

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**  
**Agenda – 511<sup>th</sup> Meeting**  
**Friday, July 26, 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
9. New Business
  - I. Authorization Resolution
    - Evans Bank (6460 Main Street)
10. Adjournment

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**  
**Minutes of the 510<sup>th</sup> Meeting**  
**May 17, 2019 – 8:30 am**  
**James J. Allen Boardroom**  
**Agency Offices, 4287 Main Street**

**PRESENT:** Carlton N. Brock, Jr.  
Steven Sanders  
Michael R. Szukala  
William W. Tuyn  
Philip Meyer  
Hadar Borden  
Jacqueline Berger, Town Board Liaison  
David S. Mingoia, Executive Director  
Kevin J. Zanner, Hurwitz & Fine PC

**ABSENT:** Hon. Timothy J. Drury

**GUESTS:** AIDA Staff  
Supervisor Brian Kulpa, TOA  
Dave Sutton, Sutton Architects  
Sean Hopkins, Esq.  
David Tytko, Uniland Development  
Kevin Roe, Uniland Development

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

**MINUTES**

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

**BILLS & COMMUNICATIONS**

The board was given a copy of the Town of Amherst 2019 PILOT Exemption Report which found that the PILOTs collected in 2019 were in order and that there were no reportable findings. There were no comments.

**TREASURER'S REPORT**

The Treasurer's Report for April 2019 was approved as presented.

**PUBLIC COMMENT**

Supervisor Brian Kulpa spoke in support of the 3980 Bailey, LLC project which the board will be deliberating later in the 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 Resolutions**

**3980 Bailey, LLC** is a lease transaction project having a total cost of up to \$4,232,000. The project is for the construction and equipping of a 21,600 +/- square foot, 9-unit, market rate housing facility located at 3980 Bailey Avenue, Amherst, New York. The project is located within the Amherst Central School District.

Financial Assistance to be provided includes a sales tax exemption for project costs up to approximately \$3.65 million, a mortgage tax exemption for a mortgage amount up to \$3.65 million, and real property tax abatement in accordance with the Agency's standard Uniform Tax Exemption policy.

Steven Sanders made a motion to approve the 3980 Baily, LLC project. William Tuyn seconded the motion. After discussion centering on rent rates, votes of aye were cast by Brock, Sanders, Szukala, Tuyn, Meyer and Borden. Motion to approve passed 6-0.

**The Uniland Partnership of Delaware, LP or an entity to be formed** – is a lease transaction project having a total cost of up to \$4,520,000 for the construction of a parking lot expansion at 400, 480, 486 and 490 CrossPoint Parkway, Getzville, New York. The parking lot expansion is for Centene, the project occupant at 480/490 CrossPoint Parkway. The project is located within the Williamsville Central School District.

Financial Assistance to be provided includes a sales tax exemption for project costs up to approximately \$4.52 million, a mortgage tax exemption for a mortgage amount up to \$2.6 million, and real property tax abatement in accordance with the Agency's standard Uniform Tax Exemption policy.

Steven Sanders made a motion to approve The Uniland Partnership of Delaware, LP (or and entity to be formed) project. William Tuyn seconded the motion. After a brief discussion, votes of aye were cast by Brock, Sanders, Szukala, Tuyn and Borden. A vote of no was cast by Meyer. Motion to approve passed 5-1.

### **II. Tenant Approval – 3500 Sheridan, LLC**

**3500 Sheridan, LLC** has requested Agency consent to sublease 4,813 square feet of its multi-tenant facility to North American Dental Real Estate, LLC.

Michael Szukala made a motion to approve the sublease request by 3500 Sheridan, LLC. William Tuyn seconded the motion. Vote of aye were cast by Brock, Sanders, Szukala, Tuyn, Meyer and Borden. Motion to approve passed 6-0.

### **III. Job Description – Director of Business Development**

Executive Director Mingoia presented the board with the newly developed job description for recently proposed Director of Business Development position.

Steven Sanders made a motion to approve the job description for the Director of Business Development. William Tuyn seconded the motion.

A discussion took place centering on the administrative responsibilities contained within the job description. It was noted that because there was mention of administrative functions, there was a question as to if the job title should be changed to reflect the administrative aspect of the position. After continued discussion, it was the belief that this was not to be a deputy director-type position, but that of business development.

