

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (hereinafter, the "Project Agreement"), is made as of May 18, 2022, by and between the **ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York having offices at the 333 W. Washington Street, Syracuse, New York 13202 (the "Agency"), and **BALDWINSVILLE SENIOR HOUSING PRESERVATION, LLC**, a New York limited liability company, with offices at , a New York limited liability company, having an office for the transaction of business located 12435 Park Potomac Avenue, Suite 200, Potomac, Maryland 20854 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 435 of the Laws of 1970 of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting that the Agency issue its Multifamily Housing Revenue Bonds (Baldwinsville Senior Housing Preservation, LLC Project), Series 2022 (the "Bonds") in the aggregate principal amount of \$20,087,000 for the purpose of providing funds for the acquisition, construction and equipping of a certain project (the "Project") consisting of: (A) the acquisition of an approximately 13.93 acre parcel known as Conifer Village Apartments, located at 700 Conifer Drive, Baldwinsville, Onondaga County, New York (the "Land"), together with the existing approximately 118,015 square-feet affordable housing development thereon, comprised of one hundred and ninety-nine (199) residential rental apartments in twenty (20) two-story buildings and one (1) single-story building containing an office, maintenance workshop and community center (the "Existing Improvements"); (B) the renovation of the Existing Improvements including (i) the replacement and/or upgrade to existing building systems, (ii) the upgrade of in-unit accommodations, (iii) the improvement of energy efficiency with new windows and doors throughout the Complex, and (iv) the expansion of the clubhouse and improvement of the outdoor common areas (collectively, the "Improvements"); (C) the acquisition in and around the Improvements and of certain items of equipment and other tangible personal property and equipment (the "Equipment"; and, collectively with the Land, the Existing Improvements and the Improvements, the "Project Facility"); and (D) funding a debt service reserve fund, if any, and paying capitalized interest, if any, and certain other costs incidental to the issuance of the Bonds; and

WHEREAS, by Resolutions adopted on July 23, 2019, August 20, 2019, June 9, 2020 and May 10, 2022 (the "Resolution"), the Agency authorized the Company to act as its agent for the purposes of undertaking the Project, subject to the Company entering into this Project Agreement; and

WHEREAS, by its Resolution, the Agency has conferred on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (a) the

for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility, (c) a partial abatement from real property taxes benefit conferred through a certain Payment-in-Lieu-of-Tax Agreement, to be dated as of May 1, 2022 (the "PILOT Agreement"), by and between the Agency and the Company, requiring the Company to make payments in lieu of taxes ("PILOT Payments") for the benefit of each municipality and school district having taxing jurisdiction over the Facility, and (d) a mortgage recording tax exemption as permitted by New York State Law (collectively, (a) through (d) are hereinafter referred to as the "Financial Assistance"); and

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

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

WHEREAS, no agency appointment of the Company or any Subagent (as hereinafter defined) thereof, nor any amount of Financial Assistance shall be provided to the Company by the Agency prior to the effective date of this Project Agreement.

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

ARTICLE I. DEFINITIONS

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

ARTICLE II. REPRESENTATIONS AND COVENANTS

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

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

(b) Neither the execution and delivery of this Project Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with

the provisions of this Project Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, and building laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this Section 2.1 (c).

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

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

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

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

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

(i) The Company covenants and agrees that at all times, it will (i) maintain its existence and not dissolve, (ii) continue to be a limited liability company subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its property, business or assets. This Project Agreement may not be assigned in whole or part without the prior written consent of the Agency or otherwise in accordance with the Leaseback Agreement.

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

ARTICLE III. GENERAL

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

ARTICLE IV. FINANCIAL ASSISTANCE AND RECAPTURE OF BENEFITS

Section 4.1 In accordance with the Resolution and the Cost-Benefit Analysis (the "CBA"), attached hereto as **Exhibit A**, disclosed by the Agency at its public hearing for the Project (the "Public Hearing"), the Company further: (i) covenants, with respect to the Sales Tax Exemption, that it shall comply with this Project Agreement, specifically, but not limited to, Section 4.3 hereof; (ii) confirms that the Mortgage Recording Tax Exemption (as defined in Section 4.7 hereof) shall not exceed Maximum Mortgage Principal Amount, as more fully described in Section 4.7 hereof; and (iii) confirms that real property tax abatement to be provided to the Company shall conform to those disclosed within the CBA at the Public Hearing for the Project and as contained within the PILOT Agreement, a form of which PILOT Agreement is attached hereto as **Exhibit A**.

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

Section 4.3 **Sales Tax Exemption**.

(a) The Agency hereby appoints and confirms its appointment of the Company as the true and lawful agent of the Agency to undertake the Project. Such appointment was made by the Agency pursuant to the Resolution.

(b) The Company, as agent of the Agency, will undertake the Project. The Company hereby agrees to limit its activities as agent of the Agency under the authority of the Resolution to acts reasonably related to the acquisition, construction, rehabilitation and equipping of the Facility. The right of the Company to act as agent of the Agency shall expire on the earlier of (x) the completion of the Project, or (y) **December 21, 2024** ("Termination Date"); provided, however, that the Agency, through its Chairperson or Executive Director, may extend the Company's agent appointment at its discretion upon the written request of the Company if such activities and improvements are not completed by such time, and further provided that the Agency shall not unreasonably withhold its consent to the extension of such appointment.

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

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

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

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

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

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

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

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

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

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

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

(i) The Company shall have the right to amend **Schedule B** from time to time and shall be solely responsible for maintaining an accurate list of all parties acting as agent for the Agency. The Company's right to appoint Subagents is expressly conditioned upon updating of **Schedule B** attached hereto, along with, for each Subagent, the Company must complete and submit Form ST-60 to the Agency, attached hereto as **Exhibit B**. An Authorized Representative of the Agency must sign the Form ST-60 and return the same to the Company. Following receipt of the signed Form ST-60, the Company must file such Form ST-60 within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as a Subagent of the Agency for purposes of extending the Sales Tax Exemption to such Subagent. The Company acknowledges and agrees that it shall be the Company's sole and exclusive responsibility to file a completed Form ST-60 with respect to any Subagent and the failure to timely do so could result in an Event of Default and Recapture Event (as hereinafter defined).

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

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

(iv) **Form ST-123 Requirement and Form FT-123 Requirement.** As an agent of the Agency, the Company agrees that it will, and will cause each Subagent to, present to each seller or vendor a completed and signed Form ST-123, attached hereto as **Exhibit C-1**, for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any Subagent, as agent for the Agency, for the purpose of undertaking the Project.

As an agent of the Agency, the Company agrees that it will, and will cause each Subagent to, present to each seller or vendor a completed and signed Form FT-123, attached hereto as **Exhibit C-2**, for each contract, agreement, invoice, bill or purchase

order **for fuel** entered into by the Company or by any Subagent, as agent for the Agency, for the purpose of undertaking the Project.

