

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Agenda – 520th Meeting
Friday, November 20, 2020-8:30 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. Executive Director's Report
6. Committee Reports
 - I. Audit & Finance Committee
 - 2021 Budget Recommendations & Approval
7. Unfinished Business
8. New Business
 - I. Authorization Resolution – Aria Buf Maple, LLC (100 Maple Rd)
9. Adjournment

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Minutes of the 519th Meeting
August 21, 2020 – 8:30 am
James J. Allen Boardroom
Agency Offices, 4287 Main Street

Due to the Covid-19 Pandemic and pursuant to Governor Andrew Cuomo’s Executive Order No.202.1, the Amherst IDA Board of Directors meeting was conducted through Zoom.com and live streamed at www.AmherstIDA.com. In physical attendance at the meeting at AIDA offices was Executive Director David Mingoia. A video recording of the meeting can be accessed and viewed at www.AmherstIDA.com.

PRESENT via Zoom.com: Carlton N. Brock, Jr.
Steven Sanders
Anthony Agostino
William Tuyn
Hon. Timothy J. Drury
Hadar Borden
Kevin J. Zanner, Hurwitz & Fine PC

ABSENT: Philip Meyer

GUESTS via Zoom.com: AIDA Staff

Chairman Carlton Brock called the meeting to order.

MINUTES

Upon a motion by Steven Sanders, seconded by William Tuyn and unanimously carried, the minutes of the June 2020 meeting were approved as presented.

BILLS & COMMUNICATIONS

There were no Bills & Communications presented at this meeting.

TREASURER’S REPORT

Upon a motion by Steven Sanders, seconded by Timothy Drury and unanimously carried, the Treasurer’s Reports for June and July 2020 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 presented at this meeting.

UNFINISHED BUSINESS

There was no Unfinished Business at this meeting.

NEW BUSINESS

I. Authorization Resolution – 6790 Main Street, LLC

The applicant requested an authorization resolution for a project having a total cost of up to \$5,600,000. The project is for the acquisition, construction and equipping of a three-story mixed-use building, consisting of 7,000 square feet of commercial space and 12 market-rate apartments, for a total of 20,745 square feet. The project is located at 6770 Main Street, within the Clarence Central School District.

Financial Assistance to be provided includes a sales tax exemption for project costs up to approximately \$2,200,000, a mortgage tax exemption and real property tax abatement in accordance with the Agency's standard Uniform Tax Exemption policy.

Steven Sanders made a motion to approve the 6790 Main Street, LLC project. William Tuyn seconded the motion. There was a brief discussion. A roll call was taken for approval of the 6790 Main Street, LLC project:

Carlton N. Brock, Jr. - aye
Steven Sanders – aye
Anthony Agostino - aye
William Tuyn – aye
Timothy Drury – aye
Hadar Borden – aye

The motion to approve the project passed 6-0.

9:11 am – Upon a motion by Anthony Agostino, seconded by William Tuyn and unanimously carried, the meeting was adjourned.

EXECUTIVE DIRECTOR'S REPORT

November 20, 2020

Hotel and Motel Assessment

There are 25 Hotel/Motel properties in Amherst of varying age and condition. COVID drastically changed the hospitality industry. Recent statistics show that travel spending is roughly 50% below pre-pandemic figures resulting in a loss of \$443 Billion since the beginning of the pandemic. Estimates indicate that this equals about \$57 Billion in taxes lost. Exacerbating this situation, WNY is entering the slower time of year for travel.

Even before COVID, a few properties were showing signs of distress. We've held a few meetings with the Supervisor, Town Planning and Assessor to discuss strategic direction considering that several properties realized decline in taxable assessment even before COVID.

Our approach is to assess market demand (absent a consultant) and rank properties by development potential into a new use. For those properties that have the right (or wrong) characteristics - old, underutilized, no recent investment, target area), rezoning may be pursued. We know from the zombie hotel on Sweet Home and the recent unsuccessful auction of the Marriot, that the market is weak for hotel development due to current and likely future leisure and business travel demand.