Steven Sanders made a motion to amend the job description to remove mention of administrative functions for the director of business development position and to approve the job description as amended. Philip Meyer seconded the motion. Votes of aye were cast by Brock, Sanders, Szukala, Tuyn, Meyer and Borden. Motion to approve passed 6-0.

The board then discussed appointing a committee to work with the Executive Director on the hiring process for the position.

After a brief discussion Steven Sanders made a motion to appoint Chairman Brock, Judge Drury and Executive Director Mingoia as the Hiring Committee. Philip Meyer seconded the motion. Votes of aye were cast by Brock, Sanders, Szukala, Tuyn, Meyer and Borden. Motion to approve passed 6-0.

9:17 am – Meeting adjourned.

## **Executive Director's Report**

July 26, 2019

### **Boulevard Mall/Opportunity Zone**

Douglas Development closed on the Boulevard Mall and Wegmans property and is now the sole owner of those parcels. Sinatra Real Estate and RMS are not part of the ownership group anymore as both have exited for undisclosed terms. Douglas Jemal foresees this property and One Seneca Tower as bookends along a development corridor connected by better transit. We expect to be meeting soon to discuss initial development projects.

A Downtown Revitalization Initiative (DRI) Grant (\$10 million) Application, along with other State grant requests for infrastructure improvements at and around the Boulevard Mall have been submitted by the Town.

The zoning code amendments that introduces form-based language replacing the existing General Business classification is nearing final approval by the Town Board. Implementation of the code is expected to take several months as property owners are notified of the changes. The Opportunity Zone, which includes the Boulevard Mall parcel, is the priority since we have several projects that are seeking the Retrofit zoning in the new code.

### **Amherst Central Park Alienation & ULI Panel**

Alienation of areas of the Northtown Center and Audubon Golf Course passed both houses of the State Legislature and awaits the Governor's signature. This will allow some acreage to be sold off for reported uses (UBMD, fieldhouse) raising funds to purchase Westwood acreage. While we await the finalization of the alienation, The Urban Land Institute (ULI) has agreed to fund a substantial portion of a 5 Day Advisory Services Panel for the Central Park concept the *10-Minute Walk Campaign*. ULI will provide a panel composed of members of the Institute and others who collectively have a varied and broad experience and knowledge applicable to the particular problems to be considered. The panel members will visit the location at least five days, sometime this Fall. During that time the panel, directly and through its staff, will study the designated area; consult with public and private officials, representatives of other relevant organizations, and other individuals familiar with the problems involved; and prepare its conclusions and recommendations which will be presented to the Sponsor (Town/AIDA) in oral form at the close of the on-site assignment. ULI will follow up with a full-color written summary of its conclusions and recommendations illustrated with photographs and drawings, within 90 days of the panel completion. The town is asking us to enter into an agreement (we do not have one yet) that would provide a repository for funding and customary workers' compensation and liability insurance for the panel members and the ULI employees. Compensation for ULI's service total \$25,000. In addition to functioning as the contracting entity, we may also be asked to contribute \$5,000 if the full amount can't be obtained from sponsorships.

**Boiler House – 404 Mill Street**

Flynn Battaglia submitted the 14.09 Report to NYS Parks, Historic Preservation Office (SHPO), on the Boiler House. The report details the history and existing conditions of the property, including its deterioration and limited hazardous materials (asbestos) and recommends the demolition of the main structure, chimney and 1980s garages. The 1928 garage is recommended for reuse along with continued planting of the historic orchard on the property. We expect to hear back from SHPO in the next few weeks on our demolition request.

**Director of Business Development Update**

Thirteen interviews (57 applicants) are complete, most of which were live with a few phone interviews. We had many qualified candidates and my focus was on finding a qualified, good fit for the team. My recommendations for a second round of interviews is before Chairman Brock and Member Drury and we expect to start those interviews as soon as schedules can be coordinated.

**PROJECT PROFILE:**  
**EVANS BANK NATIONAL ASSOCIATION**  
**\$7,650,000**  
**July 26, 2019**



**ELIGIBILITY**

- Commercial Project under NYS Law
- NAICS 521 (Finance & Insurance)

**COMPANY INCENTIVES (EST.)**

- Property Tax = \$393,000
- Sales Tax = \$201,250

**PROJECT BENEFITS (EST.)**

- Property Taxes = \$151,022
- Income Taxes = \$768,956
- Sales Taxes = \$514,809

**EMPLOYMENT**

- 27 Construction Jobs Created
- 20 Full-Time Jobs Created
- 173 Full-Time Jobs Retained
- Average Salary of New Jobs = \$64,000 annually Plus Benefits

