

TOWN OF AMHERST DEVELOPMENT CORPORATION

CONFLICT OF INTEREST POLICY

1. Purpose.

This Conflict of Interest Policy is intended to protect the Town of Amherst Development Corporation (“ADC”) when considering entering into a transaction or arrangement that might benefit the private interest of a Related Party, and to set forth procedures for handling potential or actual Conflicts of Interest and Related Party Transactions in accordance with the requirements of the New York Not-for-Profit Corporation Law.

2. Definitions.

“Conflict of Interest.” A Conflict of Interest exists if an outside interest or activity influences (or reasonably appears to influence) the ability of an individual to exercise objectivity, impairs the individual’s ability or independence in fulfilling his or her duties to ADC or reasonably tends to conflict with the proper discharge of his or her duties to ADC.

“Financial Interest.” An individual has a Financial Interest if the individual has, directly or indirectly, through business, investment or a Relative:

(i) An ownership or investment interest in any entity with which ADC has a transaction or arrangement;

(ii) A compensation arrangement with ADC or with any entity or individual with which ADC has a transaction or arrangement; or

(iii) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which ADC is negotiating a transaction or arrangement.

“Key Person” means any person, other than a director or officer, whether or not an employee of ADC, who: (i) has responsibilities, or exercises powers or influence over ADC as a whole similar to the responsibilities, powers, or influence of directors and officers; (ii) manages ADC, or a segment of ADC that represents a substantial portion of the activities, assets, income or expenses of ADC; or (iii) alone or with others controls or determines a substantial portion of ADC’s capital expenditures or operating budget.

“Related Party” means: (i) any director, officer or Key Person of ADC or any affiliate of ADC; (ii) any Relative of any director, officer or Key Person of ADC or any affiliate of ADC; or (iii) any entity in which an individual described in clauses (i) or (ii) of this paragraph has a thirty five percent (35%) or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent (5%).

“Related Party Transaction” means any transaction, agreement or any other arrangement in which a Related Party has a Financial Interest and in which ADC or any affiliate of ADC is a participant, except that a transaction shall not be a Related Party Transaction if: (i) the transaction or the Related Party’s Financial Interest in the transaction is de minimis; (ii) the transaction would not customarily be reviewed by ADC’s Board of Directors (the “Board”) or boards of similar organizations in the ordinary course of business and is available to others on the same or similar terms; or (iii) the transaction constitutes a benefit provided to a Related Party solely as a member of a class of the beneficiaries that ADC intends to benefit as part of the accomplishment of its mission which benefit is available to all similarly situated members of the same class on the same terms.

“Relative” of an individual means his or her (i) spouse, domestic partner, ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren.

3. Procedures for Disclosure and Resolution of Conflicts of Interest.

(a) Promptly upon learning of the existence of an actual or potential Conflict of Interest and/or Related Party Transaction, the individual (the “Interested Person”) shall disclose the matter and his or her Financial Interest, if applicable. Disclosure shall be made orally at a meeting of the Board or any committee thereof, or by written or electronic communication to the ADC Ethics Officer or ADC legal counsel.

(i) If disclosure is made at a meeting of the Board, the Board shall, at its option: determine whether a Conflict of Interest and/or Related Party Transaction exists; or direct the matter to the ADC’s Governance Committee (the “Governance Committee”) for such determination.

(ii) If disclosure is made at a meeting of any ADC committee or to the ADC Ethics Officer, the committee’s chair or the Ethics Officer, as applicable, shall direct the matter to the Governance Committee for determination of whether a Conflict of Interest and/or Related Party Transaction exists.

(b) The Interested Person shall, at the request of the Board or the Governance Committee, as applicable, explain the circumstances of the actual or potential Conflict of Interest and/or Related Party Transaction. The Interested Person shall not, however, be present at, participate in, or attempt to influence the Board or Governance Committee deliberation or vote regarding whether a Conflict of Interest and/or Related Party Transaction exists.

(i) If the Board or the Governance Committee, as applicable, determines that the agreement, transaction or arrangement is a Related Party Transaction, then the Board or the Governance

Committee shall follow the procedures for Related Party Transactions set forth in Section 4 of this policy.

- (ii) If the Board or the Governance Committee, as applicable, determines that a Conflict of Interest exists, but the agreement, transaction or arrangement does not constitute a Related Party Transaction, then the Board or the Governance Committee may proceed with its consideration of the transaction, provided however, that the Interested Person shall abstain from deliberation and voting regarding the transaction.
- (iii) If the Board or the Governance Committee, as applicable, determines that a Conflict of Interest does not exist, then the Board or the Governance Committee may proceed with its consideration of the transaction, and the Interested Person may participate in the deliberation and voting regarding the transaction.
- (iv) The existence and resolution of the potential Conflict of Interest and/or Related Party Transaction shall be documented in the minutes of the meeting(s) at which the matter was discussed and voted upon.

4. Related Party Transactions.

(a) ADC may enter into a Related Party Transaction only if the Board or the Governance Committee determines that the transaction is fair, reasonable and in ADC's best interest at the time of such determination (such determination shall be documented in the minutes of the meeting at which the Related Party Transaction was approved); provided, however, that prior to entering into the transaction, the Board or the Governance Committee shall consider alternatives to the extent available.

(b) Related Party Transactions shall be approved by not less than a majority vote of the Board (not counting the Interested Person for purposes of voting or quorum). The Board shall contemporaneously document in the meeting minutes the basis for approval, including its or the Governance Committee's consideration of alternative transactions.

5. Annual Disclosure.

Prior to the initial election of any director or officer, and annually thereafter, he or she shall complete, sign and submit to the Secretary a written statement identifying, to the best of his or her knowledge, any entity of which he or she is an officer, director, trustee, member, owner (either as a sole proprietor or as partner), or employee, and with which ADC has a relationship, and any transaction in which he or she might have a conflicting interest. Compliance with the financial disclosure requirements of the Town of Amherst, if applicable, shall be deemed compliance with the requirements of this Section.