

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY

Agenda – 492nd Meeting

June 16, 2017-8:30 am

Agency Offices – 4287 Main Street, Amherst, NY 14226

1. Roll Call of Members
2. Reading and Approval of Minutes
3. Bills & Communications
4. Treasurer’s Report
5. Public Comment
-Speakers limited to three minutes
6. Executive Director’s Report
7. Committee Reports
8. Unfinished Business
 - a. AIDA By-Laws, Governance and Finance & Audit Committee Charters
9. New Business
 - a. Beechwood Health Care Center, Inc. (Information Only)
10. Adjournment

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Minutes of the 491st Meeting
April 21, 2017– 8:30 am
Agency Offices, 4287 Main Street

PRESENT: Carlton N. Brock, Jr.
Michele F. Marconi
E. Marshall Wood, Jr.
Steven Sanders
Edward F. Stachura
Michael R. Szukala
William M. Tuyn
David S. Mingoia, Interim Executive Director
Kevin J. Zanner, Hurwitz & Fine PC

GUESTS: AIDA Staff
Stephen Watson, Buffalo News
Hadar Broden, Amherst Resident
David Chiazza, Iskalo Development
David Tytko, Uniland Development
Larry Rubin, Esq., Kavinoky & Cook

Chairperson Carlton N. Brock, Jr. called the meeting to order and reminded everyone that the meeting was being audio recorded.

MINUTES

The March 2017 minutes were approved with the board requesting that a typo in the Bills & Communications section regarding the Shatkin F.I.R.S.T. project by changing “way” to “aye”.

BILLS & COMMUNICATIONS

The Agency received the Annual Examination Report from the Town of Amherst Comptroller’s Office. The Report states that AIDA 2017 PILOTs have been calculated correctly based on the contractual requirements and assessed value of record with the Town of Amherst and are remitting the proper amounts to the Comptroller’s Department.

TREASURER’S REPORT

The Treasurer’s Report for March 2017 was approved as presented.

PUBLIC COMMENT

Hadar Borden, an Amherst resident spoke in opposition to the 2500 Kensington, LLC/Shatkin F.I.R.S.T. project. Ms. Borden indicated that she resided near to the property and said that while she supports economic development, she felt that this project doesn’t need abatements. She noted that the company will continue to stay in WNY and is not moving, the jobs creation estimates were modest, and that the company appears be successful and has a good business plan in place. She also stated her concern that there were not apprenticeship programs mentioned for new Americans and that there was no mention of any affiliations with local colleges or universities.

Larry Rubin, counsel for 2500 Kensington, LLC/Shatkin F.I.R.S.T. project spoke to Ms. Boden's comments. Mr. Rubin stated that the job creation estimates contained in the application specifically address the question of how many jobs will be created in two years. Mr. Rubin stated that the question that should be asked is how many jobs will be created over the life of the abatement. Mr. Rubin also noted that the company works closely with and cooperatively with local colleges and universities.

David Chiazza of Iskalo Development Company addressed the board regarding the 5000/5010 Main Street project (f/k/a Lord Amherst). Mr. Chiazza referred to a letter sent to the Agency regarding a new and distinct application for the project. Mr. Chiazza cited the recent Appellate Court ruling that the original project did not qualify as a "tourism destination facility". He stated that the new application, which now contains information on secured operators for the project, makes the argument for a "tourism destination facility". He encouraged the board to review the new application.

UNFINISHED BUSINESS

AIDA POLICY AMENDMENTS – Revised Agency policies are available for review on our website: <http://www.amherstida.com/proposed-charter-and-policy-revised-documents>

It was recommended that the board approve only the Policies. The Executive Committee requested that staff review the By-laws, and the Governance and Finance and Audit Committee Charters and recommend any further revisions. The Policies to be approved are:

AIDA/ADC Board Duties & Responsibilities; Code of Ethics; Compensation; Conflict of Interest, Data Collection and Gathering; Defense & Indemnification; Expense, Travel, Meals & Entertainment; Fix Asset & Capitalization; Financial Disclosure; Investment; Procurement; Property Disposal Guidelines; Real Property Acquisition; Whistle-blower

Michele Marconi made a motion to approve the amended policies as presented. Steven Sanders seconded the motion. After a brief discussion, votes of aye were cast by Brock, Marconi, Sander, Stachura, Szukala and Tuyn. Motion passed 7-0.

NEW BUSINESS

AUTHORIZATION RESOLUTION

2500 Kensington, LLC/Shatkin F.I.R.S.T

Company Description

2500 Kensington LLC is a real estate holding company which owns 2500 Kensington Avenue, the proposed project site. Shatkin First LLC, an affiliate of 2500 Kensington, is full service dental implant company which manufactures and distributes surgical stents, dental implants and related products and mini dental implant restorations, crowns, dentures, bridges and provides consultations and professional development training for dental health professionals. 95% of the company's products are shipped to customers outside of New York State. The project is located within the Amherst Central School District.

Project Description

The Applicant is seeking Agency assistance to construct an approximately 15,000 square foot addition to an existing facility located at 2500 Kensington Avenue. This addition will be used to train medical professionals from around the world on Shatkin First's products plus additional space for office and management functions. In addition, Shatkin First is planning to increase its research and development, advanced manufacturing and product distribution facilities at 2495 Kensington over the next three years.

