

**401 Central, LLC -  
Authorizing Resolution**

A regular meeting of the County of Chautauqua Industrial Development Agency (the “Agency”) was convened in public session on August 27, 2024, at 10:30 A.M., local time, at the offices of the Agency located at 201 West 3rd Street, Jamestown, County of Chautauqua, New York (the “IDA Office”).

The meeting was called to order by the \_\_\_\_\_ and, upon roll being called, the following members of the Agency were:

PRESENT:

Gary Henry	Chairman
Bradley Walters	Vice Chairman
Sagan Sheffield-Smith	Treasurer
Daniel Heitzenrater	Secretary
Amy Harding	Member
Daniel DeMarte	Member
Tom Harmon	Member
Kevin Muldowney	Member

NOT PRESENT:

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Mark Geise	Administrative Director/CEO
Richard E. Dixon	Chief Financial Officer
Milan K. Tyler, Esq.	Counsel

The attached resolution no. 08-27-24-01 was offered by \_\_\_\_\_, seconded by \_\_\_\_\_:

Resolution No. 08-27-24-01

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND APPROVING THE  
STRAIGHT LEASE DOCUMENTS FOR A CERTAIN PROJECT FOR  
401 CENTRAL, LLC AND/OR ITS AFFILIATES

WHEREAS, the County of Chautauqua Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 71 of the 1972 Laws of New York, as amended, constituting Section 895-h of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, 401 CENTRAL, LLC, a limited liability company duly organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of 401 Central, LLC and/or an entity or entities formed or to be formed on behalf of any of the foregoing (collectively, the “Applicant”), presented an application for financial assistance (the “Application”) to the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) consisting of the following: (A)(1) the acquisition of an interest in an approximately 9,945 square foot parcel of land known as 401-403 Central Avenue and Lark Street, City of Dunkirk, County of Chautauqua, New York (Tax Map Parcel ID Nos. 79.14-7-9 and 79.14-7-8) (the “Land”), (2) the renovation of the existing approximately 10,855 square foot building on the Land, together with related improvements to the Land (collectively, the “Building”), and (3) the acquisition of certain furniture, fixtures, machinery, equipment and building materials necessary for the completion thereof (collectively, the “Equipment” and together with the Land and the Building, collectively, the “Project Facility”), all of the foregoing for adaptive reuse by the Applicant as a mixed-use facility consisting of 5 residential rental units in approximately 6,500 square feet of space and approximately 1,800-2,800 square feet of commercial space; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from sales and use taxes, mortgage recording taxes

and real property taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the A; and

WHEREAS, in accordance with Section 859-a of the Act, any approval of the Project is contingent upon, inter alia, a determination by the members of the Agency to proceed with the Project following a determination by the Agency that (A) the public hearing and notice requirements and other procedural requirements contained in the Act relating to the Project have been satisfied; and (B) the undertaking of the Project by the Agency and the granting of the Financial Assistance are and will be in compliance with all other applicable requirements of the Act, SEQRA (as hereinafter defined), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Project and/or the Project Facility (collectively, the “Applicable Laws”); and

WHEREAS, the Administrative Director/CEO of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on August 8, 2024 to the chief executive officer of the County of Chautauqua (the “County”) and of each other affected tax jurisdiction within which the Project Facility is or is to be located, and posted a copy of the Application on the Agency’s website; (B) caused notice of the Public Hearing to be published on August 8, 2024 in *The Observer*, a newspaper of general circulation available to residents of the County; (C) caused the Public Hearing to be conducted on August 21, 2024, at 10:00 a.m., local time, at the Center for Innovation and Economic Development, 214 Central Avenue, City of Dunkirk, County of Chautauqua, New York; (D) caused the Public Hearing to be streamed on the Agency’s website in real-time and a recording of the Public Hearing to be posted on the Agency’s website, all in accordance with Section 857 of the Act, as amended; and (E) caused a written report of the Public Hearing to be prepared which fairly summarizes the views presented at the Public Hearing and collected written comments from the public (collectively, the “Report”) and distributed the Report to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the New York Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (“NYSDEC”), being 6 N.Y.C.R.R. Part 617, et. seq., as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to undertake the Project; and

WHEREAS, pursuant to SEQRA, to aid the Agency in determining whether the Project may have a significant adverse impact upon the environment, the Agency received and reviewed: (1) the Application, and; (2) Part 1 of a Short Environmental Assessment Form provided by the Applicant (the “EAF”) (collectively 1 and 2, the “Environmental Information”); and

WHEREAS, prior to making a recommendation about the potential environmental significance of the Project, the Agency has reviewed the Environmental Information, consulted various information sources, and considered the list of activities which are Type I Actions outlined in Section 617.4 of the SEQRA regulations, the list of activities that are Type II Actions outlined in Section 617.5 of the SEQRA regulations and the criteria for determining significance outlined in Section 617.7 of the SEQRA regulations; and

WHEREAS, the Agency has determined the Project is a Type II Action pursuant to SEQRA because it involves interior renovation and rehabilitation of an existing building with use and occupancy by a type of use permitted within the zoning district occupied by the Land and will not expand the footprint of the Project Facility nor increase or substantially alter environmental impacts associated with the Land and does not exceed any threshold that would make it a Type I Action; and

WHEREAS, the Project would constitute an “Adaptive Re-Use Project” within the meaning of the Agency’s Uniform Tax Exemption Policy and Guidelines (the “UTEP”) and, therefore, the granting of an exemption from real property taxes for a period of fifteen (15) years in accordance with the schedule for such projects set forth in the UTEP would not constitute a deviation under the UTEP; and

WHEREAS, the Agency now desires to make its determination to proceed with the Project and to grant the Financial Assistance, subject to the terms hereof; and

WHEREAS, the Applicant and/or one (1) or more of its affiliates will (A) execute and deliver a certain Company Lease Agreement (the “Company Lease”), pursuant to which the Applicant and/or such affiliate(s) will grant to the Agency a leasehold interest in the Project Facility; (B) execute and deliver a certain Agency Lease Agreement (Uniform Project Agreement) (the “Agency Lease”), pursuant to which the Agency will grant to the Applicant and/or such affiliate(s) a subleasehold interest in the Project Facility; (C) execute and deliver a certain Payment in Lieu of Taxes Agreement (the “PILOT Agreement”), pursuant to which the Agency would grant an exemption from real property taxes with respect to the Project Facility; and (D) execute and deliver certain other certificates, documents, instruments and agreements related to the Project (together with the Company Lease, the Agency Lease and the PILOT Agreement, collectively, the “Transaction Documents”);

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Based upon the Agency’s review of the Environmental Information, the Agency has made the following findings:

(a) The Project is a Type II action under SEQRA, precluded from further environmental review, because it consists of the “maintenance or repair involving no substantial changes in an existing structure or facility”; “replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes”; “reuse of a residential or commercial structure, or of a structure containing mixed residential and commercial uses, where the residential or commercial use is a permitted use under the applicable zoning law or ordinance”; and the “purchase or sale of furnishings, equipment or supplies, including surplus government property” and does not meet or exceed any threshold for a Type I action.

(b) More specifically, the Project involves interior renovation and rehabilitation of an existing building with use and occupancy by a type of use permitted within the zoning district occupied by the Land. The Project will not expand the footprint of the Project Facility nor increase or substantially alter environmental impacts associated with the Land.

Section 2. In accordance with Section 859-a of the Act, the Agency has prepared a written cost-benefit analysis with respect to the Project and the granting of the Financial Assistance (the “Analysis”). The Agency has reviewed the Application, the Report and the Analysis, and, based upon the representations made by the Applicant to the Agency and information obtained by the Agency, the Agency has reviewed and assessed all material information necessary to afford a reasonable basis for the Agency to make a determination to approve the Financial Assistance. In addition, the Agency hereby makes the following findings and determinations with respect to the Project:

(a) based on the proposed use of the Project Facility as set forth in the Application, the economic effects of the Project on the area in which it is situated, and the employment reasonably expected to be created and/or maintained by the Project, and an analysis of how the Project contributes to the realization of the public purposes of promoting employment opportunities in the County and the prevention of economic deterioration in the County, the Project will constitute a commercial facility with a significant impact on the area in which it is situated, and will advance the Agency’s purposes by promoting employment opportunities and preventing economic deterioration in the County. Therefore, the Project constitutes a “project” within the meaning of the Act;

(b) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Applicant to undertake the Project in the County;

(c) there is a likelihood that the Project would not be undertaken but for the granting of the Financial Assistance by the Agency to the Applicant;

(d) the completion of the Project Facility, the sublease thereof by the Agency to the Applicant and the operation thereof will not result in the removal of a facility or plant of the Applicant or any other occupant or user of the Project Facility from one area of the State of New York (the "State") to another area of the State or in the abandonment of one or more plants or facilities of the Applicant or any other occupant or user located within the State (but outside of the County). Therefore, the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Financial Assistance by the Agency to the Applicant;

(e) the Project will serve the public purposes of the Act by preserving permanent, private sector jobs, and increasing the overall number of permanent, private sector jobs in the State;

(f) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State, nor shall any funds of the Agency be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media;

(g) the Project Facility will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project; and

(h) the granting of the Financial Assistance by the Agency with respect to the Project will encourage and assist the Applicant in undertaking the Project in the County, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the County and the State and improve their standard of living, and thereby serve the public purposes of the Act.

Section 3. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Administrative Director/CEO, the Chief Financial Officer and the staff of the Agency with respect to the Application, the Analysis and the Public Hearing, including, without limitation, (a) those actions required to ensure full compliance with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Project, and (b) the appointment of the law firm of Phillips Lytle LLP as Counsel to the Agency with respect to all matters in connection with the Project.

Section 4. The Agency hereby determines that the Agency has fully complied with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Project.

Section 5. Having considered fully all comments received at or in connection with the Public Hearing and the IDA Meeting, including correspondence received subsequent to the Public Hearing, the Agency hereby further determines to proceed with the Project and the granting of the Financial Assistance, subject to the terms hereof. The Agency hereby approves the granting of (a) an exemption from real property taxes having an estimated value of \$569,016, (b) an exemption from mortgage recording taxes in the maximum amount of \$22,500, and (c) an exemption from sales and use taxes in the maximum amount of \$86,400.

Section 6. The Agency recognizes that due to the complexities of the proposed transaction it may become necessary that certain of the terms approved hereby may require modifications from time to time which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman, Administrative Director/CEO and Chief Financial Officer of the Agency, acting individually or jointly, to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution, but may include adjustments to the Financial Assistance granted hereunder. The approval of such modifications shall be evidenced by the certificate of determination of an Agency officer or the execution and delivery by some or all such Agency officers of relevant documents containing such modified terms.

Section 7. The Agency is hereby authorized to (a) acquire an interest in the Project Facility pursuant to the Company Lease and the other Transaction Documents, (b) grant a subleasehold interest in the Project Facility pursuant to the Agency Lease and the other Transaction Documents, (c) grant the Financial Assistance, (d) execute one (1) or more fee and leasehold mortgage, assignment of rents and leases, and security agreements in favor of such bank, governmental agency or financial institution as the Applicant may determine (such bank, governmental agency or financial institution, the "Bank"), encumbering the Project Facility, solely to subject the Agency's interest in the Project Facility to the lien thereof, all to secure one (1) or more loans made by the Bank to the Applicant with respect to the Project Facility, and (e) do all things necessary, convenient or appropriate for the accomplishment thereof. All acts heretofore taken by the Agency with respect to the foregoing are hereby approved, ratified and confirmed.

Section 8. The form and substance of the Transaction Documents, in the forms presented to the members of the Agency, together with such changes as the Chairman, Vice Chairman, Administrative Director/CEO or Chief Financial Officer may hereafter deem necessary or appropriate, are hereby approved. The Chairman, Vice Chairman, Administrative Director/CEO and Chief Financial Officer are hereby authorized, on behalf of the Agency, acting together or individually, to execute and deliver the Transaction Documents to which the Agency is a party and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The execution and delivery of each such agreement, approval and consent by such person(s) shall be conclusive evidence of such approval.

Section 9. The Chairman, Vice Chairman, Administrative Director/CEO and Chief Financial Officer of the Agency are hereby further authorized, on behalf of the Agency, acting together or individually, to designate any additional Authorized Representatives (as defined in the Agency Lease) of the Agency.

Section 10. The officers, employees and agents of the Agency are hereby authorized and directed, acting individually or jointly, for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Transaction Documents, to execute and deliver all such additional certificates, instruments, agreements and documents, to pay all such fees, charges and expenses, and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, convenient or appropriate to effect the purposes of this Resolution and to cause compliance with all of the terms, covenants and provisions of the Transaction Documents to which the Agency is a party or which are binding on the Agency.

Section 11. The members of the Agency acknowledge the terms and conditions of Section 875(3) of the Act and the duties and obligations of the Agency thereunder with respect to granting of State Sales and Use Taxes (as such term is defined in Section 875 of the Act) with respect to the Project. The members hereby direct the officers of the Agency to comply with such terms and conditions with respect to the Project and hereby direct Counsel to the Agency to include such terms and conditions in all relevant Transaction Documents.

Section 12. The Chairman, the Vice Chairman, the Administrative Director/CEO and the Chief Financial Officer of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Applicant and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 13. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Gary Henry	VOTING
Bradley Walters	VOTING
Sagan Sheffield-Smith	VOTING
Dan Heitzenrater	VOTING
Kevin Muldowney	VOTING
Amy Harding	VOTING
Daniel DeMarte	VOTING
Tom Harmon	VOTING



The foregoing resolution was thereupon declared duly \_\_\_\_\_.





County of Chautauqua Industrial Development Agency

**APPLICATION FOR FINANCIAL ASSISTANCE**

Please respond to all questions in this Application for Financial Assistance (the "Application") by, as appropriate: filling in blanks; checking the applicable term(s); attaching additional text (with appropriate notations, such as "see Schedule 2(A), etc."); or writing "N.A.", signifying "not applicable".

The following amounts are payable to the County of Chautauqua Industrial Development Agency (the "Agency") at the time this Application is submitted to the Agency: (i) a \$1,000 non-refundable application fee (the "Application Fee"); and (ii) a \$1,000 expense deposit for the Agency's Transaction/Bond Counsel fees and expenses (the "Counsel Fee Deposit"). The Application Fee will not be credited against any other fees or expenses which are or become payable to the Agency in connection with this Application or the project contemplated herein (the "Project"). In the event that the subject transaction does not close for any reason, the Agency may use all or any part of the Counsel Fee Deposit, to defray the cost of Transaction/Bond Counsel fees and expenses with respect to the Project. In the event that the subject transaction closes, the Counsel Fee Deposit shall be credited against the applicable expenses incurred by the Agency with respect to the Project.

