

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Agenda – 512th Meeting
Friday, August 16, 2019-8:30 am

James J. Allen Boardroom
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
 - a. Speakers Limited to Three (3) Minutes
6. Executive Director's Report
7. Committee Reports
8. Unfinished Business
 - I. Amendment to Authorization Resolution
 - The Uniland Partnership of Delaware, LP Centene Parking Lot Project
9. New Business
 - I. Authorization Resolution
 - 2019 Strategic Financial Solutions, LLC Project
- I. Adjournment

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Minutes of the 511th Meeting
July 26, 2019 – 8:30 am
James J. Allen Boardroom
Agency Offices, 4287 Main Street

PRESENT: Steven Sanders
Michael R. Szukala
William W. Tuyn
Hon. Timothy J. Drury
Hadar Borden
Jacqueline Berger, Town Board Liaison
David S. Mingoia, Executive Director
Kevin J. Zanner, Hurwitz & Fine PC

ABSENT: Carlton N. Brock, Jr.
Philip Meyer

GUESTS: AIDA Staff
David Nasca, Evans Bank
Kathleen Young, Evans Bank
John Connerton, Evans Bank
Patti Zaffram, Harris Beach
Maggie Winship, TOA
Jim Fink, Business First
Dave Tytka, Uniland Development
Matt Glynn, Buffalo News

Vice Chairman Steven Sanders called the meeting to order and reminded everyone that the meeting was being audio recorded.

MINUTES

The minutes of the May 2019 meeting were approved as presented.

BILLS & COMMUNICATIONS

There were no Bills & Communications presented at this meeting.

TREASURER'S REPORT

The Treasurer's Reports for May and June 2019 were approved as presented.

PUBLIC COMMENT

There was no Public Comment at this meeting.

EXECUTIVE DIRECTOR'S REPORT

The Executive Director's Report is attached to these minutes.

COMMITTEE REPORTS

There were no Committee Reports at this meeting.

UNFINISHED BUSINESS

There was no Unfinished Business at this meeting.

NEW BUSINESS

I. Authorization Resolution

Evans Bank, N.A. - a project having a total cost of up to \$7,650,000. The project is for the acquisition, renovation and equipping of a 50,000 square foot existing facility located at 6460 Main Street. This location consolidates functions from three other locations and offers the Bank the ability to grow as an institution and add jobs. 6460 Main Street has been vacant for nearly three years and was originally constructed for medical use. Vacancy and its previous use require significant capital investment to repurpose the building into a corporate office setting. AIDA assistance is sought to offset these conversion costs and make the project economical and free resources for Evans Bank's strategic expansion plans. Evans Bank retained CBRE to perform a search of existing buildings for sale and worked with Hamburg officials to exhaust options in that community.

Financial Assistance to be provided includes a sales tax exemption for project costs up to approximately \$2.3 million and real property tax abatement in accordance with the Agency's standard Uniform Tax Exemption policy.

William Tuyn made a motion to approve the authorization resolution for Evans Bank N.A. project. Michael Szukala seconded them motion. Votes of aye to approve the authorization for the Evans Bank N.A. project were cast by Sanders, Szukala, Tuyn, Drury and Borden. Motion to approve passed 5-0.

8:58 am – Meeting adjourned.

Executive Director's Report

August 16, 2019

Shared Services

For a number of years, we have provided cost benefit modeling for the Clarence and Lancaster IDAs for a set fee. Recently, discussions occurred regarding expanding our services to include business development and administrative assistance with reporting requirements. Outside of Hamburg, the local IDAs rely on consultants and town administration to carry out their functions. Just last month we assisted the Lancaster IDA by developing its response to the NYS Senate Investigations Committee correspondence. We are going to continue to pursue contractual assistance opportunities where it fits our purpose and capacity.

Director of Business Development Update

The first interviews are scheduled for August 13th, so we will provide an update at the Board Meeting.