Form ST-123 and Form FT-123 require that each seller or vendor accepting Form ST-123 or Form FT-123 identify the Facility on each bill or invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice should state:

*"I, BALDWINSVILLE SENIOR HOUSING PRESERVATION, LLC
[OR, NAME OF SUBAGENT: _____],
certify that I am a duly appointed agent of the ONONDAGA
COUNTY INDUSTRIAL DEVELOPMENT AGENCY and that I am
purchasing the tangible personal property or services for use in
the Baldwinsville Senior Housing Preservation, LLC Project
located at 700 Conifer Drive in the Village of Baldwinsville and
Town of Van Buren, Onondaga County, New York, being IDA OSC
Project Number 3101-19-07A".*

For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described in the prior sentence, an "Invoice Rider" (a copy of which is attached hereto as **Exhibit C-3**) can be utilized for record keeping purposes. The Company shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) years from the date thereof. For each Subagent, the Form ST-123 or Form FT-123 shall be completed as follows: (i) the "Project information" section of Form ST-123 or Form FT-123, attached hereto as **Exhibit C-1** and **Exhibit C-2** respectively, should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Subagent and; (ii) the date that the Subagent was appointed as indicated on the Form ST-60.

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

Section 4.5 **Form ST-340 Filing Requirement.** The Company shall annually file a statement with the State Department of Taxation and Finance (the "Commissioner") on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340, a copy of which is attached hereto as **Exhibit D**) regarding the value of Sales Tax Exemption the Company and its Subagents, if any, have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). **Please note, the Company is to report only the Sales Tax Exemption derived as a result of the Agency's participation in the Project and not those received as a result of other available State**

exemptions. For the avoidance of doubt, other State exemptions, which the Company should not report on its NYS Form ST-340, include, but are not limited to, exemptions available to certain manufactures or those exemptions that apply to capital improvements. On or before February 15th of each year, the Company shall provide a copy of same to the Agency. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company's authority to act as agent for the Agency and/or Recapture of Agency Benefits as described in Section 4.8 hereof.

Section 4.6 GML Provisions Relating to Sales Tax Savings.

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

(b) The Company acknowledges and agrees that pursuant to GML Section 875(3), the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company, Sales Tax Savings taken or purported to be taken by the Company, any Subagent or any other person or entity acting on behalf of the Company to which the Company is not entitled or which are in excess of the Maximum Sales Tax Exemption or which are for property or services not authorized or taken in cases where the Company, any Subagent or any other person or entity acting on behalf of the Company failed to comply with a material term or condition to use property or services in the manner required by this Project Agreement. The Company shall, and shall require each Subagent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such Sales Tax Savings and shall promptly pay over any such amounts to the Agency or any other entity that it requests receive the Sales Tax Savings. The failure to pay over such amounts to such recipient shall be grounds for the Commissioner to assess and determine State Sales and Use Taxes due from the Company under Article 28 of the Tax Law, together with any relevant penalties and interest due on such amounts.

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

(c) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (i) to indicate in reasonable detail those costs for which the Company or any Subagent

shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (ii) to permit the Agency to determine any amounts owed by the Company under this Section 4.6(c).

Section 4.7 Mortgage Recording Tax Exemption. Section 874 of the Act exempts the Agency from paying certain mortgage recording taxes except for the portion of the mortgage recording tax allocated to transportation districts referenced in Section 253(2)(a) of the New York State Real Property Tax Law. The Agency hereby grants to the Company a partial exemption from mortgage recording taxes for one or more mortgages (collectively, the "Mortgage") securing an aggregate principal amount not to exceed Maximum Mortgage Principal Amount, or such greater amount as approved by the Agency in its sole and absolute discretion, in connection with the financing of the Project and any future financing, refinancing or permanent financing of the costs of the Project (the "Mortgage Recording Tax Exemption"). The Company represents and warrants (1) that the real property secured by the Mortgage is located within a transportation district referenced in Section 253(2)(a) of the Tax Law, and (2) that upon recording the Mortgage, the Company shall pay the mortgage recording tax allocated to transportation districts referenced in Section 253(a)(2) of the Tax Law.

Section 4.8 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into this Project Agreement in order to provide the Financial Assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees that if there shall occur a Recapture Event (as defined below) after the date hereof, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits.

(b) The term "Recaptured Benefits" shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency's participation in the transaction contemplated by this Project Agreement, including, but not limited to, the amount equal to 100% of:

(i) the Mortgage Recording Tax Exemption; and

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

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

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of Section 4.8(c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency within ten (10) days after such notice.

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

- (i) The occurrence and continuation of an Event of Default under this Project Agreement which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or
- (ii) The Project shall cease to be a "Project" within the meaning of the Act as in effect on the date hereof, through the act of omission of the Company; or
- (iii) The Company receives Sales Tax Savings in connection with property or services not authorized by the Agency as part of the Project; or
- (iv) The Company receives Sales Tax Savings in connection with the Project in excess of the Maximum Sales Tax Exemption; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recapture Benefits; or
- (v) The Company has made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, on its application for Financial Assistance; or
- (vi) Failure of the Company to file a copy of the Form ST-340 with the Agency in compliance with Section 4.5 hereof; or
- (vii) Failure of the Company to cause to be maintained at least four (4) full time equivalent jobs at the Facility, which failure is not reflective of the business conditions of the Company or the subtenants of the Company, including, without limitation, loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions; or
- (viii) Failure of the Company to meet and maintain the Investment Commitment.

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

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

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

ARTICLE V. INSURANCE

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

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

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

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

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

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

ARTICLE VI. EVENTS OF DEFAULT AND REMEDIES

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

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

(e) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; or the commencement by the Company (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor, or such case or proceeding is consented to by the Company or remains undismissed for forty (40) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the

Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors.

Section 6.2 Remedies on Default.

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

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

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

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

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

Section 6.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Project Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right and power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article VI it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Project Agreement.

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

Section 6.5 Right to Cure. The Special Investor Member shall be entitled to cure any Event of Default hereunder within the time frame provided to the Company hereunder. The Agency agrees that cure of any default or Event of Default made or tendered by the Special Investor Member shall be deemed to be a cure by the Company and shall be accepted or rejected on the same basis as if made or tendered by the Company.

ARTICLE VII. MISCELLANEOUS

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

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

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

To the Agency: Onondaga County Industrial Development Agency
333 W. Washington Street
Syracuse, New York 13202
Attn: Executive Director

With a copy to: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York
Attn: Christopher A. Andreucci, Esq.

To the Company: Baldwinsville Senior Housing Preservation, LLC
c/o Foulger-Pratt, LLC
12435 Park Potomac Avenue, Suite #200
Potomac, MD 20854
Attn: Joe Clauser

With a copy to: Barclay Damon LLP
 125 E. Jefferson Street
 Syracuse, New York 13202
 Attn: Kevin McAuliffe, Esq.

