

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Agenda – 524th Meeting
Friday, May 21, 2021-8:30 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
7. Unfinished Business
8. New Business
 - I. Authorization Resolution
 - a. Amherst Sweethome Road Property LLC – Sweet Home Flats
9. Adjournment

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Minutes of the 523rd Meeting
April 23, 2021 – 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.
William Tuyn
Anthony Agostino
Hon. Timothy J. Drury
Philip Meyer
Hadar Borden
Frank L. LoTempio
Kevin J. Zanner, Hurwitz & Fine PC

GUESTS via Zoom.com: Jacqueline Berger, TOA Councilmember
AIDA Staff
Mike Jackson, Amherst Solar
Stefan Gassner
Dan Leary
Sean Hopkins
Tom Burr
Stephen Watson, Buffalo News

Chairman Carlton N. Brock, Jr. called the meeting to order.

MINUTES

Upon a motion by Timothy Drury, seconded by Hadar Borden and unanimously carried, the minutes of the March meeting were approved as presented.

BILLS & COMMUNICATIONS

The board was provided a copy of the Town of Amherst 2021 PILOT Exemption Report which found that the PILOTs collected in 2021 were in order and that there were no reportable findings. There were no comments.

TREASURER’S REPORT

Upon a motion by Hadar Borden, seconded by Frank LoTempio and unanimously carried, the Treasurer’s Report for March 2021 was 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 RPOERTS

There were no Committee Reports presented at this meeting.

UNFINISHED BUSINESS

There was no Unfinished Business presented at this meeting.

NEW BUSINESS

I. Authorization Resolution – York Acquisitions, LLC (Aspen Heights)

Aspen Heights, through York Acquisitions LLC, is proposing to construct and manage an \$83,273,930, multi-phase student housing development on the Muir Woods parcel to include 830 beds in cottage/townhome style units. The developer is faced with preliminary estimates of \$5,000,000 in extraordinary off-site public benefit infrastructure expenses as directed by the New York State Department of Transportation and others. Included in these costs is a design allowance for a future NFTA-Metro Light Rail or Enhanced Transit Stop. Construction costs, through material and labor increases caused by the pandemic, impact the feasibility of the project.

The proposed project is a deviation from the uniform tax exemption policy and leverages a payment in lieu of tax (PILOT) arrangement to mitigate extraordinary expenses not limited to roadway widening, traffic circle, water and sewer extensions and electric utility infrastructure. Any project proposed for this site would require similar off-site infrastructure. Upon construction, the public infrastructure improvements will be transferred to the requisite entities.

Executive Director Mingoia presented the board with a detailed Project Profile and Cost Benefit Analysis associated with this project.

Frank LoTempio made motion to approve the York Acquisitions, LLC project. William Tuyn seconded the motion. There was discussion. A roll call was taken to approve the York Acquisitions, LLC project:

Brock – aye
Agostino – aye
Tuyn – aye
Meyer – aye
Drury – aye
Borden – aye
LoTempio – aye

Motion to approve passed 7-0

II. Authorization Resolution – Amherst Community Solar LLC

The applicant is seeking to install and operate an \$8,568,400, 5 MW community solar farm on 22 acres of leased land at 595 Schoelles Road. The renewable electricity generated by the system is fed directly into the local utility distribution system, where it can then be purchased by area homes and businesses as credits against their electricity bill. The expected electric generation capacity of this project is enough to power approximately 850 homes.

This project meets NY's Climate Leadership and Community Protection Act which includes 70% renewable energy generation by 2030 with a goal of a zero-emissions electricity sector by 2040. General Municipal Law contains language specifically to IDAs and renewable sources as eligible projects. The New York State Energy Research and Development Authority issued a guidebook and guidelines for siting and incentivizing solar facilities. The town introduced solar law zoning and determined which sites were suitable, mainly properties that have little market value for other uses. Solar on this site also allows other agricultural related uses such as sheep grazing and pollinating plants.