Shatkin F.I.R.S.T.'s business focuses on developing, manufacturing and selling its proprietary dental technology. The assistance provided by the Agency is critical to making this significant investment feasible. Assistance from the Agency will allow Shatkin F.I.R.S.T. to expand its professional development facility, maintain its competitive position through the purchase of state of the art manufacturing equipment, retain/create jobs, including jobs for highly skilled dental professionals, administrative support jobs, and sales/distribution positions, and grow its commitment to innovation in the dental science field. It is estimated that the expanded training space will generate over \$440,000 in new annual direct spending from out of town attendees in addition to project benefits from new property, income and sales tax revenues.

Incentives

If approved, it is estimated the project will receive \$410,477 in sales tax exemptions, \$50,000 in mortgage recording tax exemption and \$532,125 in property tax incentives.

Edward Stachura made a motion to approve the 2500 Kensington, LLC/Shatkin F.I.R.S.T project. Steven Sanders seconded the motion. Michele Marconi asked if the new parking lot was part of this project. Executive Director Mingoia explained that it was not. After brief discussion Chairman Brock called for the vote. Votes of aye were cast by Sanders, Wood, Stachura, Szukala and Tuyn. A vote of no was cast by Michele Marconi and Carlton Brock abstained from voting. The motion to approve passed 5-1-1.

RESOLVED, THAT THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZE THE CONSTRUCTION AND EQUIPPING OF AN APPROXIMATELY 15,000 SQUARE FOOT BUILDING ADDITION AND BUILDING RENOVATIONS TO BE LOCATED AT 2500 KENSINGTON AVENUE, AMHERST, NEW YORK FOR SALE OR LEASE TO THE AGENCY AND SUBSEQUENT LEASE OR RECONVEYANCE PURSUANT TO AN INSTALLMENT SALE CONTRACT TO 2500 KENSINGTON LLC FOR SUBLEASE TO SHATKIN F.I.R.S.T., LLC, AND THE ACQUISITION AND INSTALLATION OF MACHINERY AND EQUIPMENT TO BE LOCATED AT 2495 KENSINGTON AVENUE, AMHERST, NEW YORK FOR USE BY SHATKIN F.I.R.S.T.,LLC, AND THE EXECUTION OF A MORTGAGE AGREEMENT, LEASE AGREEMENT AND/OR INSTALLMENT SALE CONTRACT AND PILOT AGREEMENT AND THE TAKING OF OTHER ACTIONS.

9:10 am – meeting adjourned.

BYLAWS
OF
TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY

ARTICLE I

Section 1. Name. The name of the Agency shall be "Town of Amherst Industrial Development Agency."

Section 2. Seal of Agency. The seal of the Agency shall be in the form of a circle and shall bear the name of the Agency and the year of its organization.

Section 3. Office of the Agency. The office of the Agency shall be at 4287 Main Street in the Town of Amherst, New York, but the Agency may have other offices at such other places as the Agency may from time to time designate by resolution.ⁱ

~~(Section 3 amended 1/06)~~

ARTICLE II

Section 1. Officers. The officers of the Agency shall be a Chairperson, a Vice Chairperson, a Secretary, a Treasurer, one or more Assistant Secretaries, an Executive Director and a Chief Financial Officer.ⁱⁱ

Section 2. Chairperson. The Chairperson shall be an "independent member" of the Agency within the meaning of Section 2825 of the New York Public Authorities Law and preside at all meetings of the Agency. The Chairperson shall sign all agreements, contracts, deeds and any other instruments on behalf of the Agency, except as otherwise

authorized or directed by resolution of the Agency. The Chairperson shall submit his or herⁱⁱⁱ recommendations and such information as he or she shall deem pertinent concerning the business, affairs and policies of the Agency, at each meeting.

Section 3. Vice Chairperson. The Vice Chairperson shall be a member of the Agency and perform the duties of the Chairperson in the absence or incapacity of the Chairperson. In the event of the resignation or death of the Chairperson, the Vice Chairperson shall become acting Chairperson and perform the duties of the Chairperson until such time as the Agency shall appoint a new Chairperson.

Section 4. Secretary. The Secretary shall be a member of the Agency. The Secretary ~~shall keep all records of the Agency,~~ shall act as secretary at the meetings of the Agency, and shall keep , or cause to be kept, minutes of the proceedings of the Agency in compliance with the provisions of the Open Meetings Law ~~a record of all votes thereof. The Secretary shall record the proceedings of the Agency in a journal of proceedings to be kept for such purpose. The Secretary shall perform all duties incident to the office.~~ The Secretary ~~shall have custody of the seal of the Agency, and~~ shall have the power to affix ~~such the~~ seal of the Agency to all contracts and other instruments that are authorized by the Agency to be executed, where such seal is required. The Secretary shall perform all duties incident to the office.