To the Special Columbia Housing SLP Corporation
Investor Member: Member
 c/o PNC Real Estate
 121 S.W. Morrison Street, Suite 1300
 Portland, Oregon 97204-3143
 Attention: Asset Manager

With a copy to: Kutak Rock, LLP
 1650 Farnam Street
 Omaha, Nebraska 68102
 Attention: Shane Deaver, Esq.

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

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

Section 7.5 The warranties, representations, obligations and covenants of the Company under this Project Agreement shall be absolute and unconditional and shall remain in full force and effect during the term of this Project Agreement, shall be deemed to have been relied upon by the Agency, and shall survive the delivery and termination of this Project Agreement to the Agency, regardless of any investigation made by the Agency. This Project Agreement shall survive any termination or expiration of the Leaseback Agreement or the PILOT Agreement, as described below.

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

financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

Section 7.7 The parties shall enter into the Lease Agreement and the Leaseback Agreement prior to the Company taking title to any real property as agent for the Agency. The Agency will provide the Company with a bill of sale (a form of which is attached hereto as **Exhibit F**) which sells, transfers and delivers unto the Company and its successors and assigns, all Equipment acquired and installed and/or to be acquired and installed by the Company as agent for the Agency pursuant to this Project Agreement, which such Equipment is located or intended to be located within and used exclusively in furtherance of the operations of the Facility.

[Remainder of Page Intentionally Left Blank]

[Signature Page to Project Agreement]

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

ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: Robert M. Petrovich
Name: Robert M. Petrovich
Title: Executive Director

BALDWINSVILLE SENIOR HOUSING PRESERVATION, LLC

By: Baldwinsville Preservation, LLC, its Managing Member

By: Conifer Preservation Member, LLC, its
Managing Member

By: Foulger-Pratt, LLC, its Managing Member

By: _____
Name: Cameron Pratt
Title: Authorized Person

[Signature Page to Project Agreement]

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

**ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Robert M. Petrovich
Title: Executive Director

**BALDWINSVILLE SENIOR HOUSING
PRESERVATION, LLC**

By: Baldwinsville Preservation, LLC, its Managing Member

By: Conifer Preservation Member, LLC, its Managing Member

By: Foulger-Pratt, LLC, its Managing Member

By: _____
Name: Cameron Pratt
Title: Authorized Person



SCHEDULE A

SCHEDULE OF DEFINITIONS

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

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

"Investment Commitment" shall mean that the total investment actually made with respect to the Project at the Project's construction completion date equals or exceeds **\$21,250,000** (which represents the product of 85% multiplied by **\$25,000,000**, being the total project cost as stated in the Application).

"Lease Agreement" shall mean that certain Lease Agreement, dated as of May 1, 2022, by and between the Company and the Agency.

"Leaseback Agreement" shall mean that certain Leaseback Agreement, dated as of May 1, 2022, by and between the Agency and the Company.

"Maximum Mortgage Principal Amount" shall mean **\$24,209,000**.

"Maximum Sales Tax Exemption" shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Company and all Subagents acting on behalf of the Company are permitted to receive under this Project Agreement, which shall equal **\$395,000**, or such maximum dollar amount as may be determined by the Agency pursuant to such additional documents as may be required by the Agency for such increase.

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

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

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

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

"Special Investor Member" means Columbia Housing SLP Corporation, a Nebraska corporation.

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

SCHEDULE B

LIST OF APPOINTED AGENTS¹

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

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

SCHEDULE C

MANDATORY AGENT AND SUBAGENT CONTRACT LANGUAGE

"This contract is being entered into by **BALDWINSVILLE SENIOR HOUSING PRESERVATION, LLC** [OR, NAME OF SUBAGENT: _____] (the "Agent"), as agent for and on behalf of the **ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency"), in connection with a certain project of the Agency for the benefit of **BALDWINSVILLE SENIOR HOUSING PRESERVATION, LLC**, consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 700 Conifer Drive in the Village of Baldwinsville and Town of Van Buren, Onondaga County, New York (the "Premises"). The acquisition of the machinery, equipment and building materials to be incorporated and installed in the Premises and all services and rentals of equipment related to the acquisition, construction and equipping of the Project shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption information letter of the Agency; and the Agent hereby represents that this contract is in compliance with the terms of the Project Agreement by and between **BALDWINSVILLE SENIOR HOUSING PRESERVATION, LLC** and the Agency, dated as of May 81, 2022. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

EXHIBIT A

COST BENEFIT ANALYSIS AND FORM OF PILOT AGREEMENT

[See Attached]

Onondaga County Industrial Development Agency



5/9/2022

Project Summary

1. Project	Baldwinsville Housing Preservation	2. Project Number	3101-19-07A
3. Location	Van Buren	4. School District	Baldwinsville
5. Tax Parcel(s)	022-01-14.0	6. Project Type	Acquisition and Renovation Village Baldwinsville

7. Total Project Cost	\$ 38,030,540.00	8. Total Jobs	4
Land	\$ 22,000,000	8A. Job Retention	4
Site Work	\$ -	8B: Job Creation	0
Building	\$ 9,812,833	(Next 5 Years)	
Furniture & Fixtures	\$ -		
Equipment	\$ -		
Equipment Subject to NYS Production	\$ -		
Exemption	\$ -		
Engineering/Architecture Fees	\$ 100,000		
Financial Charges	\$ 1,612,109		
Legal Fees	\$ 250,000		
Management Developer Fees	\$ 3,576,498		
Other	\$ 679,100		

Cost Benefit Analysis

Baldwinsville Housing Preservation Partners LLC

Project Description

	Fiscal Impact (\$)	
Abatement Cost	\$ 395,000	
Sales Tax	\$ 395,000	
Mortgage Tax	\$ -	
Property Tax Relief (PILOT)	See attached Application	
Tax Exempt Bonding Requested	\$ 20,500,000	
New Investment	\$ 36,490,014	The applicant is proposing to purchase and renovate the senior housing facility located at 700 Conifer Drive in the Village of Baldwinsville in the Town of Van Buren. The May 2022 Revision is to increase the bonding amount from \$20,000,000 to \$20,500,000
PILOT Payments	\$ -	
Project Wages	\$ 1,803,759	
Construction Wages	\$ 2,031,400	
Employee Benefits (10 years)	\$ 270,564	
Project Capital Investment	\$ 31,812,833	
New Sales Tax Generated	\$ -	
OCIDA Project Fee	\$ 571,458	
Benefit:Cost Ratio	92.38 :1	