- Please contact the CCIDA Main Office @ (716) 661-8900 with any questions relative to the application content and/or process.

**PART I: APPLICANT**

Name: 401 Central, LLC  
 Address: 3083 William Street , Buffalo, NY 14227  
 Phone: 716 240-9177  
 NY State Dept. of Labor Reg #: \_\_\_\_\_  
 Federal Employer ID #: 99-3413689  
 NAICS Code #: NAICS 531 NAICS 532  
 NAICS Sector: Real estate Rental and Leasing Services:  
 NAICS Industry: Real Estate  
 Website: NA

Nature of business (goods to be sold, manufactured, assembled or processed, services rendered):  
 mixed use residential and commercial

Contact Name: Leo Crewson  
 Title: Agent  
 Phone Number: 716-574-0690  
 E-Mail: LeoC@tsampeak.com

- Business Type:
- Sole Proprietorship
  - General Partnership
  - Limited Partnership
  - Limited Liability Company
  - Privately Held Corporation
  - Publicly Held Corporation
  - Not-for-Profit Corporation

State/Year of Incorporation/Organization: 2024  
 Qualified to do Business in New York (Yes or No): Yes

Owners of 20% or more of Applicant:

Name	%
Gary Crewson	100%

**PART II: PROJECT**

Address of proposed project facility: 401-403 Central Avenue  
 Dunkirk, NY 14048 and Lark Street, Dunkirk Ny 14048  
 Tax Map Parcel Number(s): SBL 79.14-7-9: (Lark) 79.14-7-8  
 City/Town/Village(s): City of Dunkirk  
 School District(s): Dunkirk  
 Current Legal Owner: Dunkirk Local Development Corp.  
 Contract to purchase (Yes or No): Yes  
 Date of purchase: TBD  
 Purchase price: \$ 95,000

Present use of the Project site: vacant bank building

What are current real estate taxes on the Project site?  
 County/Town: \$ : 401- \$3,391.42 - (Lark) Central \$81.65  
 City/Village: \$ 401-\$4,892.40 LARK - 6 #117.78  
 School: \$ 401- \$7,250.84 (Lark)- \$174.55

Are tax cert. proceedings currently pending with respect to the Project real property?  
 YES  NO

Proposed User(s)/Tenant(s) of the Facility  
 (Complete for each User/Tenant for additional User/Tenants of the Company, use space at the end of this section)  
 Company Name: TBD  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Tax ID No.: \_\_\_\_\_  
 Contact Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_  
 E-Mail: \_\_\_\_\_

% of facility to be occupied by User/Tenant:  
 100

Relationship to the Applicant:  
 none

**OFFICERS OF APPLICANT**

<b>Name:</b>	<b>Title:</b>
Gary Crewson	Managing Member
_____	_____
_____	_____
_____	_____

**Owners of 20% or more of User/Tenant:**

<b>Name</b>	<b>%</b>	<b>Corporate Title</b>
TBD		
_____	_____	_____
_____	_____	_____

**APPLICANT'S LEGAL COUNSEL:**

**Firm name:** Hurwitz Fine PC  
**Address:** The Liberty Building 424 Main Street, Suite 1300 Buffalo, NY 14202  
**Contact:** Amber E. Storr  
**Phone:** 716.849.8900 x118  
**Fax:** 716.855.0874  
**E-Mail:** Amber E. Storr AES@hurwitzfine.com

Type of Proposed Project (check all that apply):

- New Construction of a Facility  
Square footage: \_\_\_\_\_
- Addition to Existing Facility  
Square footage of existing facility: \_\_\_\_\_  
Square footage of addition: \_\_\_\_\_
- Renovation of Existing Facility  
Square footage of area renovated: 10,855 ( bldg) with land 3,900sq ft (total ~15,000sq ft)  
Square footage of existing facility: 10,855
- Acquisition of Land/Building  
Acreage/square footage of land: 8945 sq. ft.  
Square footage of building: 10,855 sq.ft. including basement
- Acquisition of Furniture/Machinery/Equipment  
List principal items or categories:  
\_\_\_\_\_  
\_\_\_\_\_
- Other (specify): \_\_\_\_\_

Briefly describe the purpose of the proposed Project, the reasons why the Project is necessary to the Applicant and why the Agency's financial assistance is necessary, and the effect the Project will have on the Applicant's business or operations:

The project involves the adaptive reuse of a vacant and abandoned former bank branch office located in Dunkirk's central business district. The building was selected for DRI funding; primarily due to its CBD prominent location.

The building has been vacant for many years and is need of many improvements including, new roof, hvac and electrical upgrades masonry repairs

The building will be converted to approx. 1800 ~ 2800 sf of commercial/retail and the remainder residential market rate apartments and parking, and 5 residential units. - approx. 6,500 sq ft.

Please list Affiliates/Parents/Subsidiary Entities to Applicant (attach organization chart if necessary)

\_\_\_\_\_

\_\_\_\_\_

**PART III. CAPITAL COSTS OF THE PROJECT**

A. Provide an estimate of Project Costs of all items listed below:

Item	Cost
1. Land and/or Building Acquisition:	95,000
2. Building Demolition:	150,000 (interiors)
3. Construction/Reconstruction/Renovation:	<u>1,530,000</u>
4. Site Work:	<u>30,000</u>
5. Infrastructure Work:	<u>75,000</u>
6. Furniture, Equipment, Machinery:	<u>65,000</u>
7. Architectural/Engineering Fees:	<u>70,000</u>
8. Applicant's Legal Fees:	<u>25,000</u>
9. Financial Fees:	<u>50,000</u>
10. Other Professional Fees:	<u>165,000 accounting and construction manager</u>
11. Other Soft Costs (describe):	<u>5% contingency 106,000</u>
12. Other (describe):	<u>marketing and leasing fees \$45,000</u>
Total Project Costs:	<u>\$ 2,406,000</u>

Estimated Sources of Funds for Project Costs:	Source
1. Tax-Exempt IDA Bonds:	<u>No</u>
2. Taxable IDA Bonds:	<u>No</u>
3. Conventional Mortgage Loans:	<u>\$1,800,000</u>
4. SBA or other Governmental Financing Identify: _____	<u>No</u>
5. Other Public Sources (e.g., grants, tax credits): Identify: <u>DRI funds \$900,000, ESD, \$150,000</u>	<u>1,050,000 (paid in arrears @ mo after completion)</u>
6. Other Public Agency Loans:	<u>No</u>
7. Other Private Loans:	<u>No</u>
8. Equity Investment: (Excluding equity attributable to grants/tax credits)	<u>\$606,000</u>
Total Funding:	<u>\$ 2,406,000</u>

What percentage of the total project costs are funded/financed from public sector sources: 45 %

C. Requested Financial Assistance

Tax-Exempt Bonds:	<u>\$ No</u>
Taxable Bonds:	<u>\$ No</u>
Estimated Value of Sales Tax Benefit: (i.e., gross amount of cost of goods and services that are subject to state and local sales and use taxes multiplied by [8.0%])	<u>\$ 80% of 1.8mm is 1,080,000 x 8% (\$86,400)</u>
Estimated Value of Mortgage Tax Benefit: (i.e., principal amount of mortgage loans multiplied by [1.25%])	<u>\$ 22,500</u>

Estimated CCIDA PILOT Property Tax Benefit:

Type: adaptive reuse

Term: 15 yrs

Schedule Requested: yes

Deviation? Yes  No

Will the proposed Project utilize a property tax exemption benefit other than from the Agency: no  
(if so, please describe requested type, term and schedule)

Existing Total Annual Property Taxes on Land and Building: \$ 15,908.74

Estimated Additional Property Taxes on completed Project over the requested PILOT term (without Agency financial assistance): \$ 812,880

Other (specify): \_\_\_\_\_

NOTE: Upon acceptance of this Application by the Agency, the Agency's staff will create a PILOT schedule and indicate the estimated amount of PILOT Benefit/Cost utilizing anticipated tax rates and assessed valuation, make an estimate of the allocation of PILOT payments among the affected tax jurisdictions, and attach such information as Exhibit A hereto.

The Applicant acknowledges that the transaction/bond documents may include a covenant by the Applicant to undertake and document the total amount of capital investment as set forth in this Application.

D. Status of Expenses

Have any of the above costs been paid or incurred (including contracts of sale or purchase orders) as of the date of this application? If YES, describe particulars on a separate sheet.

YES

NO

E. Existing Operations

Does the Applicant or any User(s)/Tenant(s) currently operate in the County? If YES, describe such operations, including whether the proposed Project will result in the relocation or abandonment of such other operation(s).

No

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PART IV: COST-BENEFIT ANALYSIS**

Provide the current annual payroll in Chautauqua County. Then, estimate projected payroll in years 1, 2, and 3, after completion of Project.

	<u>Present</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Full Time:	\$ 0	\$ 50,000	\$ 152,000	\$ 255,000
Part Time:	\$ 0	\$ 25,000	\$ 25,000	\$ 50,000

If the Applicant presently operates in Chautauqua County, provide the current number of employees in the following occupations. Then, estimate the projected Full Time Equivalent ("FTE") employees as indicated following completion of the Project:

Current and Planned Occupations	Present Jobs Per Occupation	Est. FTEs Post-Completion:			Est. # of County Residents. by yr. 3
		1 year	2 years	3 years	
Management	0	1	1	2	2
Professional	0	0	1	1	1
Administrative	0	1	1	1	1
Production	0	0	0	0	0
Supervisor	0	0	1	1	1
Laborer	0	0	1	1	1
Independent Contractor	0	0	1	1	1
Other (describe)	0	0	0	0	0

List the average salaries or provide ranges of salaries for the following categories of jobs (on a full-time equivalency basis) projected to be retained/created in Chautauqua County because of the proposed Project:

Category of Jobs to be Retained/Created:	Average Salary or Range of Salary:	Average Fringe Benefits or Range of Fringe Benefits:
Management	80-100K	28-42%
Professional	65-125K	28-42%
Administrative	35-40K	28-42%
Production	0	0
Supervisor	50-65K	28-42%
Laborer	40-45K	0-28%
Independent Contractor <sup>1</sup>	100K	28-42%
Other	0	0

Please indicate the number of temporary construction jobs anticipated to be created in connection with the acquisition, construction, and/or renovation of the Project: <sup>24</sup> \_\_\_\_\_

Please note that the Agency may utilize the foregoing employment projections, among other things, to determine the financial assistance that will be offered by the Agency to the Applicant. The Applicant acknowledges that the transaction/bond documents may include a covenant by the Applicant to retain the above number of jobs, types of occupations and amount of payroll with respect to the proposed project.

<sup>1</sup>NOTE: The Agency converts part-time jobs into FTE's for evaluation and reporting purposes by dividing the number of part-time jobs by two (2).

<sup>24</sup>As used in this chart, this category includes employees of independent contractors.

What percentage of the Applicant's total dollar amount of production, sales or services (including production, sales or services rendered following completion of the Project) are made to customers outside the economic development region (i.e., Western New York)?

25 %

Describe any municipal revenues that will result from the Project (excluding any PILOT payments):

new tax base, new commercial operations in currently vacant building, new modern, market rate housing

new water, sewer fee revenue, more people on Central Avenue patronizing other local business.

What is the estimated aggregate annual amount of goods and services to be purchased by the Applicant for each year after completion of the Project, and what portion will be sourced from businesses located in Chautauqua County and the State:

	Amount	% Sourced in Chautauqua County	% Sourced in State
Year 1	\$ 25,000	30	90
Year 2	\$ 28,000	35	90
Year 3	\$ 30,000	35	90

Describe, if applicable, other benefits to the Chautauqua County anticipated as a result of the Project, including a projected annual estimate of additional sales tax revenue generated, directly and indirectly, as a result of undertaking the project:

Remove blight by the rehabilitation of a once prominent building in the heart of the City of Dunkirk's central business district.

If applicable, has construction/reconstruction/renovation work on the Project begun? If YES, indicate the percentage of completion:

- 1. (a) Site clearance YES  NO  \_\_\_\_\_% complete
- (b) Environmental Remediation YES  NO  \_\_\_\_\_% complete
- (c) Foundation YES  NO  \_\_\_\_\_% complete
- (d) Footings YES  NO  \_\_\_\_\_% complete
- (e) Steel YES  NO  \_\_\_\_\_% complete
- (f) Masonry YES  NO  \_\_\_\_\_% complete
- (g) Interior YES  NO  \_\_\_\_\_% complete
- (h) Other (describe below): YES  NO  \_\_\_\_\_% complete

If NO to all of the above categories, what is the proposed date of commencement of construction, reconstruction, renovation, installation or equipping of the Project?

Provide an estimated time schedule to complete the Project and when first use of the Project is expected to occur:

Abatement and interior demolition will occur once we have obtained proper permits and have closed on the building estimated by August 15th, 2024

Renovations to begin upon receipt of approved site plan and architectural drawing and the issuance of a building permit, expected late August/Early September 2024

Completion date 12 months target date September 1st, 2025



**PART V: QUESTIONS**

Please answer the following questions. If the answer is "YES" to any question, please provide details in the space provided at the end of the section.

1. Is the Project reasonably necessary to preserve the competitive position of the Applicant, or of a proposed user, occupant or tenant of the Project, in its industry?

YES  NO

2. Is the Project reasonably necessary to discourage the Applicant, or a proposed user, occupant or tenant of the Project, from removing such plant or facility to a location outside of the State of New York?

YES  NO

3. Is there a likelihood that the proposed Project would not be undertaken by the Applicant but for the granting of the financial assistance by the Agency? (If yes, explain; if no, explain why the Agency should grant the financial assistance with respect to the proposed Project).

YES  NO

4. The Applicant certifies that the provisions of Section 862(1) of the General Municipal Law will not be violated if financial assistance is provided by the Agency for the proposed Project.

YES  NO

5. Is an environmental impact statement required by Article 8 of the N.Y. Environmental Conservation Law (i.e., the New York State Environmental Quality Review Act)? If "yes" please complete and attach to the Application.

YES  NO

\*\* Applicants should consult **Exhibit B** in order to determine which version of the New York State Environmental Assessment Form must be submitted with this Application.