IDAs play an important role as we manage the project on behalf of all taxing jurisdictions. Under state law, solar projects are exempt from property taxes but for negotiated local PILOTS. The Amherst IDA is managing this on behalf of the taxing jurisdictions for the term of the tariff agreement. Amherst Community Solar is required per the Town's Zoning Approval to provide a performance bond to remove the solar panels after the useful life of the project is complete.

Executive Director Mingoia presented the board with a detailed Project Profile and Cost Benefit Analysis associated with this project.

Frank LoTempio made a motion to approve the Amherst Community Solar LLC project. Hadar Borden seconded the motion. There was discussion. A roll call was taken to approve the Amherst Community Solar LLC project:

Brock – aye
Tuyn – aye
Agostino – aye
Meyer – aye
Drury – aye
Borden – aye
LoTempio – aye

Motion to approve passed 7-0

9:09 am – Frank LoTempio made a motion to adjourn the meeting. Hadar Borden seconded the motion. The motion to adjourn was unanimously carried.

Executive Director's Report

May 21, 2021

Countywide Uniform Tax Exemption Policy (UTEP)

Progress, albeit slow, occurred with revamping our UTEP with our county IDA partners. COVID-19 negatively impacted what is usually a two-year collaborative process to modify the document that provides prospects and interested parties with the economic development policy, process and benefits that is expected for eligible projects. Recent meetings finalized the scoring matrix for the three new PILOT schedules, which will be presented to the larger IDA Leadership Committee in the next several weeks. We also anticipate modifying the draft narrative of the UTEP to include a section on renewable energy.

PILOT DETERMINATION SCORING WORKSHEET

Baseline Requirements (Must Achieve All)

- Application Complete
- Eligible Project Per Countywide UTEP
- Local Labor Compliance
- Planning Approval (If Applicable)

PILOT Scoring Metrics

1 Point Per Category Except Where Noted

Investment, Employment, and Construction Employment are Cumulative Categories

- | | | |
|--|--|---|
| <u>Location</u> | <u>Investment</u> | <u>Community</u> |
| <input type="checkbox"/> Distressed Census Tract | <input type="checkbox"/> Under \$10 Million | <input type="checkbox"/> Out of Region Sales > 30% |
| <input type="checkbox"/> Designated Development Area | <input type="checkbox"/> \$10 Million - \$20 Million | <input type="checkbox"/> In Region Purchase > 50% |
| <input type="checkbox"/> Historic Preservation | <input type="checkbox"/> Over \$20 Million | <input type="checkbox"/> Average Wage > Median |
| <input type="checkbox"/> Building Re-use | | <input type="checkbox"/> ROI Ratio > 15 to 1 |
| <input type="checkbox"/> Infill Development | <u>Employment</u> | <input type="checkbox"/> Local Revenue/Abatement Ratio > 2 to 1 |
| <input type="checkbox"/> Transit | <u>New Jobs</u> | <input type="checkbox"/> Workforce Housing |
| <input type="checkbox"/> Green Building | <input type="checkbox"/> 1-15 | <input type="checkbox"/> MWBE |
| <input type="checkbox"/> Brownfield | <input type="checkbox"/> 16-40 | <input type="checkbox"/> Out of Area Option(s) |
| | <input type="checkbox"/> 41-85 | |
| | <input type="checkbox"/> 86-150 | |
| <u>Strategic Industry (2pts)</u> | <input type="checkbox"/> 151+ | <u>Construction Employment</u> |
| <input type="checkbox"/> Advanced Manufacturing | | <input type="checkbox"/> 1-50 |
| <input type="checkbox"/> Back Office | <u>Retained Jobs</u> | <input type="checkbox"/> 51-100 |
| <input type="checkbox"/> Life Sciences | <input type="checkbox"/> 1-75 | <input type="checkbox"/> 101+ |
| <input type="checkbox"/> Technology | <input type="checkbox"/> 76-150 | |
| <input type="checkbox"/> Distribution/Logistics | <input type="checkbox"/> 151+ | |
| <input type="checkbox"/> Agriculture | | |
| <input type="checkbox"/> Renewable Energy | | |
| <input type="checkbox"/> Regional Tourism/Arts | | |