	Year	PILOT Payment	Onondaga County	Town of Van Buren	Baldwinsville School District	Village of Baldwinsville
1	2020	\$215,000	\$28,957.54	\$9,795.22	\$134,654.50	\$41,602.50
2	2021	\$219,300	\$29,536.70	\$9,991.12	\$137,347.59	\$42,434.55
3	2022	\$223,686	\$30,127.43	\$10,190.94	\$140,094.54	\$43,283.24
4	2023	\$225,923	\$30,428.70	\$10,292.85	\$141,495.49	\$43,716.07
5	2024	\$228,182	\$30,732.99	\$10,395.78	\$142,910.44	\$44,153.23
6	2025	\$230,464	\$31,040.32	\$10,499.74	\$144,339.55	\$44,594.77
7	2026	\$232,769	\$31,350.72	\$10,604.74	\$145,782.94	\$45,040.71
8	2027	\$235,096	\$31,664.23	\$10,710.78	\$147,240.77	\$45,491.12
9	2028	\$237,447	\$31,980.87	\$10,817.89	\$148,713.18	\$45,946.03
10	2029	\$239,822	\$32,300.68	\$10,926.07	\$150,200.31	\$46,405.49
11	2030	\$242,220	\$32,623.69	\$11,035.33	\$151,702.31	\$46,869.55
12	2031	\$244,642	\$32,949.93	\$11,145.69	\$153,219.34	\$47,338.24
13	2032	\$247,089	\$33,279.43	\$11,257.14	\$154,751.53	\$47,811.63
14	2033	\$249,559	\$33,612.22	\$11,369.71	\$156,299.05	\$48,289.74
15	2034	\$252,055	\$33,948.34	\$11,483.41	\$157,862.04	\$48,772.64
16	2035	\$254,576	\$34,287.83	\$11,598.24	\$159,440.66	\$49,260.37
17	2036	\$257,121	\$34,630.70	\$11,714.23	\$161,035.06	\$49,752.97
18	2037	\$259,693	\$34,977.01	\$11,831.37	\$162,645.41	\$50,250.50
19	2038	\$262,289	\$35,326.78	\$11,949.68	\$164,271.87	\$50,753.00
20	2039	\$264,912	\$35,680.05	\$12,069.18	\$165,914.59	\$51,260.53
21	2040	\$267,561	\$36,036.85	\$12,189.87	\$167,573.73	\$51,773.14
22	2041	\$270,237	\$36,397.22	\$12,311.77	\$169,249.47	\$52,290.87
23	2042	\$272,939	\$36,761.19	\$12,434.89	\$170,941.96	\$52,813.78
24	2043	\$275,669	\$37,128.80	\$12,559.24	\$172,651.38	\$53,341.92
25	2044	\$278,426	\$37,500.09	\$12,684.83	\$174,377.90	\$53,875.34
26	2045	\$281,210	\$37,875.09	\$12,811.68	\$176,121.68	\$54,414.09
27	2046	\$284,022	\$38,253.84	\$12,939.79	\$177,882.89	\$54,958.23
28	2047	\$286,862	\$38,636.38	\$13,069.19	\$179,661.72	\$55,507.81
29	2048	\$289,731	\$39,022.74	\$13,199.88	\$181,458.34	\$56,062.89
30	2049	\$292,628	\$39,412.97	\$13,331.88	\$183,272.92	\$56,623.52

[FORM OF PILOT AGREEMENT]

ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

BALDWINSVILLE SENIOR HOUSING PRESERVATION, LLC

PAYMENT IN LIEU OF TAX AGREEMENT

Street Address:

700 Conifer Drive

Village of Baldwinsville and Town of Van Buren
Onondaga County, New York

Tax Map Number:

022.-01-14.0

Affected Tax Jurisdictions:

Onondaga County
Village of Baldwinsville
Town of Van Buren
Baldwinsville Central School District

Dated as of May 1, 2022

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT, dated as of May 1, 2022 (the "Agreement"), is by and between the **ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York with offices at 333 W. Washington Street, Suite 130, Syracuse, New York 13202 (the "Agency"), and **BALDWINSVILLE SENIOR HOUSING PRESERVATION, LLC**, a New York limited liability company, with offices at 169 Mamaroneck Avenue, Suite #8, White Plains, New York 10601 (the "Company")

WITNESSETH:

WHEREAS, the Agency was created by Chapter 435 of the Laws of 1970 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, on or about May 18, 2021, the Agency will issue its Multifamily Housing Revenue Bonds (Baldwinsville Senior Housing Preservation, LLC Project), Series 2021 (the "Bonds") in the aggregate principal amount of \$20,087,000 for the purpose of providing funds for the acquisition, construction and equipping of a certain project (the "Project") consisting of: (A) the acquisition of an approximately 13.93 acre parcel known as Conifer Village Apartments, located at 700 Conifer Drive, Baldwinsville, Onondaga County, New York (the "Land"), together with the existing approximately 118,015 square-feet affordable housing development thereon, comprised of one hundred and ninety-nine (199) residential rental apartments in twenty (20) two-story buildings and one (1) single-story building containing an office, maintenance workshop and community center (the "Existing Improvements"); (B) the renovation of the Existing Improvements including (i) the replacement and/or upgrade to existing building systems, (ii) the upgrade of in-unit accommodations, (iii) the improvement of energy efficiency with new windows and doors throughout the Complex, and (iv) the expansion of the clubhouse and improvement of the outdoor common areas (collectively, the "Improvements"); (C) the acquisition in and around the Improvements and of certain items of equipment and other tangible personal property and equipment (the "Equipment"; and, collectively with the Land, the Existing Improvements and the Improvements, the "Project Facility"); and (D) funding a debt service reserve fund, if any, and paying capitalized interest, if any, and certain other costs incidental to the issuance of the Bonds (the costs associated with items (A) through (D) above being hereinafter collectively referred to as the "Project Costs"); and

WHEREAS, in order to induce the Company to acquire, renovate, construct and equip the Facility, the Agency is willing to take a leasehold interest in the Land, the Improvements, and the Equipment constituting the Facility and lease said Land, the Improvements and the Equipment constituting the Facility back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement to be dated as of May 1, 2022 (the "Leaseback Agreement"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its

jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Onondaga County (the "County"), Village of Baldwinsville (the "Village"), Town of Van Buren (the "Town") and the Baldwinsville Central School District (the "School District"; and, collectively with the County, the Village and the Town, the "Affected Tax Jurisdictions").

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

Section 1 - Payment in Lieu of Ad Valorem Taxes:

Section 1.1 A. Subject to the completion and filing by the Agency by the taxable status date (March 1, 2023) (the "Taxable Status Date") of New York State Form RP-412-a "Application For Real Property Tax Exemption" (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes (as defined below) commencing with the (i) the **2024** County and Town tax year, and (ii) the **2023-2024** School District and Village tax year. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County, Village Town and School District. The Company shall provide to the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. Agreement to Make Payments. As long as the Facility is owned by or leased to the Agency by the Company, the Company agrees to pay annually to the Affected Tax Jurisdictions as a payment in lieu of taxes within the period that each Affected Tax Jurisdiction allows payment of taxes levied in such fiscal year without penalty (collectively, the

“Payment Date”), an amount equal to the Total Tax Payment, as described in **Schedule A** attached hereto. The Company shall make all such Total Tax Payments in the amounts and on the dates specified above, whether or not any such Total Tax Payment is billed by the Agency, the Affected Tax Jurisdictions, or any other party.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the Land is not on the tax rolls.