6. Will customers personally visit the Project site for "retail sales" of Goods and/or Services? "Retail Sales" means (i) sales by a registered vendor under Article 28 of the Tax Law of the State primarily engaged in the retail sale of tangible personal property, as defined in section 1101(b)(4)(i) of the Tax Law of the State, or (ii) sales of a service to such customers.

Sales of Goods: YES  NO   
Sales of Services: YES  NO

\*\* If the answer to both is "No" please continue to the next page; if the answer to either is "Yes" please answer the four (4) remaining questions.

7. What percentage of the cost of the Project (including that portion of the cost to be financed from equity or sources other than Agency financing) will be expended on such facilities or property primarily used in making retail sales of goods or services to customers who personally visit the Project?

28 %

8. Is the Project likely to attract a significant number of visitors from outside the economic development region (i.e., Western New York) in which the Project is or will be located?

YES  NO

9. Is the predominant purpose of the Project to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the city, town or village within which the Project will be located, because of a lack of reasonably accessible retail trade facilities offering such goods or services?

YES  NO

10. Will the Project be located in one of the following: (a) an area designated as an empire zone pursuant to Article 18-B of the General Municipal Law; or (b) a census tract or block numbering area (or census tract or block numbering area contiguous thereto) which, according to the most recent census data, has (i) a poverty rate of at least 20% for the year in which the data relates, or at least 20% of the households receiving public assistance, and (ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates?

YES  NO

**CERTIFICATIONS AND ACKNOWLEDGMENTS**  
**OF THE APPLICANT**

The undersigned, being duly sworn, deposes and says, under penalties of perjury, as follows: that I am the chief executive officer or other representative authorized to bind the Applicant named in the attached application for financial assistance ("Application") and that I hold the office specified below my signature at the end of this Certification and Agreement, that I am authorized and empowered to deliver this Certification and Agreement and the Application for and on behalf of the Applicant, that I am familiar with the contents of said Application (including all schedules, exhibits and attachments thereto), and that said contents are true, accurate and complete to the best of my knowledge and belief.

The grounds of my belief relative to all matters in the Application that are not based upon my own personal knowledge are based upon investigations I have made or have caused to be made concerning the subject matter of this Application, as well as upon information acquired in the course of my duties and from the books and records of the Applicant.

As an authorized representative of the Applicant, I acknowledge and agree on behalf of the Applicant that the Applicant hereby releases the County of Chautauqua Industrial Development Agency, its members, officers, servants, attorneys, agents and employees (collectively, the "Agency") from, agrees that the Agency shall not be liable for and agrees to indemnify, defend (with counsel selected by the Agency) and hold the Agency harmless from and against any and all liability, damages, causes of actions, losses, costs or expenses incurred by the Agency in connection with: (A) examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the financial assistance requested therein are favorably acted upon by the Agency, (B) the acquisition, construction, reconstruction, renovation, installation and/or equipping of the Project by the Agency, and (C) any further action taken by the Agency with respect to the Project; including, without limiting the generality of the foregoing, (i) all fees and expenses of the Agency's general counsel, bond counsel, economic development consultant, real property tax valuation consultant and other experts and consultants (if deemed necessary or advisable by the Agency), and (ii) all other expenses incurred by the Agency in defending any suits, actions or proceedings that may arise as a result of any of the foregoing. If, for any reason whatsoever, the Applicant fails to conclude or consummate necessary negotiations or fails within a reasonable or specified period of time to take reasonable, proper or requested action or withdraws, abandons, cancels, or neglects the Application or if the Applicant is unable to find buyers willing to purchase the total bond issue required or is unable to secure other third party financing or otherwise fails to conclude the Project, then upon presentation of an invoice by the Agency, its agents, attorneys or assigns, the Applicant shall pay to the Agency, its agents, attorneys or assigns, as the case may be, all fees and expenses reflected in any such invoice.

As an authorized representative of the Applicant, I acknowledge and agree on behalf of the Applicant that each of the Agency's general counsel, bond counsel, economic development consultant, real property tax valuation consultant and other experts and consultants is an intended third-party beneficiary of this Certification and Agreement, and that each of them may (but shall not be obligated to) enforce the provisions of the immediately preceding paragraph, whether by lawsuit or otherwise, to collect the fees and expenses of such party or person incurred by the Agency (whether or not first paid by the Agency) with respect to the Application.

**FIRST:**

The Applicant hereby certifies that, if financial assistance is provided by the Agency for the proposed project, no funds of the Agency (i) shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, (ii) be given to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State

**SECOND:**

The Applicant hereby certifies that no member, manager, principal, officer or director of the Applicant or any affiliate thereof has any blood, marital or business relationship with any member of the Agency (or any member of the family of any member of the Agency).

**THIRD:**

The Applicant hereby certifies that neither the Applicant nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners (other than equity owners of publicly-traded companies), nor any of their respective employees, officers, directors, or representatives (i) is a person or entity with whom United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (OFAC) of the Department of the Treasury, including those named on OFAC's Specially Designated and Blocked Persons List, or under any statute, executive order or other governmental action, or (ii) has engaged in any dealings or transactions or is otherwise associated with such persons or entities.

**FOURTH:**

The Applicant hereby acknowledges that the Agency shall obtain and hereby authorizes the Agency to obtain credit reports and other financial background information and perform other due diligence on the Applicant and/or any other entity or individual related thereto, as the Agency may deem necessary to provide the requested financial assistance.

**FIFTH:**

The Applicant hereby certifies, under penalty of perjury, that each owner, occupant or operator that would receive financial assistance with respect to the proposed Project is in substantial compliance with applicable federal, state and local tax, worker protection and environmental laws, rules and regulations.

**SIXTH:**

The Applicant hereby acknowledges that the submission to the Agency of any knowingly false or knowingly misleading information may lead to the immediate termination of any financial assistance and the recapture from the Applicant of an amount equal to all or any part of any tax exemption claimed by reason of the Agency's involvement in the Project.

**SEVENTH:**

The Applicant hereby certifies that, as of the date of this Application, the Applicant is in substantial compliance with all provisions of Article 18-A of the General Municipal Law, including, but not limited to, the provisions of Section 859-a and Section 862(1) thereof.

**EIGHTH:**

Upon successful closing of the required bond issue or other form of financing or Agency assistance, the Applicant shall pay to the Agency an administrative fee set by the Agency (which amount is payable at closing) in accordance with the following schedule:

- (A) All Initial Transactions - One-Hundred basis points (1.00%) of Total Project Costs
  - a. This fee applies to all Initial Transactions except for certain small solar or wind energy systems or farm waste energy systems under RPTL §487, for which the Agency collects no fee (other than Counsel fees).
- (B) Refunding/Assumptions/Modifications: Agency fee shall be determined on a case-by-case basis.

The Agency's bond counsel fees and expenses are payable at closing and are based on the work performed in connection with the Project.


The Agency's bond counsel's fees, general counsel fee and the administrative fees may be considered as a cost of the Project and included as part of any resultant financing, subject to compliance with applicable law.

Regardless of the success of this Application or whether the hoped-for Financial Assistance is realized, Applicant agrees to pay all costs in connection with any efforts by the Agency on behalf of the Applicant including any fees and expenses of the Agency's general counsel, bond counsel, and all applicable recording, filing or other related fees, taxes and charges upon receipt and review of the Application, securing necessary approvals, closing the necessary transaction, and/or terminating any transaction entered into by the Applicant and the Agency.

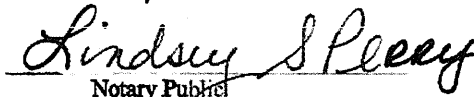
**NINTH:**

The Applicant authorizes the Agency to make inquiry of the United States Environmental Protection Agency, the New York State Department of Environmental Conservation or any other appropriate federal, state or local governmental agency or authority as to whether the Project site or any property adjacent to or within the immediate vicinity of the Project site is or has been identified as a site at which hazardous substances are being or have been used, stored, treated, generated, transported, processed, handled, produced, released or disposed of. The Applicant will be required to secure the written consent of the owner of the Project site to such inquiries (if the Applicant is not the owner), upon request of the Agency.

I further acknowledge and agree on behalf of the Applicant that, in the event the Agency shall have used all of its available tax-exempt bond financing allocation from the State of New York, if applicable, and shall accordingly be unable to obtain an additional allocation for the benefit of the Applicant, the Agency shall have no liability or responsibility as a result of the inability of the Agency to issue and deliver tax-exempt bonds for the benefit of the Applicant.

  
Name: Gary Brewson  
Title: Managing Member

Subscribed and affirmed to me this 18  
day of July, 2024

  
Notary Public

LINDSEY S PERRY  
NOTARY PUBLIC STATE OF NEW YORK  
ERIE COUNTY  
LIC. #01PE6209487  
COMM. EXP. 07/27/2025

The Agency's acceptance of this Application for consideration does not constitute a commitment on the part of the Agency to undertake the proposed Project, to grant any financial assistance with respect to the proposed Project, or to enter into any negotiations with respect to the proposed Project.

Information provided herein may be subject to disclosure under the New York Freedom of Information Law (New York Public Officers Law § 84 et seq.) ("FOIL"). If the Applicant believes that a portion of the material submitted with this Application is protected from disclosure under FOIL, the Applicant should mark the applicable section(s) or page(s) as "confidential" and state the applicable exception to disclosure under FOIL.

July 17th 2024

DATE

# 401 Central, LLC

7/16/2024

Draft Exhibit A  
Adaptive Reuse PILOT

Current Assessed Value	Parcel IDs:	Current County Tax	Current Town/City/Village Tax	Current School Tax
\$276,500	79.14-7-8, 79.14-7-9	\$3,473	\$5,010	\$7,425

### A. PILOT Estimate Table Worksheet

Dollar Value of New Construction and Renovation Costs	Estimated New Assessed Value on Improvements of Property Subject to IDA**	County Tax Rate/\$1,000	Local Tax Rate (Town/City/Village)/\$1,000	School Tax Rate/\$1,000	Combined Tax Rate
\$2,406,000	\$960,000	12.560045	18.119998	25.769985	56.450028

PILOT Year	% Payment	PILOT Amount	Full Tax Payment on Improvements without PILOT	Estimated Net Exemption
1	10%	\$5,419	\$54,192	\$48,773
2	10%	\$5,419	\$54,192	\$48,773
3	10%	\$5,419	\$54,192	\$48,773
4	10%	\$5,419	\$54,192	\$48,773
5	10%	\$5,419	\$54,192	\$48,773
6	30%	\$16,258	\$54,192	\$37,934
7	30%	\$16,258	\$54,192	\$37,934
8	30%	\$16,258	\$54,192	\$37,934
9	30%	\$16,258	\$54,192	\$37,934
10	30%	\$16,258	\$54,192	\$37,934
11	50%	\$27,096	\$54,192	\$27,096
12	50%	\$27,096	\$54,192	\$27,096
13	50%	\$27,096	\$54,192	\$27,096
14	50%	\$27,096	\$54,192	\$27,096
15	50%	\$27,096	\$54,192	\$27,096
<b>TOTAL</b>		<b>\$243,864</b>	<b>\$812,880</b>	<b>\$569,016</b>

### B. Sales Tax Exemption Benefit

Estimated Sales Tax exemption for facility construction	<b>\$86,400</b>
Estimated Sales Tax exemption for fixtures and equipment	combined with construction
Estimated duration of Sales Tax exemption:	12 months
Estimated Start Date	August 2024

### C. Mortgage Recording tax Exemption Benefit

Estimated value of Mortgage Recording Tax exemption	<b>\$22,500</b>
-----------------------------------------------------	-----------------

### D. Other Benefits

N/A

PILOT applies to estimated assessed value on improvements only and does not include special district taxes or ad valorem levies. Assessed Value estimate provided by Applicant. Adaptive Re-Use PILOT Schedule.

**Exhibit B**

State Environmental Quality Review Act Compliance Checklist

The County of Chautauqua Industrial Development Agency ("CCIDA"), pursuant to the State Environmental Quality Review Act ("SEQRA"), must evaluate the environmental impacts of a project before deciding whether to undertake the project. The below checklist is intended to aid Applicants in determining which version of NYSDEC's Environmental Assessment Form ("EAF"), available on NYSDEC's website, to submit as a part of a complete application package to the CCIDA.

If one or more of the below items applies to the project, then a Full EAF must be prepared for submission. If none of the below items apply, then a Short EAF may be submitted. Please note that the below list is not exhaustive, and Applicants who have completed a short EAF may be required to fill out a Full EAF upon review of the project information by the CCIDA. Applicants should consult with their engineers and consultants to aid them in preparing the EAF.

Does the project involve:

- activities, other than the construction of residential facilities, that meet or exceed any of the following thresholds:
  - a project or action that involves the physical alteration of 10 acres?
  - a project or action that would use ground or surface water in excess of 2,000,000 gallons per day?
  - parking for 500 vehicles?
  - a facility with more than 100,000 square feet of gross floor area?
- the expansion of existing nonresidential facilities that meet or exceed any of the following thresholds:
  - a project or action that involves the physical alteration of 5 acres?
  - a project or action that would use ground or surface water in excess of 1,000,000 gallons per day?
  - parking for 250 vehicles?
  - a facility with more than 50,000 square feet of gross floor area?

activities which meet at least one of the criteria in both Columns A and B below:

o Column A:

- occurring wholly or partially within an agricultural district certified by Agriculture and Markets?
- occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the State or National Register of Historic Places, or has been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing?
- occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland, recreation area or designated open space, including any site on the Register of National Natural Landmarks?

o Column B:

- activities, other than the construction of residential facilities, that meet or exceed any of the following thresholds:
  - a project or action that involves the physical alteration of 2.5 acres?
  - a project or action that would use ground or surface water in excess of 500,000 gallons per day?
  - parking for 125 vehicles?
  - a facility with more than 25,000 square feet of gross floor area?
- the expansion of existing nonresidential facilities that meet or exceed any of the following thresholds:
  - a project or action that involves the physical alteration of 1.25 acres?
  - a project or action that would use ground or surface water in excess of 250,000 gallons per day?
  - parking for 63 vehicles?
  - a facility with more than 12,500 square feet of gross floor area?



