

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**

**Agenda – 494<sup>th</sup> Meeting**

**August 18, 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 - amendments
9. New Business
  - a. Bureau Veritas Consumer Products Services, Inc.
  - b. 100 Northpointe, LLC
  - c. Mayor Brian Kulpa – Update on Village of Williamsville Strategic Initiatives
10. Adjournment

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**  
**Minutes of the 493<sup>rd</sup> Meeting**  
**July 21, 2017– 8:30 am**  
**Agency Offices, 4287 Main Street**

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

ABSENT: Edward F. Stachura

GUESTS: AIDA Staff  
Stephen Watson, Buffalo News

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

**MINUTES**

The June 2017 minutes were approved as presented.

**BILLS & COMMUNICATIONS**

There were no Bills & Communications presented at this meeting

**TREASURER'S REPORT**

The Treasurer's Report for June 2017 was approved as presented.

**PUBLIC COMMENT**

There was no Public Comment at this meeting.

**EXECUTIVE DIRECTOR REPORT**

Executive Director's Report provided an update on Imagine Amherst and Management Reports.

**UNFINISHED BUSINESS –**

**AIDA By-Laws, Governance and Finance & Audit Committee Charters**

Board members received the AIDA By-Laws, Governance and Finance & Audit Committee Charters. Staff reviewed and suggested changes are highlighted in the documents. Additionally, staff reviewed the documents for operational accuracy and made several additional changes that reflect Agency functions.

Marshall Wood made a motion to approve the AIDA By-Laws amendments and to approve the Governance Committee Charter amendments and the Finance & Audit Committee Charter amendments. William Tuyn seconded the motion.

Michele Marconi mentioned that she has not had opportunity to thoroughly review the proposed amendments and requested that the motion be tabled for another month.

Steven Sanders made the motion to table the vote on the AIDA By-Laws amendments and to table both the Governance Committee Charter amendments and the Finance & Audit Committee Charter amendments. Michele Marconi seconded the motion. Vote of aye were made by Brock, Marconi, Sanders, Wood, Szukala and Tuyn. Motion to table passed 6-0.

## **NEW BUSINESS**

### **I. Authorization Resolution - Strategic Financial Solutions-Amherst Project**

The Applicant is seeking Agency assistance to renovate and equip an approximately 20,000 square foot vacant office building located at 115 Lawrence Bell Drive. This project represents Phase 1 of what is anticipated to be multi-phase investment that could reach 1,500 jobs.

SFS considered locations in New Jersey, Georgia and Florida for this expansion. All locations offered the company confidential packages of tax and hiring incentives. Empire State Development, which acted as lead agency on this project, is also providing tax incentives based on hiring goals.

Steven Sanders made a motion to approve the Strategic Financial Solutions-Amherst project. Michael Szukala seconded the motion. Votes of aye were made by Brock, Marconi, Sanders, Wood, Szukala and Tuyn. Motion to approve passed 6-0.

9:55 am – meeting adjourned.

## **Executive Director's Report**

August 18, 2017

### **Imagine Amherst**

The Town Planning Board is expected to review Comprehensive Plan updates to Chapters 3 and 10, at its August 17<sup>th</sup> meeting. No action is expected that evening as the Planning Board has indicated that they would like to review code language that accompanies these changes and directly relates to the classification of 68 Commercial and Mixed-Use Areas throughout Town. The Planning Board is holding a public information session on August 31<sup>st</sup> to review all materials.

An Imagine Amherst meeting is scheduled for 7PM on August 23<sup>rd</sup> to review the project and draft code language.

### **Williamsville Grocery Co-Operative**

A group has established By-laws and a Board of Directors to establish a grocery co-op in the Village of Williamsville. You may recall this was one of the possible tenants for the Village's application for state funding to redevelop a building on Spring Street. The initial plan is to finalize organizational documents (articles of incorporation) and initiate a feasibility study that would determine the size of its membership pool and corresponding facility. A feasibility study costs \$6-10,000 and we've been approached as a possible partner in that study.

### **Regional Private Sector Job Growth**

The U.S. Bureau of Labor Statistics just released data on private sector job growth in the 53 markets having more than 400,000 private sector jobs. Our metro private sector employment grew 0.4% (+1,800 jobs) in the last year totaling 476,800. Not that long ago our employment did not see gains and often private sector growth was negative. Unfortunately, we are lagging national leaders realizing 3-4% private sector job growth, and ranked 51 out of 53 major markets.

Business First published an excellent summary that can be accessed at: <https://www.bizjournals.com/buffalo/news/2017/08/08/new-job-growth-numbers-raise-cautionary-flag-for.html>

**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.<sup>i</sup>

**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.<sup>ii</sup>

**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

her<sup>iii</sup> 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 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. The Secretary shall have the power to affix 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.<sup>ivv</sup>

**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 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.<sup>vi</sup>

**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.<sup>vii</sup>

**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.<sup>viii</sup>

**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.<sup>ix</sup>

**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.<sup>x</sup>

## 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.<sup>xi</sup>

**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 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.<sup>xii</sup>

**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.<sup>xiii</sup>

**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.<sup>xiv</sup>

**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.<sup>xv</sup> 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 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.<sup>xvi</sup>

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.

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<sup>i</sup> Section 1 amended 2006 reflecting new address.

<sup>ii</sup> Section 1 amended 2016 to add additional Assistant Secretary and eliminate Assistant Treasurer.

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

<sup>iv</sup> Section 5 amended 1990 to allow for legal counsel to act as Assistant Secretary.

<sup>v</sup> Section 5 amended 2016 to account for more than one Assistant Secretary.

<sup>vi</sup> Section 10 amended 2016 to clarify term and service of board members.

<sup>vii</sup> Section 11 amended 2016 establishing the role of the Nominating Committee to fill officer positions.