Via e-mail: DMingoia@amherstida.com

August 8th, 2019

Mr. David Mingoia
Executive Director
Amherst Industrial Development Agency
4287 Main Street
Amherst, NY 14226

Re: 480/490 CrossPoint Centene Parking Expansion – Letter Notifying of Mortgage Increase

Dear Dave:

This letter is to advise the Amherst Industrial Development Agency (“AIDA”) of some planned changes to the project referenced above. As a reminder, 480 CrossPoint and 490 CrossPoint were completed, with IDA assistance, in 2011 and 2014 respectively. The existing Notes A and B cover both properties and were originated in May 2014 in the amount of \$29,460,000 at a fixed rate of 4.20%.

The current project under consideration, to expand parking for the two buildings, was originally approved by the AIDA Board on May 17, 2019. The project, as presented at that time, contemplated a mortgage of \$2,400,000 on the improvements and, thus, the exemption from the mortgage recording tax expense was estimated to be \$18,000. The scope of the planned improvements, the expected job creation at the center, and other aspects of the project have not changed. However, due to current conditions in the capital markets and the fact that the current debt matures in 2021, it became evident that it would be more economical to refinance all of the existing debt and pursue additional funds for the parking expansion at the same time. The final terms of our new loan are not complete; we have received one term sheet and expect two or three more in the next week or so. However, please see a summary of the expected eventual financing terms below, as well as a summary of the current terms of the existing loan:

- **Current Balance (as of 8/1/2019)-** \$26,672,774
- **Current Maturity-** 5/1/2021, with 1 5-year extension option
- **Option Period Rate (estimated)-** 4.40% (fixed)
- **Cost of Parking Expansion (incl. land)-** \$4.5 million
- **New Financing (estimated)-** \$35,260,000
- **New Rate (estimated)-** 3.75% (fixed)

- **New Loan Maturity-** 9/2029
- **Other Loan Terms-** substantially similar
- **Use of Proceeds-** primarily for the land and improvement costs to construct the parking expansion (600 car parks). Any additional amounts to be used as reserves for potential other future costs for the properties.

As a result of the anticipated increase in proceeds as described above, we respectfully request the associated increase in exempted mortgage recording taxes. The new proceeds would be \$8,587,226 and, by our calculation, the exemption would increase to a total benefit of \$64,404 (0.75% x \$8,587,226).

Please feel free to contact me with any questions. Thank you for your assistance and consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Roe', is written over a large, faint circular watermark or stamp.

Kevin Roe
Sr. Loan Analyst / Portfolio Manager

**AMENDATORY RESOLUTION OF THE TOWN OF
AMHERST INDUSTRIAL DEVELOPMENT AGENCY
WITH REGARD TO THE 2019 400 CROSSPOINT
PARKWAY PROJECT**

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 Chapter 918 of the 1971 Laws of New York, 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, on May 17, 2019, the Agency adopted an inducement resolution (the “Inducement Resolution”) with respect to the renovation and equipping by the Agency of a parcel of vacant land to be used for commercial purposes (the “Project”) and conveyance of the Project to The Uniland Partnership of Delaware, L.P. (together with its related entities, the “Company”), such Project to be located at a portion of the property commonly known as 400 CrossPoint Parkway, Amherst, New York; and

WHEREAS, Section 2 of the Inducement Resolution authorizes the Agency to provide financial assistance to the Company in the form of an exemption from mortgage recording taxes for one or more mortgages having a principal amount not to exceed \$2,400,000.00; and

WHEREAS, following the Agency’s adoption of the Inducement Resolution, the Company determined that as part of its mortgage financing for the Project, the Company would also seek to refinance all of its outstanding debt relating to 480 and 490 CrossPoint Parkway properties, resulting in one or more mortgages in the aggregate amount of \$35,260,000.00; and

WHEREAS, in connection with the refinancing transaction, the Company has submitted a written request to the Agency for an increase in the mortgage recording tax exemption benefit for that portion of the total refinanced debt that represents new funds to the Company, which amount will not exceed \$8,587,226.00; and

WHEREAS, the proposed modification will result in a mortgage recording tax exemption benefit of \$64,404.00, an increase from the \$18,000 benefit initially authorized pursuant to the Inducement Resolution.