5-Year PILOT = 1-6 Points (75,65,55,45,35)

7-Year PILOT = 7-12 Points (95,90,85,80,75,75,60)

10-Year PILOT = 13+ Points (95,90,85,85,80,80,75,75,70,65)

Amherst Central Park - PILOT Increment Financing (PIF)

Catapulting off the multi-year effort undertaken by the Town to plan and implement zoning for Amherst Central Park, the next step is to establish a financing tool that will pay for infrastructure and features to achieve the vision. PIF is a tool that utilizes new Payment In Lieu Of Tax (PILOT) revenues on projects and directs those revenues to a fund that finances new infrastructure (roads, sewer, water, etc.) and amenities (recreation, park improvements, etc.). It is currently estimated that full build-out of public infrastructure and amenities is nearly \$150 million, with private investment adding 2-3 times that amount.

The AIDA anticipates entering into a PIF agreement with the Town and Sweet Home School District. The PIF agreement will define the geography where new projects are eligible, as well as other items such as term of the agreement and determining streams of revenue over the PILOT period. As projects are induced, the AIDA contracts with the private entity/developer as we currently do, but funds would have an additional destination besides the taxing jurisdictions. The AIDA and Town will enter into a funding agreement that will determine eligible projects. The funding agreement will also identify the protocol for approving payment of funds along with the provision that the fund will pay the costs of its administration. Draft documents will be ready for review in the near future as we are scheduled to present to the Sweet Home School Board in June with final documents approved in July.



PROJECT PROFILE:
SWEET HOME FLATS ADAPTIVE REUSE
\$21,338,806
May 21, 2021



ELIGIBILITY

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

COMPANY INCENTIVES (EST.)

- Property Tax = \$2,866,320
- Sales Tax = \$519,969
- Mortgage Tax = \$143,413

PROJECT BENEFITS (EST.)

- Property Taxes = \$898,346
- Income Taxes = \$237,000
- Sales Taxes = \$151,000

EMPLOYMENT

- 109 Construction Jobs Created
- \$5.7 Million Construction Payroll
- 2 Full-Time Equivalent Jobs Created
- New Site Payroll = \$95,529

PROJECT SCHEDULE

- September 2021 - Project Begins
- August 2022 - Project Complete

Project Address:

1265 Sweet Home Road
 Amherst, New York 14221
 (Sweet Home School District)

Investment:

Acquisition: \$5,750,000
 Construction: \$11,000,000
 Equipment: \$442,500
 Soft/Other Costs: \$4,146,306

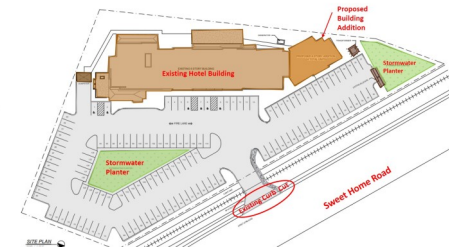
Company Description:

The project developer is DMG Investments, a real estate development and investment company started in 2013 and headquartered in New York City. The company focuses on residential development and has over \$700 million in assets under management in several states.

Project Description:

The applicant has entered into a contract for the purchase of the current undeveloped hotel property on Sweet Home Road. The property has been abandoned since 2017 in a state of partial construction with unpaid property and mechanical liens.

The project applicant intends to invest \$11,000,000 in adapting the unfinished hotel property and adding to the building footprint into 154 market rate units with a mix of studios and one and two bedroom layouts. DMG Investments, through Amherst Sweethome Rd Property LLC, is seeking benefits from the AIDA to obtain financing and make the project financially feasible. The Project constitutes an adaptive reuse project as identified in the Countywide Eligibility Policy and faces significant financial challenges including the restrictive building envelope resulting in mostly studio and one bedroom units and renovating to a multi-family development from an uncompleted structure intended for hospitality use. Given the impacts of the COVID-19 pandemic on the hotel industry, it is unlikely that this property would ever be finished as a hotel.