**PROJECT SCHEDULE**

- October 2019 Work Begins
- April 2020 Investment Expected To Be Complete

**Project Address:**

6460 Main Street  
 Amherst, New York 14221  
 (Williamsville Central School District)

**Investment:**

Acquisition: \$3,650,000  
 Construction: \$2,700,000  
 Equipment: \$900,000  
 Soft/Other Costs: \$400,000



**Company Description:**

Evans Bank National Association (Evans Bank) is a nationally chartered bank that currently operates in Erie, Niagara and Chautauqua. The bank offers a variety of products found at financial institutions along with insurance at a related company, the Evans Agency.

**Project Description:**

The proposed project will renovate the current medical building at 6460 Main Street into Evans Bank's Corporate Headquarters. 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 empty for nearly three years and was 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.

This project does consolidate the bank's existing three locations into one larger building that offers expansion opportunities, transit linkages, and links to colleges and other amenities. Evans Bank retained CBRE to perform a search of existing buildings for sale and worked with Hamburg officials to exhaust options in that community.

**PROJECT PROFILE:**

**EVANS BANK NATIONAL ASSOCIATION**

**\$7,650,000**

**AIDA COMPANY HISTORY:**

None

**MATERIAL TERMS:**

1. Achievement of total 190 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 6,502,500 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	Evans Bank Corporate HQ
Project Applicant	Evans Bank National Association
Project Description	Renovation of Vacant Office Building Facilitating Growth of Expanding Evans Bank National Association Headquarters
Project Industry	Monetary Authorities - Central Bank
Type of Transaction	Lease
Project Cost	\$7,650,000
Direct Employment Expected to Result from Project (Annual FTEs)	20

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

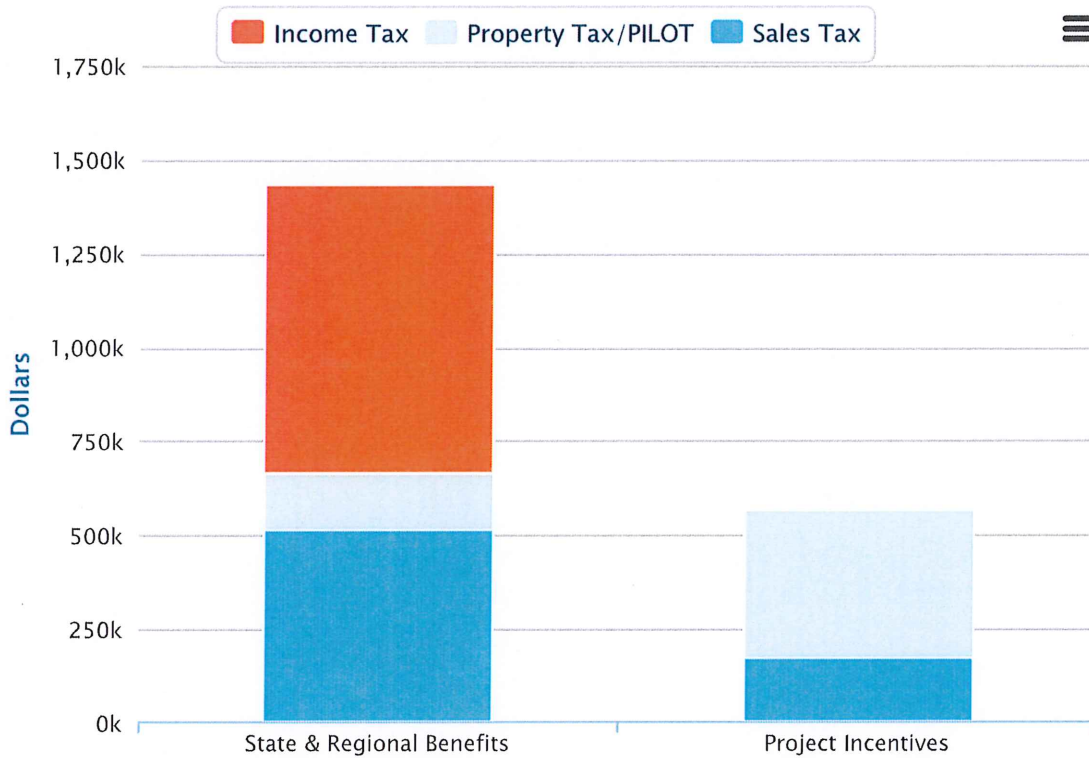


Table 2: Estimated State & Regional Benefits / Estimated Project Incentives Analysis (Discounted Present Value\*)

