

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
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 Plaintiff, :
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 Case No. 06-CV-4818(JMA)(AYS)
 v. :
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 GERALD COHEN, LAWRENCE AVIATION :
 INDUSTRIES, INC., and 125 ACRES OF LAND, :
 MORE OR LESS, :
 :
 Defendants. :
----- X

**AGREEMENT AND CONSENT DECREE CONCERNING
DISTRIBUTION OF CERTAIN ASSETS AMONG CLAIMANTS**

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (“EPA”), filed a civil complaint in this matter pursuant to Sections 104(e) and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9604(e) and 9607, (the “Complaint”), seeking adjudication of *in personam* claims against Defendants Gerald Cohen (“Cohen”) and Lawrence Aviation Industries, Inc. (“LAI”), and an *in rem* claim against real property described as 125 Acres of Land, More or Less (“125 Acres”). The Complaint stated claims against Defendants Cohen and LAI for reimbursement of response costs incurred or to be incurred for response actions taken by EPA at or in connection with the Lawrence Aviation Industries Superfund site, which is located in Port Jefferson, Suffolk County, New York (the “Site”), and penalties against Defendants Cohen and LAI for failure to respond to statutorily authorized EPA requests for information. The Complaint also sought relief related to liens that the United States asserted against six parcels of real property owned by the Defendants, three owned by Defendant Cohen and three owned by Defendant LAI, collectively constituting the 125 Acres.

B. Persons with known potential interests in the 125 Acres were notified of the action and provided with the opportunity to participate and assert their claims against the 125 Acres. Eleven persons and entities filed *in rem* claims of interest in Defendant 125 Acres. Nine *in rem* claimants have chosen to pursue their claims (the “Additional Claimants”, as identified in Appendix A), along with EPA.

C. After a trial on the merits, and for the reasons stated in its Memorandum and Order dated March 19, 2019, the Court granted judgment to the United States against Defendants Cohen and LAI with respect to its claims for cost recovery and penalties. With respect to the *in rem* claim, the Court ruled that the United States has valid CERCLA liens against the six parcels constituting Defendant 125 Acres. What remains to be resolved is an allocation of the proceeds of the sale of the six parcels among EPA and the Additional Claimants.

D. Suffolk County, the county in which the 125 Acres is situated, is one of the Additional Claimants, and it asserts that it has ad valorem tax liens on each of the six parcels that comprise the 125 Acres. Suffolk County has transferred its tax liens to the Suffolk County Landbank Corporation (the “Landbank”), and the Landbank will transfer the tax liens to SCLB Holdings, LLC, a domestic limited liability company created by the Landbank (the “LLC”), and the LLC will foreclose Suffolk County’s tax liens on the 125 Acres. Neither the Landbank nor the LLC are among the Additional Claimants.

E. The Landbank commissioned a re-use feasibility study for the Lawrence Aviation Industries Superfund site (“Study”) to identify potential options for redevelopment and to assess the current/future market for the property for redevelopment. The Study was made available to the Parties to this Consent Decree, and it was agreed that marketing the 125 Acres as contemplated by this Consent Decree rather than a liquidation sale of the 125 Acres would provide the best opportunity to maximize the sales proceeds from the sale of the 125 Acres.

F. The Study included a conclusion that repositioning the property for sale was a component of maximizing the sales proceeds, and such repositioning required enhanced access

that would not be achievable without alienating certain adjacent County park land to provide for such enhanced access. In order to accomplish such alienation in accordance with New York State common law, the Parties have agreed to set aside certain acreage, hereinafter described as New Property Category 2, that is to remain undeveloped and be dedicated toward and conveyed in substitution for the alienation of park land and/or relocation of the existing Greenway Trail constructed on a New York State right-of-way so as to allow for the aforesaid enhanced access and assemble the parcels to create New Property Category 1. The Study also refers to certain “sanitary flow credits.” There is the potential to increase the allowable square footage of industrial development in New Property Category 3 by transferring sanitary flow credits from New Property Category 2 to New Property Category 3. In order to effectuate the transfer of those credits, certain acreage in New Property Category 2 would need to remain undeveloped. It is the Parties’ belief that the use of New Property Category 2 as described will allow for, and is critical to, the enhanced value of the remaining portions of the 125 Acres.

G. The Parties to this Consent Decree agree that the LLC will perform certain tasks described in Appendix C, to the extent necessary, to enhance the marketability of the 125 Acres and to prepare for the sale of the 125 Acres. These tasks include obtaining various land use and environmental approvals as well as effectuating the process of alienation and conversion (and substitution) of an adjacent parcel of County parkland for the ultimate purpose of the construction of an access road to improve the access to and the value of portions of the 125 Acres. The preparation of the 125 Acres will also include relocation of a portion of the State-owned Greenway Trail that bisects the Site, which will require working with the New York State Department of Transportation, the New York State Legislature, and local municipalities. The LLC will eventually market the balance of the 125 Acres for sale.

H. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without the adjudication of any further issue of fact or law is appropriate and will avoid prolonged and complicated litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. STATEMENT OF PURPOSE

1. The Parties’ purpose in entering into this Consent Decree is to sell or otherwise convey the 125 Acres within a reasonable period for total net proceeds that would be greater than what would be obtained through an auction or other forced sale as of the date of this Consent Decree and to distribute the Net Sales Proceeds, all in accordance with the terms of this Consent Decree. It is the Parties’ intention that the value of the 125 Acres would be enhanced prior to sale or conveyance consistent with local community and regional needs, and consistent with local land use plans and laws.

III. JURISDICTION

2. This Court has continuing jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and Sections 107(l)(4) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(l)(4) and 9613(b), and also retains *in rem* jurisdiction over the 125 Acres. The

Parties shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. All Parties to this settlement hereby consent to the designation of the Magistrate Judge to exercise continuing civil jurisdiction over this matter, as authorized by 28 U.S.C. § 636(c) and Rule 73 of the Rules of Civil Procedure, and this Consent Decree constitutes a joint form of consent pursuant to Rule 73.

IV. PARTIES BOUND

3. This Consent Decree is binding upon the Parties and their respective heirs, successors, and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status of Defendants under this Consent Decree. No Party to this Consent Decree may be held out as a party to any contract entered into by or on behalf of any other Party to this Consent Decree in carrying out activities under this Consent Decree unless such contract is expressly consented to, in writing, by the two (or more) Parties involved.

V. DEFINITIONS

4. Whenever terms listed herein are used in this Consent Decree or its appendices, the following definitions shall apply:

"125 Acres" shall mean the following six Suffolk County Tax Map ("SCTM") parcels: SCTM 0200-159-1-26 (2.67 acres owned by LAI); SCTM 0200-159-2-19 (33.27 acres owned by LAI); SCTM 0200-159-2-20 (24.63 acres owned by Cohen); SCTM 0200-136-2-22 (13.88 acres owned by LAI); SCTM 0200-180-4-2 (44.74 acres owned by Cohen); and SCTM 0200-180-4-1 (5.34 acres owned by Cohen).

"Additional Claimants" shall mean those entities identified on Appendix A.

"Affected Properties" shall mean those real property parcels at the Site where continuing access is needed and where land, water, or other resource use restrictions, including Institutional Controls, are needed to implement the remedy selected for the Site on September 29, 2006, including two of the LAI parcels, SCTM 0200-159-1-26, SCTM 0200-159-2-19, and one of the Cohen parcels, SCTM 0200-180-4-1, all three of which were formerly used for industrial activity.

"Allocation Disbursement" shall mean the amount or percentage paid from Net Sales Proceeds periodically in accordance with Appendix B.

"Allowed Expenses" shall mean the LLC's expenditures that are incurred to achieve the Purpose of this Consent Decree, as set forth in Section II (Statement of Purpose), including, but not limited to, the costs incurred in performing the tasks described in Appendix C, as well as costs associated with outside environmental counsel, accounting and auditing fees, and staff salaries to effectuate these tasks.

"Allowed Expenses Cap" shall mean the approved maximum amount of Allowed Expenses reimbursable from the Gross Sales Proceeds. The approved maximum amount of Allowed Expenses reimbursable from the Gross Sales Proceeds, unless amended pursuant to this Consent Decree, is \$1.3 million.

