## General information

### Who must file

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as the *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person **directly** appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operators directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operators should **not** themselves file Form ST-340. However, the agent/project operators must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

### What you must report

The report must show the **total value** of all state and local **sales and use taxes exempted** during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions the agent/project operator (you) obtained; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

Include only the **total combined** exemptions obtained by the above people. A breakdown of the total is not required. However, since the report must include the value of the exemptions they obtained, you must keep records of the amounts others report to you.

You must make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available, so that you can comply with the annual reporting requirements.

Do not include on this report the amount of any sales and use tax exemptions from other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

### When the report is due

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

### Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

**Name of IDA agent/project operator:** Enter your name, address, employer identification number (EIN), and telephone number.

**Name of IDA and IDA project number:** Enter the name and address of the IDA. If more than one IDA is involved in a particular project, you must file a separate report for the tax exemptions attributable to each IDA. Also enter the ID project number.

**Name of project:** Enter the name of the project and the address of the project site. If you are involved in more than one project, you

must file a separate report for each project, even if authorized by the same IDA.

**Date project began:** Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

**Completion date of project:** Enter the date installation, lease, or rental of property (for example, machinery or computers) on the project ended, or the date the project is expected to be completed. Mark an **X** in the appropriate box to indicate if the date entered is actual or expected.

**Total sales and use tax exemptions:** Enter the total amount of New York State and local sales and use taxes exempted during the reporting period as a result of the project's receipt of IDA financial assistance (*if none, enter 0*). This includes exemptions obtained at the time of purchase, as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do **not** enter total purchases.

## Representative information

If applicable, enter the name, address, title (for example, attorney or accountant), and telephone number of the individual you authorize to submit this report. This section is not required.

## Certification

Enter the name and title of the person signing on your behalf (for example, the IDA agent/project operator's officer, employee, or other authorized representative). Your officer, employee, or authorized representative must sign and date the report.

Mail completed report to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0866**

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

## Need help?



Visit our website at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features

### Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

## Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

**HARRIS BEACH** PLLC  
ATTORNEYS AT LAW

December 21, 2023

99 GARNSEY ROAD  
PITTSFORD, NY 14534  
(585) 419-8800

**LORI A. PALMER**  
PARALEGAL  
DIRECT: (585) 419-8681  
FAX: (585) 419-8816  
LPALMER@HARRISBEACH.COM

VIA CERTIFIED MAIL:  
RETURN RECEIPT REQUESTED  
#9489 0090 0027 6557 8129 87

NYS Tax Department, IDA Unit  
Building 8, Room 657  
W. A. Harriman Campus  
Albany, New York 12227

**Re: County of Monroe Industrial Development Agency  
Appointment of Project Operator or Agency**

Dear Sir/Madam:

Enclosed for filing please find New York State Form ST-60 - IDA Appointment of Project Operator or Agent for:

**Andrews Terrace Community Partners, L.P.**

If you have any questions or concerns regarding the enclosed, please do not hesitate to contact me.

Very truly yours,



Lori A. Palmer  
Paralegal

Enclosure  
cc: COMIDA  
Brian Ivy  
Seth Gellis



# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

**ST-60**  
(1/18)

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only****IDA information**

Name of IDA County of Monroe Industrial Development Agency	IDA project number (use OSC numbering system for projects after 1998) 2602-23-002B		
Street address 50 West Main Street, Suite 1150	Telephone number (585 ) 753-2000		
City Rochester	State NY	ZIP code 14614	Email address (optional)

**Project operator or agent information**

Name of IDA project operator or agent Andrews Terrace Community Partners, L.P.	Mark an <b>X</b> in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or Social Security number 92-3453064	
Street address c/o Conifer Realty, 1000 University Avenue, Suite 500	Telephone number ( 212 ) 801-3763	Primary operator or agent? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
City Rochester	State NY	ZIP code 14607	Email address (optional)

**Project information**

Name of project Andrews Terrace Community Partners, L.P. Project			
Street address of project site 125 St. Paul Street (aka 91 St. Paul Street)**	**and any lands located in the City of Rochester and occupied by license or easement during renovation or improved by third parties for the benefit of the Project		
City Rochester (City)	State NY	ZIP code 14604	Email address (optional)
Purpose of project <p>The renovation of two buildings comprising an aggregate approximately 474,456 square feet of space, being used as a 526-unit affordable housing complex together with an approximately 96,988 sq. ft. parking structure (collectively, the "Existing Improvements") located at 125 St. Paul Street (aka 91 St. Paul Street) in the City of Rochester, New York 14604 (the "Land"); including but not limited to, new kitchens, bathrooms, flooring, lighting and HVAC upgrades (collectively, the "Improvements"); and the acquisition and installation therein, thereon or thereabout of various machinery, equipment and related personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility").</p>			

Description of goods and services intended to be exempted from New York State and local sales and use taxes

Goods and services, inclusive of fuel and utilities, whether the goods and services are purchased or rented, and notwithstanding that they continue to constitute personal property or the item is used after the completion of the project, or the item is geographically located outside the legal boundaries of the project facility; provided there is a reasonable basis to acquire the item to benefit the project.

Date project operator or agent appointed (mmddyy) 122123	Date project operator or agent status ends (mmddyy) 123126	Mark an <b>X</b> in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: All Agents, All In 74,020,298.00	Estimated value of New York State and local sales and use tax exemption provided: All Agents, All In 5,921,624.00	

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA Ana J. Liss	Print title Executive Director	
Signature 	Date 12-21-2023	Telephone number ( 585 ) 753-2000

## Instructions

### When to file

An IDA must file this form within 30 days of the date they appoint any project operator or other person as agent of the IDA, for purposes of extending any sales and use tax exemptions.

### Requirements to file

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA should not file this form if they do not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, they must, within 30 days of the change, file a new form with the new information.

### If the information on this form changes

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA, within 30 days, must send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. They must attach to the letter a copy of the form it originally filed. The IDA should not send a letter for a form that is not valid merely because the *Completion date of project* has passed.

### Mailing instructions

Mail completed form to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0866**

**Private delivery services** – See Publication 55, *Designated Private Delivery Services*.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our website at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features

### Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service