**617.20**  
**Appendix B**  
**Short Environmental Assessment Form**

**Instructions for Completing**

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

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

<b>Part 1 - Project and Sponsor Information</b>			
<b>410 Central, LLC</b>			
Name of Action or Project: <b>Adaptative reuse- renovations</b>			
Project Location (describe, and attach a location map): <b>401 -403 Central Avenue and Lark Street, Dunkirk NY 14048</b>			
Brief Description of Proposed Action: <i>GUT RENOVATION / DEMOLITION OF INTERIORS INCLUDE NEW ROOF, MECH, ELECTRICAL, PLUMBING, SPRINKLERS, NEW FLOORING, HIGHER END FINISHES, UPGRADE PARKING, LANDSCAPING, FIRE/SECURITY ALARM. - STRUCTURAL REPAIRS (MINOR)</i>			
Name of Applicant or Sponsor: <b>410 Central, LLC</b>		Telephone: <small>716-574-0800</small>	
		E-Mail: <small>Leac@leampeak.com</small>	
Address: <b>3083 William Street</b>			
City/PO: <b>Buffalo</b>	State: <b>NY</b>	Zip Code: <b>14227</b>	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO  YES
			X
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			NO  YES
<b>City of Dunkirk building permit, NYS DRI, NYS ESD</b>			X
3.a. Total acreage of the site of the proposed action?		<u>1/8th or .23</u>	acres
b. Total acreage to be physically disturbed?		<u>0</u>	acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		<u>1/8th or .23</u>	acres
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): <u>urban, commercial, residential</u> <input type="checkbox"/> Parkland			

	NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations?		X	
b. Consistent with the adopted comprehensive plan?		X	
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO		YES X
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO		YES X
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	X	YES
b. Are public transportation service(s) available at or near the site of the proposed action?			X
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?			X
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	NO		YES X
10. Will the proposed action connect to an existing public/private water supply? [If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input type="checkbox"/> YES] If No, describe method for providing potable water: _____	NO		YES X
11. Will the proposed action connect to existing wastewater utilities? [If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input type="checkbox"/> YES] If No, describe method for providing wastewater treatment: _____	NO		YES X
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? <i>Building is not on register, but is located within a historic district.</i>	NO		YES X
b. Is the proposed action located in an archeological sensitive area?		X	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	X	YES
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____		X	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	X	YES
16. Is the project site located in the 100 year flood plain?	NO	X	YES
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES	NO	X	YES
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: _____ connected to the City storm water system <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES			X



18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____	NO	YES
	X	
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____	NO	YES
	X	
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: <small>EAF mapper pre checked yes, however, the applicant is not aware of any previous remediation, nor have they witnessed any previous or ongoing remediation in any proximity to the site or nearby.</small> _____ _____	NO	YES
		X
<b>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b>		
Applicant/sponsor name: <u>401 Central LLC</u>	Date: <u>July 17th</u>	
Signature: _____		

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

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

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

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

<input type="checkbox"/> Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.	
<input type="checkbox"/> Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.	
_____	_____
Name of Lead Agency	Date
_____	_____
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
_____	_____
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

## Dunkirk, NY - Profile data - Census Reporter

### Poverty

**24.9%**

Persons below poverty line

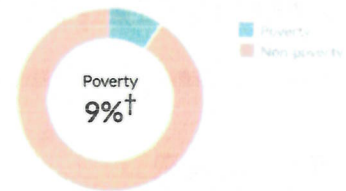
about 1.4 times the rate in the Jamestown-Dunkirk-Fredonia, NY Micro Area: 17.5%  
nearly double the rate in New York: 13.6%

Children (Under 18)



Show data / Embed

Seniors (65 and over)



Show data / Embed

### Poverty

The percentage of total households living below the poverty line ranges from 13% to 25% across the four geographies. Both the City of Dunkirk and City of Jamestown have a significantly higher percentages of households living below the poverty line, at 25% and 24% respectively, compared to 17% of County households and 13% of State households.

### Households Below Poverty Level, 2021

	Number	Percent
Chautauqua County	8,828	17.0%
Dunkirk	1,481	25.0%
Jamestown	2,971	24.0%
NYS	1,011,603	13.0%

Source: ACS 2017-2021 Estimates

# Dunkirk, NY

Place in: [Chautauqua County, NY](#), [Jamestown-Dunkirk-Fredonia, NY Micro Area](#), [New York, United States](#)

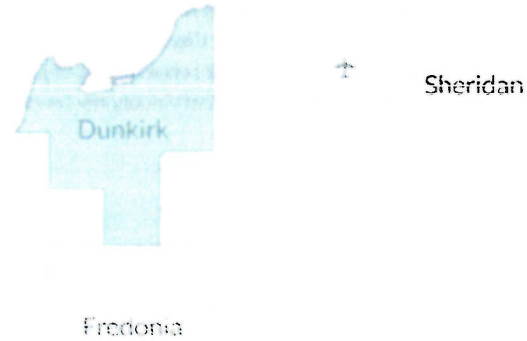
**12,668**

Population

4.5 square miles

2,787.4 people per square mile

Census data: ACS 2022 5-year unless noted



## Income

**\$27,775** ±\$1,913  
Per capita income

about 90 percent of the amount in the Jamestown-Dunkirk-Fredonia, NY Micro Area: \$30,718 ±\$740

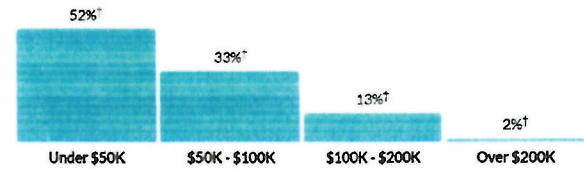
about three-fifths of the amount in New York: \$47,173 ±\$209

**\$46,800**  
Median household income

about 90 percent of the amount in the Jamestown-Dunkirk-Fredonia, NY Micro Area: \$54,625

about three-fifths of the amount in New York: \$81,386

## Household income



[Hide data / Unlink](#)

## Household income (Table B19001) [View table](#)

Column	Dunkirk		Jamestown-Dunkirk-Fredonia, NY Micro Area		New York							
Under \$50K	52.4% <sup>†</sup>	±6.3%	3,020	±389.4	46.2% <sup>†</sup>	±1.9%	24,672	±1,040.5	32.7% <sup>†</sup>	±0.2%	2,486,321	±14,284.5
\$50K - \$100K	32.7% <sup>†</sup>	±4.9%	1,887	±293.4	30.2% <sup>†</sup>	±1.0%	16,120	±794.6	25.7% <sup>†</sup>	±0.2%	1,950,592	±11,887.4
\$100K - \$200K	13.3% <sup>†</sup>	±3.3%	765	±191.1	20.1% <sup>†</sup>	±1.2%	10,727	±634.1	26.5% <sup>†</sup>	±0.2%	2,014,111	±13,520.6
Over \$200K	1.6% <sup>†</sup>	±0.9%	94	±54	3.5% <sup>†</sup>	±0.2%	1,886	±273	15.2% <sup>†</sup>	±0.1%	1,153,499	±8,907

[Hide data](#)

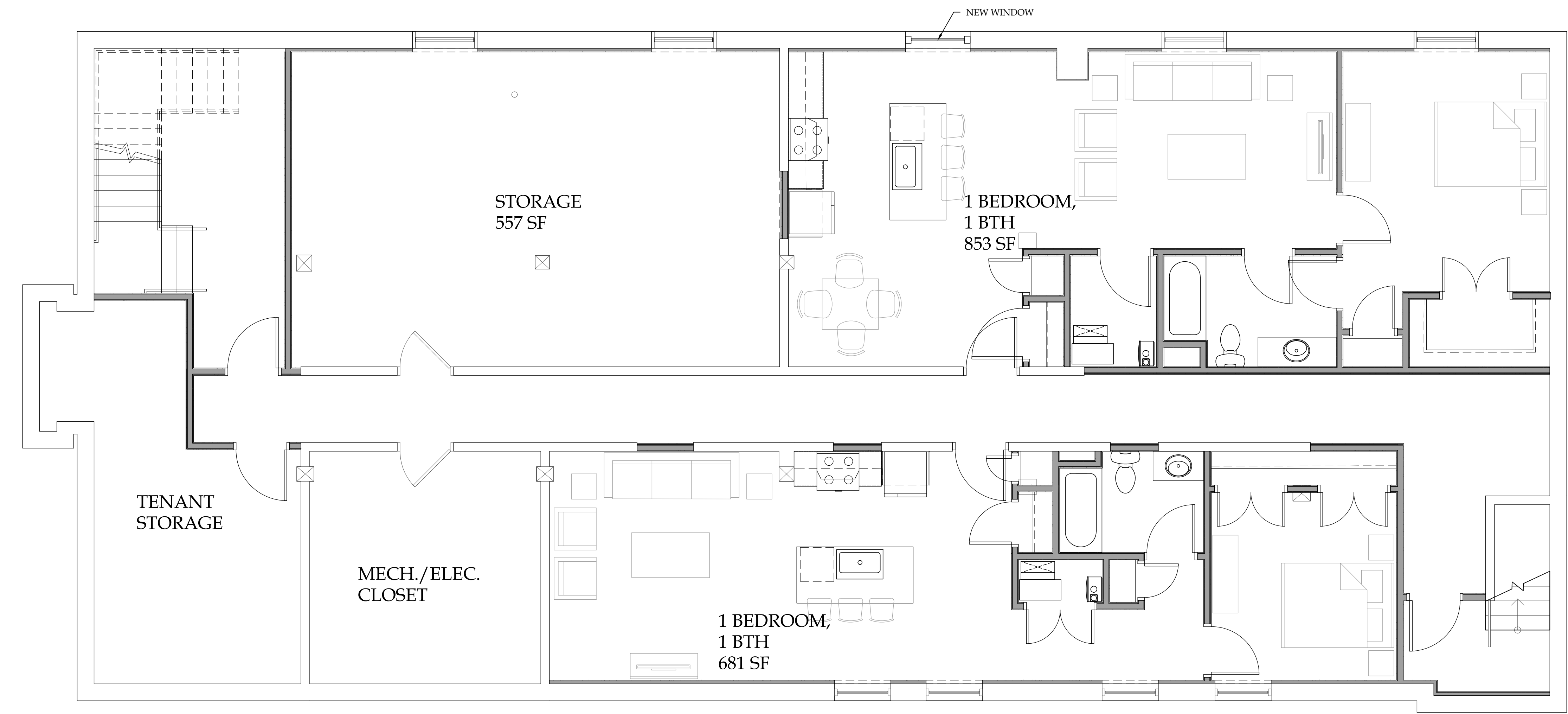
1 2 3 4 5 6

E  
D  
C  
B  
A

UNIT COUNT		
SQUARE FOOTAGE	NET	GROSS
LOWER LEVEL FLOOR	3271	3537
FIRST FLOOR	3235	3676
SECOND FLOOR	3232	3672
TOTAL	9738	10885

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**MIXED USE BUILDING**  
**401 CENTRAL AVENUE DUNKIRK**



ISSUE:

SA PROJECT TEAM: PRINCIPAL P. Silvestri  
 PROJ. ARCH. \_\_\_\_\_ DRAFTER \_\_\_\_\_  
 JOB CAPT. \_\_\_\_\_ INTERIORS \_\_\_\_\_

SEAL:

TITLE:  
**LOWER LEVEL FLOOR PLAN**



**SILVESTRI ARCHITECTS · PC**

1321 MILLERSPORT HWY PH. 716.691.0900  
 AMHERST, NY 14221 FAX 716.691.4773

SA JOB #: 24009.01 DATE: 07-15-24

DRAWING #: **A-100**

**A1 LOWER LEVEL FLOOR PLAN**  
 SCALE: 3/16" = 1'-0"

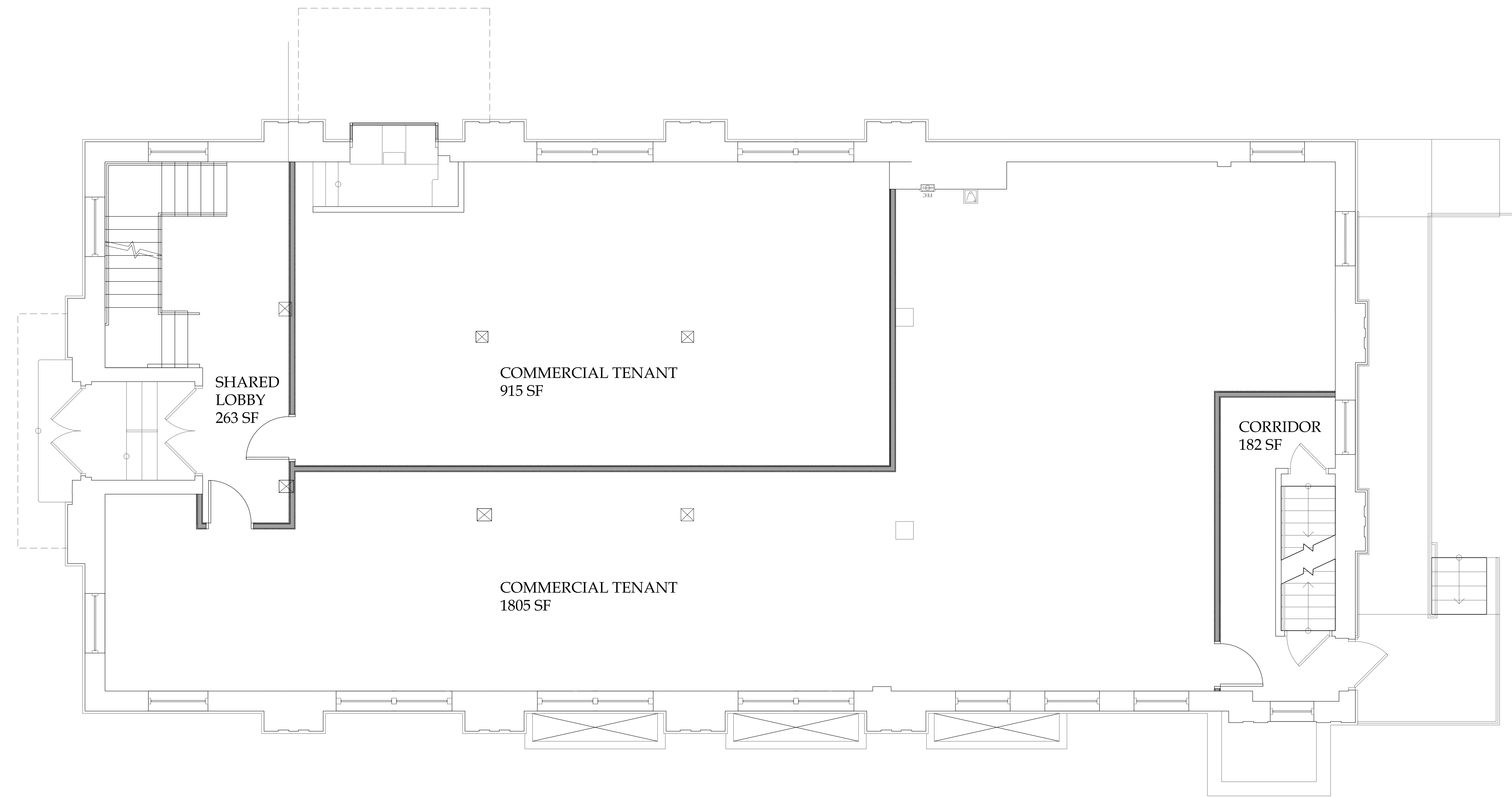
1 2 3 4 5 6

1 2 3 4 5 6

E  
D  
C  
B  
A

UNIT COUNT		
SQUARE FOOTAGE	NET	GROSS
LOWER LEVEL FLOOR	3271	3537
FIRST FLOOR	3235	3676
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TOTAL	9738	10885