<sup>viii</sup> Section 2, Committees, amended 2016 to reflect Governance Committee duties noted in its Charter.

<sup>ix</sup> Section 3, Committees, amended 2016 to reflect Audit & Finance Committee duties noted in its Charter.

<sup>x</sup> Section 4, Committees, establishes in 2016 a Nominating Committee.

<sup>xi</sup> Section 1 amended 1990.



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- <sup>xii</sup> Section 3, Meetings, establishes in 2016 means by which Members of the Agency are notified of Special Meetings.
- <sup>xiii</sup> Section 4, Meetings, establishes in 2016 when the Agency can enter into Executive Session.
- <sup>xiv</sup> Section 6, Meetings, amended in 2016 to reflect current order of business of Agency.
- <sup>xv</sup> Section added in 1990.
- <sup>xvi</sup> 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 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.<sup>1</sup> 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.

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<sup>1</sup> 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, 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. Oversee 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

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.<sup>1</sup> 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.

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

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<sup>1</sup> 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.

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. 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 forward the Agency's audited financial statements to the Board 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 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.
- b. Ensure that the internal audit function is organizationally independent from Agency operations.

- 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. 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.

**PROJECT PROFILE:**  
**BUREAU VERITAS CONSUMER PRODUCT SERVICES, INC.**  
**\$2,140,000**  
**August 18, 2017**



**ELIGIBILITY**

- NAICS Code—561 (Office Administrative Services)

**COMPANY INCENTIVES (EST.)**

- Sales Tax = \$175,000

**PROJECT BENEFITS (EST.)**

- Income Taxes \$3,338,717
- Sales Taxes = \$2,939,428

**EMPLOYMENT**

- 260 Full-Time and 4 Part-Time Jobs Retained
- 5 New Full Time Jobs Created After Project Completion
- Salary of Positions Range from \$39 —\$111,000 Annually Plus Benefits

**PROJECT SCHEDULE**

- September 2017 Equipment Purchasing Begins
- March 2018 Project Expected To Be Complete

**Project Address:**

100 Northpointe Parkway  
 Amherst, New York 14228  
 (Sweet Home Central School District)

**Investment:**

Equipment: \$2,140,000



**Company Description:**

Created in 1828, Bureau Veritas is a global leader in Testing, Inspection and Certification. The company offers innovative solutions that go beyond simple compliance with regulations and standards, reducing risk, improving performance and promoting sustainable development. The Buffalo branch works with retailers and manufacturers of consumer products worldwide to assess their products and manufacturing processes for compliance with regulatory, quality and performance requirements. Its services include testing products, inspecting goods, assessing factories, conducting social audits and training personnel. 87% of this location’s services are to customers outside of New York State.

**Project Description:**

The proposed project would expand the company’s Amherst testing capabilities. Multiple locations throughout the Audubon Industrial Park has created redundancies resulting in inefficient operations. Consolidating to one expanded building will allow the company to grow its operations an estimated 20-30% and better compete for capital across the Bureau Veritas worldwide footprint.

The Agency’s financial assistance is necessary for the company to undertake the project. One notable area of expansion is an expanded food lab, which would be located outside of New York State. The expanded building allows the company to bring outsourced testing locally, including expanding its flammability testing, large product testing, and chemical testing that is currently being done at a sister lab in Asia. Two relocation options provided by the company include Niagara County and an existing facility in Ontario.

**PROJECT PROFILE:**  
**BUREAU VERITAS CONSUMER PRODUCT SERVICES, INC.**  
**\$2,140,000**

**AIDA COMPANY HISTORY:**

None with the Current Owner.

In March 1998, the AIDA induced ACTS Testing Labs to construct a 40,000 Square Feet facility at Northpointe Parkway. Employment was 174 at time of inducement and was expected to grow to 250.

**MATERIAL TERMS:**

1. Achievement of 266 total full-time equivalent jobs at the project location two years after project completion, and retention of such jobs for the duration of the PILOT.
2. Investment of not less than \$1,819,000 in new equipment at the project location as noted in the application.



# Board Report

Table 1: Basic Information

Project Name	Bureau Veritas Equipment Investment
Project Applicant	Bureau Veritas
Project Description	Investment in new machinery and equipment in support of creating a larger testing facility in one building.
Project Industry	Administrative and Support Services
Municipality	Amherst Town
School District	Sweet Home
Type of Transaction	Lease
Project Cost	\$2,000,000
Direct Employment Expected to Result from Project (Annual FTEs)	267 (5 created and 262 retained)

Figure 1: Estimated State & Regional Benefits / Estimated Project Incentives (Discounted Present Value\*)