PROJECT PROFILE:

SWEET HOME FLATS ADAPTIVE REUSE

\$21,338,806

AIDA COMPANY HISTORY:

None

MATERIAL TERMS:

1. Creation of 2 Full-Time Equivalent Positions at the project location and maintenance of positions for the duration of the PILOT.
2. Investment of not less than \$18,137,985 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
4. Satisfaction or other resolution of the outstanding liens, taxes and judgments against the Premises at or prior to the closing of the Company's financing of the construction of the Project.

PROJECT PROFILE:

SWEET HOME FLATS ADAPTIVE REUSE

\$21,338,806

	Adaptive Reuse Uniform Tax Exemption Policy Criteria	Project Applicability
1	The age of the structure and the challenges to its redevelopment	The structure was designed and partially constructed for a hotel, which does not immediately translate to leasable apartments based on the positions of walls, superstructure and mechanicals without significant retrofit expenses.
2	Time period for which the structure has been vacant or underutilized	The structure has been vacant since 2017.
3	Whether the structure is generating significant rental income	The structure is not generating any income.
4	Whether the project is compliant with the investment and growth criteria of the Framework for Regional Growth Plan	The project is in a corridor with existing constructed road and sewer infrastructure and in a "Developed" area per the Framework for Regional Growth Plan.
5	Appropriate evidence indicating financial obstacles to the development of the project without IDA or other public assistance	Staff reviewed applicable financial data to the costs of retrofitting the property and returns based on income generated. The project is not financially feasible without incentives.
6	Evidence of local government support	The Town Board rezoned the site on 3/22/21 from General Business to Center-8 to allow for the conversion of the property. Town of Amherst officials have met with DMG representatives along with the AIDA.
7	Whether the structure or site presents a significant public safety hazard or its re-use would involve significant environmental remediation costs	Vacant properties become magnets for vandalism and break-ins and the longer this property remains unfinished the more likely these activities will occur.
8	Whether the site or structure is located in a distressed census tract	N/A
9	Whether the structure presents significant costs associated with building code issues	The building will require modification to comply with multi-family building codes.
10	Whether the site or structure is presently delinquent in property tax payments	The current owner owes \$109,144.46 in back property taxes. Proceeds from the sale of the property will be used to pay off the delinquent taxes at the time of acquisition.