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**MIXED USE BUILDING**

**401 CENTRAL AVENUE DUNKIRK**

ISSUE:

SA PROJECT TEAM: PRINCIPAL P. Silvestri  
 PROJ. ARCH. \_\_\_\_\_ DRAFTER \_\_\_\_\_  
 JOB CAPT. \_\_\_\_\_ INTERIORS \_\_\_\_\_

SEAL:

TITLE:  
**FIRST FLOOR PLAN - OPTION A**



**SILVESTRI ARCHITECTS · PC**

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 AMHERST, NY 14221 FAX 716.691.4773

SA JOB #: **24009.01** DATE: **07-15-24**

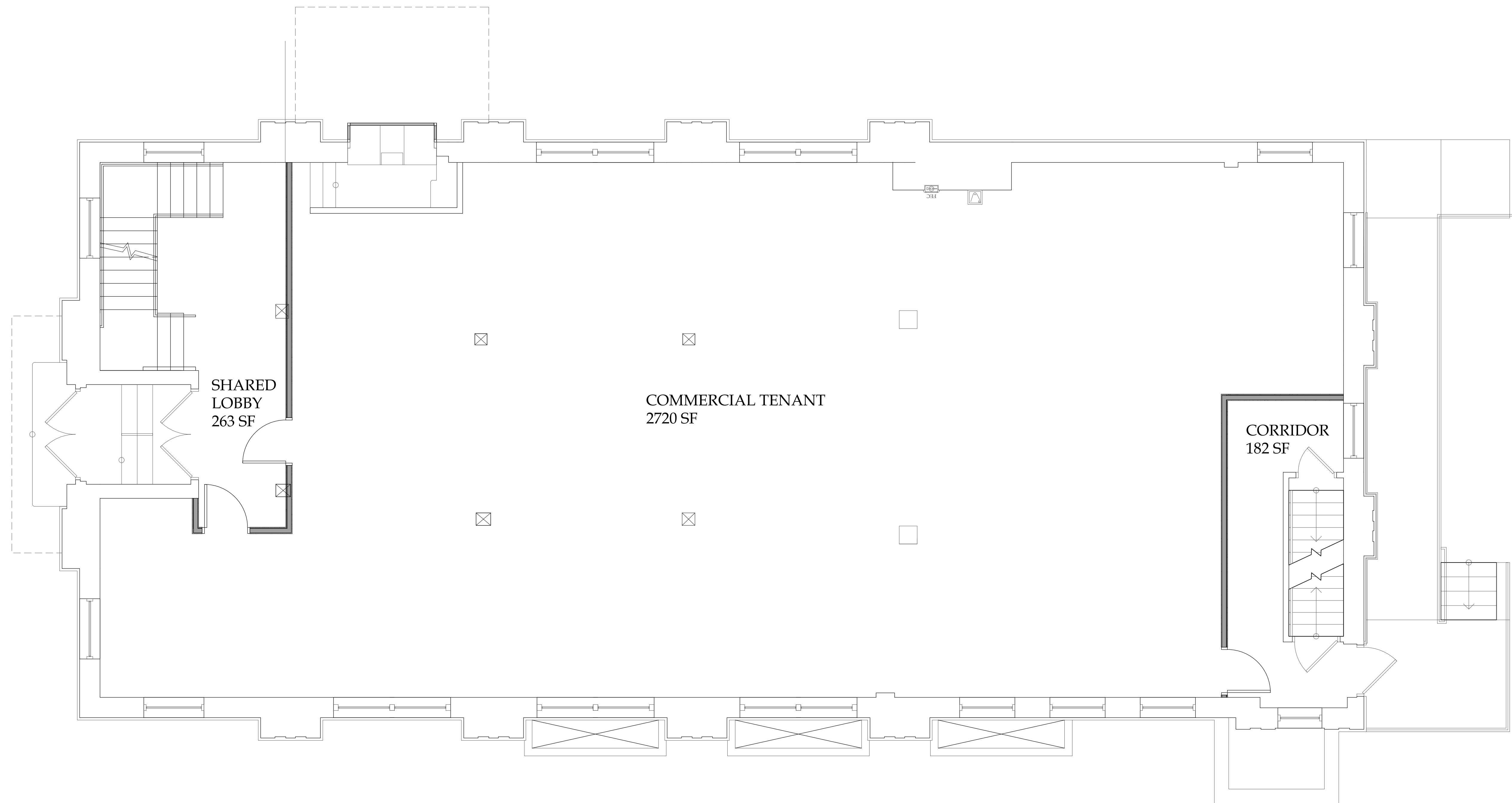
DRAWING #: **A-101**

**A1 FIRST FLOOR PLAN - OPTION A**  
 SCALE: 1/4" = 1'-0"

1 2 3 4 5 6

1 2 3 4 5 6

E  
D  
C  
B  
A



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**MIXED USE BUILDING**  
**401 CENTRAL AVENUE DUNKIRK**

ISSUE:

SA PROJECT TEAM: PRINCIPAL P. Silvestri  
 PROJ. ARCH. \_\_\_\_\_ DRAFTER \_\_\_\_\_  
 JOB CAPT. \_\_\_\_\_ INTERIORS \_\_\_\_\_

SEAL:

TITLE:  
**FIRST FLOOR PLAN - OPTION B**



SA JOB #: **24009.01** DATE: **07-15-24**

DRAWING #: **A-101.1**

**FIRST FLOOR PLAN - OPTION B**  
 SCALE: 1/4" = 1'-0"

1 2 3 4 5 6

1 2 3 4 5 6

E  
D  
C  
B  
A

UNIT COUNT		
SQUARE FOOTAGE	NET	GROSS
LOWER LEVEL FLOOR	3271	3537
FIRST FLOOR	3235	3676
SECOND FLOOR	3232	3672
TOTAL	9738	10885

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# MIXED USE BUILDING

401 CENTRAL AVENUE DUNKIRK

ISSUE:

SA PROJECT TEAM: PRINCIPAL P. Silvestri  
 PROJ. ARCH. \_\_\_\_\_ DRAFTER \_\_\_\_\_  
 JOB CAPT. \_\_\_\_\_ INTERIORS \_\_\_\_\_

SEAL:

TITLE:  
**SECOND FLOOR PLAN**

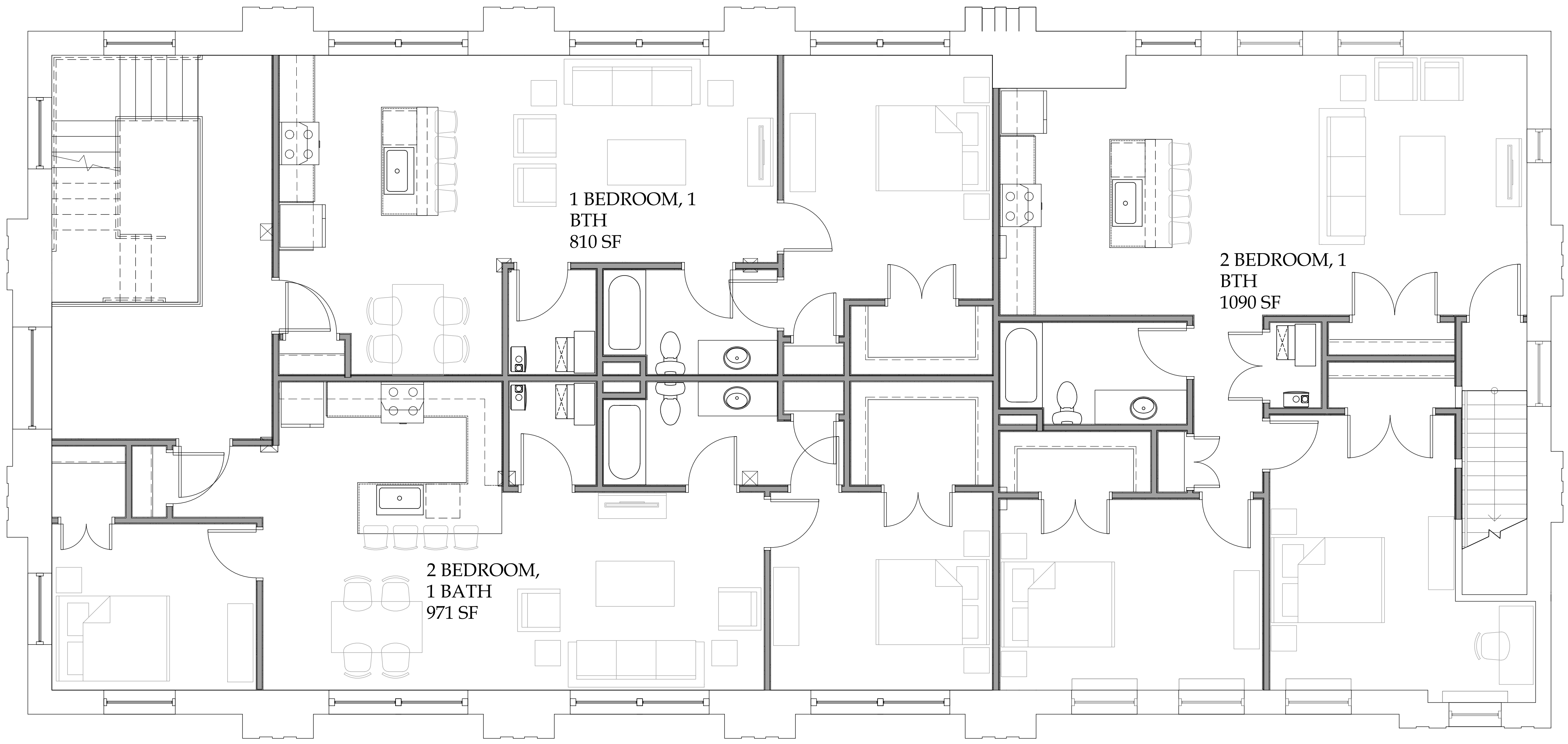


**SILVESTRI ARCHITECTS · PC**

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 AMHERST, NY 14221 FAX 716.691.4773

SA JOB #: 24009.01 DATE: 07-15-24

DRAWING #: **A-102**



**A1 SECOND FLOOR PLAN**  
 SCALE: 1/4" = 1'-0"

1 2 3 4 5 6



# Chautauqua County Industrial Development Agency

## MRB Cost Benefit Calculator



Date: July 17, 2024  
 Project Title: 401 Central, LLC  
 Project Location: 401-403 Central Ave., Dunkirk, NY 14048

### Economic Impacts

Summary of Economic Impacts over the Life of the PILOT

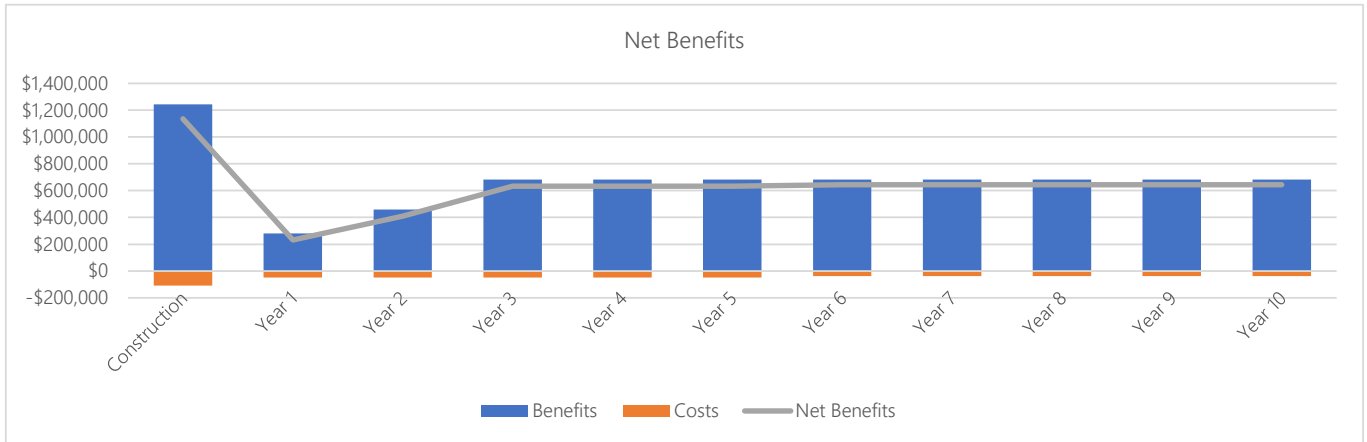
Project Total Investment  
 \$2,406,000

		Temporary (Construction)		
		Direct	Indirect	Total
Jobs		18	5	24
Earnings		\$926,951	\$248,217	\$1,175,168
Local Spend		\$2,406,000	\$818,098	\$3,224,098

		Ongoing (Operations)		
		Direct	Indirect	Total
Jobs		531129	560998	1092127
Earnings		\$5,826,168	\$3,252,437	\$9,078,605