Section 5. Assistant Secretary(ies). The Assistant Secretary (or Assistant Secretaries if there are more than one, but no more than two) shall be legal counsel for the Agency, and may not be a member of the Agency. In the absence or incapacity of the

Secretary, the Assistant -Secretary, or if there are more than one, the Assistant -Secretary designated by the Chairperson, shall perform the duties of the Secretary. In case of the resignation or death of the Secretary, the Assistant Secretary, or if there are more than one, the Assistant Secretary designated by the Chairperson,- shall perform the duties of the Secretary until such time as the Agency shall appoint a new Secretary.^{iv}~~(Section 5 Amended 11/16/90)~~^v

Section 6. Treasurer. The Treasurer shall be an “independent member” of the Agency and shall exercise supervision and control over the Chief Financial Officer of the Agency. The Treasurer shall review financial reports prepared by the Chief Financial Officer and shall report to the Board on such measures.

Section 7. Executive Director. The Executive Director shall not be a member of the Agency. The Executive Director shall be the Chief Executive Officer (CEO) of the Agency. The Executive Director shall be appointed by a majority of the members of the Agency for such term of employment as the Agency determines proper and shall exercise supervision and control of all administrative functions of the Agency. The Executive Director shall be responsible for the implementation of all resolutions, orders, programs or projects of the Agency. The Executive Director shall have the power to sign and execute, on behalf of the Agency, all contracts, agreements, deeds, notes, bonds, or other evidence of indebtedness and to affix and attest to the seal of the Agency as authorized by the Agency. The Executive Director shall attend all meetings of the Agency and shall make recommendations to the Agency from time to time. The

Executive Director shall have all necessary and incidental powers to perform and exercise any of the duties and functions as specified or lawfully delegated to him or her.

Section 8. Chief Financial Officer. The Chief Financial Officer (CFO) may not be a member of the Agency and shall be appointed by a majority of the members of the Agency for such term of employment as the Agency determines proper. The Chief Financial Officer shall have the care and custody of all funds of the Agency and shall have all such funds deposited in the name of the Agency in such banks as the Agency may designate. Except as otherwise provided by resolution of the Agency, the Chief Financial Officer shall sign all instruments of indebtedness, orders and checks for the payment of money by the Agency pursuant to the direction of the Agency. Except as otherwise authorized by resolution of the Agency, all such instruments of indebtedness, orders and checks, shall be countersigned by ~~the Chairperson~~ an authorized member of the Board. The Chief Financial Officer shall have regular books of account kept on an accrual basis, showing all receipts and expenditures. The Chief Financial Officer shall report to the Treasurer of the Agency who shall exercise care and supervision of him. The Chief Financial Officer shall provide the information required by the Treasurer to allow the Treasurer to render to the Agency at each regular meeting an account of the financial transactions and current financial condition of the Agency. The Chief Financial Officer shall give such bond for the faithful performance of his or her duties as the Agency may determine. The Agency shall pay the cost of any bond so required by the Agency.

Section 9. Additional Duties. The Officers of the Agency shall perform such other duties and functions as may from time to time be required by the Agency, by its bylaws, or by its rules and regulations.

Section 10. Appointment of Officers. The Chairperson, Vice Chairperson, Secretary, and Treasurer of the Agency shall be appointed at the annual meeting of the Agency from among the members of the Agency and shall hold office for one year or until their successors are appointed. If the term of an Agency member should terminate, his or her term of office as an officer shall also terminate. The Assistant Secretary(ies) shall be appointed at the annual meeting, but need not be a member of the Agency. The CEO and CFO may not be members of the Agency.^{vi}

Section 11. Vacancies. Should any office become vacant, the Agency shall convene the Nominating Committee to solicit interest from interested members and recommend a successor at the next regular meeting. The appointment shall be for the unexpired term of said office.^{vii}

Section 12. Members of the Agency. The term of office of each member of the Agency shall be established by the Town Board of Amherst and each member shall continue to hold office until his or her successor is appointed. A majority of the members of the Agency must be “independent members” of the Agency within the meaning of Section 2825 of the Public Authorities Law.

ARTICLE III

COMMITTEES

Section 1. Executive Committee. There shall be an Executive Committee which shall consist of the Chairperson, Vice Chairperson and Treasurer. The Executive Director and Chief Financial Officer shall each be non-voting members of the Executive Committee. The Executive Committee shall function as a steering committee and shall advise and make recommendations to the membership of the Agency.

Section 2. Governance Committee. There shall be a Governance Committee appointed by the Chairperson with the consent of the entire membership of the Agency. The Governance Committee shall consist of the Chairperson and two other members of the Agency and must be “independent members” of the Agency within the meaning of Section 2825 of the New York Public Authorities Law. [No more than one member of the Executive Committee may serve on the Governance Committee. The Chairperson may authorize the Vice Chairperson to serve as the Committee Chair in the absence of the Chairperson.](#) The Governance Committee shall keep the Board informed of current best governance practices, review corporate governance trends, suggest updates to the Agency’s corporate governance principles and shall advise those responsible for appointing members to the Board of the skills and experience required of potential Board members. The Governance Committee shall also have such other duties and responsibilities as set forth in the Governance Committee Charter, as the same may from time to time be amended.^{viii}