<b>Total State and Regional Benefits</b>	<b>\$1,434,765</b>	
<b>Total Project Incentives</b>	<b>\$566,250</b>	
<b>Projected Employment</b>	<b>State</b>	<b>Region</b>
<b>Total Employment</b>	<b>68</b>	<b>68</b>
Direct**	20	20
Indirect***	9	9
Induced****	12	12
Temporary Construction (Direct and Indirect)	27	27

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

<b>Total State and Regional Benefits</b>	<b>\$1,434,765</b>
Income Tax Revenue	\$768,956
Property Tax/PILOT Revenue	\$151,000
Sales Tax Revenue	\$514,809

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

<b>Total Project Incentives</b>	<b>\$566,250</b>
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Property Tax	\$393,000
Sales Tax	\$173,250

\* 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 BY EVANS BANK, NATIONAL ASSOCIATION OF A 50,000 +/- SQUARE FOOT OFFICE BUILDING LOCATED AT 6460 MAIN STREET, AMHERST, NEW YORK FOR SALE OR LEASE TO THE AGENCY AND SUBSEQUENT LEASE OR RECONVEYANCE PURSUANT TO A LEASE AGREEMENT OR AN INSTALLMENT SALE CONTRACT TO EVANS BANK, NATIONAL ASSOCIATION, THE EXECUTION OF A 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**, Evans Bank, National Association, 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 a 50,000+/- square foot building to be used for the Company’s corporate headquarters and back-office operations, and the acquisition of machinery and equipment (the “Project”) and the conveyance of the Project pursuant to a lease of the Project to the Company, such Project to be located at 6460 Main Street, Amherst, New York; 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 Project; and

**WHEREAS**, the Application sets forth certain information with respect to the Company and the Project, including the following:

(i) the Company seeks Agency financing for renovation and equipping of a 50,000+/- square foot building located at 6460 Main Street in the Town of Amherst (the “Premises”) to be used for the Company’s corporate headquarters and back-office operations, and the acquisition of machinery and equipment, all at a cost of approximately \$7,650,000;

(ii) the Project involves the consolidation of the Company’s headquarters at One Grimsby Drive, Hamburg, New York and its back-office operations at 6834 Erie Road, Derby, New York and 485 Sunset Drive, Hamburg, New York to a single location at the Premises;

(iii) the consolidation of the Company's headquarters and back-office operations to a single location is a key strategy in the Company's plans for the continued growth of its business and to allow the Company to remain competitive in its industry;

(iv) the Company engaged a realty firm to assist with the evaluation of the Company's non-retail facilities and, after determining that the Company's One Grimsby Drive location would not meet the Company's long-term strategic needs, undertook a search to find a suitable location for its corporate headquarters and consolidated operations;

(v) the Company considered as options the construction of a new building on undeveloped land and rehabilitating a vacated banquet and hotel facility in Hamburg, but determined that those options did not meet the long-term plans of the Company;

(vi) the Company has completed the inter-municipal move determination provisions of the Application, including particulars relating to the Company's search process (including the engagement of the realty firm), the Company's project site criteria and requirements, the lack of suitable locations in the current municipality, and information detailing that the Project is reasonably necessary to preserve the Company's competitive position in the banking industry;

(vii) the Company anticipates that one hundred seventy-three (173) full-time equivalent (FTE) employment positions will be retained and twenty (20) new FTE employment positions will be created as a result of the Project at the end of two (2) years of operation thereof;

(viii) (A) the Project will provide substantial capital investment; (B) due to renovation costs associated with the Project location, Agency financing is necessary in order for the Project to be economically feasible; and (C) if Agency financing is not approved, it is likely that the Company will 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 and written notice pursuant to Article XI(i)(A) of the Countywide Industrial Development Agency Uniform Tax Exemption Policy), the Agency held a public hearing on the Project on July 11, 2019, and has considered all oral and written presentations made at or in connection with said public hearing; and

**WHEREAS**, the Project will result in the removal of a facility of the Company from one area of the State to another area of the State or in the abandonment of one or more facilities of the Company located within the State but the Agency is permitted to provide financial assistance with respect to the Project pursuant to Section 862(1) of the New York General Municipal Law because the Project is reasonably necessary to preserve the competitive position of the Company in its respective industry, based upon the information submitted by the Company in the Application; and

**WHEREAS**, the Agency has considered the intermunicipal movement provisions of the

Countywide Industrial Development Agency Uniform Tax Exemption Policy, and Agency staff has provided a written certification to the Agency Board in accordance with the provisions thereof; 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 New York State Department of Environmental Conservation, 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 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 determines, pursuant to 6 N.Y.C.R.R. Part 617.5(c)(2) and (c)(18) of the SEQRA regulations, that the Project constitutes a Type II action and that no further 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: (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 \$2,300,000.00; and (ii) an abatement from real property taxes in accordance with the Agency's standard ten-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 of a total of 190 full-time equivalent jobs within two (2) years 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 \$7,650,000.00 in the construction and equipping of the Project prior to Project completion.

**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 determines that the Project will result in the removal of a facility of the Company from one area of the State to another area of the State or in the abandonment of one or more facilities of the Company located within the State, but that the Agency is permitted to provide financial assistance with respect to the Project pursuant to Section 862(1) of the New York General Municipal Law because, based upon the information provided by the Company in the Application, the Project is reasonably necessary to preserve the competitive position of the Company in its industry. The Agency further determines that the intermunicipal movement provisions of the Countywide Industrial Development Agency Uniform Tax Exemption Policy have been duly complied with.

**Section 5.** 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, the Agency Lease Agreement or Installment Sale Contract (as hereinafter defined). 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 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 \$2,300,000.00 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. 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 Contract") between the Agency and the Company, a Payment in Lieu of Tax Agreement between the Agency and the Company (the "PILOT Agreement"), 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 PILOT Agreement shall provide for payments in accordance with the Agency's standard ten-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, Installment Sale Contract, the PILOT 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.** 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 a lease is not executed between the Lessee 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 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 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 Lessee, 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 and/or (y) any exemption from real estate taxes received by reason of the Agency's leasehold interest in 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 with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and Lessee 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.** 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 13.** No covenant, stipulation, obligation or agreement herein contained or contained in the Project Agreement, Company Lease, the Agency Lease Agreement, Installment Sale Contract, 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 14.** 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 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 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 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: July 26, 2019

ACCEPTED AND AGREED TO: \_\_\_\_\_, 2019

EVANS BANK, NATIONAL ASSOCIATION

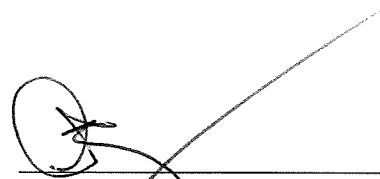
By: \_\_\_\_\_

**INTERMUNICIPAL MOVEMENT**  
**CERTIFICATION**

The undersigned, being the Executive Director of the Town of Amherst Industrial Development Agency (the "Agency"), hereby certifies as follows:

1. This certification is made pursuant to Article XI(i)(E) of the Countywide Industrial Development Agency Uniform Tax Exemption Policy (the "Countywide Eligibility Policy") with respect to the application of Evans Bank National Association (the "Company") for financial assistance from the Agency.
2. The Agency has complied with the requirements set forth in paragraphs A through D of subsection (i) of Article XI of the Countywide Eligibility Policy.
3. By letter dated June 27, 2019, a copy of which is attached hereto, the Agency notified the chief elected officers of the Town and Village of Hamburg, the Town of Evans and the Town of Amherst of the Agency's receipt from the Company of an application for financial assistance in connection with the Company's consolidation of its corporate headquarters and back-office operations and relocation to 6460 Main Street in the Town of Amherst. The municipalities were invited to comment on the project, were advised that the comments would be entered into the record, and were informed of the dates of the public hearing and the Agency Board meeting at which the application would be considered.
4. The Company's application for financial assistance includes responsive information relating to the Company's efforts to find a suitable location for its headquarters and consolidated operations and its reasons for rejecting sites in the current municipality.
5. The Company's application for financial assistance includes responsive information from the Company demonstrating that the Company has contacted appropriate local economic development agencies, municipal officials, local realtors and/or other appropriate sources and has reviewed sites in the current municipality.
6. In accordance with the requirements of Article XI of the Countywide Eligibility Policy, a copy of this certification will be provided to the Agency Board at the time that the Board considers the Company's application for financial assistance from the Agency.

Dated: July 16, 2019

  
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David S. Mingoia  
Executive Director