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

1. Section 2 of the Inducement Resolution is hereby amended to read in its entirety as follows:

Section 2. The Project is described in the recitals to this Resolution. The financial assistance to be provided in connection therewith includes: (i) 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 \$2,400,231.00, (ii) an exemption from mortgage recording taxes for one or more mortgages having a principal amount not to exceed \$35,260,000.00, but such exemption shall apply only as to \$8,587,226.00 of such mortgage amount; and (iii) 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) achievement by Centene of a total of 1,476 full-time equivalent jobs at 480 and/or 490 CrossPoint Parkway within two (2) year of Project completion and the retention of such jobs throughout the Compliance Period; and
- (c) investment of not less than 85% of the total Project cost of \$4,519,982.00 in the construction and equipping of the Project prior to Project completion.

2. Section 8 of the Inducement Resolution is hereby amended to read in its entirety as follows:

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 \$35,260,000.00, provided further that only \$8,587,226.00 of that amount shall be eligible for a mortgage recording tax exemption. 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.

3. Except as amended by paragraphs 1 and 2 of this Amendatory Resolution, the terms of the Inducement Resolution are unchanged and remain in full force and effect.

4. This Resolution shall take effect immediately.

ADOPTED: August 16, 2019

PROJECT PROFILE: CENTENE EXPANSION

\$4,519,982

August 16, 2019



ELIGIBILITY

- Back Office Facility Eligible Under NYS Law

COMPANY INCENTIVES (EST.)

- Property Tax = \$13,700
- **Mortgage Tax = \$64,404**
- Sales Tax = \$213,520

PROJECT BENEFITS (EST.)

- Property Taxes = \$5,361
- Income Taxes = \$71,101,041
- Sales Taxes = \$46,775,806

EMPLOYMENT

- 70 New Full-time Jobs Created
- 1413 Full-Time & 7 Part-Time Jobs Retained
- Salary of Positions Range from \$50,000 - \$96,000 Annually Plus Benefits

PROJECT SCHEDULE

- June 2019 Renovation Begins
- August 2019 Investment Expected To Be Complete

Project Address:

400/480/490 Crosspoint Parkway
Williamsville, New York 14221
(Williamsville Central School District)

Investment:

Acquisition: \$1,550,000
Construction: \$2,440,321
Soft/Other Costs: \$529,751

Company Description:

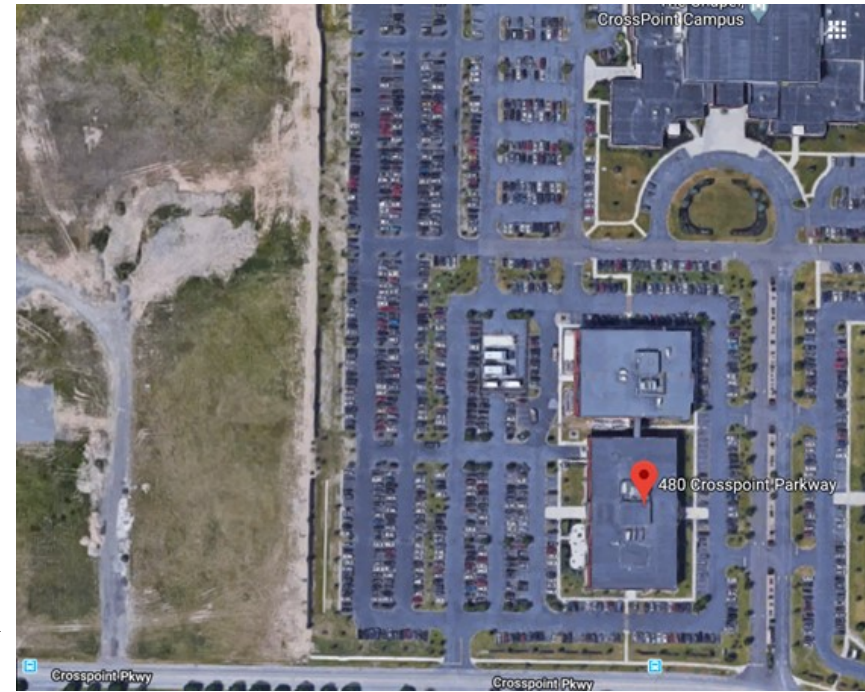
The Uniland Partnership of Delaware, L.P., an affiliate of Uniland Development Company, engages in real estate development, construction, leasing, and management of industrial and commercial properties throughout the Western New York Region. Centene Corporation, which owns Fidelis Care, provides health insurance.