Cost-Benefit Analysis for Adaptive Reuse - Sweet Home Flats - DMG Investments

Prepared by this agency using InformAnalytics

Executive Summary

INVESTOR
Amherst Sweethome Rd Property LLC - DMG Investments

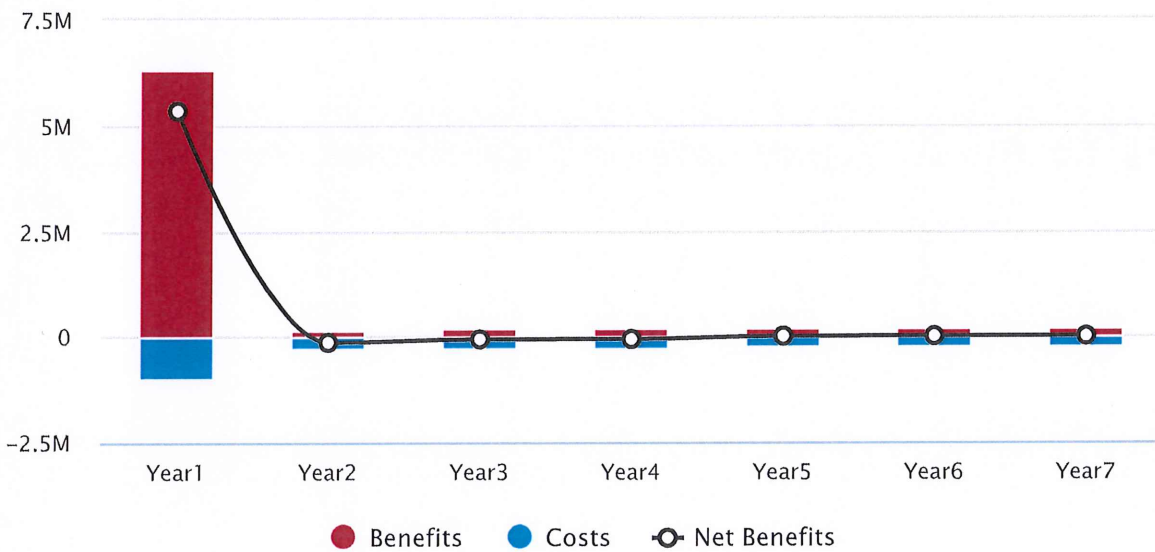
TOTAL INVESTED
\$21.3 Million

LOCATION
1265 Sweet Home Road

TIMELINE
7 Years

F1 FIGURE 1

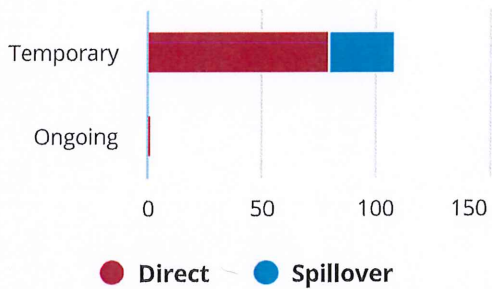
Discounted* Net Benefits for Adaptive Reuse - Sweet Home Flats - DMG Investments by Year Total Net Benefits: **\$5,092,000**



Discounted at 2%

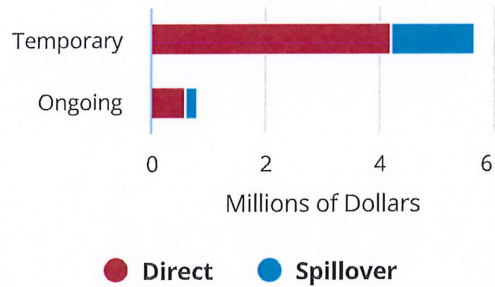
F2 FIGURE 2

Total Jobs



F3 FIGURE 3

Total Payroll



Proposed Investment

Amherst Sweethome Rd Property LLC - DMG Investments proposes to invest \$21.3 million at 1265 Sweet Home Road over 7 years. Agency staff summarize the proposed with the following: Adaptive Reuse of an unfinished hotel property, and new construction adding to the building footprint, into 154 market rate units with a mix of studios and one and two bedroom layouts.

T1 TABLE 1

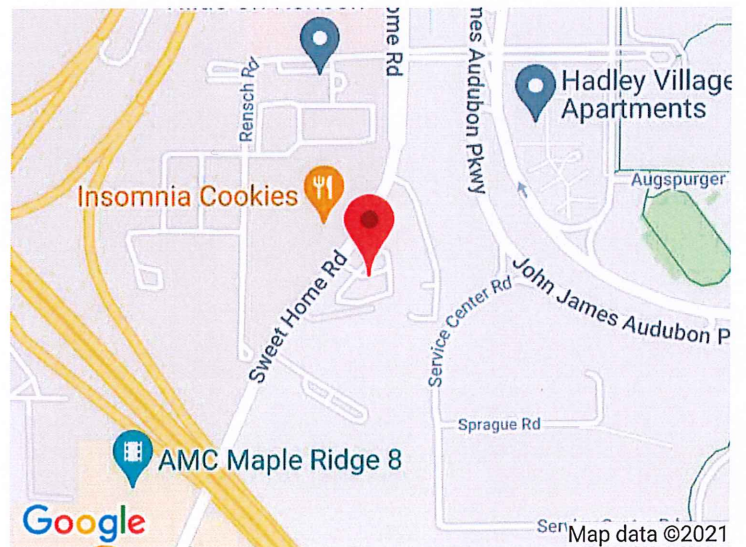
Proposed Investments

Description	Amount
CONSTRUCTION SPENDING	
Project Development	\$11,000,000
OTHER SPENDING	
Land/Building Acquisition	\$5,750,000
Equipment	\$443,000
Soft Costs	\$4,146,000
Total Investments	\$21,339,000
Discounted Total (2%)	\$21,339,000

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 the agency. The report calculates the costs and benefits for specified local taxing districts over the first 7 years, with future returns discounted at a 2% rate.