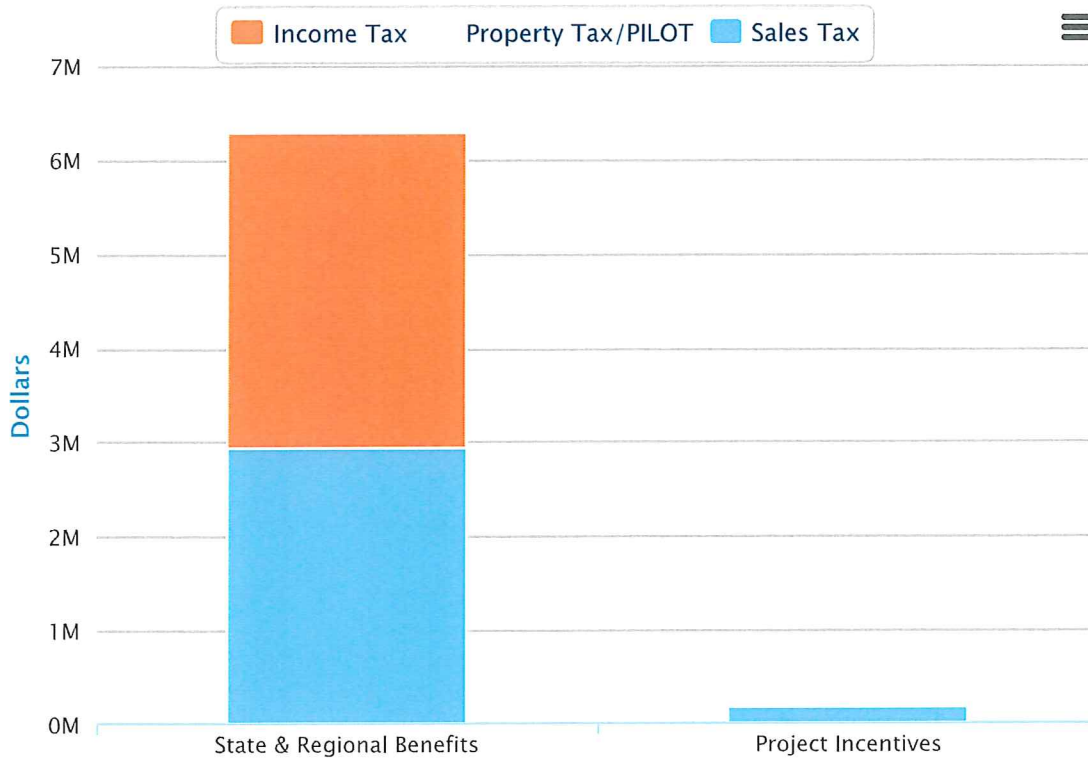


Table 2: Estimated State & Regional Benefits / Estimated Project Incentives Analysis (Discounted Present Value\*)

<b>Total State and Regional Benefits</b>	<b>\$6,278,145</b>	
<b>Total Project Incentives</b>	<b>\$175,000</b>	
<b>Projected Employment</b>	<b>State</b>	<b>Region</b>
<b>Total Employment</b>	<b>375</b>	<b>375</b>
Direct**	267 (5 created and 262 retained)	267 (5 created and 262 retained)
Indirect***	34	34
Induced****	74	74
Temporary Construction (Direct and Indirect)	0	0

Table 3: Estimated State & Regional Benefits (Discounted Present Value\*)

<b>Total State and Regional Benefits</b>	<b>\$6,278,145</b>
Income Tax Revenue	\$3,338,717
Sales Tax Revenue	\$2,939,428

Table 4: Estimated Project Incentives (Discounted Present Value\*)

<b>Total Project Incentives</b>	<b>\$175,000</b>
Sales Tax	\$175,000



\* Figures over 10 years and discounted by 3.49%

\*\* Direct - The recipient of IDA assistance adds new jobs to the regional economy and/or retains jobs at risk of being lost to another region. Investments that result in displacing existing jobs (e.g., most retail and many service sector industries) do not fall under this definition.

\*\*\* Indirect - The recipient of IDA assistance makes purchases from regional firms, which stimulates suppliers to add jobs and payroll that are new to the regional economy or are saved from being lost to competitors outside the region.

\*\*\*\* Induced - The recipient of IDA assistance by adding to and/or retaining payroll stimulates household spending that is new to the regional economy and/or saved from being lost to competitors outside the region.

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**RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE EQUIPPING OF COMMERCIAL SPACE BY BUREAU VERITAS CONSUMER PRODUCTS SERVICES, INC. TO BE LOCATED AT 100 NORTHPOINTE PARKWAY, AMHERST, NEW YORK FOR SALE OR LEASE TO THE AGENCY AND SUBSEQUENT LEASE OR RECONVEYANCE PURSUANT TO AN INSTALLMENT SALE CONTRACT TO BUREAU VERITAS CONSUMER PRODUCTS SERVICES, INC. THE EXECUTION OF LEASE AGREEMENTS AND/OR AN INSTALLMENT SALE CONTRACT AND THE TAKING OF OTHER ACTIONS.**

**WHEREAS**, the Town of Amherst Industrial Development Agency (the "Agency"), is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Section 914-a of the General Municipal Law, as amended (collectively, the "Act"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

**WHEREAS**, Bureau Veritas Consumer Products Services, Inc., for itself or for related individuals or entities (the "Company"), has entered into negotiations with officials of the Agency with respect to the equipping by the Agency, without the proceeds of a bond, of commercial space to be used for commercial purposes, including testing facilities (the "Project") and conveyance of the Project to the Agency pursuant to an Installment Sale Contract, such Project to be located at 100 & 165 Northpointe Parkway, Amherst, New York (the "Premises"); and

**WHEREAS**, the Company has submitted an application and other materials and information (collectively, the "Application") to the Agency to initiate the accomplishment of the above; and

**WHEREAS**, the Application sets forth certain information with respect to the Company and the Project, including the following: that the Company desires Agency financing for the equipping of commercial space to be located at 100 Northpointe Parkway, Amherst, New York, for warehousing, office, testing expansion and back-office purposes, all at a cost of approximately \$2,140,000.00; that the Project will allow the Company to centralize employees, increase its warehouse space, expand its testing facilities and consolidate its back-office support system to include office space, all to support its growing consumer products testing business in New York State; because of the nature of the proposed facility, it could be located anywhere in the United States and the Company could reduce the cost of expanding its operations by seeking a facility which is already fitted-out and equipped to meet the Company's needs; that the Company anticipates that two hundred sixty-two (262) full-time equivalent employees will be retained and five (5) new full-time equivalent jobs will be created as a result of the Project at the end of two (2)

years of operation thereof; that (i) there will be no substantial adverse disruption of existing employment of facilities of a similar nature in the Town of Amherst; (ii) the Project will retain present employment, provide substantial employment and substantial capital investment; and (iii) Agency financing will help to encourage the Company to proceed with the Project in the Town of Amherst; and