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder, *if any*, within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency’s involvement, unless the Affected Tax Jurisdictions have consented in writing to an alternative allocation.

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

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this Agreement, the Company shall notify the Agency of such future addition (“Future Addition”). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total PILOT Payment (the “Increased PILOT Payment”). The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the Increased PILOT Payment until a different Total PILOT Payment shall be established. If a lesser Total PILOT Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency’s sole discretion, such excess payment shall be applied as a credit against the next succeeding PILOT payment(s).

1.5 Period of Benefits Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the **2023-24** School District and Village tax year through the **2052-53** School District and Village tax year, and (ii) the **2024** County and Town tax year through the **2053** County and Town tax year. This Agreement shall expire on **December 31, 2053**; *provided, however*, the Company shall pay (i) the **2052-53** School District and Village tax bills and (ii) the

2053 County and Town tax bills in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility while this Agreement is in effect, which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

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

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

Section 4 - Assessment Challenges.

4.1 During the term of this Agreement, the Company shall have the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall not be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

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

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

Section 5 - Changes in Law. To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section 6 - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section 1 hereof within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any event of default under the Leaseback Agreement after any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions), pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section 1 and Section 2 herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section 1 herein, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month; and, with respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, the Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

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

Section 8 - Miscellaneous.

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

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

To the Agency: Onondaga County Industrial Development Agency
333 W. Washington Street
Syracuse, New York 13202
Attn: Executive Director

With a copy to: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York
Attn: Christopher A. Andreucci, Esq.

To the Company: Baldwinsville Senior Housing Preservation, LLC
c/o Foulger-Pratt, LLC
12435 Park Potomac Avenue, Suite #200
Potomac, MD 20854
Attn: Joe Clauser

With a copy to: Barclay Damon LLP
125 E. Jefferson Street
Syracuse, New York 13202
Attn: Kevin McAuliffe, Esq.

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

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

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither any member, officer, employee, agent (other than the Company) or servant of the Agency nor any person executing this Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto

against any past, present or future member, officer, agent (other than the Company), servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents (other than the Company), servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

[Remainder of Page Intentionally Left Blank]

[Signature Page to PILOT Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Payment-in-Lieu-of-Tax Agreement as of the day and year first above written.

**ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Robert M. Petrovich
Title: Executive Director

**BALDWINSVILLE SENIOR HOUSING
PRESERVATION, LLC**

By: Baldwinsville Preservation, LLC,
its Managing Member

By: Conifer Preservation Member, LLC,
its Managing Member

By: Foulger-Pratt, LLC,
its Managing Member

By: _____
Name: Cameron Pratt
Title: Authorized Person

SCHEDULE A
 to
 PILOT Agreement, dated as of May 1, 2022,
 by and between
 the Onondaga County Industrial Development Agency
 and
 Baldwinsville Senior Housing Preservation, LLC

Tax Year	School District Tax Year	Town and County Tax Year	Village Tax Year	School District Tax Payment	Town Tax Payment	County Tax Payment	Village Tax Payment	Total Tax Payment
1	2023-24	2024	2021-22	\$134,654.50	\$9,795.22	\$28,957.54	\$41,602.50	\$215,000
2	2024-25	2025	2022-23	\$137,347.59	\$9,991.12	\$29,536.70	\$42,434.55	\$219,300
3	2025-26	2026	2023-24	\$140,094.54	\$10,190.94	\$30,127.43	\$43,283.24	\$223,686
4	2026-27	2027	2024-25	\$141,495.49	\$10,292.85	\$30,428.70	\$43,716.07	\$225,923
5	2027-28	2028	2025-26	\$142,910.44	\$10,395.78	\$30,732.99	\$44,153.23	\$228,182
6	2028-29	2029	2026-27	\$144,339.55	\$10,499.74	\$31,040.32	\$44,594.77	\$230,464
7	2029-30	2030	2027-28	\$145,782.94	\$10,604.74	\$31,350.72	\$45,040.71	\$232,769
8	2030-31	2031	2028-29	\$147,240.77	\$10,710.78	\$31,664.23	\$45,491.12	\$235,096
9	2031-32	2032	2029-30	\$148,713.18	\$10,817.89	\$31,980.87	\$45,946.03	\$237,447
10	2032-33	2033	2030-31	\$150,200.31	\$10,926.07	\$32,300.68	\$46,405.49	\$239,822
11	2033-34	2034	2031-32	\$151,702.31	\$11,035.33	\$32,623.69	\$46,869.55	\$242,220
12	2034-35	2035	2032-33	\$153,219.34	\$11,145.69	\$32,949.93	\$47,338.24	\$244,642
13	2035-36	2036	2033-34	\$154,751.53	\$11,257.14	\$33,279.43	\$47,811.63	\$247,089
14	2036-37	2037	2034-35	\$156,299.05	\$11,369.71	\$33,612.22	\$48,289.74	\$249,559
15	2037-38	2038	2035-36	\$157,862.04	\$11,483.41	\$33,948.34	\$48,772.64	\$252,055
16	2038-39	2039	2036-37	\$159,440.66	\$11,598.24	\$34,287.83	\$49,260.37	\$254,576
17	2039-40	2040	2037-38	\$161,035.06	\$11,714.23	\$34,630.70	\$49,752.97	\$257,121
18	2040-41	2041	2038-39	\$162,645.41	\$11,831.37	\$34,977.01	\$50,250.50	\$259,693
19	2041-42	2042	2039-40	\$164,271.87	\$11,949.68	\$35,326.78	\$50,753.00	\$262,289
20	2042-43	2043	2040-41	\$165,914.59	\$12,069.18	\$35,680.05	\$51,260.53	\$264,912
21	2043-44	2044	2041-42	\$167,573.73	\$12,189.87	\$36,036.85	\$51,773.14	\$267,561
22	2044-45	2045	2042-43	\$169,249.47	\$12,311.77	\$36,397.22	\$52,290.87	\$270,237
23	2045-46	2046	2043-44	\$170,941.96	\$12,434.89	\$36,761.19	\$52,813.78	\$272,939
24	2046-47	2047	2044-45	\$172,651.38	\$12,559.24	\$37,128.80	\$53,341.92	\$275,669
25	2047-48	2048	2045-46	\$174,377.90	\$12,684.83	\$37,500.09	\$53,875.34	\$278,426
26	2048-49	2049	2046-47	\$176,121.68	\$12,811.68	\$37,875.09	\$54,414.09	\$281,210
27	2049-50	2050	2047-48	\$177,882.89	\$12,939.79	\$38,253.84	\$54,958.23	\$284,022
28	2050-51	2051	2048-49	\$179,661.72	\$13,069.19	\$38,636.38	\$55,507.81	\$286,862
29	2051-52	2052	2049-50	\$181,458.34	\$13,199.88	\$39,022.74	\$56,062.89	\$289,731
30	2052-53	2053	2050-51	\$183,272.92	\$13,331.88	\$39,412.97	\$56,623.52	\$292,628