T2 TABLE 2

Estimated Costs or Incentives

The agency is considering the following incentive package for Amherst Sweethome Rd Property LLC - DMG Investments.

Description	Nominal Value	Discounted Value*
Property Tax Exemption	\$1,839,000	\$1,741,000
Sales Tax Exemption	\$520,000	\$520,000
Mortgage Recording Tax Exemption	\$143,000	\$143,000
Total Costs	\$2,502,000	\$2,405,000

May not sum to total due to rounding.

* Discounted at 2%

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	\$5,469,000	\$1,671,000	\$7,140,000
To Private Individuals	\$4,886,000	\$1,644,000	\$6,529,000
Temporary Payroll	\$4,228,000	\$1,467,000	\$5,695,000
Ongoing Payroll	\$658,000	\$176,000	\$834,000
To the Public	\$583,000	\$28,000	\$611,000
Property Tax Revenue	\$502,000	N/A	\$502,000
Temporary Sales Tax Revenue	\$71,000	\$25,000	\$95,000
Ongoing Sales Tax Revenue	\$11,000	\$3,000	\$14,000
STATE BENEFITS	\$306,000	\$102,000	\$408,000
To the Public	\$306,000	\$102,000	\$408,000
Temporary Income Tax Revenue	\$207,000	\$72,000	\$278,000
Ongoing Income Tax Revenue	\$30,000	\$7,000	\$37,000
Temporary Sales Tax Revenue	\$60,000	\$21,000	\$80,000
Ongoing Sales Tax Revenue	\$9,000	\$2,000	\$12,000
Total Benefits to State & Region	\$5,775,000	\$1,773,000	\$7,548,000
Discounted Total Benefits (2%)	\$5,735,000	\$1,762,000	\$7,497,000

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	\$7,092,000	\$2,071,000	3:1
State	\$405,000	\$333,000	1:1
Grand Total	\$7,497,000	\$2,405,000	3:1

May not sum to total due to rounding.

* Discounted at 2%

CGR has exercised reasonable professional care and diligence in 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 THE ADAPTIVE REUSE OF A PROPERTY BY AMHERST SWEETHOME RD PROPERTY LLC LOCATED AT 1265 SWEET HOME 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 AMHERST SWEETHOME RD PROPERTY 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, Amherst Sweethome Rd Property LLC, for itself or for related individuals or entities (the “Company”), has entered into negotiations with officials of the Agency with respect to the adaptive reuse project (the “Project”) consisting of the following: (1) the acquisition of a leasehold interest in a 2.33 +/- acre parcel of land located at 1265 Sweet Home Road, Amherst, New York (SBL No. 54.12-1-23.11) (the “Premises”); (2) the construction and building addition for a multi-family, market-rate housing development to include up to 154 units totaling 105,738 square feet and related amenities and improvements (the “Improvements”); and (3) the acquisition and installation therein of certain machinery, equipment and related personal property necessary for completion of the Project thereof (the “Equipment”); 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 of an 88,146 square foot building and construction of a 17,592 square foot building addition for a multi-family, market-rate housing development to include up to 154 units and related amenities and improvements, all at a cost of approximately \$21,338,806.00; that the Company anticipates that four (4) new part-time jobs will be created as a result of the Project at the end of two (2) years of operation thereof; that (i) the Project involves the adaptive reuse of a site and building that has been blighted and vacant since 2017, when the partially constructed building intended for hospitality was left incomplete; (ii) the Project will provide substantial capital investment; and (iii) that if Agency financing is disapproved, the Company would likely not proceed with the Project; and that, therefore, Agency financing is necessary to encourage the Company to proceed with the Project; and