Project Description:

Centene's office and data center two building complex at 480 and 490 Crosspoint requires additional parking to continue to grow. The company is evaluating a potential move of a department to 105 Crosspoint that would open up additional space for 70 new hires.

Centene, with a nation-wide footprint, has various options where to locate its operations. The benefits from the Agency would help induce Centene to pursue the expansion in Amherst. AIDA participation in the project is necessary to solidify the Amherst location and increase the feasibility of the project.

The revised project includes combining the mortgages of 480 and 490 Crosspoint with 400 Crosspoint in the amount of \$35,260,000.



PROJECT PROFILE:

CENTENE EXPANSION

\$4,519,982

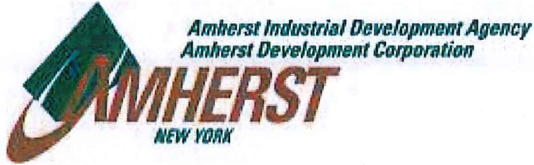
AIDA COMPANY HISTORY:

2010 - \$15,269,154 investment to construct a 90,000 SF building that would retain 463 jobs and create 100.

2013 - \$16,491,866 expansion which resulted in the construction of a 87,737 SF building that would retain 645 jobs and create 385.

MATERIAL TERMS:

1. Achievement of total 1,476 full-time equivalent jobs at the project location two years after project completion, and retention of such jobs for duration of the PILOT.
2. Investment of not less than \$3,841,985 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	Centene Expansion
Project Applicant	Centene
Project Description	Expansion of Parking Facilities to Facilitate 70 New Jobs at Centene (Fidelis Care) in Amherst, NY.
Project Industry	Insurance Carriers and Related Activities
Type of Transaction	Lease
Project Cost	\$4,520,072
Mortgage Amount	\$6,440,420
Direct Employment Expected to Result from Project (Annual FTEs)	1,487 (70 created and 1,417 retained)