Ineligible Inquiries

There are a number of inquiries fielding by the AIDA in the last several months that did not make it through staff review and full applications which would have led to Board of Directors Review. A breakdown of those inquiries by sector:

Retail	- 4
Senior Housing	- 2
Student Housing	- 2
Medical	- 2
Small Office	- 2

E-Commerce Rezoning

The acceleration of online purchases due to COVID restrictions (travel, occupancy, etc.) yielded a growing number of e-commerce leads searching for larger tracts of land near existing infrastructure suitable for the large building footprints and vehicle impacts. The rise of e-commerce could provide some relief to the unemployment problem as jobs at fulfillment centers continue to grow. Workers displaced by traditional retail or other affected industries may be able to transition their skills to e-commerce distribution centers.

We have been working with the Town to identify sites that could support inter-regional and sub-market types of facilities. The most promising is a 92 acre site between Millersport Highway and Transit near the terminus of the I-990 and a 50 acre site on South Youngs fronting the I-90. State wetlands are not an issue on either site, but recent visits by Site Selectors facilitated by Invest Buffalo Niagara indicated that the correct zoning is necessary to ensure that a site makes it past initial review for prospects.

The 92 acre site is scheduled for rezoning to Research and Development (R&D), which is a zoning classification that allows this type of use, albeit with additional language necessary in the zoning classification. The Town considered creating a new zoning classification for e-commerce facilities, but decided that R&D with additional language allowing for ancillary retail uses on-site sufficed. Once this property is rezoned (Planning Board this month), we will begin marketing it to our site selection contacts.



Solar Projects

New York State has set a goal of 100% Carbon Free by 2040 through a combination of renewable energy generation expansion and energy efficiency. Solar increasingly is becoming a larger component of meeting current and future energy needs. IDAs have a role in providing a one-stop for solar developers, developing 3-25 MWs, to negotiate a PILOT agreement and can provide additional term over what is allowable under New York Real Property Tax Law 487. Larger projects exceeding 25 MWs are managed by the State. The PILOTs are somewhat prescribed through a calculator provided by the New York State Energy Research and Development Authority (NYSERDA).

There has been a great deal of interest and development east of our area as evidenced by the number of projects viewed along major highways. Interest has grown over the last 18 months for siting facilities in Amherst and we may have a project on the horizon in the 4-5 MW range. The Town has shown an interest in the IDA managing the PILOT and other incentives for the project as it ensures that each taxing jurisdiction receives payments from the project.



	2020	2020	2021
	Budget	Estimated	Prelim
REVENUES:			
Administrative Fees (Agency 1%)	700,000	421,550	650,000
Management Fee (ADC fees)	0	40,000	50,000
Application Fees	4,500	2,000	5,000
Interest Income (NR)	5,000	2,250	3,000
Other Revenue	5,000	2,000	2,000
subtotal	714,500	467,800	710,000
EXPENSES			
ADMINISTRATION:			
Payroll	322,500	322,500	328,500
Employer FICA Expense	25,000	25,000	25,000
Pension Fund	19,500	19,500	25,300
Health Insurance	55,500	55,500	55,500
subtotal	422,500	422,500	434,300
OPERATION:			
Office Expense	10,000	7,500	10,000
Postage	500	500	500
Travel	3,000	750	3,000
Telephone	7,000	6,500	7,000
Fees & Dues	5,000	5,000	5,000
Subscriptions/Publications	1,500	3,000	3,000
Legal Fees-General Counsel	15,000	12,000	15,000
Legal Fee - Litigation	5,000	0	5,000
Bldg Interest	26,000	19,000	20,000
Bldg Utilities	7,000	6,000	7,000
Bldg Property Tax	8,500	8,500	8,500
Bldg Inside Maint	9,000	8,000	9,000
Bldg Outside Maint	11,000	9,000	11,000
Meetings	3,000	1,500	3,000
Equipment	15,000	5,000	6,000
Equipment Rental	5,000	3,500	4,000
Professional Services	30,000	30,000	30,000
Insurance	20,000	20,000	22,000
Depreciation	25,000	20,000	20,000
subtotal	206,500	165,750	189,000
SPECIAL PROJECTS:			
Marketing	10,000	3,000	10,000
Invest BN	20,000	20,000	20,000
Education	6,000	3,000	6,000
Special Events	3,000	2,000	3,000
Regional Partnerships	5,000	2,000	5,000
Local Redevelopment Initiatives	20,000	15,000	20,000
Capital Improvements	15,000	13,000	15,000
subtotal	79,000	58,000	79,000
Total Expenses (non-restricted)	708,000	646,250	702,300
Excess Revenue over/(under)	6,500	-178,450	7,700