Section 3. Finance & Audit Committee. There shall be a Finance & Audit Committee consisting of the Treasurer and two additional “independent members” appointed by the Chairperson, with the consent of the entire membership of the Agency, which members shall, to the extent practicable, be familiar with corporate financial and accounting practices. [No more than one member of the Executive Committee may serve on the Finance & Audit Committee.](#) The Finance & Audit Committee shall provide assistance to the members of the Agency in fulfilling their fiduciary responsibilities relating to accounting, reporting and regulatory compliance practices. The Finance & Audit Committee shall approve the budget for submission to the Board for approval, review and approve transfers of moneys under the budget and make recommendations to the Board as to other financial matters. The Finance & Audit Committee shall recommend the hiring of a certified independent accounting firm and shall provide direct oversight over the performance of the independent audit performed by the accounting firm hired for such purposes and receive and review reports from such accounting firm. The Finance & Audit Committee shall also ensure that the proper submissions are made to the governmental authorities having audit authority and fiscal oversight of the Agency.

The Finance & Audit Committee shall periodically report to the members of the Agency, at least annually, the findings of the independent accountants and auditors. Such reports shall highlight any weaknesses in the manner in which the Agency is operating and suggest actions that should be taken to correct such weaknesses. The

Finance & Audit Committee shall also have such other duties and responsibilities as set forth in the Finance & Audit Committee Charter, as the same may from time to time be amended.^{ix}

Section 4. Nominating Committee. There shall be a Nominating Committee appointed by the Chairperson with the consent of the entire membership of the Agency annually in October. The Nominating Committee shall consist of three members of the Agency whose terms are not expiring, and must be “independent members” of the Agency within the meaning of Section 2825 of the New York Public Authorities Law.

[No more than one member of the Executive Committee may serve on the Committee.](#)

The Nominating Committee shall solicit interest for officer and committee positions for the following calendar year and present the slate of candidates to the members of the Agency at the Annual Meeting.^x

ARTICLE IV

MEETINGS

Section 1. Annual Meeting. The annual meeting of the Agency shall be held on the third Friday of January, at 8:30 a.m. at the regular meeting place of the Agency, or at such place and time as the Agency shall designate.^{xi} ~~(Section 1 Amended 11/16/90)~~

Section 2. Regular Meetings. Regular meetings of the Agency may be held at such times and places as from time to time may be determined by the Agency.

Section 3. Special Meetings. The Chairperson of the Agency may when he or she deems it desirable, and shall, upon written request of two members of the Agency,

call a special meeting of the Agency for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered ~~to each member of the Agency or may be delivered~~ personally to each member, or by regular or electronic mail ~~to the business, home, or electronic mail address of each member of the Agency~~ at least two (2) days prior to the date of such special meeting. Waivers of Notice may be signed by any member failing to receive a proper notice. At such special meeting, ~~no business shall be considered other than as designated in the call, but if all members of the Agency are present at a special meeting, with or without notice thereof, and are all agreeable thereto, any and all business may be transacted at such special meeting.~~^{xii}

Section 4. Executive Session. Upon majority vote of the members, ~~the Agency may enter into executive session and exclude non-members from such session in accordance with Section 105 of the Open Meetings Law.~~^{xiii}

Section 5. Quorum. At all meetings of the Agency, a majority of the members of the Agency shall constitute a quorum for the purpose of transacting business; provided that a smaller number may meet and adjourn to some other time or until a quorum is obtained.

Section 6. Order of Business. At the regular meetings of the Agency, the following shall be the order of business:

1. Roll Call
2. Reading and approval of the minutes of the previous meeting

3. Bills and communications
4. Treasurer's Report
5. Public Comment
6. Executive Director's Report
7. Committee Reports
8. Unfinished Business
9. New Business
10. Adjournment

All resolutions shall be in writing and shall be recorded in the journal of the proceedings of the Agency. At its discretion, the members may change the order of business at any meeting by majority vote.^{xiv}

Section 7. Manner of Voting. The voting on all questions coming before the Agency shall be by roll call or by acclamation, but in either case the yeas and nays shall be entered on the minutes of such meeting, except in the case of appointments when the vote may be by ballot. Any action of the Agency shall be binding, upon determination by a majority of the members of the Agency.

ARTICLE V

AMENDMENTS

Section 1. Amendments to Bylaws. The bylaws of the Agency may be amended by affirmative vote of a majority of the members of the Agency at a regular meeting or at a special meeting called for that purpose; but no such amendment shall be adopted

unless at least thirty days' written notice thereof has been previously given to all members of the Agency.

ARTICLE VI

POLICIES & PROCEDURES

Section 1. Projects to be considered by this Agency. It is the policy of the Agency that any project shall be considered by it which shall conform to the letter and spirit of the Laws of New York State.

Section 2. Site of Agency Projects.

1. The Agency shall not approve any project to be located on a site or within an area, which does not conform to or has not been granted a variance from the zoning laws of the Town of Amherst.

2. The Agency shall not approve any project, which shall be in violation of the anti-pollution laws of the Federal, State, County or Town government.^{xv} ~~(Section 2, #2 Added 11/16/90)~~

3. The Agency shall not approve any project, which shall be in violation of the health, labor or other laws of the State of New York or the United States, or the local laws of the County of Erie or local laws and ordinances of the Town of Amherst.