**WHEREAS**, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on July 21, 2017, and has considered all oral and written presentations made at or in connection with said public hearing; and

**WHEREAS**, the Agency has reviewed the Application and a cost-benefit analysis with respect to the Project, including the extent to which the Project will create and retain permanent, private-sector jobs, the value of tax exemptions to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the proposed Project in a timely fashion, the extent to which the proposed Project will provide additional sources of revenue for the municipalities and school district and other public benefits that might occur as a result of the Project; and

**WHEREAS**, the Agency desires to encourage the Company with respect to the consummation of the Project, if by doing so it is able to induce the Company to proceed with the Project in the Town of Amherst; and

**WHEREAS**, the Company has completed and submitted to the Agency Part 1 of an Environmental Assessment Form ("EAF") in accordance with the provisions of the State Environmental Quality Review Act and regulations adopted pursuant thereto (collectively, "SEQRA"); and

**WHEREAS**, the Agency has completed Part 2 of the EAF and has considered the proposed Project and reviewed the EAF and the criteria set forth in SEQRA in order to determine whether the Project will have a significant effect on the environment and wishes to make the findings required of an agency under SEQRA.

**NOW, THEREFORE, THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** The Agency hereby resolves that the proposed Project will not have a significant impact on the environment for the reasons more particularly set forth in the negative declaration prepared by the Agency and, in accordance with SEQRA, hereby adopts such negative declaration with regard to the Project.

**Section 2.** The Project is described in the recitals to this Resolution. The financial assistance to be provided in connection therewith include: an exemption from sales and use taxes for building materials and machinery, equipment, fixtures and furnishings purchased for incorporation into or use at the Project location having a total cost not to exceed \$2,000,000.00 (the "Financial Assistance"). In addition to any other covenants, obligations and agreements which may be contained in the Project Documents (as hereinafter defined), the provision by the Agency of the

Financial Assistance is made subject to the agreement by the Company throughout the Compliance Period (as defined below) to comply with the following covenants and agreements, each of which shall constitute a “Material Factor”:

- (a) compliance with the Agency’s Local Labor Policy in connection with the construction of the Project;
- (b) retention of existing full-time equivalent employment of two hundred sixty-two (262) jobs;
- (c) creation within two (2) years of Project completion of four (4) new full time jobs and retention of such jobs throughout the Compliance Period; and
- (d) investment of not less than \$1,819,000.00 in the equipping of the Project prior to Project completion.

The “Compliance Period” shall mean the period during which the Company and/or Northpointe Commerce Park LLC is receiving Financial Assistance from the Agency.

**Section 3.** The Agency hereby determines that the Project and the financing thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act.

**Section 4.** The Agency hereby authorizes the Company, as agent for the Agency, to proceed with the Project as herein authorized. The Agency is hereby authorized to acquire an interest in the Project equipment. The Company is authorized to proceed with the equipping of the Project as set forth in any Project Agreement, the Agency Lease Agreement or Installment Sale Contract (as hereinafter defined).

**Section 5.** The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary of the Agency, and other appropriate officials of the Agency and its agents and employees, are hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and to complete the Project in cooperation with the Company.

**Section 6.** The Company is authorized, as agent of the Agency, to initiate the acquisition of machinery, equipment, fixtures and furnishings which will be a part of the Project or will be used in connection therewith, and to advance such funds as may be necessary to accomplish such purposes. The designation of the Company as agent hereunder is limited to purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$2,000,000.00 and shall not apply to any other purchase by the Company or any operating expenses of the Company. The Company shall report to the Agency, at such times as the Agency shall require, or as may otherwise be prescribed by the Commissioner of the New York State Department of Taxation and Finance (the “Commissioner”), the value of all sales and use tax exemptions claimed by the Company or agents of the Company or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators under the authority

granted pursuant to this Resolution. A failure to report may result in the revocation of the designation of the Company as agent and repayment of any sales and use tax exemptions claimed.

**Section 7.** The Agency is hereby authorized to enter into a Project Agreement with respect to the provision of the Financial Assistance authorized herein (the "Project Agreement") and to acquire an interest in the Project site and equip a facility thereon, and the execution and delivery of an Installment Sale Contract (the "Installment Contract") between the Agency and the Company and such other documents as may be necessary to fulfill the intent of the parties to the transaction (collectively, the "Project Documents"), in form satisfactory to Agency counsel, are hereby authorized. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, or any Assistant Secretary are each authorized to execute such documents and to make or approve such amendments or modifications to the Project Agreement, Installment Sale Contract and such other documents executed and delivered in connection therewith as they deem necessary under the circumstances provided, however, that such modifications do not materially alter the risk to the Agency.

**Section 8.** Any such action heretofore taken by the Company initiating the acquisition, installation and construction of the Project is hereby ratified, confirmed and approved.

**Section 9.** Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency with respect to the Project and the financing thereof.