Figure 1



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

Figure 2

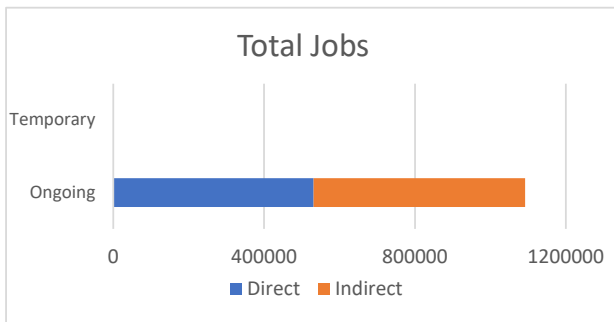
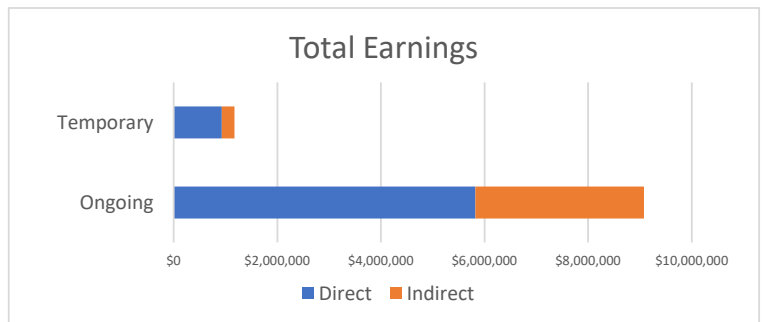


Figure 3



# Fiscal Impacts



Cost-Benefit Analysis Tool powered by MRB Group

## Estimated Costs of Exemptions

	Nominal Value	Discounted Value*
Property Tax Exemption	\$569,015	\$496,606
Sales Tax Exemption	\$86,400	\$86,400
Local Sales Tax Exemption	\$43,200	\$43,200
State Sales Tax Exemption	\$43,200	\$43,200
Mortgage Recording Tax Exemption	\$22,500	\$22,500
Local Mortgage Recording Tax Exemption	\$22,500	\$22,500
State Mortgage Recording Tax Exemption	\$0	\$0
<b>Total Costs</b>	<b>\$677,915</b>	<b>\$605,506</b>

## State and Local Benefits

	Nominal Value	Discounted Value*
<b>Local Benefits</b>	<b>\$10,325,019</b>	<b>\$8,935,751</b>
To Private Individuals	<b>\$10,253,773</b>	<b>\$8,883,193</b>
Temporary Payroll	\$1,175,168	\$1,175,168
Ongoing Payroll	\$9,078,605	\$7,708,026
Other Payments to Private Individuals	\$0	\$0
To the Public	<b>\$71,246</b>	<b>\$52,558</b>
Increase in Property Tax Revenue	\$5,245	(\$4,685)
Temporary Jobs - Sales Tax Revenue	\$8,226	\$8,226
Ongoing Jobs - Sales Tax Revenue	\$57,775	\$49,016
Other Local Municipal Revenue	\$0	\$0
<b>State Benefits</b>	<b>\$527,421</b>	<b>\$456,986</b>
To the Public	<b>\$527,421</b>	<b>\$456,986</b>
Temporary Income Tax Revenue	\$52,883	\$52,883
Ongoing Income Tax Revenue	\$408,537	\$346,861
Temporary Jobs - Sales Tax Revenue	\$8,226	\$8,226
Ongoing Jobs - Sales Tax Revenue	\$57,775	\$49,016
<b>Total Benefits to State &amp; Region</b>	<b>\$10,852,440</b>	<b>\$9,392,737</b>

## Benefit to Cost Ratio

	Benefit*	Cost*	Ratio
Local	\$8,935,751	\$562,306	16:1
State	\$456,986	\$43,200	11:1
<b>Grand Total</b>	<b>\$9,392,737</b>	<b>\$605,506</b>	<b>16:1</b>

\*Discounted at 2%

## Additional Comments from IDA

New water and sewer fee revenue.

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

**PUBLIC HEARING**  
**Center for Innovation & Economic Development**  
**214 Central Avenue**  
**Dunkirk, NY 14048**  
**August 21, 2024**  
**10:00 a.m.**

**401 Central, LLC**

**Attendees:**

Kristine Morabito, CCIDA Staff

Jeanette Lo Bello, CCIDA Staff

Gregory Peterson, CCIDA Counsel

Vince DeJoy, City of Dunkirk

MS. MORABITO: Good morning. My name is Kristine Morabito. I am a Project Manager and a duly authorized hearing officer of the County of Chautauqua Industrial Development Agency (the "Agency") and I have been authorized to hold a public hearing pursuant to Section 859-a of the New York General Municipal Law, as amended (the "Act").

Today is August 21, 2024 and the time is now 10:02 a.m. We are at the Center for Innovation and Economic Development, 214 Central Avenue, City of Dunkirk, County of Chautauqua, New York.

The Agency has received an application for financial assistance in connection with the following matter:

401 CENTRAL, LLC, a limited liability company duly organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of 401 Central, LLC and/or an entity or entities formed or to be formed on behalf of any of the foregoing (collectively, the "Applicant"), presented an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in an approximately 9,945 square foot parcel of land known as 401-403 Central Avenue and Lark Street, City of Dunkirk, County of Chautauqua, New York (Tax Map Parcel ID Nos. 79.14-7-9 and 79.14-7-8) (the "Land"), (2) the renovation of the existing approximately 10,855 square foot building on the Land, together with related improvements to the Land (collectively, the "Building"), and (3) the acquisition of certain furniture, fixtures, machinery, equipment and building materials necessary for the completion thereof (collectively, the "Equipment" and together with the Land and the Building, collectively, the "Project Facility"), all of the foregoing for adaptive reuse by the Applicant as a mixed-use facility consisting of 5 residential rental units in approximately 6,500 square feet of space and approximately 1,800-2,800 square feet of commercial space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from sales and use taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency.

The Project Facility would be initially owned, operated and/or managed by the Applicant (or such other designated entity(ies)).

The Applicant (or such other designated entity(ies)) would receive the Financial Assistance from the Agency in the form of potential exemptions or partial exemptions from sales and use taxes, mortgage recording taxes and real property taxes.

Notice of this public hearing was published in the *Observer* on August 8, 2024 and provided to the Chief Executive Officer of each affected tax jurisdiction within which the Project Facility is or will be located and all other persons required by applicable law by letter dated August 8, 2024.

The purpose of this public hearing is to provide an opportunity for all interested parties to present their views, both orally and in writing, with respect to the granting of the Financial Assistance contemplated by the Agency or the location or nature of the Project. As set forth in the notice of this public hearing, comments may also be submitted to the Agency in writing or electronically at the following email address: [morabitk@chqgov.com](mailto:morabitk@chqgov.com).

Subject to applicable law, copies of the Application, including an analysis of the costs and benefits of the Project, are available for review by the public online at [www.ccida.com](http://www.ccida.com).

This public hearing is being streamed on the Agency's website in real-time and a video recording of this public hearing is being made and will be posted on the Agency's website, all in accordance with Section 857 of the New York General Municipal Law, as amended. In addition, a report or summary of this hearing will be made and such report or summary of all comments received by the Agency shall be provided to the Agency's members and posted on the

Agency's website. Comments received in writing will be also be included in the report and any summary of this public hearing.

Is there anyone wishing to be heard with respect to the Project or the Financial Assistance?

MR. DEJOY: Yes.

MS. MORABITO: Okay, Vince. I wasn't sure if you were going to speak or just attending.

MR. DEJOY: Sure, just a brief statement. On behalf Mayor Wdowiasz and the City of Dunkirk I would like to provide support for this project and for the proposed application for assistance through the Chautauqua County Industrial Development Agency. This project will be the first Downtown Revitalization Initiative project to have been started during this award process and the mixed-use project is going to be transformational for Central Avenue and I believe it's just the beginning. So providing this type of assistance is in line with the IDA and the City's vision and goals for revitalizing downtown Dunkirk.

MS. MORABITO: Thank you, and could you please state your name and title?

MR. DEJOY: Sure. My name is Vincent DeJoy, I am the Director of Planning and Development for the City of Dunkirk.

MS. MORABITO: Thank you.

MR. DEJOY: You're very welcome.

MS. MORABITO: Is there anyone else wishing to be heard with respect to the Project or the Financial Assistance?

MS. MORABITO: It is now 10:09 a.m. Let the record show that, no other members of the public have indicated a desire to comment with respect to the Financial Assistance or the location or nature of the Project. Additionally, no written comments have been received by the Agency with respect to the Financial Assistance or the location or nature of the Project. I therefore call this hearing to a close.



**Ellicott Property Sale SEQRA Resolution**

A regular meeting of the County of Chautauqua Industrial Development Agency (the “Agency”) was convened in public session on August 27, 2024, at 10:30 A.M., local time, at the offices of the Agency located at 201 West 3rd Street, Jamestown, County of Chautauqua, New York (the “IDA Office”).

The meeting was called to order by the \_\_\_\_\_ and, upon roll being called, the following members of the Agency were:

PRESENT:

Gary Henry	Chairman
Bradley Walters	Vice Chairman
Sagan Sheffield-Smith	Treasurer
Daniel Heitzenrater	Secretary
Amy Harding	Member
Daniel DeMarte	Member
Tom Harmon	Member
Kevin Muldowney	Member

NOT PRESENT:

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Mark Geise	Administrative Director/CEO
Richard E. Dixon	Chief Financial Officer
Milan K. Tyler, Esq.	Counsel

The attached resolution no. 08-27-24-02 was offered by \_\_\_\_\_, seconded by \_\_\_\_\_:

**Resolution No. 08-27-24-02**

RESOLUTION OF THE COUNTY OF CHAUTAUQUA INDUSTRIAL  
DEVELOPMENT AGENCY PURSUANT TO THE STATE  
ENVIRONMENTAL QUALITY REVIEW ACT CONCERNING THE  
DETERMINATION OF SIGNIFICANCE FOR THE SALE  
OF CERTAIN REAL PROPERTY OWNED BY THE AGENCY LOCATED  
IN THE TOWN OF ELLICOTT, NEW YORK

**Name of Project:** Ellicott Property Sale

**Location:** Lodestro Lane, Town of Ellicott, County of Chautauqua and State of New York, and identified as Tax Map number 371.00-2-3.1; and also S. Dow Street, Town of Ellicott, County of Chautauqua and State of New York, located on and identified as Tax Map number 371.00-2-46.1.

**SEQR Status:** Unlisted

**Determination of Significance:** Negative Declaration

WHEREAS, the County of Chautauqua Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 71 of the 1972 Laws of New York, as amended, constituting Section 895-h of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, renovating, improving, maintaining, equipping and furnishing of commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to, among other things, (i) acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein; (ii) to sell, convey, mortgage, lease, pledge, exchange or otherwise dispose of real property in such manner as the Agency shall determine; and (iii) acquire, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, Lucy’s Energy Reserve LLC (“Applicant”), proposes to enter into a purchase and sale agreement (“Agreement”) with the Agency for the purchase of certain real property and improvements thereon located in the Town of Ellicott (“Town”), County of Chautauqua and State of New York, located adjacent to Lodestro Lane and S. Dow Street, and identified as Tax Map numbers 371.00-2-3.1 (“Parcel 1”) and 371.00-2-46.1 (“Parcel 2”) (Parcel 1 and Parcel 2 are referred to collectively herein as the “Land”); and

WHEREAS, Applicant proposes to enter the Agreement for the purchase of the Land with the intent of developing an as-of-yet undetermined energy storage project (“ Future Project”); and

WHEREAS, in accordance with Section 859-a of the Act, any approval of the Future Project is contingent upon, inter alia, a determination by the members of the Agency to proceed with the Future Project following a determination by the Agency that (A) the public hearing and notice requirements and other procedural requirements contained in the Act relating to the Future Project have been satisfied; and (B) the undertaking of the Future Project by the Agency and the granting of the Financial Assistance are and will be in compliance with all other applicable requirements of the Act and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Future Project and/or the Project Facility (collectively, the “Applicable Laws”); and

WHEREAS, the Agency now desires to authorize (A) the sale and conveyance of fee title to the Land to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency and/or (B) the granting of an option to acquire such fee title to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency (collectively, the “Sale Transaction”); and

WHEREAS, pursuant to Article 8 of the New York Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (“NYSDEC”), being 6 N.Y.C.R.R. Part 617, et seq., as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to undertake the Sale Transaction; and

WHEREAS, pursuant to SEQRA, the Agency is normally required to review an entire set of activities or steps (i.e., the Sale Transaction and the Future Project) in a single environmental review but, if a lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance, the supporting reasons and must demonstrate that such review is clearly no less protective of the environment; and

WHEREAS, the Agency believes that a segmented review of the Sale Transaction and

the Future Project is warranted under the circumstances and is no less protective of the environment; and

WHEREAS, pursuant to SEQRA, to aid the Agency in determining whether the Sale Transaction may have a significant adverse impact upon the environment, the Agency has received and reviewed (1) Part 1 of a Short Environmental Assessment Form (“EAF”); (2) NYSDEC’s Environmental Resource Mapper (“NYSDEC Mapper”); (3) the New York State Cultural Resource Information System (“CRIS”); (4) the NYSDEC Environmental Remediation Database (“Remediation Database”); (5) the NYSDEC DECinfo Locator Mapper (“Info Locator”); and (6) other relevant environmental information (collectively, 1-6 shall be referred to as the “Environmental Information”); and

WHEREAS, prior to making a recommendation about the potential environmental significance of the Sale Transaction, the Agency has reviewed the Environmental Information, consulted various information sources, and considered the list of activities which are Type I Actions outlined in Section 617.4 of the SEQRA Regulations, the list of activities that are Type II Actions outlined in Section 617.5 of the SEQRA Regulations and the criteria for determining significance outlined in Section 617.7 of the SEQRA Regulations; and

WHEREAS, a thorough analysis of the Environmental Information and potential environmental impacts associated with the Sale Transaction reveals that the Sale Transaction will not have any potentially significant adverse environmental impacts; and

WHEREAS, it is appropriate that the Agency issue a negative declaration pursuant to SEQRA for the Sale Transaction.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

**Section 1.** Based upon a thorough review and examination of the Sale Transaction and Environmental Information, and upon the Agency’s knowledge of the area surrounding the Land and such further investigation of the Sale Transaction and its environmental effects as the Agency has deemed appropriate, the Agency makes the following findings with respect to the Sale Transaction:

- (A) The Sale Transaction is an Unlisted Action pursuant to SEQRA, as the Sale Transaction involves the sale of less than 100 acres of land and does not meet or exceed any threshold for a Type I Action;
- (B) The Agency, as Lead Agency, has undertaken an uncoordinated review of the Sale Transaction in accordance with the requirements of SEQRA; and
- (C) No potentially significant adverse impacts on the environment are noted in the Environmental Information and none are known to the Agency.