Section 3. Payment in Lieu of Taxes. The Agency shall provide to the Town Board any changes in its payment in lieu of tax policy prior to their adoption.

Section 4. Audit of Records and Accounts

1. The Agency shall annually file a copy of the audit prepared by the certified independent accounting firm retained by the Board upon the recommendation of the Finance & Audit Committee with the Town Board of Amherst within ~~ninety~~ one hundred and twenty days after the close of the Agency's fiscal year for its proceedings and its activities during the preceding fiscal year.^{xvi} (~~Section 4, #1~~ Amended 11/16/90)

2. The Agency may require any other operating statements, which it shall determine are required for daily operation.

Section 5. Conveyance of Property. The Agency may insert in a contract for a project that upon the payment in full of all notes, bonds and indebtedness incurred in connection with a project that the Agency will convey the lands, buildings and equipment involved in said project and so paid for to the tenant or operator of the same upon terms set forth in such contract that the additional consideration for such conveyance may be nominal.

Section 6. The Agency by resolution may adopt such rules, regulations, policies and procedures as it may deem necessary and appropriate to the operation so long as the same shall not be contrary to these bylaws as they may be amended from time to time.

Section 7. Any sale or disposal of property of the Agency must be in compliance with the provisions of Title 5-A of the Public Authorities Law.

ⁱ Section 1 amended 2006 reflecting new address.

ⁱⁱ Section 1 amended 2016 to add additional Assistant Secretary and eliminate Assistant Treasurer.

ⁱⁱⁱ Several areas of the By-Laws amended in 2016 to account for gender neutrality in positions.

^{iv} Section 5 amended 1990 to allow for legal counsel to act as Assistant Secretary.

^v Section 5 amended 2016 to account for more than one Assistant Secretary.

^{vi} Section 10 amended 2016 to clarify term and service of board members.

^{vii} Section 11 amended 2016 establishing the role of the Nominating Committee to fill officer positions.

^{viii} Section 2, Committees, amended 2016 to reflect Governance Committee duties noted in its Charter.

^{ix} Section 3, Committees, amended 2016 to reflect Audit & Finance Committee duties noted in its Charter.

^x Section 4, Committees, establishes in 2016 a Nominating Committee.

^{xi} Section 1 amended 1990.

^{xii} Section 3, Meetings, establishes in 2016 means by which Members of the Agency are notified of Special Meetings.

^{xiii} Section 4, Meetings, establishes in 2016 when the Agency can enter into Executive Session.

^{xiv} Section 6, Meetings, amended in 2016 to reflect current order of business of Agency.

^{xv} Section added in 1990.

^{xvi} Section amended in 1990.

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY

AMENDED AND RESTATED
GOVERNANCE COMMITTEE CHARTER

This Amended and Restated Governance Committee Charter (“Charter”) is adopted by the Board of Directors of the Town of Amherst Industrial Development Agency (the “Agency”), a public benefit corporation established under the laws of the State of New York, on the ____ day of _____, 2017.

ARTICLE I
Core Responsibilities

The responsibilities of the Governance Committee (the “Committee”), in compliance with Section 2824(7) of the New York Public Authorities Law, shall include:

- a. Keeping the Board of Directors (the “Board”) informed of current best practices in corporate governance;
- b. Reviewing corporate governance trends for their applicability to the Agency;
- c. Recommending updates to the Agency's corporate governance principles and practices;
- d. Advising those responsible for appointing directors to the Board of the skills, qualities and professional or educational experiences necessary to be effective Board members;
- e. Examining ethical and conflict of interest issues that are referred to the Committee by the Ethics Officer or the Board;
- f. Performing Board self-evaluations; and
- g. Recommending bylaws which include rules and procedures for the conduct of Board business.

ARTICLE II
Powers

The Board has delegated to the Committee the power and authority necessary to discharge its duties under this Charter, including the right to: (i) meet with and obtain any information it may require from Agency staff; and (ii) obtain advice and assistance from Agency counsel, ~~outside counsel, accounting and other advisors~~ as the Committee deems necessary.

ARTICLE III

Composition and Selection

The Committee shall be comprised of the Chairperson of the Agency and two (2) additional members of the Agency, all of whom shall be “independent members” within the meaning of Section 2825 of the New York Public Authorities Law.¹ The two additional members shall be appointed by the Chairperson with the consent of the entire membership of the Agency at the annual meeting of the Agency. No more than one member of the Executive Committee may serve on the Committee. Appointees are required to possess the necessary skills to understand the duties and functions of the Committee, and should be knowledgeable or become knowledgeable in matters pertaining to corporate governance. Committee members will serve at the discretion of the Board. The Chairperson of the Agency shall serve as the Committee Chair. The Chairperson may authorize the Vice Chairperson to serve as the Committee Chair in the absence of the Chairperson. Each Committee member shall serve for a term of one (1) year and until his or her successor shall be duly appointed. The term of office of a Committee member shall terminate upon the Committee member’s resignation or retirement or his or her removal by the Board. When feasible, the immediate past Committee Chair will continue serving as a member of the Committee for at least one year to ensure an orderly transition.