EXHIBIT B

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

[See Attached]



Department of Taxation and Finance

IDA Appointment of Project Operator or Agent For Sales Tax Purposes

ST-60

(1/18)

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

For IDA use only

IDA information

Name of IDA Onondaga County Industrial Development Agency	IDA project number (use OSC numbering system for projects after 1998) 3101-19-07A		
Street address 333 W. Washington Street, Suite 130	Telephone number (315) 435-3770		
City Syracuse	State NY	ZIP code 13202	Email address (optional) N/A

Project operator or agent information

Name of IDA project operator or agent	Mark an X in the box if directly appointed by the IDA: N/A <input type="checkbox"/>	Employer identification or Social Security number	
Street address	Telephone number ()	Primary operator or agent? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City	State NY	ZIP code 13027	Email address (optional)

Project information

Name of project Baldwinsville Senior Housing Preservation, LLC Project			
Street address of project site 700 Conifer Drive**	** and any lands located in Onondaga County and occupied by license or easement during construction or improved by third parties for the benefit of the Project		
City Baldwinsville	State NY	ZIP code 13027	Email address (optional) N/A
Purpose of project The purpose of the project is the renovation, reconstruction, refurbishing and equipping of an approximately 118,015 square-foot affordable housing development			

Description of goods and services intended to be exempted from New York State and local sales and use taxes Goods and services, inclusive of fuel and utilities, whether the goods and services are purchased or rented, and notwithstanding that they continue to constitute personal property or the item is used after the completion of the Project, or the item is geographically located outside the legal boundaries of the Project Facility; provided there is a reasonable basis to acquire the item to benefit the Project.			
Date project operator or agent appointed (mmddyy) 051822	Date project operator or agent status ends (mmddyy) 123124	Mark an X in the box if this is an extension to an original project:	<input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 4,937,500.00	Estimated value of New York State and local sales and use tax exemption provided: 395,000.00		

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

Print name of officer or employee signing on behalf of the IDA Robert M. Petrovich	Print title Executive Director	
Signature 	Date 05-18-2022	Telephone number (315) 435-3770

EXHIBIT C-1

NYS FORM ST-123 FOR USE BY COMPANY

[See Attached]



IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

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

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

Name of seller	Name of agent or project operator		
	Baldwinsville Senior Housing Preservation, LLC		
Street address	Street address		
	12435 Park Potomac Avenue, Suite 200		
City, town, or village	State	ZIP code	City, town, or village
			Potomac MD 20854
	Agent or project operator sales tax ID number (see instructions)		

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

To the seller:

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

Project information

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

Name of IDA			
Onondaga County Industrial Development Agency			
Name of project	IDA project number (use OSC number)		
Baldwinsville Senior Housing Preservation, LLC Project	3101-19-07A		
Street address of project site	* and any lands located in Onondaga County and occupied by license or easement during construction or improved by third parties for the benefit of the Project		
700 Conifer Drive*			
City, town, or village	State	ZIP code	
Baldwinsville	NY	13027	
Enter the date that you were appointed agent or project operator (mm/dd/yy)	05 / 18 / 22	Enter the date that agent or project operator status ends (mm/dd/yy)	12 / 31 / 24

Exempt purchases

(Mark an **X** in boxes that apply)

- A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

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

Instructions

To the purchaser

You may use Form ST-123 if you:

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

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

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

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

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

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

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

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

Exempt purchases

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

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

Misuse of this certificate

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

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

To the seller

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

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

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

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

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

Privacy notification

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

Need help?



Visit our Web site at www.tax.ny.gov

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



Sales Tax Information Center:

(518) 485-2889

To order forms and publications:

(518) 457-5431



Text Telephone (TTY) Hotline

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

(518) 485-5082

EXHIBIT C-1

NYS FORM ST-123 FOR USE BY SUBAGENTS OF COMPANY

[See Attached Page]



IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

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

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

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

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

To the seller:

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

Project information

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

Name of IDA Onondaga County Industrial Development Agency		
Name of project Baldwinsville Senior Housing Preservation, LLC Project	IDA project number (use OSC number) 3101-19-07A	
Street address of project site 700 Conifer Drive*	* and any lands located in Onondaga County and occupied by license or easement during construction or improved by third parties for the benefit of the Project	
City, town, or village Baldwinsville	State NY	ZIP code 13027
Enter the date that you were appointed agent or project operator (mm/dd/yy) / /	Enter the date that agent or project operator status ends (mm/dd/yy) 12 / 31 / 24	

Exempt purchases

(Mark an **X** in boxes that apply)

- A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

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

Instructions

To the purchaser

You may use Form ST-123 if you:

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

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

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

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

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

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

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

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

Exempt purchases

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

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

Misuse of this certificate

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

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

To the seller

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

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

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

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

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

Privacy notification

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

Need help?



Visit our Web site at www.tax.ny.gov

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



Sales Tax Information Center:

(518) 485-2889

To order forms and publications:

(518) 457-5431



Text Telephone (TTY) Hotline

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

(518) 485-5082

EXHIBIT C-2

NYS FORM FT-123 (FUEL) FOR USE BY COMPANY

[See Attached Page]



IDA Agent or Project Operator Exempt Purchase Certificate for Fuel

FT-123

(10/14)

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

To be completed by the purchaser and given to the seller.

Name of seller	Name of agent or project operator		
	Baldwinsville Senior Housing Preservation, LLC Project		
Street address	Street address		
	12435 Park Potomac Avenue, Suite 200		
City, town, or village	State	ZIP code	City, town, or village
			Potomac MD 20854
	Agent or project operator sales tax ID number (see instructions)		

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

To the seller:

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

Project information

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

Name of IDA Onondaga County IDA			
Name of project Baldwinsville Senior Housing Preservation, LLC Project	IDA project number (use OSC number) 3101-19-07A		
Street address of project site 700 Conifer Drive*	*and any lands located in Onondaga County and occupied by license or easement during construction or improved by third parties for the benefit of the Project		
City, town, or village Baldwinsville	State	ZIP code	
NY	13207		
Enter the date that you were appointed agent or project operator (mm/dd/yy) 05 / 18 / 22	Enter the date that agent or project operator status ends (mm/dd/yy) 12 / 31 / 24		

Exempt purchases – Only fuel or residual petroleum product used to **complete** the project may be purchased by IDA agents or project operators exempt from the fuel excise tax, petroleum business tax, and sales and use tax. Fuel or residual petroleum product used to **operate** a business after the project is completed does not qualify for this exemption (see *instructions*).

Mark an **X** in boxes that apply:

<input type="checkbox"/> A. Motor fuel	<input type="checkbox"/> C. Non-highway diesel motor fuel
<input type="checkbox"/> B. Highway diesel motor fuel	<input type="checkbox"/> D. Residual petroleum product

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that excise taxes and state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

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

Instructions

To the purchaser

You may use Form FT-123 if you:

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

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

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

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

IDAs are exempt from the payment of sales and use tax on their purchases. However, IDAs do not normally make direct purchases for projects. Commonly, an IDA instead appoints a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax. Purchases made by an agent or project operator to operate a business after the project is completed are subject to tax.