**Section 2.** With respect to the scope of environmental review, the Agency determines that segmentation of the environmental review for the Sale Transaction from the environmental

review of the Future Project is warranted and no less protective of the environment. The reasons supporting this determination are as follows:

- (A) Segmenting the review of the Sale Transaction from the development of the Future Project as a whole is warranted under the circumstances. The Applicant strongly desires to acquire a fee title interest in the Land prior to moving forward with developing detailed plans for the Future Project in order to allow the Applicant to secure financing for the Future Project. The Applicant has not yet undertaken initial planning for the Future Project, as such plans will only be finalized once financing for the Future Project is secured.
- (B) Segmenting the review of the Sale Transaction from the development of the Future Project is no less protective of the environment. There are no cumulative adverse impacts from the Future Project which will combine with the Sale Transaction to exacerbate environmental impacts. Moreover, the Applicant will not be permitted to proceed with the Future Project or any development of the Land until completion of a detailed and thorough environmental review specific to the Future Project or such development either under the jurisdiction of the Agency (if an application for financial assistance is filed) or the Town as the local zoning jurisdiction. The Applicant has acknowledged and understands that the Applicant cannot proceed to develop the Land unless/until a SEQRA process has been completed for the development of the Land.
- (C) The Agency acknowledges that segmentation is disfavored under SEQRA. Nonetheless, the Agency believes that it is reasonable to consider segmentation of actions and whether appropriate segmentation findings can reasonably be made on a case by case basis in a manner that is no less protective of the environment. It is important to note that a segmented review of the Sale Transaction will not create either of the two dangers that SEQRA seeks to avoid. The first danger of segmentation is that the action under review is practically determinative of other future projects. In this case, the Sale Transaction involves the sale of real property for the development of the Land. Undertaking the Sale Transaction is not practically determinative of any development on the Land. It also does not commit the Applicant or Agency to undertake any development at the Land, as the ownership of the Land may revert back to the Agency pursuant to the Sale Transaction should the Future Project not proceed.
- (D) The second danger of segmentation is that the Sale Transaction will be split so as to avoid environmental review. The Agency has completed the EAF for the Sale Transaction in order to thoroughly analyze the potential adverse environmental impacts associated with the Sale Transaction. The EAF comprehensively reviews each potential environmental impact associated with the Sale Transaction, as detailed below. Thus, the Sale Transaction has not escaped any environmental review. Similarly, any development of the Land will undergo a detailed review pursuant to SEQRA. Further, no potential development plans have been proposed and no specific future use is known for the Future Project. Any evaluation of the potential impacts of any future development would be impossible and purely speculative, at this time. For this reason, a segmented environmental review between the Sale Transaction and any future development of the Land is warranted under the circumstances.

**Section 3.** Based upon the Agency’s review of the Environmental Information and investigations of the potential environmental impacts associated with the Sale Transaction, considering both the magnitude and importance of each potential environmental impact indicated, and upon the Agency’s knowledge of the Land and surrounding area and such further investigations of the Sale Transaction and its environmental effects as the Agency has deemed appropriate, the Agency has determined that the Sale Transaction will not have a significant adverse impact upon the environment. The reasons supporting this determination are as follows:

1. Impact on Land. The Sale Transaction does not involve any physical changes to the Land because the Agency seeks only to effectuate the sale of the Land. No physical alterations to the Land will occur as a result of the Sale Transaction, and hence there will be no adverse effects to the Land.
2. Impact on Geological Features. The Land does not contain, and is not adjacent to, any unique geologic features or National Natural Landmarks. Accordingly, the Sale Transaction will not create any potentially significant adverse impacts to geological features.
3. Impact on Surface Water. As the EAF notes, the Land contains an unnamed Class C stream (the “Stream”). While the Stream appears to be a tributary to the Chadakoin River located North of the Land, the Sale Transaction does not involve any type of physical alteration to the Land; therefore, it has no potential to adversely affect any water bodies on or around the Land.
4. Impact on Groundwater. As noted above, the Sale Transaction does not involve any type of physical alteration to the Land or any activities which would typically pose a risk to groundwater; therefore, it has no potential to adversely affect groundwater resources.
5. Impact on Flooding. The EAF indicates that the Sale Transaction will not result in the development of lands which are located in a designated floodway, and does not include the impoundment of water. The Sale Transaction does not involve any type of physical alteration to the Land or any activities which would exacerbate existing conditions with respect to flooding. Accordingly, the Sale Transaction is not anticipated to create any potentially significant adverse impacts to flooding.
6. Impact on Air. The Sale Transaction will not result in any development or physical alteration of the Land, and does not entail the types of activities or operations that require the Agency or Applicant to acquire air registration permits or that are associated with a significant potential for air emissions. Accordingly, the Sale Transaction is not anticipated to create any significant adverse impacts to air resources.
7. Impact on Plants and Animals. The EAF does not identify the Land as a habitat for any threatened or endangered species. Further, the Sale Transaction does not result in any development or physical alteration of the Land. Accordingly, the Sale Transaction is not anticipated to create any significant adverse impacts to plants or animals.

8. Impact on Agricultural Land Resources. As noted in the EAF, the Land is not located within an Agricultural District, and the Land is not currently used for farming. Based on the foregoing, the Sale Transaction will not create any significant adverse impacts to agricultural land resources.
9. Impact on Aesthetic Resources. The Sale Transaction does not result in any development or physical alteration of the Land. Accordingly, the Sale Transaction is not anticipated to create any significant adverse impacts to aesthetic resources.
10. Impact on Historic and Archaeological Resources. The Land is not adjacent to any building which is listed on the State or National Register of Historic Places. The Land is located adjacent to, but not within, area delineated as archaeological buffer zones by the New York State Division for Historic Preservation. Notwithstanding, the Sale Transaction does not result in any development or physical alteration of the Land. Accordingly, the Sale Transaction will not create any significant impacts to historic or archaeological resources.
11. Impact on Open Space and Recreation. The Sale Transaction does not result in any development or physical alteration of the Land or otherwise limit existing open space and recreation in the vicinity of the Land. Accordingly, the Sale Transaction will not create any significant impacts to open space or recreational resources.
12. Impact on Critical Environmental Areas. The Land is not located in or substantially contiguous to any Critical Environmental Areas. As such, the Sale Transaction will not create any significant adverse impacts to Critical Environmental Areas.
13. Impact on Transportation. The Sale Transaction does not entail any changes to existing parking or traffic levels as it does not result in any development or physical alteration of the Land. As such, the Sale Transaction is not anticipated to create any significant adverse impacts to transportation.
14. Impact on Energy. The Sale Transaction will not result in any increase in the use of energy, and no energy infrastructure improvements are necessary to accommodate the Sale Transaction. As such, the Sale Transaction will not create any significant adverse impacts to energy resources.
15. Impact on Noise, Odor and Light. The Sale Transaction involves only the transfer of fee title to the Land itself and does not result in any development or physical alteration of the Land. Accordingly, the Sale Transaction is not anticipated to create any significant adverse impacts to noise or odors.
16. Impact on Public Health. The Land does not include a history of prior remediation. However, as identified in the EAF, the Land is located within 2,000 feet of sites with a history of prior remediation and identified in the Remediation Database as 907020; 907013; V00129. (“Remediation Sites”). According to the EAF and the Remediation Database, the Remediation Sites are not directly adjacent to the Land, and remediation of the Remediation Sites has been completed. Additionally, there is an active, NYSDEC authorized recyclables handling and recovery facility located adjacent to the Land at 2142 Lodestro Lane (“Recycle Facility”). The Sale Transaction involves only

the transfer of fee title to the Land itself and does not result in any development or physical alteration of the Land or of the Remediation Sites or Recycle Facility. Furthermore, any impacts associated with the development of the Future Project on public health will be appropriately analyzed once the Future Project is proposed and fully planned. Accordingly, the Sale Transaction is not anticipated to create any significant adverse impact to public health.

17. Impact on Character of the Community, and Community Plans. The Sale Transaction involves only the transfer of fee title to the Land itself and does not result in any development or physical alteration of the Land. Accordingly, the Sale Transaction will not create any significant adverse impacts to the character of the community or community plans.

**Section 4.** Since the Sale Transaction will not have a significant adverse impact on the environment, a negative declaration (“Negative Declaration”) pursuant to SEQRA is hereby issued. This Negative Declaration has been prepared pursuant to and in accordance with the requirements of SEQRA.

**Section 5.** The Chairman, the Vice Chairman, and the Administrative Director of the Agency are hereby further authorized on behalf of the Agency, or acting together or individually, to distribute copies of this Resolution to the Applicant and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 6.** This Resolution, which is adopted by a majority vote of the Agency, shall serve as the Negative Declaration (as defined in 6 N.Y.C.R.R. 617.2(z)) for the Sale Transaction, and is issued by the Agency pursuant to and in accordance with SEQRA, shall take effect immediately.

**Section 7.** For further information on this Determination of Significance/Negative Declaration contact:

-----  
County of Chautauqua Industrial Development Agency  
201 West 3rd Street, Suite 115  
Jamestown, New York 14701-6902  
ATTN: Mark Geise, Administrative Director/CEO  
Phone: 716-661-8900  
Fax: 716-664-4515



The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Gary Henry	VOTING
Bradley Walters	VOTING
Sagan Sheffield-Smith	VOTING
Dan Heitzenrater	VOTING
Kevin Muldowney	VOTING
Amy Harding	VOTING
Daniel DeMarte	VOTING
Tom Harmon	VOTING

The foregoing resolution was thereupon declared duly \_\_\_\_\_.

STATE OF NEW YORK                    )  
                                                  ) SS.:  
COUNTY OF CHAUTAUQUA         )

WE, the undersigned officers of the County of Chautauqua Industrial Development Agency (the “Agency”), DO HEREBY CERTIFY that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on August 27, 2024 with the original thereof on file in our offices, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

WE FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public at both locations at which members of the Agency were present, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; (D) there was a quorum of the members of the Agency present throughout said meeting; and (E) the meeting was recorded and the recording has been or will be posted on the public website of the Agency pursuant to the Open Meetings Law.

WE FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, we have hereunto set our hand this 27<sup>th</sup> day of August, 2024.

\_\_\_\_\_  
[Assistant] Secretary

\_\_\_\_\_  
[Vice] Chairman



County of Chautauqua Industrial Development Agency



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**RESOLUTION 08-27-24-03 OF THE MEMBERS OF  
COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY  
TO SELL TO LUCY'S ENERGY RESERVE LLC PROPERTY LOCATED (i) ON LODESTRO LANE  
IN THE TOWN OF ELLICOTT AND (ii) ON SOUTH DOW STREET, IN THE TOWN OF  
FALCONER, BOTH IN  
CHAUTAUQUA COUNTY, NEW YORK**

I, Gary Henry, Chairperson of the County of Chautauqua Industrial Development Agency ("CCIDA") hereby CERTIFY that at a meeting of the Board of Directors of said CCIDA, duly called and held at 201 West Third Street, Jamestown, NY 14701 on the 27th day of August, 2024, at which a quorum was present, the following resolutions were unanimously adopted:

WHEREAS, CCIDA is the owner of certain real property and improvements thereon located in the Town of Ellicott, County of Chautauqua and State of New York, located on Lodestro Lane, and identified as Tax Map number 371.00-2-3.1 ("Parcel 1") and also the real property and improvements located in the Town of Falconer, County of Chautauqua and State of New York, located on South Dow Street, and identified as Tax Map number 371.00-2-46.1 ("Parcel 2") (Parcel 1 and Parcel 2 are referred to collectively herein as the "Property");

WHEREAS, CCIDA has received an offer to enter into a Purchase and Sale Agreement (the "Contract") from Lucy's Energy Reserve LLC ("Buyer"), to sell the Property for the sum of Seventy Five Thousand and 00/100 Dollars (\$75,000);

WHEREAS, the Buyer desires to acquire the Property as a site for a possible future battery energy storage project, which project would be in the interest of the CCIDA as an economic development agency;

WHEREAS, pursuant to Article 8 of the New York Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York ("NYSDEC"), being 6 N.Y.C.R.R. Part 617, et. seq., as amended (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the appropriate personnel of the CCIDA reviewed the environmental assessment form and other materials prepared by the CCIDA and made any necessary comments to the members of the CCIDA, and by resolution of the members of the CCIDA adopted on August 27, 2024, the CCIDA determined that the execution of the Contract would have no significant adverse environmental impacts and issued a negative declaration in accordance with SEQRA; and

WHEREAS, CCIDA has reviewed its Real Property Disposition Policy and concluded, based on the recommendation of its Contracting Officer, that the disposition of the Property is in furtherance of the economic development interest of CCIDA, as provided for in Section 3(F)(3)(e) of said policy; and

WHEREAS, CCIDA deems it in the best interest of CCIDA to sell the Property to the Buyer under terms and conditions set forth in the form of Contract attached hereto and otherwise as acceptable to the Administrative Director and/or the Chief Financial Officer;

NOW, THEREFORE, BE IT:

RESOLVED, that CCIDA proceed to sell the Property to the Buyer under terms and conditions set forth in the form of Contract attached hereto and otherwise as acceptable to the Administrative Director and/or Chief Financial Officer; and it is

FURTHER RESOLVED, that the Administrative Director, Chief Financial Officer or any officer of CCIDA be and hereby is authorized to execute and deliver any and all documents necessary to effectuate the foregoing resolutions, and that such actions be and hereby are ratified in all respects.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 27<sup>th</sup> day of August, 2024.

\_\_\_\_\_  
Gary Henry, Chairperson

## **PURCHASE AND SALE AGREEMENT**

THIS **PURCHASE AND SALE AGREEMENT** (“Agreement”) is made as of the \_\_\_ day of August, 2024, (the “Effective Date”) by and between **COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY** with a mailing address of 201 W 3<sup>rd</sup> Street, Suite 115, Jamestown, New York 14701 (the “Seller”) and **LUCY’S ENERGY RESERVE LLC**, with a mailing address of 155 Fleet Street, Portsmouth, New Hampshire 03801 (the “Buyer”).

### **RECITALS:**

A. Seller is the owner of certain real property and improvements thereon located in the Town of Ellicott, County of Chautauqua and State of New York, located on Lodestro Lane, and identified as Tax Map number 371.00-2-3.1 (“Parcel 1”) and also the real property and improvements located in the Town of Falconer, County of Chautauqua and State of New York, located on S. Dow Street, and identified as Tax Map number 371.00-2-46.1 (“Parcel 2”) (Parcel 1 and Parcel 2 are referred to collectively herein as the “Property”).