Committee members are prohibited from being an employee of the Agency or an immediate family member of an employee of the Agency. In addition, Committee members shall not: (i) engage in any private business transactions with the Agency; (ii) receive compensation from any private entity that has material business relationships with the Agency; or (iii) be an immediate family member of an individual that engages in private business transactions with the Agency or receives compensation from an entity that has material business relationships with the Agency.

ARTICLE IV

Committee Structure and Meetings

All Committee meetings shall comply with the requirements of Article 7 of the New York Public Officers Law (the “Open Meetings Law”). The Committee will meet at least once per year, with the expectation that additional meetings may be required to adequately fulfill all the obligations and duties outlined in this Charter. All Committee members are expected to attend each meeting in person or via videoconference.

¹ An independent member is one who: (a) is not, and in the past two years has not been, employed by the Agency or an affiliate in an executive capacity; (b) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than fifteen thousand dollars for goods and services provided to the Agency or received any other form of financial assistance valued at more than fifteen thousand dollars from the Agency; (c) is not a relative of an executive officer or employee in an executive position of the Agency or an affiliate; and (d) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the Agency or an affiliate.

Meeting agendas will be prepared for every meeting and provided to the Committee members at least five (5) days in advance of the scheduled meeting, along with the appropriate materials needed to make informed decisions. A quorum of the Committee shall consist of a majority of the members then serving on the Committee. The affirmative vote of a majority of the members shall constitute an act of the Committee. Minutes of Committee meetings shall be kept and maintained by the Agency.

ARTICLE V

Committee Reports

The Committee shall:

- a. Report its actions and recommendations to the Board at each regular meeting of the Board following a meeting of the Committee and when otherwise requested by the Board; and
- b. Report to the Board, ~~at least annually,~~ regarding any proposed changes to this Charter.

ARTICLE VI

Duties

The Board of Directors has delegated to the Committee the responsibility to review, develop, draft, revise and oversee policies and practices for which the Committee has specific expertise, as follows:

- a. Develop the Agency's governance practices that shall address transparency, independence, accountability, fiduciary responsibilities and management oversight;
- b. Identify the competencies and personal attributes required of directors to assist those authorized to appoint members to the Board in identifying qualified individuals;
- c. Develop and recommend to the Board the number and structure of committees to be created by the Board;
- d. Develop and provide recommendations to the Board regarding Board member education, including new member orientation and regularly scheduled Board member training to be obtained from state-approved trainers;
- e. Develop and provide recommendations to the Board regarding performance evaluations, including coordination and oversight of such evaluations of the Board, its committees and senior management in the Agency's governance process;

- f. Develop, review on a regular basis and update as necessary the Agency's code of ethics and written policies regarding conflicts of interest (such code of ethics and policies shall be at least as stringent as the laws, rules, regulations and policies applicable to state officers and employees);
- g. Develop and recommend to the Board any required revisions to the Agency's written policies regarding the protection of whistleblowers from retaliation;
- h. Develop and recommend to the Board any required revisions to the Agency's equal opportunity and affirmative action policies;
- i. Develop and recommend to the Board any required updates to the Agency's written policies regarding procurement of goods and services, including policies relating to the disclosure of persons who attempt to influence the Agency's procurement process;
- j. Develop and recommend to the Board any required updates to the Agency's written policies regarding the disposition of real and personal property;
- k. Develop and recommend to the Board any other policies or documents relating to the governance of the Agency, including rules and procedures for conducting the business of the Agency's Board, such as the Agency's bylaws; and
- l. Oversee the implementation and effectiveness of the bylaws and other governance documents and recommend modifications as needed.

ARTICLE VII **Amendments**

This Charter may be amended upon affirmative vote of a majority of the Board.

ARTICLE VIII **Agency Affiliates**

This Charter shall also be applicable to the Town of Amherst Development Corporation ("ADC") upon approval by the Board of ADC.

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY

AMENDED AND RESTATED
FINANCE AND AUDIT COMMITTEE CHARTER

This Amended and Restated Finance and Audit Committee Charter (“Charter”) is adopted by the Board of Directors of the Town of Amherst Industrial Development Agency (the “Agency”), a public benefit corporation established under the laws of the State of New York, on this ____ day of _____, 2017.

ARTICLE I
Core Responsibilities

The responsibilities of the Finance and Audit Committee (the “Committee”), in compliance with Sections 2824(4) and 2824(8) of the New York Public Authorities Law, shall include:

- a. Providing assistance to the Agency’s Board of Directors (the “Board”) in fulfilling its fiduciary responsibilities relating to accounting, reporting and regulatory compliance matters;
- b. Reviewing and approving transfers of money under the budget and making recommendations to the Board regarding other financial matters;
- c. Recommending to the Board the hiring of a certified independent accounting firm for the Agency, establishing the compensation to be paid to the accounting firm and providing direct oversight of the performance of the independent audit performed by the accounting firm;
- d. Providing an avenue of communication between management, the independent auditors, the internal auditors and the Board;
- e. Approving the budget for submission to the Board for approval;
- f. Reviewing proposals for the issuance of debt by the Agency and its affiliates;
- g. Making recommendations to the Board concerning the level of debt and nature of debt issued by the Agency;
- h. Making recommendations concerning the appointment and compensation of bond counsel, investment advisors and underwriting firms used by the Agency, and to oversee the work performed by these individuals and firms on behalf of the Agency; and
- i. Reviewing proposals relating to the repayment of debt or other long-term financing arrangements by the Agency and its affiliates.