“Break Up” shall mean that the Landbank and LLC are relieved of their respective obligations, as set forth in Paragraphs 5 and 6 of this Consent Decree and Appendix C thereto, in accordance with Section VII and Section XIV of this Consent Decree, and that the 125 Acres (or the remainder thereof) will be disposed of and the proceeds of such disposition will be distributed as provided in Sections VII and XII of this Consent Decree.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Cohen” shall mean Gerald Cohen.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of a conflict between this Consent Decree and any appendix, the Consent Decree shall control.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

The term “Defendant” or “Defendants” shall mean Gerald Cohen, Lawrence Aviation Industries, Inc., or LAI, and 125 Acres of Land, More or Less, either individually or collectively, respectively.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

“Environmental Laws” means any and all present and future federal, state, and local laws (whether under common law, statute, rule, regulation, or otherwise), requirements under consent orders, judicial orders, administrative orders, and permits or authorizations issued with respect to any of the foregoing, and other requirements of any governmental authority that regulates hazardous substances.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Final Reconciliation” shall mean an accounting prepared after the conveyance of the entire 125 Acres that records and provides a breakdown of the following: (1) the Gross Sales Proceeds from each conveyance of the 125 Acres; (2) in addition to Gross Sales Proceeds, the amount and type of all other funds obtained and used by the Landbank or LLC concerning the 125 Acres, *e.g.*, TIF or grant funding; (3) each Allocation Disbursement paid to the United States and the Additional Claimants; (4) all Allowed Expenses expended; and (5) all closing costs.

“Gross Sales Proceeds” shall mean all the proceeds from the sale of the 125 Acres. The total amount of the Gross Sales Proceeds shall be the amount of proceeds from the sale of the entire 125 Acres.

“Institutional Controls” shall mean non-engineered actions or requirements, such as administrative or legal controls, that help minimize the potential for human exposure to contamination and/or protect the integrity of the remedy selected for the Site on September 29, 2006.

“Landbank” shall mean the Suffolk County Landbank Corporation.

“LAI” shall mean Lawrence Aviation Industries, Inc., an inactive New York State corporation that was dissolved by proclamation on June 25, 2003.

“Lawrence Aviation Site Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“LLC” shall mean SCLB Holdings, LLC, a domestic limited liability company established by the Landbank under the laws of the State of New York.

“Net Sales Proceeds” shall mean the Gross Sales Proceeds less Allowed Expenses and normal and customary closing costs.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper- or lower- case letter.

“Party” or “Parties” shall mean the United States, the Additional Claimants, the Landbank, and the LLC, either individually or collectively, respectively.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Site” shall mean the Lawrence Aviation Industries Site, which is located in Port Jefferson, Suffolk County, New York.

“State” shall mean the State of New York.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

VI. PROCESS OF SALE OF THE 125 ACRES

5. The LLC shall perform the services set forth in Appendix C, to the extent required, to enhance the marketability of the 125 Acres in preparation for sale. The following categories of properties shall be created from the 125 Acres, to the extent feasible and appropriate, pursuant to this Consent Decree. The Parties acknowledge that the acreages described below are based on tax assessment documentation and may deviate slightly from surveyed acreage amounts:

a. New Property Category 1: This property shall comprise 13.88 acres of current parcel SCTM 0200-136-2-22, 17.55 acres of current parcel SCTM 0200-159-2-20, and approximately 3.87 acres of current parcel SCTM 0200-180-4-2, for a total of 34.98 acres;

b. New Property Category 2: This property shall comprise 5.34 acres of current parcel SCTM 0200-180-4-1 and the 40.87 acres of current parcel SCTM 0200-180-4-2 that are not included in New Property Category 1, for a total of 46.21 acres; and

c. New Property Category 3: This property shall comprise 2.67 acres of current parcel SCTM 0200-159-1-26, 33.27 acres of current parcel SCTM 0200-159-2-19, and 7.08 acres of current parcel SCTM 0200-159-2-20, for a total of 43.02 acres.

6. New Property Categories 1, 2, and 3 shall be marketed and sold or otherwise conveyed to the extent feasible and appropriate for the uses set forth in this Paragraph and in conformance with the tasks set forth in Appendix C that shall be performed by the Landbank and/or the LLC:

a. New Property Category 1: This property shall be marketed, enhanced, and sold as a single parcel for a regionally significant infrastructure project. It is currently envisioned that, rather than utilizing a request for proposal (“RFP”) process, the LLC may identify one or more parties willing to undertake a regionally significant infrastructure project, and the LLC will negotiate directly with that party or those parties for the sale of New Property Category 1, subject to the process set forth in Section XIV (Dispute Resolution and Break Up Procedure).

b. New Property Category 2: This property will remain undeveloped and be dedicated and conveyed to satisfy the obligation to substitute for the alienation for park land and/or for the Greenway Trail that bisects the Site subject to the process set forth in Section XIV (Dispute Resolution and Break Up Procedure). It is anticipated that this property will generate no income to be disbursed. However, if the above-described alienation and conversion (and substitution) of adjacent County park land for creation of an enhanced access road to portions of the 125 Acres results in the conveyance of said access road for consideration, the proceeds of such conveyance shall be included among the Gross Sales Proceeds under this Consent Decree.

c. New Property Category 3: This property shall be subdivided, marketed, enhanced, and sold for use as a commercial/industrial park. The LLC will market this property, in whole or in parcels, for sale through one or more private, competitive RFP bidding process(es) subject to the process set forth in Section XIV (Dispute Resolution and Break Up Procedure).

7. New Property Categories 1, 2, and 3 as set forth in Paragraph 5, shall constitute the entirety of the 125 Acres. Variations of less than ten percent (10%) to the metes and bounds descriptions and/or acreage among New Property Categories 1, 2, and 3 may be made by the LLC based on the goal of improving the marketability of one or more of the New Property Categories 1, 2, or 3, or otherwise achieving the objectives of Section II (Statement of Purpose) of this Consent Decree. In the event of any variation in acreage of New Property Categories 1 and 3 that exceeds this 10% threshold, the LLC shall provide notice of any such proposed variation to the United States and the Additional Claimants, and the United States or Additional

Claimants shall have 40 calendar days after their respective receipt of such notice to file an objection pursuant to Section XIV (Dispute Resolution) of this Consent Decree. Any such proposed variation that exceeds this 10% threshold shall be effective if the requisite number of Additional Claimants fail to object to such a variation in a timely manner in accordance with the process set forth in Section XIV (Dispute Resolution) of this Consent Decree, or if the Court rejects or disapproves of such proposed variation after the United States or the requisite number of Additional Claimants have properly objected to such proposed variation.

8. The LLC shall provide notice to the United States and the Additional Claimants, as hereinafter provided, of any proposed material modification or material change to the proposed use or process for the marketing and/or the sale or conveyance of New Property Categories 1, 2, and 3 as they are described in Paragraph 6. The United States or Additional Claimants shall have 40 calendar days after their receipt of such notice to file an objection to such proposed modification or change pursuant to Paragraph 29. Any such proposed modification or change shall be effective if neither the United States nor the requisite number of Additional Claimants object to such variation or change in a timely manner in accordance with the process set forth in Section XIV (Dispute Resolution) of this Consent Decree, or if the Court approves of such proposed variation or change after the United States or the requisite number of Additional Claimants have properly objected to such proposed variation or change.

9. a. The LLC shall provide notice to the United States and the Additional Claimants, as hereinafter provided, of any proposed sale or conveyance, and the United States or the requisite number of Additional Claimants may object to such proposed sale or conveyance in a timely manner in accordance with the process set forth in Section XIV (Dispute Resolution). The Court shall approve or reject any proposed sale or conveyance based on any such timely-filed objection(s) by the United States and/or the requisite number of Additional Claimants. For notice of a sale or conveyance, the notice must be provided after the prospective purchaser has signed the contract of sale, and the LLC shall only execute the contract of sale if neither the United States nor the requisite number of Additional Claimants have timely objected to such proposed sale or conveyance or the Court has rejected all objection(s) of the United States and the requisite number of Additional Claimants.

b. The LLC agrees that any contract of sale shall include the following notice provision in bold-faced type:

IMPORTANT NOTICE RELATIVE TO PURCHASE AGREEMENT: The sale of this property is subject to a Consent Decree issued in a civil action in federal court (the Eastern District of New York), to wit: U.S. v. Lawrence Aviation Industries, Inc., No. 06-CV-4818 (Azrack, J.) (Shields, M.J.). Pursuant to that Consent Decree, SCLB Holdings, LLC will provide notice to the United States and the Additional Claimants in the action prior to executing the Purchase Agreement, and there will be a 40-day period for the United States or the Additional Claimants to object to the sale by invoking Dispute Resolution. This Purchase Agreement shall not be binding on the LLC or the Purchaser until such time as (1) (a) the LLC provides notice to the United States and Additional Claimants and the objection period expires without objection per the Consent Decree or (b) the Court has rejected any such objections to the Purchase Agreement, whichever occurs first, and (2) the LLC executes this Purchase Agreement.

c. Such notice shall include the following information: (i) the identity of the purchaser; (ii) the purchase price; (iii) the general intended future use; (iv) the estimated duration until a closing; and (v) any conditions of sale tendered by the purchaser.

d. The United States or Additional Claimants shall have 40 calendar days to file an objection regarding a proposed sale or conveyance pursuant to Paragraph 29. Failure of the requisite number of Additional Claimants to object in a timely manner in accordance with the process set forth in Section XIV (Dispute Resolution) shall be deemed a waiver of the right to object to that sale or conveyance.

VII. BREAK UP AND RELIEF FROM OBLIGATIONS

10. If the Purpose of this Consent Decree (Section II) cannot be effectuated, or there is a material failure of the Landbank or LLC to meet the obligations set forth in Paragraphs 5 and 6 and Appendix C, the United States or five Additional Claimants may petition the Court for a Break Up in accordance with this Paragraph and Section XIV (Dispute Resolution). Neither the United States nor any Additional Claimant may petition for a Break Up on the same ground(s) that a prior petition for Break Up, or invocation of dispute resolution, was unsuccessful. Moreover, neither the United States nor any Additional Claimant may petition for a Break Up for any action for which notice has been given by the LLC, as hereinafter provided, and the United States or such Additional Claimant did not timely file an objection to such action.

11. The Landbank and the LLC may jointly, but not individually, petition to be relieved from their obligations under this Consent Decree. If such a petition is granted by the Court, the sale or conveyance process for this Consent Decree will be modified in the manner set forth in Paragraph 13.

12. The procedure for filing a petition for Break Up, or for a petition by the Landbank and the LLC for relief from their obligations, is set forth in Paragraph 30. Each Party to this Consent Decree shall have the right to propose the manner in which the 125 Acres, or the entire remaining portion thereof not yet sold or otherwise conveyed pursuant to the sale or conveyance process, shall be sold or otherwise conveyed for the benefit of and ultimate distribution of proceeds to the United States and the Additional Claimants in accordance with the allocated amounts and percentages set forth in Appendix B and pursuant to Section II (Statement of Purpose).

13. In the event that there is a petition for a Break Up or Relief from Obligations, and the Court, based on such petition, terminates the remaining obligations of the Landbank and LLC that are set forth in Paragraphs 5 and 6 and Appendix C, then (a) the LLC shall transfer the 125 Acres, or the entire remaining portion thereof not yet sold or otherwise conveyed from its ownership and possession pursuant to the sale or conveyance process established under this Consent Decree, into a trust approved by the Parties for the purpose of ultimate sale or conveyance of such property for the benefit of the United States and the Additional Claimants and distribution of the Net Sale Proceeds of such sale or conveyance to the United States and the Additional Claimants in accordance with the allocations set forth in Appendix B; (b) the LLC shall cooperate in any real estate closings in any manner that is necessary to effectuate a transfer

of the 125 Acres, or any portion thereof not yet sold or otherwise conveyed from its possession pursuant to the sale or conveyance process established under this Consent Decree; and (c) the LLC may seek approval from the United States and the Additional Claimants, or from the Court, for reimbursement of reasonable expenses it incurs pursuant to this paragraph.

VIII. TAX INCREMENT FINANCING

14. The Landbank shall evaluate the availability and/or viability of tax increment financing (“TIF”) related to the sale and development of the 125 Acres. It is anticipated that the 125 Acres will be developed and will result in an incrementally enhanced tax base. TIF may be considered appropriate for some or all of the development of the 125 Acres involving both parcel- and project-specific considerations, including the following:

- a. whether development of a parcel or parcels for a specific aspect of a development project would be desirable and/or feasible absent the use of TIF;
- b. whether the proposed development will generate new versus relocated economic activity;
- c. whether a proposed development’s anticipated return on investment is adequate to justify investing revenue that would otherwise constitute general purpose tax revenue;
- d. whether the proposed development will generate enough increase in incremental value to repay debt service (e.g., bonds) and some or all of the Allowed Expenses, and whether options exist to ensure against any potential shortfall;
- e. whether, in consideration of the factors set forth in subparagraphs a. – d., herein, TIF bonds can be sold at reasonable interest rates; and
- f. whether the local taxing districts are supportive of a TIF.

15. In order to pursue TIF, Suffolk County and the local municipal governmental entities would need to undertake certain steps in order to adopt a redevelopment plan, which is necessary for the municipality to authorize the issuance of bonds based upon the tax increment revenue. These steps include the municipality adopting a resolution authorizing the indebtedness.

16. Given the TIF process and the fact that persons that are not Parties to this Consent Decree are critical to this process (i.e., the municipal local tax jurisdictions), it is premature and beyond the control of the Parties, respectively, to determine that TIF will be a viable option related to redevelopment of some or all of the 125 Acres.

17. It is, however, the intention of Suffolk County and the LLC to evaluate TIF bonding to fund at least one hundred percent of the Allowed Expenses. If a TIF is approved, such funding will be used, in the first instance, for payment of Allowed Expenses.

IX. DISTRIBUTION OF NET SALES PROCEEDS

18. The Net Sales Proceeds and, if applicable, any TIF funding dedicated to be disbursed to the United States and the Additional Claimants, shall be distributed in accordance with the allocated amounts and percentages set forth in Appendix B.

19. The two fixed-amount disbursements (as opposed to the percentage disbursements) set forth in Appendix B will be paid in full from the Net Sales Proceeds of an initial or interim sale of the 125 Acres. The timing of the fixed amount disbursements shall be subject to the financial demands imposed upon the LLC by the sales process, including whether there are Gross Sales Proceeds sufficient to reimburse the LLC for Allowed Expenses that have already been incurred and to fund reasonably anticipated future Allowed Expenses.

20. Prior to a Final Reconciliation, the LLC may retain a portion of Gross Sales Proceeds sufficient to reimburse Allowed Expenses that have been incurred, or to fund future Allowed Expenses that are reasonably anticipated in consideration of tasks set forth in Appendix C that have not been completed, are within the Allowed Expenses Cap amount and are not provided for by other funding available for the tasks, including TIF or grant funding.

X. PAYMENTS TO PARTIES

21. a. As to the United States: Subject to Paragraphs 19 and 20, the LLC shall pay to EPA Allocation Disbursements, in accordance with the allocation set forth in Appendix B. To the extent generated, Allocation Disbursements will be paid on a quarterly basis commencing on January 1 of each year. The LLC shall make any such payment at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to LLC by the Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the Eastern District of New York after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

SCLB Holdings, LLC
100 Veterans Memorial Hwy. 11th Floor
Hauppauge, New York 11788
Phone: 631-853-6330
Email: Landbank@suffolkcountyny.gov

on behalf of LLC. LLC may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XVIII (Notices and Submissions).

b. As to the Additional Claimants: Subject to Paragraphs 19 and 20, the LLC shall pay to the Additional Claimants Allocation Disbursements for each Additional Claimant, based on the allocation set forth in Appendix B. To the extent generated, Allocation Disbursements shall be made on a quarterly basis commencing on January 1 of each year. Payment shall be made in accordance with the payment instruction included in Appendix A.

22. **Deposit of Payment to EPA.** The total amount to be paid pursuant to Paragraph 21 a. shall be deposited by EPA in the Lawrence Aviation Site Special Account to be retained

and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

23. **Notice of Payment to EPA.** At the time of any payment to EPA, LLC shall send notice that payment has been made as follows: (a) to EPA in accordance with Section XVIII (Notices and Submissions); (b) to DOJ by email or by mail in accordance with Section XVIII (Notices and Submissions); and (c) to the EPA Cincinnati Finance Center by email or by regular mail at:

Email: cinwd_acctsreceivable@epa.gov

Regular mail: EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number 02NS, and DJ Number 90-11-2-08707.

XI. TREATMENT OF ALLOWED EXPENSES

24. If the LLC's Allowed Expenses cannot be funded or reimbursed through a TIF as set forth in Section VIII, herein, notwithstanding the Landbank and the LLC's reasonable efforts to obtain the tax increment revenue, the LLC agrees to limit its reimbursement for Allowed Expenses from the Gross Sales Proceeds to a maximum of \$1.3 million (the "Allowed Expenses Cap"), subject to the terms of Paragraph 25 regarding raising the amount of the Allowed Expenses Cap. Allowed Expenses that are funded by funding sources other than Gross Sales Proceeds, such as TIF or grant funding, are not eligible for reimbursement from the Gross Sales Proceeds.

25. In the event that the LLC reasonably anticipates that Allowed Expenses will exceed the Allowed Expenses Cap and the LLC desires to raise the Allowed Expenses Cap so as to render said anticipated expenditures reimbursable Allowed Expenses, the LLC shall provide 40-days notice to the United States and the Additional Claimants, as hereinafter provided, of its desire to increase the amount of the Allowed Expenses Cap so that such anticipated expenditures will be reimbursable from Gross Sales Proceeds. The United States or five Additional Claimants shall have 40 calendar days, after their receipt of such notice, to file an objection with the Court pursuant to Paragraph 30. Should the United States or the requisite number of Additional Claimants not object in a timely manner, in accordance with the process set forth in Section XIV (Dispute Resolution), to a proposed increase in the amount of the Allowed Expenses Cap, the Court may approve the proposed increase. In the event that the United States or the requisite number of Additional Claimants timely file an objection to the proposed increase, the Court shall determine whether such proposed increase is approved based on the necessity and reasonableness of the additional expenditures for which such proposed increase is sought. Expenditures, either individually or cumulatively, that are incurred to achieve the Purpose of this Consent Decree, as set forth in Section II (Statement of Purpose) of this Consent Decree, and that do not exceed the Allowed Expenses Cap (as established hereunder or amended), are deemed and stipulated to be reasonable and are not susceptible to challenge under this Section, nor subject to Dispute Resolution.

XII. PROGRESS REPORTS

26. The LLC shall provide to the United States and the Additional Claimants written quarterly progress reports by the 15th day of January, April, July, and October commencing on the Effective Date of this Consent Decree. The progress reports shall be provided electronically only. The LLC shall be obligated to submit progress reports until the earlier of: (a) the sale or conveyance of all of the 125 Acres and the distribution of all Sale Proceeds in accordance with the terms of this Consent Decree; (b) the United States and the Additional Claimants provide the LLC with written notice that it may cease submitting reports; or (c) the Court issues an Order authorizing the LLC to cease submitting reports. At a minimum, with respect to the preceding Quarter, each progress report shall:

- i. describe the actions that have been taken to implement this Consent Decree to date, including the past three months;
- ii. describe Appendix C tasks and other activities planned for the next three months;
- iii. describe all problems encountered in implementing this Consent Decree and any anticipated problems and solutions developed and implemented to address such problems; and
- iv. identify all persons that have responded to a Request for Proposals or otherwise expressed to the LLC a similar level of interest in acquiring any unsold portion(s) of the 125 Acres.

27. In addition to the requirements set forth in Paragraph 26, the July and January reports shall include the following expense information:

- a. a description of the type of each Allowed Expense that has been incurred by the LLC to date, and the types of anticipated Allowed Expenses yet to be incurred by the LLC in the next six months;
- b. the cost associated with each Allowed Expense that has been incurred by the LLC, and the estimated cost of each anticipated Allowed Expense to be incurred by the LLC in the next six months; and
- c. the amount of total Allowed Expenses that have been paid to date and an estimate of the sum of the total Allowed Expenses that have been incurred and those that are anticipated to be incurred by the LLC within the next six months.

XIII. RESIDUAL EQUITY

28. As stated herein, it is the understanding among the United States and the Additional Claimants that the LLC will seek to foreclose on the 125 Acres, and that, should such foreclosure be completed, it is the understanding of the Parties that the rights of Defendants Cohen and LAI, and their respective successors in interest, to the 125 Acres, based on New York State law, would be extinguished as a result of such a foreclosure proceeding by the LLC.

As such, the United States and the Additional Claimants agree to the following, notwithstanding any Party's potential assertion that, under New York state law, if property rights are extinguished in a tax foreclosure proceeding, the former property owner would have no right to any equity in that property. Notwithstanding this potential assertion, the United States and the Additional Claimants agree that any successors in interest to Defendants Cohen and LAI shall be paid all Net Sales Proceeds that exceed the accumulated value of agreed-upon claims of the United States and the Additional Claimants. Appendix D is a list of those claims of the United States and the Additional Claimants as of the date indicated on Appendix D. The total amount set forth in Appendix D shall be the threshold upon which an analysis of the potential for residual equity associated with Net Sales Proceeds will be performed. In the event that the Net Sales Proceeds exceed the total amount of the claims of the United States and the Additional Claimants, as set forth in Appendix D, then that amount of the Net Sales Proceeds that exceeds the total amount of claims of the United States and the Additional Claimants shall be paid to the successors in interest to Defendants Cohen and LAI. In the event the Net Sales Proceeds exceed the total amount of the claims as described above, the LLC shall ascertain and contact the heirs, successors, and distributees of Defendants Cohen and LAI to determine the method of payment.

XIV. DISPUTE RESOLUTION AND BREAK UP PROCEDURE

29. As set forth in Paragraph 2, the Parties have consented to the Court exercising continuing jurisdiction over this matter including as to any disputes that may arise. The United States or, alternatively, five Additional Claimants may invoke dispute resolution with respect to the following provisions of this Consent Decree: (1) Paragraph 7 (modification of New Property Categories); (2) Paragraph 8 (modification to the proposed use or sale or conveyance process for New Property Categories); (3) Paragraph 9 (notification of proposed sale of New Property Categories 1 and 3 and/or conveyances of New Property Category 2); (4) Paragraph 10 (petition for Break Up and Relief from Obligations); and (5) Paragraph 25 (notification of an increase of Allowed Expenses).

30. With regard to all potential disputes except pursuant to Paragraph 10 (petition for Break Up and Relief from Obligations), the United States or five Additional Claimants must file an Objection with the Court within 40 days after their receipt of the LLC's notice of its intention to take an action as provided in Paragraphs 7, 8, 9, and 25, in order for a Party to invoke a dispute. A Break Up or Relief from Obligations under Section VII may be invoked at any time. For any dispute under this Section, the Parties initiating the dispute shall notify the Court and request that the Court establish a briefing schedule for resolution of the dispute. Each Party to this Consent Decree shall have the right to file a response.

31. The United States, County, or Landbank may appeal any decision of the Court. The remaining Parties agree that they will not assert any right they may have to file a judicial appeal of any decision of the Court. However, in the event that the United States, County, or Landbank appeal from any decision of the Court, the Parties agree that the Additional Claimants may intervene or otherwise participate in any such appeal (e.g., by filing *amicus curiae* papers in connection with such appeal), and the United States, County, Landbank, and the other Parties shall not oppose or object to such intervention or other participation by the Additional Claimants in any such appeal. All Parties agree that, regardless of how the Court

rules with regard to a dispute, the Parties will not object to, or request of the Court any deviation from, the allocated amounts and percentages set forth in Appendix B.

XV. EFFECT OF SETTLEMENT/CONTRIBUTION

32. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights, defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the 125 Acres against any person not a Party hereto. Subject to Paragraph 33, herein, nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any persons not a Party to this Consent Decree to obtain additional response costs or performance of a response action or to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

33.

a. Except as provided herein, the United States covenants not to sue or to take administrative action against the Landbank and/or the LLC pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), related to any CERCLA hazardous substances, pollutants, or contaminants (i) that are present or existing on or under the 125 Acres prior to the foreclosure upon the 125 Acres and transfer of title to the LLC or (ii) that have migrated from the 125 Acres prior to the foreclosure upon the 125 Acres and transfer of title to the LLC. These covenants shall take effect upon the latter of the foreclosure upon and transfer of title to the LLC. Nothing in this Consent Decree constitutes a covenant not to sue or a covenant not to take action or otherwise limit the ability of the United States, including EPA, to seek or obtain relief from the Landbank and/or the LLC if the Landbank and/or the LLC engages in activities subsequent to obtaining title that would otherwise operate to negate a liability exemption under CERCLA.

b. The Additional Claimants covenant, for themselves and their respective agents, affiliates, successors, and assigns, not to sue the Landbank or the LLC, and their officers, directors, members, employees, managers, agents, and affiliates for any claims, demands, causes of actions, losses, damages (including natural resource damages), liabilities, costs and expenses (including attorneys' fees and disbursements) whether known or unknown, liquidated or contingent, that Additional Claimants have or may have in the future arising from or relating to any hazardous substances on, in, or under the Site as of the date of this Consent Decree arising under Environmental Laws or any other federal, state, or local statute or common law relating to liability for environmental matters, and whether based on statutory or common law theories of trespass, nuisance, indemnification, contribution or otherwise. Nothing in this Consent Decree constitutes a covenant not to sue or a covenant not to take action or otherwise limit the ability of the State, including the Department of Environmental Conservation, to seek or obtain relief from the Landbank and/or the LLC if the Landbank and/or the LLC engages in activities subsequent to obtaining title that would otherwise operate to negate a liability exemption under CERCLA and State Environmental Laws.

34. The Parties agree, and by entering this Consent Decree the Court finds, that this Consent Decree constitutes a judicially approved settlement.

XVI. MISCELLANEOUS PROVISIONS

35. In consideration for the terms of this Consent Decree, the United States and the Additional Claimants agree not to object to or challenge any efforts by the LLC to foreclose the Suffolk County's ad valorem tax liens on the 125 Acres.

XVII. PROPERTY REQUIREMENTS

36. Agreements Regarding Access and Non-Interference.

a. At all times that the LLC owns the 125 Acres, it shall provide the United States and the State and their designated representatives (e.g., contractors, and subcontractors) with access at all reasonable times to the 125 Acres for the United States or the State to conduct any activity relating to response actions at the Site, including the following activities:

- i. verifying any data or information submitted to the United States or the State;
- ii. conducting investigations regarding contamination at or near the Site;
- iii. obtaining samples;
- iv. assessing the need for, designing, planning, implementing, or monitoring response actions;
- v. determining whether the 125 Acres is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, under this Consent Decree; and
- vi. implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls or any land, water, or other resource use restrictions regarding the Affected Properties.

b. The LLC agrees to refrain from using the 125 Acres in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment because of exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response activities undertaken at the Site, and, in particular, it agrees to abide by the following restrictions on and with respect to the Affected Properties:

- i. use of contaminated ground water shall be prohibited;
- ii. use of the property for activities that could result in exposure to contaminants in subsurface soils and groundwater (e.g., use of the Affected Properties in a manner other than for industrial and/or commercial uses) shall be prohibited; and

iii. no new structures shall be constructed on the Affected Properties unless the location of such structures is first evaluated for potential soil vapor intrusion and mitigation is provided, if necessary.

37. EPA and the State have determined that an Institutional Control in the form of an environmental easement memorializing the restrictions in Paragraph 36.b. is needed regarding the Affected Properties, and the Landbank and LLC agree to cooperate fully with EPA's and the State's efforts to secure compliance with such an Institutional Control.

38. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA and any other applicable statute or regulations. Nothing in any of the provisions of this Consent Decree shall alter or affect a Site Transfer Agreement to be entered between EPA and the State Department of Environmental Conservation, which will lay out each agency's responsibilities for remediation and management of contamination remaining at the Site.

XVIII. NOTICES AND SUBMISSIONS

39. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified herein, unless those individuals or their successors give notice of a change to the other Parties in writing. Notice to a Party by email or by regular mail in accordance with this Section satisfies any notice requirement of this Consent Decree regarding such Party. Notice by e-mail shall be deemed given upon electronic confirmation of the addressee's receipt of such e-mail, and notice by mail shall be deemed given upon actual receipt of such mail by the addressee. Notice shall be given to the Parties as follows:

As to DOJ by email: richard.hayes@usdoj.gov

eescdcopy.enrd@usdoj.gov

Re: DJ# 90-11-2-08707

As to DOJ by mail:

BREON PEACE
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, N.Y. 11201
Attn: Richard K. Hayes, Asst. U.S. Attorney

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-08707

As to EPA:

Maria Jon
Environmental Protection Agency Region 2
Superfund and Emergency Management Division
290 Broadway
New York, NY 10007-1866
212-637-3967
Jon.Maria@epa.gov

Andrea Leshak
Environmental Protection Agency Region 2
Office of Regional Counsel
290 Broadway
New York, NY 10007-1866
212-637-3197
Leshak.Andrea@epa.gov

As to Additional Claimants: To the addresses provided in Appendix A

XIX. RETENTION OF JURISDICTION

40. Consistent with Paragraph 2, the Parties have consented to the designation of the Magistrate Judge to exercise continuing civil jurisdiction over this matter. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree and resolving disputes, as set forth in Section XIV (Dispute Resolution and Break Up Procedure).

XX. INTEGRATION/APPENDICES

41. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to this settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: “Appendix A” is the list of and relevant payment information pertaining to the Additional Claimants; “Appendix B” is the agreed upon “Allocation/Pro Rata Schedule for Disbursements Among the United States and the Additional Claimants”; “Appendix C” is a description of the tasks that the LLC intends to perform in furtherance of achieving the purpose of this Consent Decree; and “Appendix D” is a list of the agreed upon amounts of claims of the United States and the Additional Claimants.

XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

42. This Consent Decree shall be lodged with the Court for a period of at least thirty (30) days for public notice and comment. The Additional Claimants consent to the entry of this Consent Decree without further notice.

43. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party, and the terms of the agreement may not be used as evidence in any litigation among the Parties.

XXII. SIGNATORIES/SERVICE

44. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

45. Each Additional Claimant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified that Additional Claimant, in writing, that it no longer supports entry of this Consent Decree.

46. This Consent Decree may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute one agreement.

XXIII. FINAL JUDGMENT

47. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Additional Claimants. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

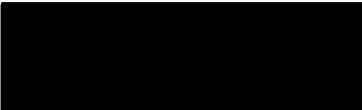
SO ORDERED THIS ____ DAY OF _____, 2023.

HONORABLE JOAN M. AZRACK
United States District Judge

Signature Page for Consent Decree Regarding Lawrence Aviation Industries, Inc. Superfund Site

FOR THE UNITED STATES OF AMERICA

BREON PEACE
United States Attorney
Eastern District of New York



3/14/2023
Dated

RICHARD K. HAYES
Assistant United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, N.Y. 11201
(718) 254-6040

Signature Page for Consent Decree Regarding Lawrence Aviation Industries, Inc. Superfund Site

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Pat
Evangelista

Digitally signed by Pat
Evangelista
Date: 2023.03.13
16:02:24 -04'00'

Dated

Pat Evangelista, Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, N.Y. 10007

Signature Page for Consent Decree Regarding the Lawrence Aviation Superfund Site

UNITED STATES DEPARTMENT OF LABOR

SEEMA NANADA
Solicitor of Labor

JEFFREY S. ROGOFF
Regional Solicitor

3/6/23

Dated _____



Michael Hartman
Counsel for ERISA
201 Varick Street, Room 983
New York, N.Y. 10014
646-264-3673 (Office)
646-264-3660 (Fax)
202-578-4653 (Mobile)

Signature Page for Consent Decree Regarding the Lawrence Aviation Superfund Site

STATE OF NEW YORK

LETITIA JAMES
Attorney General for the State of New York

March 6 2023

Dated



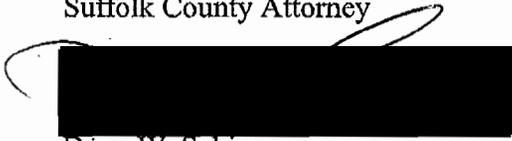
Stephen M. Nagle
Special Counsel
Environmental Protection Bureau-Albany
The Capital
Albany, N.Y. 12224-0341
Phone: (518) 776-2405 (Phone)
Fax: (518) 650-9364 (Fax)
Stephen.Nagle@ag.ny.gov

Signature Page for Consent Decree Regarding the Lawrence Aviation Superfund Site

SUFFOLK COUNTY

DENNIS M. COHEN
Suffolk County Attorney

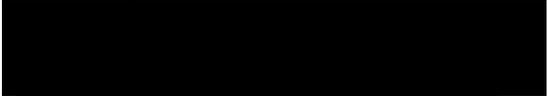
3/8/23
Dated


Drew W. Schirmer
Assistant County Attorney
H. Lee Dennison Building
100 Veterans Memorial Highway
Hauppauge, N.Y. 11788
(631) 853-4804
Drew.schirmer@suffolkcountyny.gov

Signature Page for Consent Decree Regarding the Lawrence Aviation Superfund Site

HOWARD HUDSON AND MARY HINES HUDSON

3/5/2023



Dated

Howard Hudson
6117 Ibis Lane
New Bern, N.C. 28560
(252) 288-5616

3/5/2023



Dated

Mary Hines Hudson
6117 Ibis Lane
New Bern, N.C. 28560
(252) 288-5616

Signature Page for Consent Decree Regarding the Lawrence Aviation Superfund Site

CHS SERVICES, INC., SUCCESSOR IN INTEREST TO MARYHAVEN CENTER OF HOPE, INC.

CERTILMAN BALIN ADLER & HYMAN, LLP

3/10/23
Dated


John M. Wagner, Esq.
100 Motor Parkway, Suite 560
Hauppauge, N.Y. 11788
(631) 979-3000 (Phone)
(631) 979-7070 (Fax)

3/10/2023
Dated

CHS SERVICES, INC., successor in interest to
Maryhaven Center of Hope, Inc.

By: 
Patrick M. O'Shaughnessy, DO
President and CEO
Catholic Health
992 North Village Avenue
Rockville Centre, N.Y. 11570
(516) 705-3711

Signature Page for Consent Decree Regarding the Lawrence Aviation Superfund Site

ST. CHARLES CORPORATION

CERTILMAN BALIN ADLER & HYMAN, LLP

3/10/23

Dated

[Redacted Signature]

John M. Wagner, Esq
100 Motor Parkway, Suite 560
Hauppauge, N.Y. 11788
(631) 979-3000 (Phone)
(631) 979-7070 (Fax)

8/10/2023

Dated

ST. CHARLES CORPORATION

By

[Redacted Signature]

Patrick M. O'Shaughnessy, DO
President and CEO
Catholic Health
992 North Village Avenue
Rockville Centre, N.Y. 11570
(516) 705-3711

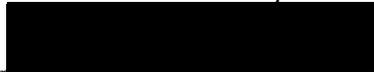
Signature Page for Consent Decree Regarding the Lawrence Aviation Superfund Site

NORTH SHORE JEWISH CENTER

CERTILMAN BALIN ADLER & HYMAN, LLP

3/10/23

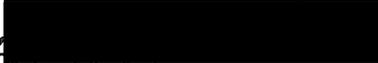
Dated


John M. Wagner, Esq
100 Motor Parkway, Suite 560
Hauppauge, N.Y. 11788
(631) 979-3000 (Phone)
(631) 979-7070 (Fax)

2/10/23

Dated

NORTH SHORE JEWISH CENTER

By: 

Brian Mankuta
President
385 Old Town Road
Port Jefferson Station, N.Y. 11776
(631) 928-3737

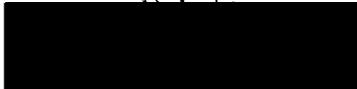
Signature Page for Consent Decree Regarding the Lawrence Aviation Superfund Site

SUFFOLK COUNTY LANDBANK CORPORATION

ALLEN & DESNOYERS

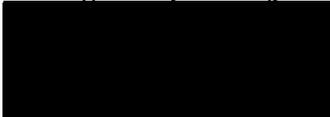
3/9/2023

Dated


Dale A. Desnoyers, Esq.
120 Defreest Drive
Troy, N.Y. 12180
(518) 426-2990

3/8/23

Dated


Matthew Kapell
Executive Director
Suffolk County Landbank Corporation
100 Veterans Memorial Highway
Hauppauge, N.Y. 11788
(631) 853-5751

Signature Page for Consent Decree Regarding the Lawrence Aviation Superfund Site

SCLB HOLDINGS, LLC

ALLEN & DENOYERS

3/9/2023
Dated



Dale A. Desnoyers, Esq.
120 Defreest Drive
Troy, N.Y. 12180
(518) 426-2990

3/8/23
Dated



Matthew Kapell
Executive Director
SCLB Holdings, LLC
100 Veterans Memorial Highway
Hauppauge, N.Y. 11788
(631) 853-5751

Appendix A – List of Additional Claimants and Payment Information for each

Appendix B – Distribution Chart (formerly known as the Pro rata chart)

Appendix C – Description of Tasks to be Performed by the LLC

Appendix D – List of the agreed upon Claim amounts of the United States and the Additional Claimants

APPENDIX A

APPENDIX A

Names of Additional Claimants and Payment Instructions

County of Suffolk

Payment Instructions: To be provided

New York State

Payment Instructions: To be provided

U.S. Department of Labor

Payment Instructions: To be provided

U.S. Internal Revenue Service

Payment Instructions: To be provided

Howard Hudson

Payment Instructions: To be provided

Mary Hines

Payment Instructions: To be provided

CHS Services, Inc., Successor in Interest to Maryhaven Center of Hope, Inc.

Payment Instructions: To be provided

St. Charles Corporation

Payment Instructions: To be provided

North Shore Jewish Center

Payment Instructions: To be provided

APPENDIX B

APPENDIX B

Allocation/Pro Rata Schedule for Disbursements Among the United States and the Additional Claimants

Name	Allocated Percentage	Allocated Amount
County of Suffolk	17.2892	---
New York State	5.0242	---
U.S. Internal Revenue Service (vs. Cohen)	2.6947	---
U.S. Internal Revenue Service (vs. LAI)	4.3575	---
U.S. Department of Labor (Lawrence Aviation Industries 401(k) Plan)	1.6906	---
Howard Hudson*	---	\$15,904.41
Mary Hines*	---	\$15,277.57
Maryhaven Center of Hope, Inc., St. Charles Corporation, and North Shore Jewish Center	9.5367	---
U.S. Environmental Protection Agency	59.4071	---
TOTAL	100.0000	
*The Parties have agreed that Mr. Hudson and Ms. Hines will receive the full amount of their claims, \$15,904.41 and \$15,277.57, respectively, rather than a percentage of the Sales Proceeds.		

APPENDIX C

APPENDIX C
ACTIVITIES IN FURTHERANCE OF PURPOSE OF CONSENT DECREE

New LLC

1. SCLBC will create a domestic limited liability company (“LLC”) to received title to the following real property parcels.
 - a) SCTM 0200-159-1-26
 - b) SCTM 0200-159-2-19
 - c) SCTM 0200-159-2-20
 - d) SCTM 0200-136-2-22
 - e) SCTM 0200-180-4-2
 - f) SCTM 0200-180-4-1

(each a “Parcel” collectively the “Parcels”)
2. SCLBC will register the LLC with NYS Department of State.
3. Complete publication requirements per NYS statue for the new LLC.
4. Obtain an federal EIN # for the LLC.

Tax Liens

5. The County will pass a resolution to transfer the tax liens to SCLBC.
6. The County’s will transfer the tax liens to SCLBC.
7. The SCLBC will pass a resolution to transfer the tax liens to the mew LLC.
8. The SCLBC will transfer the tax liens to the newly formed LLC.
9. The LLC will foreclose on the County’s tax liens resulting in a deed from the County.

Subdivision

10. The LLC will draft a subdivision application for submission to the Town of Brookhaven Planning Board.
11. The LLC will prepare the (Part 1) Full Environmental Assessment Form (EAF) and all necessary filing materials.
12. For each parcel to be developed, an individual site plan will be developed.
13. For each parcel, an application for approval of the site plan will be drafted and

submitted to the Planning Board, followed by the ordinary process, comprising staff review, a public hearing, issuance of a SEQRA determination, and, provided successful completion of the process, ultimately site plan approval.

14. The LLC will seek approval of the Suffolk County Department of Health in conformance with Article 6 of the Suffolk County Sanitary Code, pertaining to water resource management and protection.

Alienation [see Attachment A: SUMMARY OF THE ALIENATION AND
CONVERSION PROCESSES FOR MUNICIPAL PARKLAND]

15. The County will work through the process of alienation and conversion (and substitution) of a strip of County parkland for the construction of a new access road.

Permitting

16. Obtain a permit from the Town Highway Department for a highway work permit.
17. The relocation of a portion of the Greenway Trail that bisects the Site will require working with the New York State Department of Transportation, which owns the right of way on which the Greenway Trail is located.

Marketing

18. Develop one or more Request for Proposals or “RFPs”.
19. Weigh proposals for development based on evaluation criteria, taking into consideration the proposer’s information contained in a completed application, including:
 - a) Financial statements;
 - b) Architectural plans and renderings (if available/applicable);
 - c) Operating Budget (Required for income producing properties only, i.e., Mixed Use Developments, Office Buildings, Storage Facilities, etc.);
 - d) Estimate of jobs to be created (direct, indirect, construction, permanent);
 - e) Draft partnership or joint venture agreement (if applicable to proposal);
 - f) Letter or letters of interest from private lender or lenders (if applicable); and
 - g) Letters of support from local civic associations, community organizations, and town officials will be accepted and considered

(not mandatory).

20. Draft Contract of Sale for each parcel.

21. Close on each parcel.

Tax Increment Financing

22. The County will evaluate the availability/viability of tax increment financing (“TIF”) relative to this project. It is anticipated that the Parcels will be developed and will result in an incrementally enhanced tax base. Consideration of whether TIF financing will be appropriate involves both Parcel and project specific considerations.

23. The County will evaluate whether development of a Parcel or project will be desirable/feasible absent TIF financing.

24. The County will evaluate whether the proposed development will generate new (vs. relocated) economic activity.

25. The County will evaluate whether the proposed development’s ROI is adequate to justify investing revenue that would otherwise constitute general purpose tax revenue.

26. The County will evaluate whether the proposed development will generate enough increase in incremental value to repay debt service (bonds) and related costs.

27. The County will evaluate options that may exist to backstop or otherwise insure any potential shortfall.

28. The County will evaluate whether TIF bonds can be sold at reasonable interest rates.

29. If TIF is advanced, then following steps will need to be undertaken:

- a. Develop a Redevelopment Plan;
- b. The municipality will have to pass a resolution approving the Redevelopment Plan;
- c. The County will have to pass a resolution approving the Redevelopment Plan;
- d. The municipality must pass a resolution designating a “Survey Area”;
- e. The municipality must complete a “Survey Area Study”, which is used to determine the feasibility of undertaking the proposed redevelopment project within the Survey Area.
- f. Based on the results of the Survey Area Study, the municipality

may then select one or more "Project Areas" for redevelopment and provides for the preparation of a Preliminary Plan.

- g. The municipality passes a resolution approving the Preliminary Plan for the Project Area and provides for the preparation of a Redevelopment Plan.
- h. The Redevelopment Plan for the Project Area is submitted to the municipality's Planning Agency for review and recommendation.
- i. The Redevelopment Plan is submitted to all school districts impacted by the Redevelopment Plan for review of the tax allocation included within such Plan and approval of such by resolution.
- j. The municipality holds a public hearing and approves the Redevelopment Plan. Note, prior to approving the Redevelopment Plan, the municipality must comply with SEQRA.
- k. The municipality transmits a copy of the approval resolution and a map indicating the boundaries of the Project Area to the applicable assessor.
- l. Once the Redevelopment Plan has been adopted, the municipality is authorized to issue bonds based upon the tax increment revenue. The municipality will adopt a resolution authorizing the indebtedness. Upon commencement of the redevelopment process, the project will be reassessed annually to reflect the increase value due to the redevelopment. The difference between the increased value of the redeveloped property and the blighted property is the tax increment. The incremental revenues are to be held in a special fund by the municipality to pay for the principal and interest payments on the Bonds. Until the Bonds are retired, the local tax jurisdictions will continue to receive taxes on the Project Area based upon the assessed value of the blighted property (i.e. the base amount).

Community Engagement:

- a) Prior to the release of the RFP the LLC will schedule meetings with and share the RFP with a variety of stakeholders including, local and state legislators and representative, Town of Brookhaven Officials, local civic associations and community members
- b) LLC will hold at least two virtual public workshops to get community input on desired reuses of the site.
- c) Following the closure of the RFP process the LLC will hold at least two virtual workshops with stakeholders to get input on the top 3 proposed reuses of the site

Generic Environmental Impact Statement:

- a) The LLC will issue a Request for Proposals for a Generic Environmental Impact Statement to the Suffolk County Landbanks list of pre-approved environmental consulting firms.

- b) LLC will select a firm, or firms, that will provide high quality and cost effective services. Pursuant to its procurement policy, Procurement contracts for professional services shall be selected based upon the Best Value to the LLC, which takes into consideration other factors in addition to costs, such as quality and efficiency.

Maintenance/Security:

- a) The LLC will execute a survey of the property and issue a Request for Quotes for fencing services to repair the existing fence and install new portions of fencing where needed.

Attachment A
SUMMARY OF THE ALIENATION AND CONVERSION PROCESSES FOR MUNICIPAL
PARKLAND

The County will work through the process of performing the alienation process and, if required, a separate conversion process to utilize a strip of County parkland for the construction of a new access road. The County has identified a replacement park area greater in size for dedication as a component of the process. The following provides the required steps and additional narrative specific to the conversion of County Parkland for the purpose of providing an access road.

Step 1. Determine if State or federal funding has been allocated to the park

This step is important, since whether or not Federal funding was utilized for the parkland determines whether the action intended requires an Alienation or Alienation followed by Conversion of parkland. If no Federal funds were involved in establishing the parkland, then an Alienation is required (and will be conducted under the jurisdiction of the State) but, if Federal funding was involved, then both an Alienation followed by a Conversion are required, to be conducted under the jurisdiction of the National Park Service. According to the NYS OPRHP's "Handbook on the Alienation and Conversion of Municipal Parkland":

At the outset, it is important to know that there are two procedures that may be triggered when a municipality wishes to change the way it uses parkland. These two procedures are known as parkland alienation and parkland conversion.

Parkland Alienation

Parkland alienation occurs when a municipality wishes to convey, sell, or lease municipal parkland or discontinue its use as a park. Parkland alienation applies to every municipal park in the State, whether owned by a city, county, town, or village. In order to convey parkland away, or to use parkland for another purpose, a municipality must receive prior authorization from the State in the form of legislation enacted by the New York State Legislature and approved by the Governor. The bill by which the Legislature grants its authorization is commonly referred to as a parkland alienation bill.

Parkland Conversion

Parkland conversion occurs when a municipality wishes to convey, sell, or lease Federally-funded parkland to another entity, or if a Federally-funded park will cease to be used for public outdoor recreation. Conversions are done only for those municipal parks that have received Federal funds for acquisition or improvement pursuant to either the Land and Water Conservation Fund or the Urban Park and Recreation Recovery Program. Under most circumstances, Federally-funded municipal parkland is subject to both alienation and conversion procedures. The conversion process is a second layer of review; Federal approval of a conversion does not replace the need for State parkland alienation legislation, and the State approval must be obtained first. The conversion process is governed by the rules and regulations of the National Park Service ("NPS") of the United States Department of the Interior.

In this case the new access roadway would utilize approximately 11 acres of County Parkland identified as SCTM number 200-158-4-16 which is in total approximately 44.9 acres in size. The parcel (and two other parcels) comprise the area of the park (known as the Three Village Parks County Park). According to the research completed during preparation of the Feasibility Study, the properties were acquired through tax lien procedures and dedicated to Suffolk County Parks by Resolution No. 76-1986. A large portion of the three parcels was dedicated to the Suffolk County Parks system and a smaller portion of these three parcels was dedicated to public purposes. All three parcels were transferred to the Suffolk County Department of Parks for management purposes. There is no indication that federal funding was used in establishment of the subject parkland; however, further verification is required.

Once the issue of funding is settled, a decision of whether to conduct an alienation or an alienation then a conversion can be determined. Regardless, proceed to Step 2 for the alienation process.

Step 2. The Alienation Process

1. Complete the Parkland Alienation Municipal Information Form

The Parkland Alienation Municipal Information Form found in Appendix 2 [of the Handbook] helps municipalities think through the specifics of the parcel to be alienated and the requirements of the alienation bill. Completed forms would be prepared by the County and provided to State Parks and to the Members of the State Legislature who will be sponsoring the alienation bill. Among other things, it includes the following which would need to be researched:

- The history of the park, its size, and the proposed use of the land being alienated;
- The location of the park, its present use and condition, and the presence of natural, historic and archeological resources; and
- Whether or not any State or Federal grants were used towards the acquisition or development of the park.

The Feasibility Study provided a portion of this information, which is itemized below for reference.

Current History/Use:

- The park was acquired through tax lien procedures and dedicated to Suffolk County Parks in 1976.
- As of 2017, there were no plans to use this parkland for an active park and was not used by the public. The only known proposal for use of the site for recreation was for Boys and Girls Club Recreational Facilities, which was never completed. It should be noted that if an active use were proposed in future, an access roadway would not preclude use of the site and could actually reduce costs for development of recreational facilities, as such facilities would also benefit from the improvement of roadway access.

Current Conditions:

- As of 2017 it was clear that the land had evidence of disturbance and did not contain significant natural features or sensitive vegetation or habitat.
- The park is not within a Critical Environmental Area.
- A request through DEC Natural Heritage Program would be submitted to determine presence of protected species.
- The property is not within an archeologically sensitive area or in or adjacent to historic resources.

2. Contact Local State Legislative Sponsors and Draft Legislation

The County would contact the local State legislative representatives for sponsoring an alienation bill. A legislative sponsor would draft the legislation on behalf of the municipality (County) and introduces it in the Legislature. Sponsors are needed in both the Senate and the Assembly to pass the bill. While the primary bill drafter is the legislative sponsor, State Parks' Counsel's Office is available to work with municipal officials and legislative staff to ensure the bill includes necessary provisions.

3. Conduct a Review Pursuant to the State Environmental Quality Review Act

The State Environmental Quality Review ("SEQR") Act requires municipalities and State agencies to consider, in advance, the potential significant adverse environmental impacts of their actions; to weigh alternatives to their actions; and minimize or mitigate any environmental damage potentially caused by those actions. The New York State Department of Environmental Conservation (DEC) considers a municipal resolution requesting parkland alienation legislation an action under SEQR. The initial decision to sell, lease, convey or change the use of parkland is also part of the action subject to SEQR.

SEQR analysis should be commenced as early as possible in the decision-making process. State Parks suggests that a municipality vote on the SEQR resolutions prior to voting on the alienation resolution request and on the resolution for the Municipal Home Rule Request (in this case made by the Suffolk County Legislature).

SEQR indicates that actions "occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland, recreation area or designated open space" may be Type I Actions and it is recommended that the County classify the process as a Type I Action to be conservative. Required elements:

- Lead Agency Coordination (Identification of Involved Agencies, establishment of Lead Agency)
- Preparation of Full EAF (Parts I, II and III)
- Determination of Significance:
 - if Negative Declaration, no further action,
 - if Positive Declaration, an Environmental Impact Statement will be required – and ultimately a Findings Statement.

4. Pass a Municipal Home Rule Request

Under the rules of the Senate and the Assembly, a parkland alienation bill cannot be sent to the floor for a vote until the Municipal Home Rule Request is received. A Municipal Home Rule Request is a formal request for enactment of a bill made by the local municipal legislative body (in this case the Suffolk County Legislature)¹.

This concludes the steps the County would need to take in initiating the alienation process for consideration by the State Senate, Assembly and ultimately the Governor's signature.

It is noted that for the alienation process, the dedication of an equal area of replacement parkland is not strictly required; however, it is strongly encouraged that municipalities provide substitute parkland in all alienation bills due to New York State's policy of "no net loss of parkland." The Feasibility Study identified an area for dedication greater than the area of parkland to be required for the implementation of an access road for all scenarios which included the access road – including those that envisioned a residential subdivision to the south of the Greenway. The preferred scenario (B-1) includes preservation of the majority of land area south of the Greenway (far exceeding the 11 acres required for the access road). This land consists largely of mature wooded land which would provide an attractive addition to the community parkland, and which is convenient in location adjacent to the actively used multipurpose recreational trail within the NYS DOT right of way.

For the Conversion process, dedication of replacement parkland is a requirement and the replacement property must be at least equal to the land being converted. "Equality" is based upon the specific standards below:

- The fair market value of the replacement land must be of equal or greater value than the land being converted.
- The recreational usefulness of the replacement land must be reasonably equivalent to the land being converted.
- The location of the replacement land must be comparable to the land being converted.

Other than the assessment of fair market value, the requirements above can be provided to show the benefit (or lack of impact) of the alienation. A survey of the properties may be provided to demonstrate the relative areas of the sites.

If the park in question involved Federal funding, a conversion process is required; go to Step 3.

¹ At least two-thirds of the local legislative body must vote for the request or, alternatively, a majority of the body must vote for it and the chief executive officer of the municipality must concur. If the alienation bill is amended during the State legislative session, a new Municipal Home Rule Request will be required

Step 3. The Conversion Process (if required)

According to the Handbook:

A municipality's proposed conveyance of parkland or proposed change in its use from outdoor recreational use requires compliance with parkland conversion process if it received Federal funding from the Land and Water Conservation Fund ("LWCF") or the Urban Park and Recreation Recovery ("UPARR") program for the parcel. If the municipal park in question has not received this type of Federal funding, this chapter does not apply. The conversion approval process is administered by the National Park Service and State Parks. A conversion requires an amendment to the original project agreement and the maps associated with that agreement.⁷⁵ Almost all changes in use that result in a conversion also trigger the alienation process in New York State. Therefore, in most cases, a municipality must receive approval from the Legislature for the alienation prior to obtaining conversion approval.

When a municipality in New York State is considering the conversion of Federally-mapped parkland, it must work through State Parks, which directs such requests in writing to the NPS Regional Director.¹⁰⁴ The conversion process requires extensive documentation from the municipality and a detailed review by both State Parks and the NPS, therefore, it is complex and time-consuming. State Parks guides the municipality by providing information to assist it in creating a complete package detailing the municipality's proposed action. Once the package is created, State Parks reviews it to ensure that it meets the NPS criteria. State Parks, on behalf of the municipality, then submits the package with comments and a recommendation to the NPS for final approval.

Below is a list of issues that the municipality must address before a conversion package is deemed complete. In addition, municipalities are encouraged to review the LWCF Manual for further assistance in creating a conversion package. Certain conversions may meet the criteria for "small conversions", which are subject to an abbreviated conversion process and review. State Parks can provide a municipality with additional guidance on small conversions if appropriate.

The Conversion Process

The following is a list of the items that will need to be completed for a conversion. Following this list, each item will be discussed in more detail.

1. Complete environmental review documentation pursuant to the National Environmental Policy Act.

The National Park Service will not consider a conversion unless "[a]ll practical alternatives to the proposed conversion have been evaluated." Part of meeting this requirement is demonstrating that the municipality has completed an adequate environmental review. Because the LWCF and UPARR programs are Federal programs, the environmental review must be completed pursuant to the National Environmental Policy Act (NEPA).

Municipalities must submit environmental information on both the property to be

converted and the replacement parcel (discussed later). Pursuant to NEPA, an Environmental Assessment or a more detailed Environmental Impact Statement for both properties must be submitted with the conversion package.

2. Determine the effect of the conversion on historic resources pursuant to the National Historic Preservation Act.

Pursuant to the National Historic Preservation Act, Federal agencies must evaluate, minimize and mitigate the effects of their actions on historic and archeological resources. Municipalities that have received Federal funding through the LWCF program must, therefore, assist the NPS in considering how its approval of the conversion would affect historic properties. This is referred to as an “historic preservation” review, or a “Section 106” review. The Section 106 process requires Federal agencies and project sponsors to explore prudent and feasible alternatives that would avoid or reduce the conversion’s impacts on historic resources. The review encompasses potential effects on historic resources on both the parcel to be converted and the proposed replacement parcel which together comprise the “project area.” The municipality will be expected to coordinate with the State Historic Preservation Office (SHPO) within OPRHP to complete this review, and to obtain a “determination.” A determination is a written statement from the SHPO that details potential effects on historic resources, if any, and how to minimize those impacts. Where adverse effects cannot be avoided by relocating or redesigning the project, the municipality must work with the SHPO to develop a “Memorandum of Agreement” (MOA) incorporating measures to mitigate those effects.

The municipality should provide the SHPO with a United States Geological Survey (USGS) map of the project location, as well as photographs of any buildings, sites, or structures 50 years or older within, or adjacent to, the project area and any archeological sites. If the SHPO determines that any of the buildings, sites, or structures are listed on, or eligible for listing on, the National Register of Historic Places, the municipality will have to provide the SHPO with plans and specifications and the impacts will be evaluated. Ultimately, the package to be submitted to the NPS must include review determinations, including an MOA, if required, from the SHPO.

3. Select Appropriate and Eligible Substitute Lands

Replacement parkland is always required in a conversion. The replacement property must be at least equal to the land being converted. “Equality” is based upon the specific standards below:

- The fair market value of the replacement land must be of equal or greater value than the land being converted.
- The recreational usefulness of the replacement land must be reasonably equivalent to the land being converted.
- The location of the replacement land must be comparable to the land being converted.

Thus, the fair market value of both the proposed replacement land and the land to be converted must be determined and submitted. In determining fair market value, the National Park Service requires that strict Federal appraisal rules be followed, specifically, the Uniform Appraisal Standards for Federal Land Acquisitions. It is important to note that a fair market value appraisal determination for an alienation by the Legislature may not meet the requirements of an LWCF conversion. Therefore, if a municipality is seeking to both alienate and convert parkland, the municipality should apply the Uniform Appraisal Standards for Federal Land Acquisitions at the beginning of the process when obtaining State alienation legislation.

The municipality must submit a statement demonstrating that the replacement property is of equivalent recreational usefulness and location. However, it is important to note that replacement property need not be the same size, nor located adjacent or close to the converted site. Similarly, it is not necessary for the replacement property to provide the identical recreational experience or resources. However, the recreational resources it does provide must meet public outdoor recreation needs as indicated in the Statewide Comprehensive Outdoor Recreation Plan (“SCORP”).

Additionally, the replacement land becomes part of an amended grant agreement and, as a result, becomes part of the new boundary map for that project.

4. Coordinate review with other Federal agencies.

The municipality must coordinate the conversion with any other Federal agencies that may be involved. The NPS also expects a statement that demonstrates that such coordination with other Federal agencies has been satisfactorily accomplished.

5. Prepare Survey Maps

The municipality must prepare and submit clearly marked survey maps stamped and signed by a land surveyor and signed and dated by a municipal official indicating:

- The original LWCF or UPARR area.
- The area to be converted.
- The area remaining, if any.
- The substitute lands.

6. Submit the Package to the National Park Service

State Parks will provide guidance to a municipality in preparing all the documentation needed for review by the National Park Service. Once the package is completed, State Parks, acting on behalf of the municipality, will submit the package to the NPS. The NPS will then review the documentation, and make a decision regarding the conversion. The

NPS will notify State Parks about the decision, and State Parks will pass this information on to the municipality.

APPENDIX D

APPENDIX D

List of the agreed upon Claim amounts (with interest as of July 9, 2019) of the United States and the Additional Claimants

Name	Claim Amount
County of Suffolk	\$15,647,709.00
New York State	\$8,262,387.34
U.S. Internal Revenue Service (vs. Cohen)	\$3,082,171.38
U.S. Internal Revenue Service (vs. LAI)	\$4,873,958.05
U.S. Department of Labor (Lawrence Aviation Industries 401(k) Plan)	\$2,956,082.40
Howard Hudson	\$61,407.42
Mary Hines	\$58,987.17
Maryhaven Center of Hope, Inc., St. Charles Corporation, and North Shore Jewish Center	\$30,171,420.12
U.S. Environmental Protection Agency	\$52,598,454.43
TOTAL	\$117,712,577.31