PROJECT PROFILE: ARIA-PEG Conversion

\$11,650,000
November 20, 2020



ELIGIBILITY

- Commercial Project under NYS Law
- Adaptive Reuse Project under Countywide Eligibility Policy

COMPANY INCENTIVES (EST.)

- Property Tax = \$49,000
- Sales Tax = \$263,000
- Mortgage Tax = \$45,000

PROJECT BENEFITS (EST.)

- Property Taxes = \$596,000
- Income Taxes = \$133,000
- Sales Taxes = \$272,000

EMPLOYMENT

- 37 Construction Jobs Created
- 1 Full-Time Jobs Created
- 2 Part-Time Jobs Created
- Average Salary of New Jobs = \$50,000

PROJECT SCHEDULE

- December 2020 - Project Begins
- October 2021 - Project Complete

Project Address:

100 Maple Road
Amherst, New York 14221
(Sweet Home School District)

Investment:

Acquisition: \$6,500,000
Construction: \$5,000,000
Soft/Other Costs: \$150,000



Company Description:

The project developer is ARIA PEG, a Provo Utah based company that has experience acquiring underutilized residence type hotel properties and converting them to market rate apartments.

Project Description:

The applicant has entered into a contingent contract for the purchase of the current Marriott Residence Inn at 100 Maple Road. Marriott has informed the operator that they will not renew the franchise agreement. This site will likely become vacant for the long term if this deal does not move forward and is currently operating at a reduced occupancy.

The project applicant intends to invest approximately \$5,000,000 to upgrade this 30-year old facility including interior retrofits of 112 separate units plus a number of site improvements that fit a middle market need for affordable rentable units. Significant updates include numerous fire and building code compliance issues.

The Applicant is seeking benefits from the AIDA to undertake the redevelopment project and remains financially feasible. Since negotiations started, the Covid-19 Pandemic has negatively impacted the schedule and increased construction costs. The Project constitutes an adaptive reuse project as identified in the Countywide Eligibility Policy as it redevelops a building that is currently underutilized due to the ongoing COVID-19 pandemic which has adversely impacted the hospitality industry. It is an infill development utilizing existing infrastructure, creates new economic activity, promote the re-use of an existing building and help maintain the existing taxable assessment and increases it over time.

PROJECT PROFILE:

ARIA-PEG Conversion

\$11,650,000

AIDA COMPANY HISTORY:

None

MATERIAL TERMS:

1. Creation of 1.5 Full-Time Equivalent Positions at the project location and maintenance of positions for the duration of the PILOT.
2. Investment of not less than \$9,902,500 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