ARTICLE II

Powers

The Board has delegated to the Committee the power and authority necessary to discharge its duties, including the right to:

- a. ~~Appoint, compensate and o~~versee the work of any independent accounting firm employed by the Agency;
- b. Conduct or authorize investigations into any matters within its scope of responsibility;
- c. Seek any information it requires from Agency employees, all of whom should be directed by the Board to cooperate with Committee requests;
- d. Meet with Agency staff, independent auditors or Agency counsel as necessary to perform the duties of the Committee; and
- e. ~~Retain, at the Agency's expense, outside counsel, experts and other advisors as the Committee may deem appropriate.~~

The Board shall ensure that the Committee has sufficient resources to carry out its duties.

ARTICLE III

Composition and Selection

The Committee shall consist of the Treasurer and two (2) additional members of the Agency, all of whom shall be “independent members” within the meaning of Section 2825 of the New York Public Authorities Law.¹ The two additional members shall be appointed by the Chairperson with the consent of the entire membership of the Agency. No more than one member of the Executive Committee may serve on the Committee. Appointees are required to possess the necessary skills to understand the duties and functions of the Committee, and they should be knowledgeable or become knowledgeable in matters pertaining to financing and governmental financial reporting and auditing. Committee members will serve at the discretion of the Board. The Treasurer shall serve as the Committee Chair. Each Committee member shall serve for a term of one (1) year and until his or her successor shall be duly appointed. The term of office of a Committee member shall terminate upon the Committee member’s resignation or retirement or his or her removal by the Board. When feasible, the immediate past Committee Chair will continue serving as a member of the Committee for at least one year to ensure an orderly transition.

¹ An independent member is one who: (a) is not, and in the past two years has not been, employed by the Agency or an affiliate in an executive capacity; (b) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than fifteen thousand dollars for goods and services provided to the Agency or received any other form of financial assistance valued at more than fifteen thousand dollars from the Agency; (c) is not a relative of an executive officer or employee in an executive position of the Agency or an affiliate; and (d) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the Agency or an affiliate.

Committee members shall be prohibited from being an employee of the Agency or an immediate family member of an employee of the Agency. In addition, Committee members shall not: (i) engage in any private business transactions with the Agency; (ii) receive compensation from any private entity that has material business relationships with the Agency; or (iii) be an immediate family member of an individual that engages in private business transactions with the Agency or receives compensation from an entity that has material business relationships with the Agency.

ARTICLE IV **Committee Structure and Meetings**

All meetings shall comply with the requirements of Article 7 of the New York Public Officers Law (the “Open Meetings Law”). The Committee will meet a minimum of twice a year, with the expectation that additional meetings may be required to adequately fulfill all the obligations and duties outlined in this Charter. Members of the Committee are expected to attend each Committee meeting in person or via videoconference. The Committee may invite other individuals, such as members of management, auditors or other technical experts to attend meetings and provide pertinent information, as necessary. The Committee will meet with the Agency’s independent auditor at least annually to discuss the financial statements of the Agency.

Meeting agendas will be prepared for every meeting and provided to the Committee members along with briefing materials five days before the scheduled Committee meeting. A quorum of the Committee shall consist of a majority of the members then serving on the Committee. The affirmative vote of a majority of the members of the Committee shall constitute an act of the Committee. Minutes of these meetings shall be kept and maintained by the Agency.

ARTICLE V **Committee Reports**

The Committee shall:

~~a. Present annually to the Board a report of how it has discharged its duties and met its responsibilities as outlined in this Charter.~~

b.a. Annually review this Charter, reassess its adequacy and recommend to the Board any proposed changes including, but not limited to, those changes required as a result of amendments to applicable laws, regulations, accounting and auditing standards.

ARTICLE VI **Duties**

The Board has delegated to the Committee responsibilities related to: (1) independent auditors and annual financial statements; (2) internal auditors; (3) oversight of management's internal controls, compliance and risk assessment practices; (4) special investigations and

whistleblower policies; (5) the issuance of debt by the Agency; (6) the Agency's annual budget; (7) the Agency's investments; (8) the Agency's capital requirements and capital plan; (9) the Agency's financial and procurement thresholds; and (10) other miscellaneous issues related to the financial practices of the Agency, as follows:

1. Independent Auditors and Financial Statements

The Committee shall:

- a. Recommend to the Board the hiring of a certified independent accounting firm for the Agency.
- b. Compensate and oversee independent auditors retained by the Agency and pre-approve all audit services provided by the independent auditor.
- c. Establish procedures for the engagement of the independent auditor. The Agency's independent auditor is prohibited from providing non-audit services unless it has received previous written approval from the Committee. Non-audit services include tasks that directly support the Agency's operations such as bookkeeping or other services related to the accounting records or financial statements of the Agency, financial information systems design and implementation, appraisal or valuation services, actuarial services, investment banking services and other tasks that may involve performing management functions or making management decisions.
- d. Review and ~~approve forward~~ the Agency's audited financial statements ~~to the Board of Directors~~ and report on internal controls and all other auditor communications.
- e. Review significant accounting and reporting issues, including complex or unusual transactions and management decisions, and recent professional and regulatory pronouncements and identify their impact on the financial statements.
- f. Meet with the independent auditor ~~on a regular basis~~ to discuss any significant issues identified during the course of the audit.
- g. Review the independent audit findings and recommendations, discuss any significant risks reported and assess the responsiveness and timeliness of management's follow-up activities pertaining to the same.