B. Buyer desires to purchase, and Seller desires to sell, the Property on the terms and conditions set forth herein.

### **AGREEMENTS**

1. Property. Parcel 1 is located on Lodestro Lane, in the Town of Ellicott, County of Chautauqua, State of New York, Tax Map No. 371.00-2-3.1, consisting of approximately ten (10.00) acres of vacant land and Parcel 2 is located on S. Dow Street, in the Town of Falconer, County of Chautauqua, State of New York, Tax Map No. 371.00-2-46.1, consisting of approximately two and 30/100 (2.3) acres of vacant land.

2. Purchase Price. The purchase price (the “Purchase Price”) for the Property shall be equal to SEVENTY FIVE THOUSAND AND 00/100 DOLLARS (\$75,000.00). The Purchase Price will be paid in cash from Buyer to Seller at the closing of the sale and purchase of the Property (the “Closing”) by cashier’s or certified check, or by wire transfer of immediately available funds, subject to adjustments and pro-rations for taxes in accordance with this Agreement.

3. Contingencies. Buyer’s obligation to purchase the Property is contingent on Buyer being satisfied with the condition of the Property, to its sole satisfaction. After the Effective Date and continuing for a period of ninety (90) days thereafter (the “Due Diligence Period”), Buyer and its designated agents may enter the Property, at reasonable times and upon reasonable notice to Seller, for the purpose of making surveys, investigations and inspecting the physical condition of the Property, including but not limited to a Phase I Environmental Study, provided that such operations are solely at Buyer’s expense. Seller agrees to cooperate with Buyer, provided it is without cost to Seller. Buyer shall repair any and all damage by reason of Buyer entry upon or inspection of the Property. Following the conclusion of its testing, Buyer will restore the disturbed Property to the condition the disturbed Property was in prior to commencement of the inspection. Notwithstanding anything contained in this Agreement to the contrary, the obligations of Buyer to restore the Property shall survive any termination of this Agreement. If the contingencies set forth in Section 3 of this Agreement have not been satisfied on or before the end of the Due Diligence Period, then this Agreement may be terminated, at Buyer’s option, by written notice from Buyer

to Seller given not more than five (5) business days after the end of the Due Diligence Period. Upon such termination, neither party will have any further rights or obligations regarding this Agreement except Buyer's obligation to repair as described above.

In the event it is determined by Buyer in its sole discretion during the Due Diligence Period that a Phase 2 Environmental Study is required, Buyer shall be entitled to exercise a ninety (90) day extension of the Due Diligence Period to perform the Phase 2 Environmental Study (the "Due Diligence Extension Period"), and all other provisions of this Section 3 shall apply.

4. Due Diligence Deliverables.

Seller shall deliver to Buyer, no later than thirty (30) days after the Effective Date, a copy of the following for both Parcel 1 and Parcel 2:

- (a) any existing title insurance policies, to the extent in Seller's possession;
- (b) any existing surveys ("Survey"), to the extent in Seller's possession;
- (c) a true, correct and complete copy of all governmental licenses and approvals issued in connection with the Property, to the extent in Seller's possession;
- (d) any existing abstract of title, to the extent in Seller's possession; and
- (e) a true, correct and complete copy of any and all soil studies and reports; all environmental assessments, studies, tests, reports and analysis; and all other studies, reports, permits, subdivision and planned unit development plats, approvals and plans, tax statements, copies of drawings, specifications, zoning information, topographical and engineering studies, geotechnical subsoil tests or analyses, soil compaction tests and any and all other reports, plans, studies, data and information held by or for Seller relating to the Property, or any portion thereof, or the development thereof, which Seller or any of its agents or representatives have in their possession.

5. Title Defects.

(a) Buyer may obtain, at Buyer's expense, an updated abstract of title (the "Updated Abstract") and a title commitment (the "Commitment").

(b) Buyer shall order the Updated Abstract within five days of the Effective Date and Buyer shall order the Commitment within five days of receipt of the Updated Abstract. If the Commitment or Survey shall show any title defect, lien or encumbrance (a "Title Defect") not acceptable to Buyer, Buyer shall notify Seller of the Title Defect prior to the end of the Due Diligence Period or fifteen (15) days after receipt of both the Commitment and Survey, whichever occurs later. Seller shall have a period not to exceed thirty (30) days after receipt of notice from Buyer (the "Cure Period"), to remove the Title Defect. If Seller is unwilling or unable do so within the Cure Period, then Buyer shall have the right (but not the obligation) to either (i) accept title to the Property subject to the Title Defect, which shall then become a permitted exception ("Permitted Exception"), without reduction in the Purchase Price; or (ii) cancel and terminate this Agreement. For purposes of clarification, in no event shall a Title Defect that has been removed from the Commitment thereafter be deemed a Permitted Exception hereunder. Seller shall be required to remove at Closing, those Title Defects that can be removed by paying an ascertainable sum of money such as mortgages, land contracts, liens, unpaid taxes, and special assessments (excepting, however, those taxes and expenses required to be paid by Buyer under the terms hereof).

6. Conveyance. Seller shall convey the Property to Buyer in accordance with the provisions of Section 5 above by Warranty Deeds with Lien Covenant (the "Deed"), good and marketable title in fee simple, free and clear of all liens, easements, conditions or restrictions except the Permitted Exceptions.

7. Covenants of Seller.

(a) From and after the Effective Date, Seller shall not intentionally suffer or permit any third party to adversely affect Seller's title to or interest in the Property, and will not suffer or permit to be created any exceptions to the title of the Property other than the Permitted Exceptions.

(b) Seller shall, at Buyer's expense, cooperate and take all actions reasonably required by Buyer including, without limitation, signing any special permit or other right to build applications and cooperating with any necessary marketing and site visits, provided it is without cost to Seller.

(c) Seller shall not intentionally take any of the following actions unless approved in advance in writing by Buyer: (i) transfer any interest in the Property, (ii) grant or modify any easements affecting the Property, (iii) create any liens, mortgages or encumbrances affecting the Property, (iv) enter into any development or other agreements affecting the Property (except as requested by Buyer); (v) permit any changes to the zoning classification of the Property; or (vi) enter into any contracts or agreements pertaining to the Property.

(d) Seller shall adhere to the requirements of all liens and encumbrances, agreements and other contractual arrangements to which the Property or Seller is subject and make all payments required to be paid thereunder and suffer no default thereunder.

(e) Seller shall notify Buyer promptly if, prior to the Closing, Seller becomes aware of any fact, transaction, event or occurrence which could make any of the covenants of Seller under this Agreement not materially true.

(f) Seller shall not withdraw, settle or otherwise compromise any protest or reduction proceeding affecting real estate taxes assessed against the Property for any fiscal period in which the Closing is to occur or any subsequent fiscal period without the prior written consent of Buyer, which consent shall not be unreasonably withheld.

(g) Seller, at their sole expense, shall deliver possession of the Property to Buyer at Closing, free of any tenancy.

8. Representations and Warranties of Seller. In order to induce Buyer to enter into this Agreement, Seller represents and warrants to Buyer that: (a) fee simple ownership of the Property is vested solely in Seller; (b) no proceedings of any type (including condemnation or similar proceedings), to Seller's knowledge, are being contemplated against the Property or any part thereof; (c) the Property is not subject to any leases (written or oral), unrecorded easements, options to purchase, rights of first purchase or refusal, or any other agreement or contract to use, lease, or purchase the Property, except those shown in the public record; (d) the person executing this Agreement on behalf of Seller is authorized to do so under the Seller's organizational documents; and (e) to the best of Seller's knowledge at no time was the Property used for the generation, storage or disposal of hazardous substances or as a landfill or other waste disposal site.

9. Closing. The closing of the purchase by Buyer of the Property shall occur on or about sixty (60) days' after Buyer has waived or satisfied the contingencies set forth in Section 3

above. Notwithstanding, Buyer may close within five (5) business days during the Due Diligence Period or Due Diligence Extension Period by providing written notice to the Seller.

10. Adjustments at Closing. Adjustments to the Purchase Price between Seller and Buyer shall be made for the following items, prorated on a per diem basis as of 11:59 p.m. of the day prior to Closing: (a) real estate taxes and other state or city taxes, charges and assessments; and (b) water and sewer rents, fees, and charges with respect to the Property. All bills for utility services to the Property shall also be paid in full by Seller as of the Closing, and all such utility services shall be transferred by Seller into Buyer's name at Closing. At Closing, Seller shall pay any transfer taxes due with the filing of the New York State Department of Taxation and Finance Form TP-584 Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate.

11. Closing Deliverables. At the time of Closing, Seller shall execute, acknowledge (where applicable) and deliver to Buyer the following items in form and substance reasonably satisfactory to Buyer's legal counsel:

- i. The Deed, properly executed and acknowledged for recording so as to convey the title to the Property as required by this Agreement;
- ii. A New York State Department of Taxation and Finance Form TP-584 Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate;
- iii. A New York State Board of Equalization and Assessment Form;
- iv. a copy of Seller's authorizing resolution; and
- v. Such other documents as Buyer's title insurance company may reasonably require in order to issue the Commitment which is satisfactory in form to Buyer's legal counsel.

To enable the Seller to make the conveyance herein provided, the Seller may, and if necessary shall, at Closing, use the Purchase Price or any portion thereof to clear the title of any or all encumbrances or interests which are to be removed or eliminated by the terms hereof, provided that all instruments so procured are recorded at Seller's expense prior to or simultaneously with the delivery of the Deed or other reasonable arrangements, satisfactory to Buyer.

12. Waiver. The exercise (or failure to exercise) of any one of Buyer's rights or remedies under this Agreement shall not be deemed to be in lieu of, or a waiver of, any other right or remedy contained herein or provided by law, except to the extent inconsistent herewith.

13. Remedies.

(a) Upon Seller default of any obligation herein, Buyer shall notify Seller of the specific nature of the default and allow Seller a ten (10) day period to cure such default (the "Remedy Period"). Upon the expiration of the Remedy Period, if the Seller remains in default, Buyer may either: (i) declare this Agreement terminated and thereafter all rights and obligations of the parties hereunder shall be terminated; or (ii) enforce specific performance of Seller's obligations under this Agreement.

(b) Upon a default by Buyer on any of its obligations herein, Seller shall notify Buyer of the specific nature of the default and allow Buyer to cure the default within the Remedy Period. Upon the expiration of the Remedy Period, if Buyer remains in default, Seller may declare this



Agreement terminated, and all other rights and obligations of the parties hereunder shall be terminated.

(c) In the event any litigation is commenced in connection with a dispute between Seller and Buyer with respect to the subject matter of this Agreement, the prevailing party shall be entitled to collect from the non-prevailing party the prevailing party's reasonable attorneys' fees and court costs in connection with such litigation. The provisions of this Paragraph 13(c) shall survive the termination of this Agreement.

14. Commissions. Seller and Buyer represent that they have not dealt with any brokers, Seller and Buyer hereby agree to indemnify and hold each other and its nominee harmless with respect to any claim, including the cost of counsel fees, made by any other real estate broker in connection herewith.

15. Notices. All notices, requests, waivers, and other communications under this Agreement shall be in writing and shall be deemed properly served upon delivery (a) by hand; (b) by sender to the applicable carrier if sent postage prepaid by United States Registered or Certified Mail, Return Receipt Requested; (c) by sender to a nationally recognized overnight express mail courier to the following street addresses:

If to Seller at: 201 W 3<sup>rd</sup> Street, Suite 115, Jamestown, New York 14701

With a copy to Seller's attorney:

Phillips Lytle LLP  
Att: Milan K. Tyler, Esq.  
201 West 3<sup>rd</sup> Street, Suite 205  
Jamestown, NY 14701

If to Buyer:

Lucy's Energy Reserve LLC  
Att: Christopher Hickey  
155 Fleet Street  
Portsmouth, New Hampshire 03801

With a copy to Buyer's attorney:

BARCLAY DAMON LLP  
Att: Christopher J. Babiarz, Esq.  
125 E. Jefferson Street  
Syracuse, New York 13202

16. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

17. Modifications. This Agreement may not be modified, amended or changed except by a written agreement specifically referring to this Agreement signed by Buyer and Seller.

18. Confidentiality. The terms and conditions of this Agreement, including, without limitation, any information delivered by Buyer to Seller in connection with this Agreement and the transaction contemplated hereby, including the identity of Buyer, are confidential and Seller shall not disclose the terms of this Agreement to any third party except as may be required by law or to enforce its rights hereunder; provided, however, Seller shall be permitted to disclose the terms of this Agreement to Seller's legal counsel, accountants and brokers. Buyer acknowledges that Seller is subject to New York's Freedom of Information Law.

19. Purchase Option. Buyer and Seller acknowledge that Buyer is proposing to build a Battery Energy Storage System on the Property (the "Project"). In the event the Project is Cancelled ("Cancelled" is defined as not applying to County of Chautauqua Industrial Development Agency within thirty (30) months of Closing OR the sale of all or a material portion of the Property to a third party which Buyer does not own a controlling interest in), or Not Completed ("Not Completed" is defined as a failure to start construction within six (6) years or complete construction within seven (7) years), Buyer shall provide notice to Seller in accordance with Section 15 hereof, and Seller shall have thirty (30) days to exercise Seller's right to purchase back the Property on terms substantially similar to this Agreement at a purchase price of SIXTY THOUSAND AND 00/100 DOLLARS (\$60,000.00). Buyer agrees to use reasonable good faith efforts to cooperate with the exercise of this Purchase Option. In the event Seller does not exercise its Purchase Option within the thirty day time period, the Purchase Option shall extinguish and the parties shall have no further obligations to one another.

20. Counterparts/Delivery. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, and all such counterparts shall together constitute one and the same instrument. Counterparts may be delivered by .pdf attachment to an email, by facsimile, or via an electronic signature platform.

IN WITNESS WHEREOF, the parties have executed this Agreement.

**SELLER:**

**COUNTY OF CHAUTAUQUA  
INDUSTRIAL DEVELOPMENT  
AGENCY**

By: \_\_\_\_\_  
Its: Richard Nixon, CFO

**Buyer:**

**LUCY'S ENERGY RESERVE LLC**

Signed by:  
By: Christopher Hickey  
7972453141B04A6...  
Its: \_\_\_\_\_