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

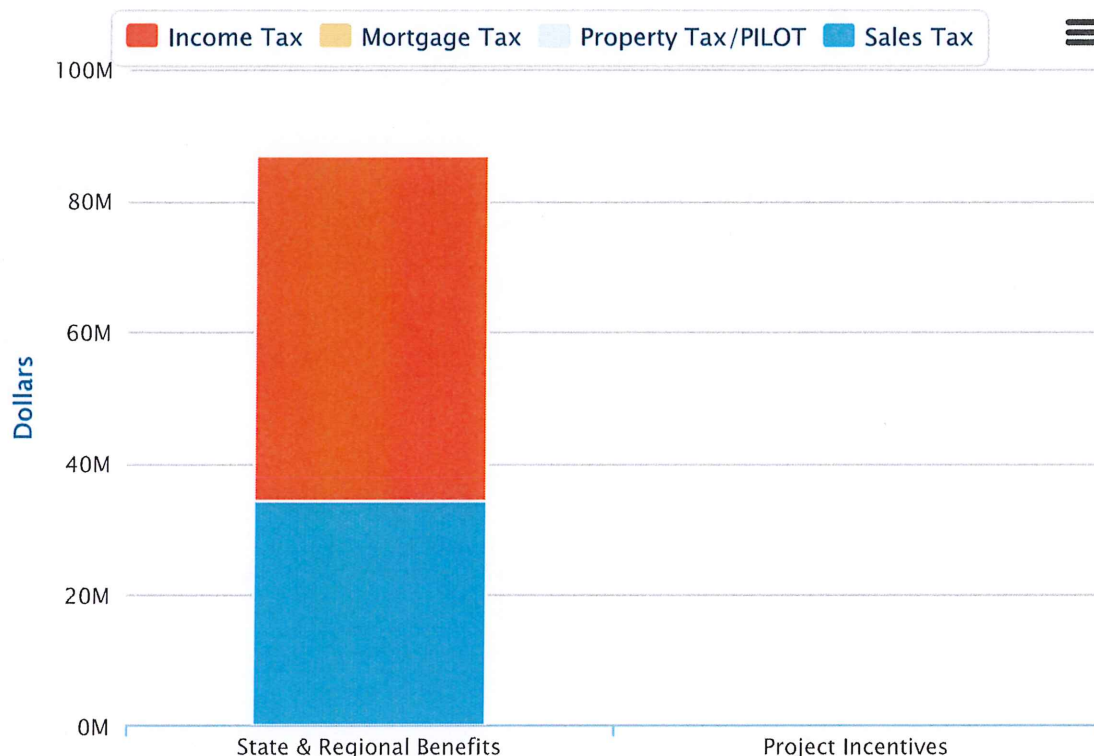


Table 2: Estimated State & Regional Benefits / Estimated Project Incentives Analysis (Discounted Present Value*)

Total State and Regional Benefits	\$86,680,149	
Total Project Incentives	\$163,515	
Projected Employment	State	Region
Total Employment	3,891	3,891
Direct**	1,487 (70 created and 1,417 retained)	1,487 (70 created and 1,417 retained)
Indirect***	1,198	1,198
Induced****	1,181	1,181
Temporary Construction (Direct and Indirect)	24	24

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

Total State and Regional Benefits	\$86,680,149
Income Tax Revenue	\$52,280,529
Property Tax/PILOT Revenue	\$5,361
Sales Tax Revenue	\$34,394,259

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

Total Project Incentives	\$163,515
Mortgage Tax	\$64,404
Property Tax	\$13,700
Sales Tax	\$85,411

* Figures over 7 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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PROJECT PROFILE: STRATEGIC FINANCIAL SOLUTIONS

\$1,10,000

August 16, 2019



ELIGIBILITY

- NAICS Code— 5614 (Business Support Services)

COMPANY INCENTIVES

- Sales Tax = \$96,250

PROJECT BENEFITS (EST.)

- Income Taxes = \$
- Sales Taxes = \$

EMPLOYMENT

- 150 New Full-Time Jobs
- 346 Retained Jobs
- Salary of Positions Range from \$45,834 - \$130,400 Annually Plus Benefits

PROJECT SCHEDULE

- September 2019 New Equipment & Renovation Begins
- December 2021 Project Expected To Be Complete

Project Address:

115 Lawrence Bell Drive
Amherst, New York 14221
(Williamsville Central School District)

Investment:

Renovation: \$550,000
Equipment: \$300,000
Soft Costs: \$250,000



Company Description:

Founded in 2017, Strategic Financial Solution (SFS) is a leading consumer debt resolution business in the United States. The New York City Headquartered company employs approximately 800 employees and services 45,000 active clients. SFS has been recognized as one of the 50 fastest growing companies in New York City for two straight years and one of the top 500 fastest growing companies in the United States. The company maintains an “A” rating with the Better Business Bureau. 94% of the company’s services are provided to customers outside of New York State.

Project Description:

The Applicant is seeking Agency assistance to renovate and equip approximately 25,000 square feet of existing vacant space in its current building located at 115 Lawrence Bell Drive. This project represents Phase 2 of what is anticipated to be multi-phase investment that could reach 1,500 jobs.

As a fast growing company with excellent industry compliance and a high employee reputation, SFS has been recruited to expand in New Jersey, Georgia and Florida. All locations offered the company confidential packages of tax and hiring incentives. Empire State Development is also providing tax incentives based on hiring goals.

PROJECT PROFILE:

STRATEGIC FINANCIAL SOLUTIONS

\$1,100,000

AIDA COMPANY HISTORY:

1. July 2017 approval of \$750,000 project that would create 300 total full-time equivalent jobs at the project location two years after project completion, and retention of such jobs for three additional years.
2. Project Modification December 2018 to increase investment to \$1,100,000.

MATERIAL TERMS:

1. Compliance with terms of 2017 and 2018 Inducement
2. Achievement of 173.5 total full-time equivalent jobs at the project location two years after project completion, and retention of such jobs for three additional years.
3. Investment of not less than \$935,000 at the project location as noted in the application.
4. Compliance with the Agency's Local Labor Policy in connection with the construction of the Project



Board Report

Table 1: Basic Information

Project Name	Strategic Financial Expansion 2019
Project Applicant	Strategic Financial Solutions
Project Description	Build-out and Equipment Purchases to support further expansion of consumer debt resolution service.
Project Industry	Administrative and Support Services
Type of Transaction	Lease
Project Cost	\$1,100,000
Direct Employment Expected to Result from Project (Annual FTEs)	196 (150 created and 46 retained)

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

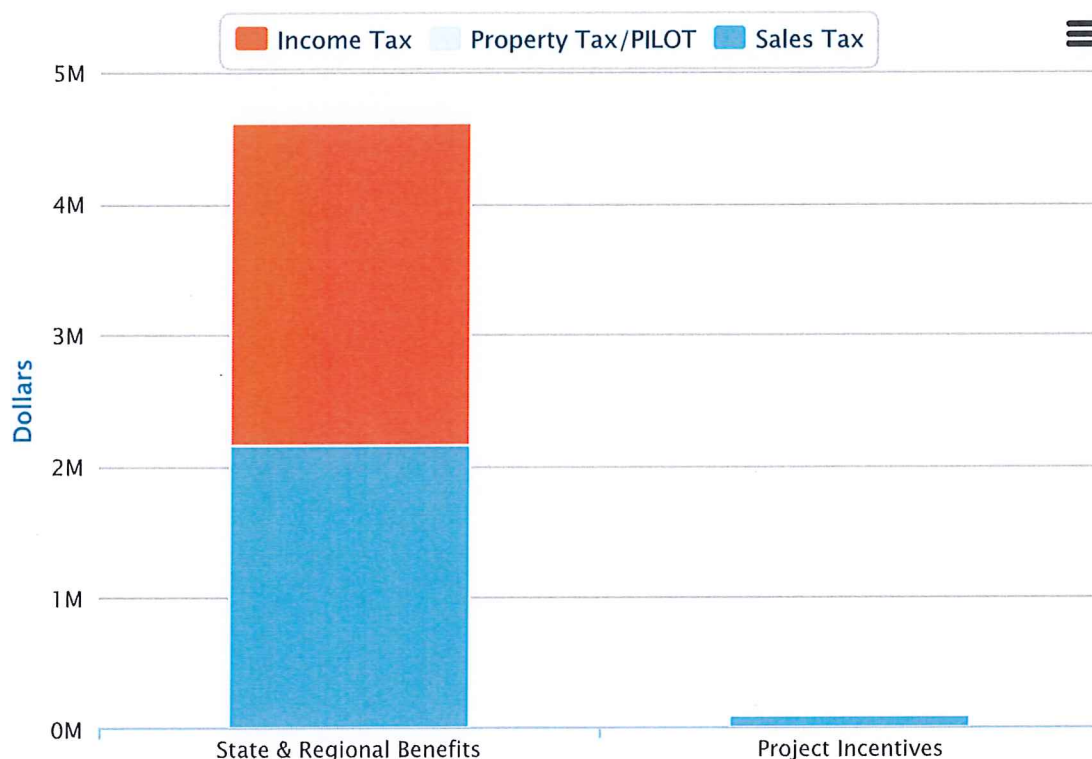


Table 2: Estimated State & Regional Benefits / Estimated Project Incentives Analysis (Discounted Present Value*)

Total State and Regional Benefits	\$4,608,676	
Total Project Incentives	\$96,250	
Projected Employment	State	Region
Total Employment	275	275
Direct**	196 (150 created and 46 retained)	196 (150 created and 46 retained)
Indirect***	25	25
Induced****	54	54
Temporary Construction (Direct and Indirect)	0	0

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

Total State and Regional Benefits	\$4,608,676
Income Tax Revenue	\$2,450,893
Sales Tax Revenue	\$2,157,782

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

Total Project Incentives	\$96,250
Sales Tax	\$96,250

* 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 RENOVATION AND EQUIPPING OF APPROXIMATELY 25,000 +/- SQUARE FEET OF OFFICE SPACE BY STRATEGIC FS BUFFALO, LLC LOCATED AT 115 LAWRENCE BELL DRIVE, AMHERST, NEW YORK FOR SALE OR LEASE TO THE AGENCY AND SUBSEQUENT RECONVEYANCE OR LEASE PURSUANT TO AN INSTALLMENT SALE CONTRACT OR LEASE TO STRATEGIC FS BUFFALO, LLC, THE EXECUTION OF AN INSTALLMENT SALE CONTRACT AND/OR LEASE AGREEMENTS, 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, Strategic FS Buffalo, LLC, for itself or for related individuals or entities (the “Company”), has entered into negotiations with officials of the Agency with respect to the renovation and equipping by the Agency without the proceeds of a bond issue of approximately 25,000 +/- square feet of office space to be used for back-office operations and support (the “Project”) and conveyance of the Project pursuant to an Installment Sale Contract or the lease of the Project to the Company, such Project to be located at 115 Lawrence Bell Drive, 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 renovation and equipping of approximately 25,000 +/- square feet of office space located at 115 Lawrence Bell Drive, Amherst, New York, for back-office operations and support purposes, all at a cost of approximately \$1,100,000.00; that the Project will allow the Company to expand its operations into the Western New York area, and expand its back-office support system, all to expand its growing consumer debt resolution business which services customers across the country; that due to the nature of the proposed facility and the Company’s proposed future expansion plans, the Company will eventually have 50% of its workforce employed in the Town of Amherst; that the Company anticipates that one hundred fifty (150) new full-time 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 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, the financial assistance to be provided by the Agency in connection with the Project, in the form of exemptions from sales and use taxes will not exceed \$100,000.00, therefore no public hearing with respect to the Project is required pursuant to General Municipal Law Section 859-a; 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, pursuant to State Environmental Quality Review Act, as amended, and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (collectively, "SEQRA"), the Agency must determine whether the Project is subject to SEQRA; and

WHEREAS, pursuant to SEQRA, the Agency has examined the Application in order to make an determination as to the potential environmental significance of the Project; and

WHEREAS, the Project appears to constitute a Type II action under SEQRA, and therefore the Agency has no further responsibilities under SEQRA it appears that no further determination or procedure under SEQRA is required with respect to the Project.

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

Section 1. The Agency hereby determines, pursuant to Section 617.5(c)(1), (2) and (23) of the Regulations, that the Project constitutes a Type II action under SEQRA and that no environmental impact statement or any other determination or procedure is required under SEQRA with respect 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 \$1,100,000.00 (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) achievement within two (2) years of Project completion of one hundred seventy-four (174) full time equivalent jobs and retention of such jobs throughout the Compliance Period;
- (c) investment of not less than 85% of the total Project cost of \$1,100,000.00 in the renovation and equipping of the Project prior to Project completion; and
- (d) compliance with all prior Resolutions adopted by the Board with respect to the Company and/or its affiliates.

The “Compliance Period” shall mean the three (3) calendar years following the Company initially achieving compliance with the Material Factors.

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 to make renovations thereto. The Company is authorized to proceed with the acquisition and construction of the Project as set forth in any Project Agreement, the Company Lease, 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 construction of building renovations constituting the Project, and the acquisition of machinery, equipment, fixtures and furnishings 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 \$1,100,000.00 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 the execution and delivery of a lease by the Lessee to the Agency (the "Company Lease"), an Agency Lease Agreement (the "Agency Lease Agreement") or Installment Sale Contract (the "Installment Sale 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 a 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, the Project Documents 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 the Project Documents are 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 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, the Project Documents 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. 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 9, 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 15. This Resolution is subject to compliance with all local building and zoning requirements.

ADOPTED: August 16, 2019

ACCEPTED AND AGREED TO: _____, 2019

STRATEGIC FS BUFFALO, LLC

By: _____