2. Internal Auditors

The Committee shall:

- a. Review with management and the internal audit director this Charter and the activities, staffing and organizational structure of the internal audit function. ~~The~~

~~Committee shall have authority over the appointment, dismissal, compensation and performance reviews of the internal audit director.~~

- b. Ensure that the internal audit function is organizationally independent from Agency operations.

~~c. Review the reports of internal auditors and review and approve the annual internal audit plan.~~

~~c.~~ Review the results of internal audits and approve procedures for implementing accepted recommendations of the internal auditor.

3. Internal Controls, Compliance and Risk Assessment

The Committee shall review management's assessment of the effectiveness of the Agency's internal controls and review the report on internal controls by the independent auditor as a part of the financial audit engagement.

4. Special Investigations

The Committee shall:

- a. Ensure that the Agency has an appropriate confidential mechanism for individuals to report suspected fraudulent activities, allegations of corruption, criminal activity, conflicts of interest or abuse by the directors, officers or employees of the Agency or any persons having business dealings with the Agency and breaches of internal control.
- b. Develop procedures for the receipt, retention, investigation and/or referral of complaints concerning accounting, internal controls and auditing to the appropriate body.
- c. Request and oversee special investigations as needed and/or refer specific issues to the appropriate body for further investigation (for example, issues may be referred to the State Inspector General or other investigatory organization).
- d. Review all reports delivered to it by the Inspector General and serve as a point of contact with the Inspector General.

5. Issuance of Debt

The Committee shall make recommendations to the Board and review proposals for the issuance of debt by the Agency and its affiliates.

6. Annual Budget

The Committee shall:

- a. Review the Agency's proposed annual operating budget as presented by Agency management for the upcoming fiscal year.
- b. Recommend the annual budget to the Board for approval after incorporating necessary amendments.
- c. Monitor and report to the Board on the Agency's compliance with its adopted budget during the fiscal year (actual vs. estimated budget).

7. Agency Investments

The Committee shall:

- a. Annually review the Agency's investment policy and evaluate allocation of assets.
- ~~b. Review and recommend to the Board for approval of the Agency's annual investment report.~~
- ~~eb.~~ Annually review the Agency's audit of investments as provided by independent auditors.

8. Agency Capital Requirements and Capital Plan

The Committee shall:

- a. Assess the financial requirements of the Agency's capital plans. The assessment is to include current and future capital needs, a justification of why such capital expenditure is required and an explanation of funding sources for capital projects such as grants, issuance of debt or specified pay-as-you-go resources.
- b. Review the financial aspects of major proposed transactions, significant expenditures, new programs and services and proposals to discontinue programs or services and make recommendations to the Board based on such review.

9. Agency Financial and Procurement Thresholds

The Committee shall:

- a. Review and make recommendations to the Board regarding any proposed procurements submitted to the committee by the Agency's procurement officer.
- b. Review and recommend changes to the Agency's procurement policy and its thresholds for procuring goods and services.

- c. Review and recommend changes to the Agency's fee schedules.
- d. Review the scope and terms of the Agency's insurance policies and liability coverage on an annual basis.

10. Other Responsibilities of the Committee

The Committee shall obtain any information and training needed to enhance Committee members' understanding of the role of internal audits and the independent auditor, the risk management process, internal controls and a certain level of familiarity in financial reporting standards and processes.

ARTICLE VII
Amendments

This Charter may be amended upon affirmative vote of a majority of the Board.

ARTICLE VIII
Agency Affiliates

This Charter shall also be applicable to the Town of Amherst Development Corporation ("ADC") upon approval by the ADC Board.

Beachwood Health Care Center Inc. Refinancing	
Applicant:	Beechwood Health Care Center, Inc.
Applicant Background:	The applicant is a New York not-for-profit corporation operating a 272-bed skilled nursing facility which provides both long term care programs and short term care sub-acute services in approximately 325,000 square feet of space.
Project:	Beechwood is refunding the original bond and is seeking to refinance the remaining balance and use new moneys for facility renovations and equipment purchases.
Original Bond Amount:	\$14,860,000
Principal & Interest Currently Remaining:	\$9,895,000
New Bond Amount:	\$11,500,000
Date of Issue:	January 18, 2007
Obligation:	The debt is not an obligation of the ADC, Town of Amherst or State of New York. Repayment of the Bond is the responsibility of the applicant or its designee.
Exemptions:	Up to \$115,000 Mortgage Recording Tax
Schedule:	-6/16/17 ADC Public Hearing - ? Town Board Approval