Example: An IDA agreement with its agent, Contractor X, states that Contractor X may make all purchases of materials and equipment necessary for completion of the project as agent for the IDA.

Contractor X purchases non-highway diesel motor fuel for use in construction equipment that will be used to prepare the site for construction. Since the fuel is being used to complete the project, Contractor X may purchase the fuel exempt from taxes.

When the project is completed, Contractor X purchases motor fuel and highway diesel motor fuel for use in snowplows and other maintenance vehicles used to maintain the parking lots for the business. Contractor X may not purchase this fuel exempt from tax because it is being used to operate, not to complete, the project.

Exempt purchases

To qualify for exemption, the purchases must be made within the authority granted by the IDA and used to **complete** the project, but not to **operate** the completed project.

Box A – Motor fuel is gasoline, benzol, reformulated blend stock for oxygenate blending, conventional blend stock for oxygenate blending, E85, fuel grade ethanol that meets the ASTM International active standards specification D4806 or D4814, or other product which is suitable for use in the operation of a motor vehicle engine. If you are purchasing motor fuel exempt from tax, mark this box.

Box B – Highway diesel motor fuel is any diesel motor fuel that is **not** non-highway diesel motor fuel. If you are purchasing highway diesel motor fuel exempt from tax, mark this box.

Box C – Non-highway diesel motor fuel is any diesel motor fuel designated for use other than on a public highway, and is dyed diesel motor fuel. If you are purchasing non-highway diesel motor fuel exempt from tax, mark this box.

Diesel motor fuel is No. 1 diesel fuel, No. 2 diesel fuel, biodiesel, kerosene, fuel oil, or other middle distillate, and also motor fuel suitable for operating a diesel engine. Diesel motor fuel does not include any product specifically designated "No. 4 diesel fuel."

Box D – Residual petroleum product means the topped crude of refinery operations, including No. 5 fuel oil, No. 6 fuel oil, bunker C, and the special grade of diesel product designated as No. 4 diesel fuel, that is not suitable for use in the operation of a motor vehicle engine. If you are purchasing residual petroleum product exempt from tax, mark this box.

Misuse of this certificate

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

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

To the seller

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

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

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

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

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

Privacy notification

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

Need help?



Visit our Web site at www.tax.ny.gov

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



Sales Tax Information Center:

(518) 485-2889

To order forms and publications:

(518) 457-5431



Text Telephone (TTY) Hotline

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

(518) 485-5082

EXHIBIT C-2

NYS FORM FT-123 (FUEL) FOR USE BY SUBAGENTS OF COMPANY

[See Attached Page]



IDA Agent or Project Operator Exempt Purchase Certificate for Fuel

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

To be completed by the purchaser and given to the seller.

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

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

To the seller:

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

Project information

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

Name of IDA Onondaga County IDA			
Name of project Baldwinsville Senior Housing Preservation, LLC Project	IDA project number (use OSC number) 3101-19-07A		
Street address of project site 700 Conifer Drive*	*and any lands located in Onondaga County and occupied by license or easement during construction or improved by third parties for the benefit of the Project		
City, town, or village Baldwinsville	State NY	ZIP code 13207	
Enter the date that you were appointed agent or project operator (mm/dd/yy) 05 / 18 / 22	Enter the date that agent or project operator status ends (mm/dd/yy) 12 / 31 / 24		

Exempt purchases – Only fuel or residual petroleum product used to **complete** the project may be purchased by IDA agents or project operators exempt from the fuel excise tax, petroleum business tax, and sales and use tax. Fuel or residual petroleum product used to **operate** a business after the project is completed does not qualify for this exemption (see *instructions*).

Mark an **X** in boxes that apply:

<input type="checkbox"/> A. Motor fuel	<input type="checkbox"/> C. Non-highway diesel motor fuel
<input type="checkbox"/> B. Highway diesel motor fuel	<input type="checkbox"/> D. Residual petroleum product

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that excise taxes and state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

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

Instructions

To the purchaser

You may use Form FT-123 if you:

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

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

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

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

IDAs are exempt from the payment of sales and use tax on their purchases. However, IDAs do not normally make direct purchases for projects. Commonly, an IDA instead appoints a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax. Purchases made by an agent or project operator to operate a business after the project is completed are subject to tax.

Example: An IDA agreement with its agent, Contractor X, states that Contractor X may make all purchases of materials and equipment necessary for completion of the project as agent for the IDA.

Contractor X purchases non-highway diesel motor fuel for use in construction equipment that will be used to prepare the site for construction. Since the fuel is being used to complete the project, Contractor X may purchase the fuel exempt from taxes.

When the project is completed, Contractor X purchases motor fuel and highway diesel motor fuel for use in snowplows and other maintenance vehicles used to maintain the parking lots for the business. Contractor X may not purchase this fuel exempt from tax because it is being used to operate, not to complete, the project.

Exempt purchases

To qualify for exemption, the purchases must be made within the authority granted by the IDA and used to **complete** the project, but not to **operate** the completed project.

Box A – Motor fuel is gasoline, benzol, reformulated blend stock for oxygenate blending, conventional blend stock for oxygenate blending, E85, fuel grade ethanol that meets the ASTM International active standards specification D4806 or D4814, or other product which is suitable for use in the operation of a motor vehicle engine. If you are purchasing motor fuel exempt from tax, mark this box.

Box B – Highway diesel motor fuel is any diesel motor fuel that is **not** non-highway diesel motor fuel. If you are purchasing highway diesel motor fuel exempt from tax, mark this box.

Box C – Non-highway diesel motor fuel is any diesel motor fuel designated for use other than on a public highway, and is dyed diesel motor fuel. If you are purchasing non-highway diesel motor fuel exempt from tax, mark this box.

Diesel motor fuel is No. 1 diesel fuel, No. 2 diesel fuel, biodiesel, kerosene, fuel oil, or other middle distillate, and also motor fuel suitable for operating a diesel engine. Diesel motor fuel does not include any product specifically designated "No. 4 diesel fuel."

Box D – Residual petroleum product means the topped crude of refinery operations, including No. 5 fuel oil, No. 6 fuel oil, bunker C, and the special grade of diesel product designated as No. 4 diesel fuel, that is not suitable for use in the operation of a motor vehicle engine. If you are purchasing residual petroleum product exempt from tax, mark this box.

Misuse of this certificate

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

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

To the seller

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

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

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

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

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

Privacy notification

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

Need help?