Cost-Benefit Analysis for Aria Buf Maple LLC

Prepared by Amherst IDA using InformAnalytics

Executive Summary

INVESTOR
PEG Companies

TOTAL INVESTED
\$11.7 Million

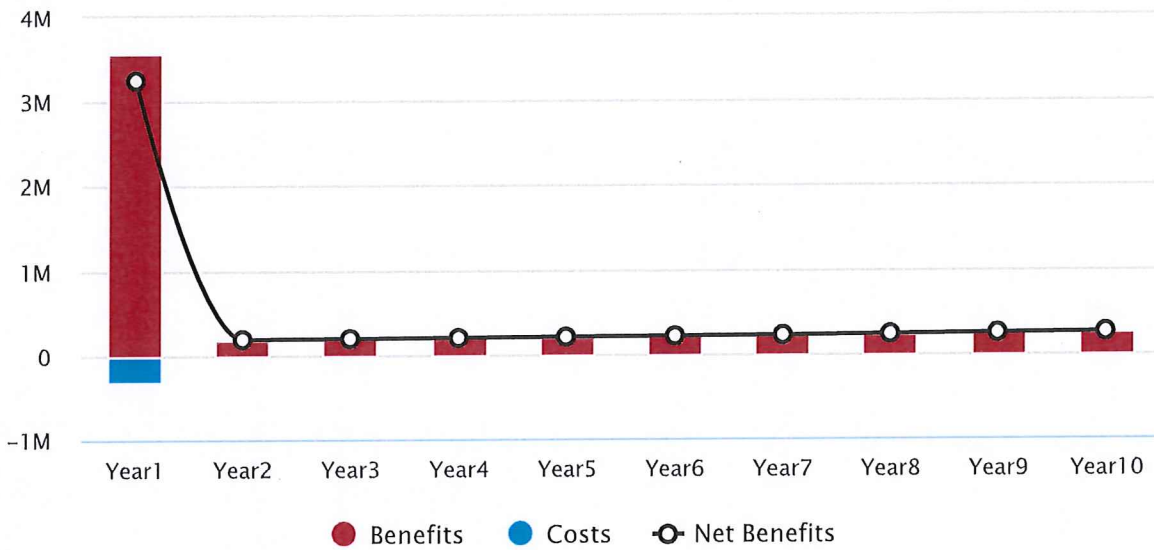
LOCATION
**100 Maple Road,
Amherst, NY**

TIMELINE
10 Years

F1 FIGURE 1

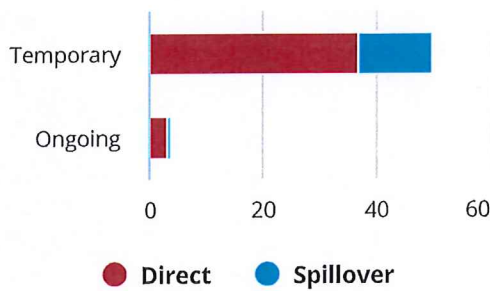
Discounted* Net Benefits for Aria Buf Maple LLC by Year

Total Net Benefits: \$5,240,000



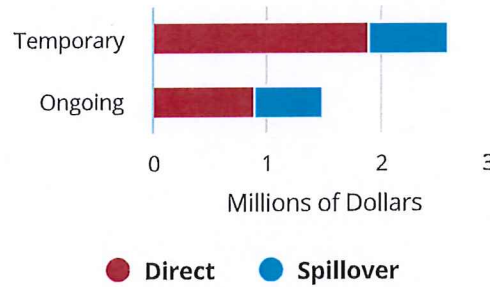
F2 FIGURE 2

Total Jobs



F3 FIGURE 3

Total Payroll



Proposed Investment

PEG Companies proposes to invest \$11.7 million at 100 Maple Road, Amherst, NY over 10 years. Amherst IDA staff summarize the proposed with the following: Adaptive Re-Use of hospitality property to multi-family residential targeted at middle market renters.

T1 TABLE 1

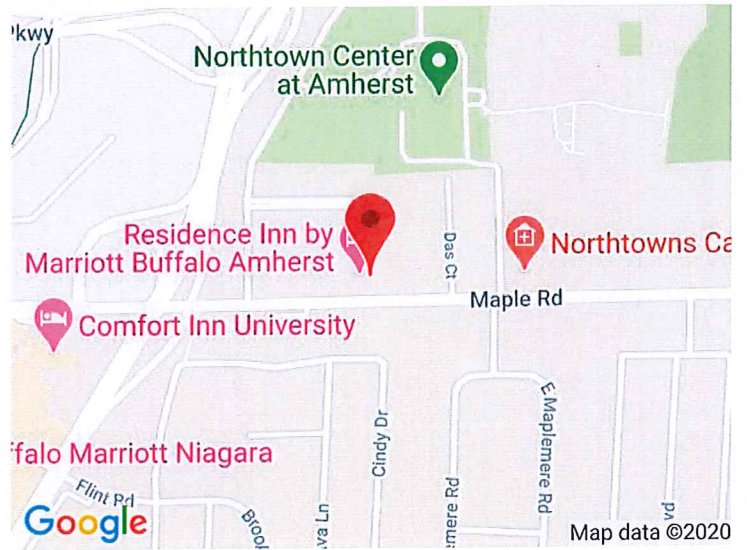
Proposed Investments

Description	Amount
CONSTRUCTION SPENDING	
Renovations	\$5,000,000
OTHER SPENDING	
Property Acquisition	\$6,500,000
Soft Costs	\$150,000
Total Investments	\$11,650,000
Discounted Total (2%)	\$11,650,000

May not sum to total due to rounding.

F4 FIGURE 4

Location of Investment



Cost-Benefit Analysis

A cost-benefit analysis of this proposed investment was conducted using InformAnalytics, an economic impact model developed by CGR. The report estimates the impact that a potential project will have on the local economy based on information provided by Amherst IDA. The report calculates the costs and benefits for specified local taxing districts over the first 10 years, with future returns discounted at a 2% rate.

T2 TABLE 2

Estimated Costs or Incentives

Amherst IDA is considering the following incentive package for PEG Companies.

Description	Nominal Value	Discounted Value*
Property Tax Exemption	\$49,000	\$45,000
Sales Tax Exemption	\$263,000	\$263,000
Mortgage Recording Tax Exemption	\$45,000	\$45,000
Total Costs	\$357,000	\$353,000

May not sum to total due to rounding.

* Discounted at 2%

T3 TABLE 3

State & Regional Impact (Life of Project)

The following table estimates the total benefits from the project over its lifetime.

Description	Direct	Spillover	Total
REGIONAL BENEFITS	\$3,911,000	\$1,312,000	\$5,223,000
To Private Individuals	\$2,950,000	\$1,290,000	\$4,240,000
Temporary Payroll	\$1,922,000	\$667,000	\$2,589,000
Ongoing Payroll	\$1,029,000	\$623,000	\$1,652,000
To the Public	\$961,000	\$22,000	\$983,000
Property Tax Revenue	\$596,000	N/A	\$596,000
Temporary Sales Tax Revenue	\$32,000	\$11,000	\$43,000
Ongoing Sales Tax Revenue	\$17,000	\$10,000	\$28,000
Purchases Sales Tax Revenue	\$316,000	N/A	\$316,000
STATE BENEFITS	\$441,000	\$77,000	\$518,000
To the Public	\$441,000	\$77,000	\$518,000
Temporary Income Tax Revenue	\$94,000	\$33,000	\$127,000
Ongoing Income Tax Revenue	\$39,000	\$27,000	\$66,000
Temporary Sales Tax Revenue	\$27,000	\$9,000	\$37,000
Ongoing Sales Tax Revenue	\$15,000	\$9,000	\$23,000
Purchases Sales Tax Revenue	\$266,000	N/A	\$266,000
Total Benefits to State & Region	\$4,352,000	\$1,389,000	\$5,741,000
Discounted Total Benefits (2%)	\$4,260,000	\$1,333,000	\$5,593,000

May not sum to total due to rounding.

T4 TABLE 4

Benefit to Cost Ratio

The following benefit to cost ratios were calculated using the discounted totals.

Description	Benefit*	Cost*	Ratio
Region	\$5,082,000	\$203,000	25:1
State	\$511,000	\$150,000	3:1
Grand Total	\$5,593,000	\$353,000	16:1

May not sum to total due to rounding.

* Discounted at 2%

CGR has exercised reasonable professional care and diligence in the the production and design of the InformAnalytics™ tool. However, the data used is provided by users. InformAnalytics does not independently verify, validate or audit the data supplied by users. CGR makes no representations or warranties with respect to the accuracy of the data supplied by users.

RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING AN ADAPTIVE REUSE PROJECT BY ARIA BUF MAPLE, LLC INVOLVING THE REAL PROPERTY AND IMPROVEMENTS LOCATED AT 100 MAPLE ROAD, 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 ARIA BUF MAPLE, LLC, 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, Aria Buf Maple, LLC, for itself or for related individuals or entities (the “Company”), has entered into negotiations with officials of the Agency with respect to an adaptive reuse project, which project will involve the Agency undertaking the conversion, renovation and equipping (without the proceeds of a bond issue) of an approximately 171,191 square foot building that is currently operated as a Residence Inn hotel into approximately twenty-eight 1,125+/- square foot studio apartments and eighty-four 925+/- square foot studio apartments and related improvements (the “Project”) and the conveyance of the Project pursuant to a lease of the Project to the Company, such Project to be located at 100 Maple Road, 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 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 conversion, renovation and equipping of an existing 30-year old Residence Inn hotel located at 100 Maple Road, Amherst, New York (the “Premises”) into approximately twenty-eight 1,125+/- square foot studio apartments and eighty-four 925+/- square foot studio apartments and related improvements, all at a cost of approximately \$11,650,000.00; that (i) the Company anticipates that one new full-time job and two part-time jobs will be created as a result of the Project; (ii) that the Premises is currently underutilized given its age and the lack of travelers due to the COVID-19 pandemic; (iii) the current hotel franchise agreement is expiring and will not be renewed, increasing the probability that the hotel will close and become vacant; (iv) the Project will provide substantial capital investment; and (v) 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; and

WHEREAS, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on November 5, 2020, 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 has considered the provisions of the Countywide Eligibility Policy relating to Adaptive Reuse Projects, including the extent to which the Project will redevelop and promote the re-use of an existing underutilized building, promote infill development utilizing existing infrastructure, create new economic activity and help maintain the fabric of the surrounding neighborhood; 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 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: (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 \$5,000,000.00; (ii) an exemption from mortgage recording taxes for one or mortgages having an aggregate principal amount not to exceed \$11,650,000.00; and (iii) an abatement from real property taxes in accordance with the ten-year exemption schedule set forth in Section 485-b of the New York Real Property Tax Law (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 1.5 full-time jobs during the Compliance Period; and
- (c) investment of not less than 85% of the total Project cost of \$11,650,000.00 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 makes the following findings and determinations with respect to the Project:

(a) The Project is for a commercial purpose within meaning of the Act. The Project will help prevent economic deterioration in the area in which the Project is located through the adaptive reuse of a building that is currently underutilized. The Project will be located in a section of Town of Amherst that is in need of residential units of the kind and quality proposed by the Company. The Project is consistent with the Town of Amherst Comprehensive Plan, which specifically identifies Maple Road as an area of redevelopment for additional housing opportunities and choices, including higher density housing. The construction of the Project will promote employment opportunities by providing housing to attract new residents to the Town and retain current residents, thereby promoting economic growth and prosperity.

(b) The Project constitutes an adaptive reuse project within meaning of the Countywide Eligibility Policy. The Project will redevelop a building that is currently underutilized due to the ongoing COVID-19 pandemic which has adversely impacted the hospitality industry. The Project will promote infill development utilizing existing infrastructure, create new economic activity, promote the re-use of an existing building and help maintain the fabric of the surrounding neighborhood. In making this determination, the Agency has also considered the following factors within the UTEP which further support its findings: (i) the Project has the support of the Town of Amherst government; (ii) the Project is compliant with the investment and growth criteria of the

Framework for Regional Growth Plan; and (iii) the Company has provided appropriate evidence indicating financial obstacles to the development of the Project without Agency assistance.

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 the Project Agreement, the Company Lease, the Agency Lease Agreement or Installment 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 \$5,000,000.00 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 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") 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 "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 ten-year exemption schedule set forth in Section 485-b of the New York Real Property Tax Law. 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 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 \$11,650,000.00. 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 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 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 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 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 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 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 each 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, Installment Contract, the Payment in Lieu of Tax 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 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: November_____, 2020

ACCEPTED AND AGREED TO: _____, 2020

ARIA BUF MAPLE, LLC

By: _____