**Section 10.** In the event an installment sale contract is not executed between the Company and the Agency by the expiration date of this Resolution (as such date may be extended as provided herein) or the termination of this Resolution, the Company shall then be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all improvements of the real property and the machinery and equipment which constitute the Project, as if the Agency did not have an interest in the Project from the date the Company commenced its acquisition, construction and installation. In addition, in the event, because of the involvement of the Agency, the Company claims an exemption from state sales or use tax in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder, or which exemption is in excess of the amounts authorized hereunder, or is otherwise not permitted under this Resolution, or if the Company shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company as agent for the Agency as set forth in this Resolution or in any document authorized hereunder, then the Company shall each be required to remit to the Agency an amount equal to the amount of state sales and use taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company by the Commissioner of state sales and use taxes, together with any relevant penalties and interest. In addition to the foregoing, in the event the Agency determines that Company is in violation of a Material Factor, or in the event that the Company closes the Project or relocates its operations to a location outside of the Town of Amherst within the Compliance Period or in the event the Agency determines, in its judgment,

that the Company knowingly and intentionally submitted false or intentionally misleading information in its application to the Agency or in any report or certification submitted to the Agency for the purpose of obtaining or maintaining any Financial Assistance from the Agency (each referred to herein as a “Recapture Event”), the Agency may, in accordance with its policies and procedures then in effect, (i) revoke the designation of the Company and any agents of the Company (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company) as agents for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Company pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of all sales tax exemptions claimed by the Company and any agents of the Company, including, but not limited to, consultants, sub-contractors, or any equipment lessors of the Company under the authority granted under this Resolution and the Project Agreement. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company, the Company shall (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed to by any affected tax jurisdiction.

**Section 11.** The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Company's purposes or needs. The Company is satisfied that the Project is suitable and fit for its purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Company each hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

**Section 12.** No covenant, stipulation, obligation or agreement herein contained or contained in the Project Agreement, Installment Sale Contract or other documents, nor the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit, nor shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity.

**Section 13.** Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company

hereunder or otherwise.

**Section 14.** The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Company's or Sublessee's purposes or needs. The Company and Sublessee each is satisfied that the Project is suitable and fit for its purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Company and Sublessee each hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

**Section 15.** This Resolution shall take effect immediately and shall continue in full force and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Company and Lessee pursuant to Sections 9 and 10 of this Resolution which shall survive any expiration or termination) or (b) allow the Company additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Company and Lessee to complete such transactions. Upon any allowance of additional time to close, the Agency may charge the Company an extension fee in accordance with the Agency's fee schedule.

**Section 16.** This Resolution is subject to compliance with all local building and zoning requirements.

ADOPTED: August \_\_\_\_, 2017

ACCEPTED AND AGREED TO: \_\_\_\_\_, 2017

BUREAU VERITAS CONSUMER  
PRODUCTS SERVICES, INC.

By: \_\_\_\_\_

**PROJECT PROFILE:  
NORTHPOINTE COMMERCE PARK, LLC**

**\$6,975,000**

**August 18, 2017**



**ELIGIBILITY**

- NAICS Code—561 (Building Expansion For Bureau Veritas)

**COMPANY INCENTIVES (EST.)**

- Sales Tax = \$306,250
- Mortgage Tax = \$37,500
- Property Tax = \$800,586

**PROJECT BENEFITS (EST.)**

- PILOT Revenue = \$285,144
- Income Taxes \$114,933
- Sales Taxes = \$76,104

**EMPLOYMENT**

- 260 Full-Time and 4 Part-Time Jobs Retained
- 5 New Full Time Jobs Created After Project Completion
- Salary of Positions Range from \$39 —\$111,000 Annually Plus Benefits

**PROJECT SCHEDULE**

- September 2017 Construction Begins
- November 2018 Project Expected To Be Complete

**Project Address:**

100 Northpointe Parkway  
Amherst, New York 14226  
(Sweet Home Central School District)

**Investment:**

New Construction: \$3,500,000  
Renovation: \$2,500,000  
Land Purchase: \$75,000  
Soft Costs: \$900,000

**Company Description:**

Zaepfel Development is a full-service real estate development firm located in Williamsville, New York. The Zaepfel team has more than 40 years of real estate development, real estate services, property management, leasing and brokerage, and construction management experience. Ranked as one of Western New York’s top five development firms, Zaepfel has developed, owned, managed, built or sold nearly five million square feet of office, warehouse, industrial and flex space in Western New York, Pennsylvania and the southeast.

**Project Description:**

The proposed project would provide a single, expanded building for Bureau Veritas’s Amherst testing capabilities. Zaepfel will expand the existing 54,000 square feet building to 93,000 square feet, which will allow Bureau Veritas to consolidate three other leased locations to one efficient building enabling its forecasted growth.





**PROJECT PROFILE:**

**NORTHPOINTE COMMERCE PARK, LLC**

**\$6,975,000**

**AIDA COMPANY HISTORY:**

None

**MATERIAL TERMS:**

1. Achievement of 266 total full-time equivalent jobs at the project location two years after project completion, and retention of such jobs for the duration of the PILOT.
2. Investment of not less than \$5,928,750 at the project location as noted in the application.
3. Compliance with the Agency's Local Labor Policy in connection with the construction of the Project



# Board Report

Table 1: Basic Information

Project Name	100 Northpointe Parkway Building Expansion
Project Applicant	Northpointe Commerce Park LLC
Project Description	Zaepfel Development is proposing to expand Bureau Veritas's existing building.
Project Industry	Administrative and Support Services
Type of Transaction	Lease
Project Cost	\$6,975,000
Mortgage Amount	\$5,000,000
Direct Employment Expected to Result from Project (Annual FTEs)	0

Figure 1: Estimated State & Regional Benefits / Estimated Project Incentives (Discounted Present Value\*)

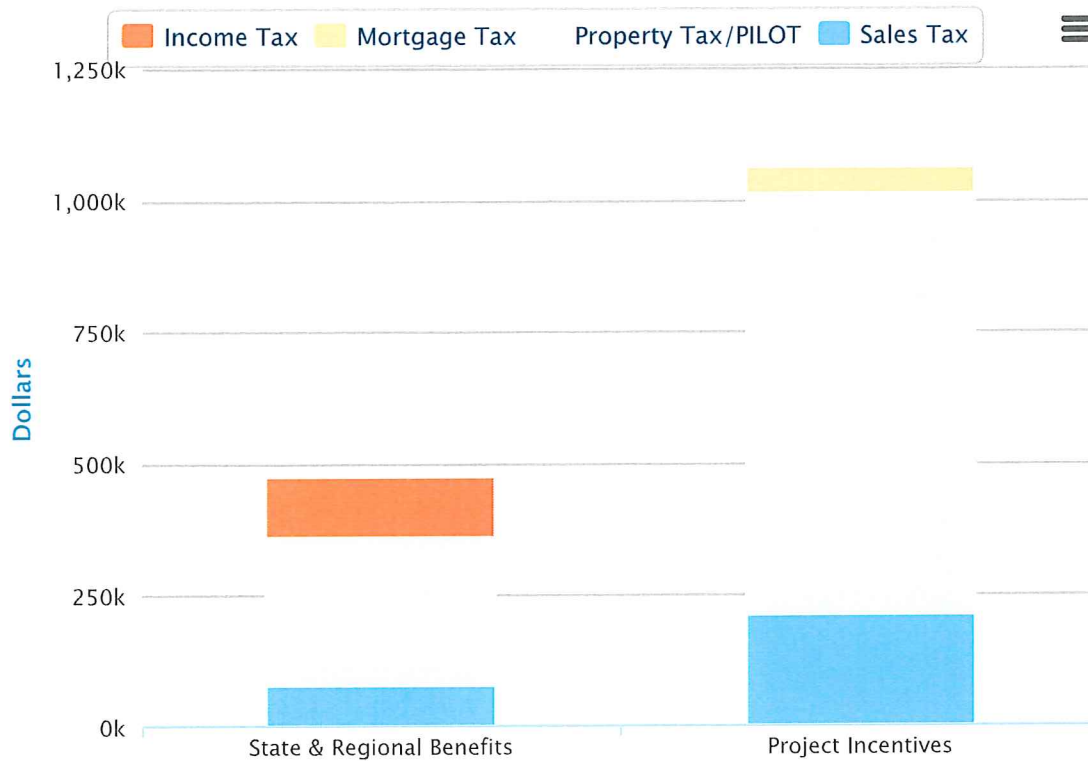


Table 2: Estimated State & Regional Benefits / Estimated Project Incentives Analysis (Discounted Present Value\*)

<b>Total State and Regional Benefits</b>	<b>\$476,181</b>	
<b>Total Project Incentives</b>	<b>\$1,060,586</b>	
<b>Projected Employment</b>	<b>State</b>	<b>Region</b>
<b>Total Employment</b>	<b>60</b>	<b>60</b>
Direct**	0	0
Indirect***	0	0
Induced****	0	0
Temporary Construction (Direct and Indirect)	60	60

Table 3: Estimated State & Regional Benefits (Discounted Present Value\*)

<b>Total State and Regional Benefits</b>	<b>\$476,181</b>
Income Tax Revenue	\$114,933
Property Tax/PILOT Revenue	\$285,144
Sales Tax Revenue	\$76,104

Table 4: Estimated Project Incentives (Discounted Present Value\*)

<b>Total Project Incentives</b>	<b>\$1,060,586</b>
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Mortgage Tax	\$50,000
Property Tax	\$800,586
Sales Tax	\$210,000

\* Figures over 10 years and discounted by 3.49%

\*\* Direct - The recipient of IDA assistance adds new jobs to the regional economy and/or retains jobs at risk of being lost to another region. Investments that result in displacing existing jobs (e.g., most retail and many service sector industries) do not fall under this definition.

\*\*\* Indirect - The recipient of IDA assistance makes purchases from regional firms, which stimulates suppliers to add jobs and payroll that are new to the regional economy or are saved from being lost to competitors outside the region.

\*\*\*\* Induced - The recipient of IDA assistance by adding to and/or retaining payroll stimulates household spending that is new to the regional economy and/or saved from being lost to competitors outside the region.

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**RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE CONSTRUCTION AND EQUIPPING OF AN APPROXIMATELY 43,500 SQUARE FOOT EXPANSION TO AN EXISTING BUILDING BY NORTHPOINTE COMMERCE PARK, LLC TO BE LOCATED AT 100 NORTHPOINTE PARKWAY, AMHERST, NEW YORK FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASE OR RECONVEYANCE PURSUANT TO A LEASE AGREEMENT TO NORTHPOINTE COMMERCE PARK LLC FOR SUBLEASE TO BUREAU VERITAS CONSUMER PRODUCTS SERVICES, INC., THE EXECUTION OF A MORTGAGE AGREEMENT, LEASE AGREEMENT AND/OR INSTALLMENT SALE CONTRACT AND PILOT AGREEMENT AND THE TAKING OF OTHER ACTIONS.**

**WHEREAS**, the Town of Amherst Industrial Development Agency (the "Agency"), is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Section 914-a of the General Municipal Law, as amended (collectively, the "Act"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

**WHEREAS**, Northpointe Commerce Park LLC, for itself or for related individuals or entities (the "Company"), has entered into negotiations with officials of the Agency with respect to the construction and equipping by the Agency without the proceeds of a bond issue of a 43,500+/- square foot expansion to an existing building to be used for commercial purposes (the "Project") and the lease of the Project to the Company for sublease to Bureau Veritas Consumer Products Services, Inc., (the "Sublessee"), such Project to be located at 100 Northpointe Parkway, Amherst, New York (the "Premises"); and

**WHEREAS**, the Company has submitted an application and other materials and information (collectively, the "Application") to the Agency to initiate the accomplishment of the above; and

**WHEREAS**, the Application sets forth certain information with respect to the Company and the Project, including the following: that the Company desires Agency financing for the construction and equipping of a 43,500+/- square foot expansion to an existing building and the acquisition and installment of machinery and equipment, all to be located at 100 Northpointe Parkway, Amherst, New York, for the purpose of providing expanded testing and warehousing facilities for the Sublessee and consolidating office space for the Sublessee from four buildings to one building, all at a cost of approximately \$6,975,000.00; that the Sublessee's current facility does not provide the Sublessee with adequate space to expand its testing and warehousing facilities and consolidate its office space and if the Sublessee is unable to do so, it may be required to out-source its operations, resulting in the loss of employment; that the Company anticipates that two hundred sixty-two (262) full-time equivalent employees will be retained by Sublessee and five (5) new full-

time equivalent jobs will be created by Sublessee as a result of the Project at the end of two (2) years of operation thereof; that (i) there will be no substantial adverse disruption of existing employment of facilities of a similar nature in the Town of Amherst (ii) the Project will retain present employment, provide substantial employment and substantial capital investment; (iii) that if Agency financing is disapproved, the Company would likely not proceed with the Project; and that, therefore, Agency financing is necessary to encourage the Company to proceed with the Project in the Town of Amherst; and

**WHEREAS**, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on July 21, 2017, and has considered all oral and written presentations made at or in connection with said public hearing;

**WHEREAS**, the Agency has reviewed the Application and a cost-benefit analysis with respect to the Project, including the extent to which the Project will create and retain permanent, private-sector jobs, the value of tax exemptions to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the proposed Project in a timely fashion, the extent to which the proposed Project will provide additional sources of revenue for the municipalities and school district and other public benefits that might occur as a result of the Project; and

**WHEREAS**, the Agency desires to encourage the Company and the Sublessee with respect to the consummation of the Project, if by doing so it is able to induce the Company to proceed with the Project in the Town of Amherst; and

**WHEREAS**, the Company will complete the Project by obtaining a conventional loan from a third party, and the Company has requested that the Agency execute any and all documents required by the parties, including any collateral mortgages on the Project given to secure a loan(s) obtained by the Company to finance the cost of the Project; and

**WHEREAS**, the Company has completed and submitted to the Agency Part 1 of an Environmental Assessment Form ("EAF") in accordance with the provisions of the State Environmental Quality Review Act and regulations adopted pursuant thereto (collectively, "SEQRA"); and

**WHEREAS**, the Agency has completed Part 2 of the EAF and has considered the proposed Project and reviewed the EAF and the criteria set forth in SEQRA in order to determine whether the Project will have a significant effect on the environment and wishes to make the findings required of an agency under SEQRA.

**NOW, THEREFORE, THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** The Agency hereby resolves that the proposed Project will not have a significant impact on the environment for the reasons more particularly set forth in the negative declaration prepared by the Agency and, in accordance with SEQRA, hereby adopts such negative declaration with regard to the Project.

**Section 2.** The Project is described in the recitals to this Resolution. The financial assistance to be provided in connection therewith include: an exemption from sales and use taxes for building materials and machinery, equipment, fixtures and furnishings purchased for incorporation into or use at the Project location having a total cost not to exceed \$3,500,000.00, an exemption from mortgage recording taxes for a mortgage having a principal amount not to exceed \$5,000,000.00 and an abatement from real property taxes in accordance with the Agency's standard 7-year payment in lieu of tax schedule (collectively, the "Financial Assistance"). In addition to any other covenants, obligations and agreements which may be contained in the Project Documents (as hereinafter defined), the provision by the Agency of the Financial Assistance is made subject to the agreement by the Company to comply, throughout the period during which the Company is receiving Financial Assistance from the Agency (the "Compliance Period"), with the following covenants and agreements, each of which shall constitute a "Material Factor":

- (a) compliance with the Agency's Local Labor Policy in connection with the construction of the Project;
- (b) retention of existing full-time equivalent employment of 262 jobs by Sublessee;
- (c) creation by Sublessee within two (2) years of Project completion of 4 of the 5 new full time jobs and retention of such jobs throughout the Compliance Period; and
- (d) investment of not less than 85% of the total Project cost of \$6,975,000.00 in the construction and equipping of the Project prior to Project completion.

The "Compliance Period" shall mean the period during which the Company and/or Sublessee is receiving Financial Assistance, including any assistance under the Payment in Lieu of Tax Agreement (as hereinafter defined).

**Section 3.** The Agency hereby determines that the Project and the financing thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act.

**Section 4.** The Agency hereby authorizes the Company, as agent for the Agency, to proceed with the Project as herein authorized. The Agency is hereby authorized to acquire an interest in the Project site and the buildings thereon, if any, and to make renovations or additions thereto. The Company is authorized to proceed with the acquisition and construction of the Project as set forth in any Project Agreement, or the Agency Lease Agreement (as hereinafter defined).

**Section 5.** The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary of the Agency, and other appropriate officials of the Agency and its agents and employees, are hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and to complete the Project in cooperation with the Company.

**Section 6.** The Company is authorized, as agent of the Agency, to initiate the construction

of the building expansion constituting the Project, and the acquisition of machinery and equipment which will be a part thereof or will be used in connection therewith, and to advance such funds as may be necessary to accomplish such purposes. The designation of the Company as agent hereunder is limited to purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$3,500,000.00 and shall not apply to any other purchase by the Company or any operating expenses of the Company. The Company shall report to the Agency, at such times as the Agency shall require, or as may otherwise be prescribed by the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner"), the value of all sales and use tax exemptions claimed by the Company or agents of the Company or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators under the authority granted pursuant to this Resolution. A failure to report may result in the revocation of the designation of the Company as agent and repayment of any sales and use tax exemptions claimed.

**Section 7.** The Agency is hereby authorized to enter into a Project Agreement with respect to the provision of the Financial Assistance authorized herein (the "Project Agreement") and to acquire an interest in the Project site and renovate a facility thereon, and the execution and delivery of a lease by the Company to the Agency (the "Company Lease"), an Agency Lease Agreement (the "Agency Lease Agreement"), a Payment in Lieu of Tax Agreement between the Agency and the Company (the "Payment in Lieu of Tax Agreement"), and such other documents as may be necessary to fulfill the intent of the parties to the transaction (collectively, the "Project Documents"), in form satisfactory to Agency counsel, are hereby authorized. The Payment in Lieu of Tax Agreement shall provide for payments in accordance with the Agency's standard 10-year payment in lieu of tax schedule. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, or any Assistant Secretary are each authorized to execute such documents and to make or approve such amendments or modifications to the Project Agreement, Company Lease, the Agency Lease Agreement, the Payment in Lieu of Tax Agreement and such other documents executed and delivered in connection therewith as they deem necessary under the circumstances provided, however, that such modifications do not materially alter the risk to the Agency.

**Section 8.** In the event the Company obtains one or more conventional loans to finance the cost of the Project, the Agency is hereby authorized to execute and deliver to the lender(s) one or more collateral mortgages on the Project given to secure such loans, and such other documents as may be necessary to fulfill the intent of the parties to the transaction in form satisfactory to Agency counsel provided that the aggregate amount of such mortgages shall not exceed \$5,000,000.00. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary are each authorized to execute such collateral mortgages and to make or approve such amendment(s) or modifications to such collateral mortgages and other documents executed and delivered in connection therewith as they may deem necessary under the circumstances, provided, however, that such modifications do not materially alter the risk to the Agency.

**Section 9.** Any such action heretofore taken by the Company initiating the acquisition, installation and construction of the Project is hereby ratified, confirmed and approved.

**Section 10.** Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Company. By acceptance hereof, the Company agrees to pay



and shall cause Sublessee to pay such expenses and further agrees to indemnify the Agency, its members, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency with respect to the Project and the financing thereof and shall cause the Sublessee to do the same.

**Section 11.** In the event a lease is not executed between the Company and the Agency by the expiration date of this Resolution (as such date may be extended as provided herein) or the termination of this Resolution, the Company shall then be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all improvements of the real property and the machinery and equipment which constitute the Project, as if the Agency did not have an interest in the Project from the date the Company commenced its acquisition, construction and installation. In addition, in the event, because of the involvement of the Agency, the Company claims an exemption from state sales or use tax in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder, or which exemption is in excess of the amounts authorized hereunder, or is otherwise not permitted under this Resolution, or if the Company shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company as agent for the Agency as set forth in this Resolution or in any document authorized hereunder, then the Company shall be required to remit to the Agency an amount equal to the amount of state sales and use taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company by the Commissioner of state sales and use taxes, together with any relevant penalties and interest. In addition to the foregoing, in the event the Agency determines that Company or Sublessee is in violation of a Material Factor, or in the event that the Company closes the Project or relocates its operations to a location outside of the Town of Amherst within the time period during which the Company is receiving Financial Assistance from the Agency or in the event the Agency determines, in its judgment, that the Company knowingly and intentionally submitted false or intentionally misleading information in its application to the Agency or in any report or certification submitted to the Agency for the purpose of obtaining or maintaining any Financial Assistance from the Agency (each referred to herein as a "Recapture Event"), the Agency may, in accordance with its policies and procedures then in effect, (i) revoke the designation of the Company and any agents of the Company (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company) as agent for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Company, commencing with the tax fiscal year next following such Recapture Event make payments in lieu of taxes on the Project with respect to all applicable taxing authorities in such amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project or otherwise modify the amount or terms of any Financial Assistance being provided by the Agency in connection with the Project and/or (iii) require that the Company pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of (x) all sales tax exemptions claimed by the Company and any agents of the Company, including, but not limited to, consultants, sub-contractors, or any equipment lessors of the Company under the authority granted under this Resolution and the Project Agreement, (y) any exemption from real estate taxes received by reason of the Agency's leasehold interest in the Project and/or (z) any exemption from mortgage recording tax received by reason of the

Agency's involvement with the Project. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company, the Company shall (i) cooperate and cause the Sublessee to cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over and cause the Sublessee to pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed to by any affected tax jurisdiction.

**Section 12.** The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Company's purposes or needs. The Company is satisfied that the Project is suitable and fit for its purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Company hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

**Section 13.** Should the appropriate officers of the Agency determine, in their absolute discretion, that there is reason to believe that the activities of any past or present owner or operator of the Premises have resulted in the generation of any "hazardous substance" (as the term has been defined from time to time in any applicable federal or state law, rule or regulation), or that any party has stored, disposed or released any such substance on the Premises or within a one (1) mile radius thereof, the Agency shall be under no obligation to enter into a lease as contemplated by this Resolution.

**Section 14.** No covenant, stipulation, obligation or agreement herein contained or contained in the Project Agreement, Company Lease, the Mortgage Agreement, the Agency Lease Agreement, the PILOT Agreement or other documents, nor the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit, nor shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity.

**Section 15.** Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company or Sublessee hereunder or otherwise.

**Section 16.** This Resolution shall take effect immediately and shall continue in full force and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Company pursuant to Sections 10 and 11 of this Resolution which shall survive any expiration or termination) or (b) allow the Company additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Company to complete such transactions. Upon any allowance of additional time to close, the Agency may charge the Company an extension fee in accordance with the Agency's fee schedule.

**Section 17.** This Resolution is subject to compliance with all local building and zoning requirements.

ADOPTED: August \_\_\_\_, 2017

ACCEPTED AND AGREED TO: \_\_\_\_\_, 2017

NORTHPOINTE COMMERCE PARK, LLC

By: \_\_\_\_\_