WHEREAS, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on May 6, 2021 and has considered all oral and written presentations made at or in connection with said public hearing; and

WHEREAS, the Agency has reviewed the Application and prepared 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 Industrial Development Agency Uniform Tax Policy (the “UTEP”) relating to Adaptive Reuse Projects, including the age of the structure and the challenges to redevelopment; the time period for which the structure has been vacant; whether the structure is generating significant rental income; whether the project is compliant with the investment and growth criteria of the Framework for Regional Growth Plan; whether appropriate evidence indicates financial obstacles to the development of the project without IDA or other public assistance; evidence of local government support; and whether the site or structure is presently delinquent in property tax payments; 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: 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 \$5,500,000.00, an exemption from mortgage recording taxes for a mortgage having a principal amount not to exceed \$19,121.858 and an abatement from real property taxes in accordance with the County UTEP 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; and
- (b) creation of 2 full-time equivalent positions at the project location within two (2) years of Project completion and retention of such jobs for the duration of the PILOT; and
- (c) investment of not less than 85% of the total Project cost of \$21,338,806.00 in the construction and equipping of the Project prior to Project completion; and
- (d) satisfaction or other resolution of the outstanding liens, taxes and judgments against the Premises at or prior to the closing of the Company’s financing of the construction of the Project.

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 the meaning of the Act and the Project will promote employment opportunities and prevent economic deterioration in the area in which the Project is to be located. The Project will be located in a section of the Town of Amherst which is in need of market-rate, multifamily residential units of the kind and quality proposed by the Company. The Project is consistent with the Town of Amherst Comprehensive Plan. The construction of the Project will promote employment opportunities by providing housing to attract and retain residents to live within the Town, which will promote economic growth and improve the neighborhood. The Project will help prevent economic deterioration through the reuse of a currently vacant and unused site.

(b) The Project constitutes an adaptive reuse project within the meaning of the UTEP. The Project will redevelop a blighted site, promote infill development utilizing existing infrastructure, create new economic activity, promote the re-use of an existing vacant site 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) that the age of the structure presents challenges to its redevelopment; (ii) that the structure has been vacant since 2017; (iii) that the structure is not currently generating any income; (iv) that the Project is compliant with the investment and growth criteria of the Framework for Regional Growth Plan; (v) that the Company has provided appropriate evidence indicating financial obstacles to the development of the Project without Agency assistance; (vi) that the Project has the support of the Town of Amherst government; and (vii) that there are past due property taxes, liens and judgments on the property, which will be satisfied or otherwise resolved as part of the Company's financing of the Project.

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).

Section 6. 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 7. 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 \$5,500,000.00 and shall not apply to any other purchase by the Company or any operating expenses of the Company. The Company shall report to the Agency, at such times as the Agency shall require, or as may otherwise be prescribed by the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner"), the value of all sales and use tax exemptions claimed by the Company or agents of the Company or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators under the authority granted pursuant to this Resolution. A failure to report may result in the revocation of the designation of the Company as agent and repayment of any sales and use tax exemptions claimed.

Section 8. 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 Agency's standard 7-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 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 9. The Agency is hereby authorized to execute and deliver to the lender(s) one or more collateral mortgages on the Project given to secure loans made to the Company, 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 \$19,121,858. 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 10. Any such action heretofore taken by the Company initiating the acquisition, installation and construction of the Project is hereby ratified, confirmed and approved.

Section 11. 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 12. 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 13. 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 14. 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 15. No covenant, stipulation, obligation or agreement herein contained or contained in the Project Agreement, Company Lease, the Mortgage Agreement, 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 16. 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 17. 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 11 and 12 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 18. This Resolution is subject to compliance with all local building and zoning requirements.

DATED: May 21, 2021

ACCEPTED AND AGREED TO: _____, 2021

AMHERST SWEETHOME RD PROPERTY LLC

By: _____