Visit our Web site at www.tax.ny.gov

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



Sales Tax Information Center:

(518) 485-2889

To order forms and publications:

(518) 457-5431



Text Telephone (TTY) Hotline

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

(518) 485-5082

EXHIBIT C-3
INVOICE RIDER FORM

I, BALDWINSVILLE SENIOR HOUSING PRESERVATION, LLC [OR, SUBAGENT NAME: _____], certify that I am a duly appointed agent of ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency") and that I am purchasing the tangible personal property or services for use in the following Agency Project and that such purchases qualify as exempt from sales and use taxes under the Project Agreement, dated as of May 18, 2022, by and between the Agency and BALDWINSVILLE SENIOR HOUSING PRESERVATION, LLC.

Name of the Project:	Baldwinsville Senior Housing Preservation, LLC Project
Street address of the Project Site:	700 Conifer Drive Village of Baldwinsville and Town of Van Buren Onondaga County, New York
IDA OSC project number:	3101-19-07A

EXHIBIT D

**NYS FORM ST-340 TO BE COMPLETED BY THE COMPANY AND FILED
ANNUALLY WITH THE NYS TAX DEPARTMENT IDA UNIT**

[See Attached Page]



Department of Taxation and Finance

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

ST-340

(1/18)

For period ending December 31, _____ (enter year)

Project information

Name of IDA agent/project operator Baldwinsville Senior Housing Preservation, LLC		Employer identification number (EIN)	
Street address 12435 Park Potomac Avenue, Suite 200		Telephone number ()	
City Potomac		State MD	ZIP code 20845
Name of IDA Onondaga County IDA	Name of project Baldwinsville Senior Housing Preservation, LLC Project	IDA project number 3101-19-07A	
Street address of project site 700 Conifer Drive*	* and any lands located Onondaga County and occupied by license or easement during construction or improved by third parties for the benefit of the Project		
City Baldwinsville	State NY	ZIP code 13207	
Date project began 051822	Completion date of project 123124	Actual <input type="checkbox"/>	Expected <input checked="" type="checkbox"/>
Total sales and use tax exemptions (actual tax savings; not total purchases)			\$

Representative information (not required)

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

Certification

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

Print name of officer, employee, or authorized representative	Title of person signing
Signature	Date

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

Mail completed report to:

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

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

Instructions

General information

Who must file

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

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

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

What you must report

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

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

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

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

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

When the report is due

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

Project information

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

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

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

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

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

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

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

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

Representative information

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

Certification

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

Mail completed report to:

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

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

Need help?



Visit our website at www.tax.ny.gov

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

Telephone assistance

Sales Tax Information Center: 518-485-2889

To order forms and publications: 518-457-5431

Text Telephone (TTY) or TDD equipment users Dial 7-1-1 for the New York Relay Service

Privacy notification

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

EXHIBIT E

FORM OF ANNUAL EMPLOYMENT AND FINANCIAL ASSISTANCE CERTIFICATION LETTER

Company name and address:

**BALDWINSVILLE SENIOR HOUSING
PRESERVATION, LLC
169 MAMARONECK AVENUE, SUITE #8
WHITE PLAINS, NEW YORK 10601**

Project Name:

**BALDWINSVILLE SENIOR HOUSING
PRESERVATION, LLC PROJECT**

Job Information

Current number of full time equivalent employees ("FTE") retained at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

Category	FTE	Average Salary and Fringe Benefits or Ranges
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____
Other	_____	_____

Current number of full time equivalent employees ("FTE") created at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

Category	FTE	Average Salary and Fringe Benefits or Ranges
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____
Other	_____	_____

A copy of the NYS-45 form for the project location is required to be submitted with this report. If the NYS-45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created, an internal payroll report verifying

the total jobs by employment category as outlined above at the location is required with this submission.

Financing Information

Has the Agency provided project financing assistance (generally through issuance of a bond or note)

If financing assistance was provided, please provide:

- Original principal balance of bond or note issued
- Outstanding principal balance of such bond or note as of December 31
- Outstanding principal balance of such bond or note

Final maturity date of the bond or note

Sales Tax Abatement Information

Did your Company or any appointed Subagents receive Sales Tax Abatement for your Project During the prior year? Yes No

If so, please provide the amount of sales tax savings received by the Company and all appointed Subagents _____

(Attach copies of all ST-340 sales tax reports that were submitted to New York State by the Company and all Subagents for the reporting period. Please also attach all ST-60's filed for Subagents for the reporting period)

Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project During the prior year?

(note this would only be applicable to the year that a mortgage was placed upon the Project, so if the Agency did not close a mortgage with you during the reporting period, the answer should be no)

The amount of the mortgage recording tax that was exempted during the reporting period:

PILOT INFORMATION:

County Real Property Tax without PILOT	\$ _____
City/Town Property Tax without PILOT	\$ _____
School Property Tax without PILOT	\$ _____
TOTAL PROPERTY TAXES WITHOUT PILOT	\$ _____

Total PILOT Payments made for reporting period: \$_____

Whether paid separately or lump sum to Agency for distribution, please provide break down of allocation of PILOT Payment to individual taxing jurisdictions:

County PILOT	\$_____
City/Town PILOT	\$_____
Village PILOT	\$_____
School PILOT	\$_____
TOTAL PILOTS	\$_____

Net Exemptions \$_____
(subtract Total PILOTS from TOTAL property taxes without PILOT)

I certify that to the best of my knowledge and belief all of the information on this form is correct. I further certify that the salary and fringe benefit averages or ranges for the categories of jobs retained and the jobs created that was provided in the Application is still accurate and if not, I hereby attach a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. I also understand that failure to report completely and accurately may result in enforcement of provisions of my agreement, including but not limited to voidance of the agreement and potential claw back of benefits.

Signed: _____

Name: _____

Title: _____

(authorized company representative)

Date: _____

EXHIBIT F

**BILL OF SALE
TO
BALDWINSVILLE SENIOR HOUSING PRESERVATION, LLC**

ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having offices at 333 W. Washington Street, Syracuse, New York 13202 (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from **BALDWINSVILLE SENIOR HOUSING PRESERVATION, LLC**, a New York limited liability company with offices at , a New York limited liability company, having an office for the transaction of business located 12435 Park Potomac Avenue, Suite 200, Potomac, Maryland 20854 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee and its successors and assigns, the Equipment (as defined in the Project Agreement, dated as of May 18, 2022 (the "Project Agreement"), as may be amended from time to time, which were acquired and installed and/or are to be acquired and installed by the Grantee as agent for the Grantor pursuant to the Project Agreement, which Equipment is located or intended to be located at 700 Conifer Drive, Village of Baldwinsville and Town of Van Buren, Onondaga County, New York.

TO HAVE AND TO HOLD the same unto the Grantee and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT "AS IS," WITHOUT RE COURSE OF ANY NATURE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OF DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

This Bill of Sale shall become effective as to each item of the Equipment as and when the same are delivered to the site of the Facility (as defined in the Project Agreement) or installed in the Facility.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by the officer described below on the date indicated beneath the signature of such officer and dated as of the _____ day of _____, 2022.

**ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

Form Only - Do Not Sign

By: _____

Name:

Title: