

FOR CONSIDERATION

January 20, 2012

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Buffalo (Western New York Region – Erie County) – Buffalo Lafayette Capital – Urban and Community Development Program – Urban and Community Project Development Assistance (Capital Grant)

REQUEST FOR: Findings and Determinations Pursuant to Sections 5(4), 16-d and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions; Determination of No Significant Effect on the Environment

General Project Plan

I. Project Summary

Grantee: Buffalo Lafayette LLC

ESD* Investment: A grant of up to \$2,000,000, to be used for a portion of the cost of construction and renovation costs.

* The New York State Urban Development Corporation doing business as the Empire State Development Corporation (“ESD” or the “Corporation”)

Project Location: 391 Washington Street, Buffalo, Erie County

Proposed Project: Renovate a historic, blighted building into a mixed-use development consisting of a boutique hotel, companion retail services, restaurant and apartments, including maintaining and creating jobs.

Regional Council: The Western New York Regional Council has been made aware of this item.

ESD Incentive Offer Accepted: July 26, 2011

Project Completion: May 2012

Number of Employees at Project Location:

Initial employment at time of ESD Incentive Offer: 30^(a)
Current employment level: 30^(a)
Minimum employment on January 1, 2014: 100^(b)

^(a) 30 employees are employed by Butterwood Desserts, a future tenant of the Grantee, which will be transferred from its existing West Falls facility to the Project Location in May 2012.

^(b) Employees can be on the Grantee's or the Grantee's tenants' payroll.

Grantee Contact: Rocco Termini, Managing Member
489 Ellicott Street
Buffalo, NY 14203
Phone: (716) 842-1938
Fax: (716) 332-0496

Anticipated
Appropriation

Source: Urban Community Development Program

ESD Project No.: X468

Project Team: Origination Diego Sirianni
Project Management Jean Williams
Affirmative Action Helen Daniels
Finance Amit Nihalani
Environmental Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Real Estate Acquisition	\$ 550,000
Construction/Renovation	14,237,000
Soft Costs	<u>4,430,000</u>
Total Project Costs	<u>\$19,217,000</u>

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate/Term/Lien</u>
ESD-Grant	\$ 2,000,000	10%	
National Grid Brownfield Redevelopment-Grant	250,000	1%	
National Fuel National Gas Efficiency-Grant	107,100	1%	
City of Buffalo-Loan	850,000	4%	0%/10 yrs/2 nd on RE
Regional Development Corp.-Loan	500,000	3%	4%/5 yrs/2 nd on all borrower's personal property and related business assets.
Five Star Bank-Loan	3,875,000	20%	5.3%/20 yrs/1 st on condominiums, assignment of rents & leases, security interest in Landlord owned FF&E
Company Equity	<u>11,634,900</u>	<u>61%</u>	
Total Project Financing	<u>\$19,217,000</u>	<u>100%</u>	

III. Project Description

A. Background

Buffalo Lafayette LLC was established in 2011 to acquire, operate and renovate the former Hotel Lafayette (the "Lafayette"), located in the City of Buffalo's ("Buffalo") central business district. The seven-story, 280,000-square-foot, 367 room former hotel, constructed in 1904, was considered one of the 15 finest hotels in the country at the height of its operations. It was designed principally by Louise Blanchard Bethune, the first professional woman architect in the United States to be recognized as a professional architect by the American Institute of Architects, and features decorative vitreous red brick and white terra cotta trim. The Lafayette deteriorated over the years and operated as a single-room occupancy hotel until it closed in 2010. The Lafayette was placed on the National Register of Historic Places in 2010.

The Lafayette is primarily owned by Rocco Termini, a local developer who has been instrumental in re-developing vacant Buffalo buildings, previously slated for demolition into mixed-use commercial and residential structures, while preserving the buildings' architectural details. Within the past several years, Mr. Termini has successfully rehabilitated six previously-vacant structures into the H@Lofts, Ellicott Lofts, IS Lofts, Ellicott Commons, Oak School Lofts and Webb Lofts. Five of these structures were listed on the National Register of Historic Places.

In 2010, Mr. Termini completed the transformation of the vacant, eight-story former AM&A's warehouse (the "Warehouse") into H@Lofts, a mixed-use structure consisting of 15,000 square feet of office space and thirty-six one-bedroom and twelve two-bedroom apartments. Mr. Termini has the option to purchase the AM&A department store (the "Store"), which is adjacent to the Lafayette and the Warehouse and has also remained vacant for several years. Mr. Termini is currently attempting to secure financing to rehabilitate the Store and recently secured financing to renovate

two smaller vacant storefront structures into affordably-priced restaurants. In addition to redeveloping these underutilized sites, Mr. Termini's projects have the potential to achieve the critical mass needed to re-ignite growth and development in Buffalo's central business district.

Mr. Termini notified ESD in early 2011 of his intent to acquire and renovate the Lafayette. Although he had identified adequate funding to complete the residential portion of the renovations, he lacked sufficient financing for the commercial aspect which, if not secured, would place the entire Lafayette renovation at risk. Mr. Termini therefore sought ESD's financial assistance and accepted ESD's July 21, 2011 incentive of a \$2 million capital grant offer as an inducement to proceed with the renovation project. Without ESD assistance, the project would likely not have proceeded and this structure would remain vacant.

B. The Project

The \$19 million project involves the real estate acquisition and renovation costs including interior renovations, demolition, plumbing, electrical, HVAC, windows, exterior façade, and general construction. Upon completion, the former blighted Lafayette will consist of 34-room boutique hotel (the "Hotel"); companion retailers including two catering services, a jeweler, tuxedo shop, and bakery; two cocktail lounges; a restaurant and 123 market-rate apartments with rents projected from \$900 to \$1200 per month. The construction project is approximately fifty percent complete and the building is expected to be fully operational May 2012. There are currently 30 people on the waiting list to lease the apartments.

C. Financial Terms and Conditions

1. Upon execution of the grant disbursement agreement, the Company shall pay a commitment fee of 1% of the \$2 million capital grant (\$20,000) and reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will demonstrate no material or adverse changes in its financial condition prior to disbursement.
3. The Company will be required to contribute a minimum of 10% of the total project cost in the form of equity contributed after the Company's acceptance of ESD's offer. Equity is defined as cash injected into the project by the Company or by investors, and should be auditable through Company financial statements or Company accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project.
4. Prior to disbursement, the Company must employ at least the number of Full-time Permanent Employees set forth as the Baseline Employment in the table below. A Full-time Permanent Employee shall mean (a) a full-time, permanent, private-sector employee on the Grantee's or Grantee's tenants' payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other

employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Grantee's or Grantee's tenants' payroll, who have worked at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties.

5. Up to \$2,000,000 will be disbursed to the Grantee in three installments as follows:
 - a) an Initial Disbursement of an amount equal to 50% of the grant (\$1,000,000) upon completion of the project described in these materials, documentation of verifying total project expenditures of approximately \$19 million, including \$14 million in construction and renovation costs, and documentation of the employment of at least 30 Full-time Permanent Employees at the Project Location;
 - b) a Second Disbursement of an amount equal to 25% of the grant (\$500,000) will be disbursed upon documentation of the employment of at least 65 Full-time Permanent Employees at the Project Location (Employment Increment of 35), provided Grantee is otherwise in compliance with program requirements;
 - c) a Third Disbursement of an amount equal to 25% of the grant (\$500,000) will be disbursed upon documentation of the employment of at least 100 Full-time Permanent Employees at the Project Location (Employment Increment of 35), provided Grantee is otherwise in compliance with program requirements.

Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require. Expenditures must be incurred on or after July 26, 2011, to be considered eligible project costs. All disbursements must be requested by April 1, 2014.

6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$2 million, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Company and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.
7. In consideration for the making of the Grant, Grantee will achieve the Employment Goals set forth in Column B of the table below. If the Full-time Permanent Employee Count for the year prior to the reporting date set forth in Column A of the table below is less than eighty-five percent (85%) of the Employment Goal set forth in Column B (an "Employment Shortfall"), then upon demand by ESD, Grantee shall be obligated to repay to ESD a portion of each disbursement of the Grant, as follows:

The Recapture Amount is based on the time that has lapsed between when the Grant funds were disbursed and when the Employment Shortfall occurred. The Recapture Amount shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

- (i) 100% of the disbursed amount if the Employment Shortfall occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
- (ii) 80% of the disbursed amount if the Employment Shortfall occurred in the second full calendar year after the disbursement was made;
- (iii) 60% of the disbursed amount if the Employment Shortfall occurred in the third full calendar year after the disbursement was made;
- (iv) 40% of the disbursed amount if the Employment Shortfall occurred in the fourth full calendar year after the disbursement was made;
- (v) 20% of the disbursed amount if the Employment Shortfall occurred in the fifth full calendar year after the disbursement was made.

The Grantee’s number of Full-time Permanent Employees shall be deemed to be the greater of the number as of the last payroll date in the month of December for such year or the average employment for the 12 month period computed by quarter.

Baseline Employment	30 ^(a)
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A	B
Reporting Date	Employment Goals
February 1, 2013	30+X+Y
February 1, 2014	30+X+Y
February 1, 2015	30+X+Y
February 1, 2016	30+X+Y

X = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in section C.5 above (i.e. X=35, and Employment Goals shall equal $[30^{(a)} + X = 65^{(b)}]$ if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Second Disbursement has not yet been made then X=0.

Y = Grantee’s Employment Increment that will be the basis of the Third Disbursement of the Grant as described in section C.5 above (i.e. Y=35, and Employment Goals shall equal $[30^{(a)} + X + Y = 100^{(b)}]$ if the Third Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Third Disbursement has not yet been made then Y=0.

^(a) 30 employees are employed by Butterwood Desserts, a future tenant of the Grantee, which will be transferred from its existing West Falls facility to the Project Location in May 2012.

^(b) Employees can be on the Grantee’s or the Grantee’s tenants’ payroll.

- 8. The Hotel is expected to employ up to 12 individuals. In the event the Hotel employs more than 15 individuals, the Grantee will be required to enter a Labor Peace Agreement in compliance with Section 2879-b of the Public Authorities Law. Failure to comply with Section 2879-b of the Public Authorities Law shall constitute a default under the terms of the Grant Disbursement Agreement which shall require repayment of the grant to ESD.

IV. Statutory Basis

This project is authorized under Sections 5(4) and 16-d of the New York State Urban Development Corporation Act (the "Act") and satisfies the eligibility criteria for a capital grant as set forth in the Act and the rules and regulations for the Urban and Community Development Program. No residential relocation is required as there are no families or individuals residing on the site.

Evaluated over a seven-year period, the following are anticipated project impacts (dollar values are present value):

- Fiscal benefits to NYS government from the project are estimated at \$3,191,282;
- Fiscal cost to NYS government is estimated at \$2,045,677;
- Project cost to NYS government per direct job is \$26,741;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$21,057;
- Ratio of project fiscal benefits to costs to NYS government is 1.56:1;
- Fiscal benefits to all governments (state and local) are estimated at \$5,451,604;
- Fiscal cost to all governments is \$2,191,748;
- All government cost per direct job is \$28,650;
- All government cost per total job is \$22,561;
- The fiscal benefit to cost ratio for all governments is 2.49:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$26,997,297, or \$277,898 per job (direct and indirect);
- The economic benefit to cost ratio is 12.32:1;
- Project construction cost is \$18,667,000 which is expected to generate 180 direct job years and 123 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 0.27 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is four years.

(See Project Summary Benefit-Cost Evaluation attached for detail and definitions.)

V. Environmental Review

The Buffalo Urban Renewal Agency, as lead agency, has completed an environmental review of the proposed project, pursuant to the requirements of the State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. This review, which was coordinated with ESD as an involved agency, found the project to be a Type I Action which would not have a significant effect on the environment. The lead agency issued a Negative Declaration on May 12, 2011. ESD staff reviewed the Negative Declaration and supporting materials and concurs. It is recommended that the Directors make a Determination of No Significant Effect on the Environment.

Due to the building's inclusion in the New York State and National Registers of Historic Places, ESD has confirmed that the project sponsor consulted with the New York State Office of Parks, Recreation and Historic Preservation (“OPRHP”) pursuant to Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law. No further consultation is required, subject to a Letter of Understanding.

VI. Affirmative Action

ESD’s Non-Discrimination and Affirmative Action policy will apply. The client is encouraged to include minorities and women in any job opportunities created by the Project and to solicit and utilize Minority and Women-owned Business Enterprises for any contractual opportunities generated in connection with the Project.

VII. ESD Financial Assistance Subject to Availability of Funds and Additional Approval

The provision of ESD financial assistance is contingent upon the availability of funds and the approval of the State Division of the Budget.

VIII. Additional Submissions to Directors

- Resolutions
- New York State Map
- Project Finance Memorandum
- Benefit-Cost Analysis

January 20, 2012

Buffalo (Western New York Region – Erie County) – Buffalo Lafayette Capital – Urban and Community Development Program – Urban and Community Project Development Assistance (Capital Grant) – Findings and Determinations Pursuant to Sections 5(4), 16-d and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the Hotel Lafayette Capital – Urban and Community Development Program – Urban and Community Project Development Assistance (Capital Grant) Project (the “Project”), the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the “Plan”) for the Project submitted to this meeting, together with such changes therein as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the President and Chief Executive Officer of the Corporation or his designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing, and that upon such written finding being made, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Buffalo Lafayette LLC a grant for a total amount not to exceed Two Million Dollars (\$2,000,000) from the Urban and Community Development Program, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designee(s) be, subsequent to the making of the grant, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the grant as he or she may deem necessary or appropriate in the administration of the grant; and be it further

RESOLVED, that the provision of ESD financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the President and Chief Executive Officer or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

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January 20, 2012

Buffalo (Western New York Region – Erie County) – Buffalo Lafayette Capital – Urban and Community Development Program – Urban and Community Project Development Assistance (Capital Grant) – Determination of No Significant Effect on the Environment

RESOLVED, that based on the material submitted to the Directors with respect to the Buffalo Lafayette Capital Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment.

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