

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Agenda – 535th Meeting
Friday, May 20, 2022-8:30 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
 - a. 2022 Town of Amherst PILOT Exemption Report
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
 - a. Authorization Resolution – 6842 Main Street, LLC
10. Adjournment

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Minutes of the 534th Meeting
Friday, April 29, 2022 – 8:44 am – via Zoom
James J. Allen Boardroom
Agency Offices, 4287 Main Street

Pursuant to the provisions of Part E of Chapter 417 of the Laws of 2021, the Town of Amherst Industrial Development Agency Board of Directors Meeting was conducted through via Zoom and live streamed at www.AmherstIDA.com. In attendance at the meeting at Amherst IDA offices was Executive Director David Mingoia. A video recording of the meeting can be accessed and viewed at www.AmherstIDA.com

PRESENT via Zoom: William Tuyn
Anthony Agostino
Timothy Drury
Hadar Borden
Frank LoTempio, III
Nicole Gavigan
David S. Mingoia, Executive Director
Kevin J. Zanner, Hurwitz & Fine PC

EXCUSED: Carlton N. Brock, Jr.

GUESTS via Zoom: AIDA Staff
Jacqueline Berger, TOA Councilmember
Terrance Gilbride, Hodgson Russ
Chris Canada, Hodgson Russ
Wes McClean, Sutton Preservation

Vice Chairman William Tuyn called the meeting to order and reminded everyone the meeting was being video recorded and live-streamed.

MINUTES

Upon a motion by Frank LoTempio, seconded by Anthony Agostino and unanimously carried, the minutes of the March 2022 meeting were approved as presented.

BILLS & COMMUNICATIONS

There were no Bills & Communications presented at this meeting.

TREASURER'S REPORT

Upon a motion by Frank LoTempio, seconded by Hadar Borden and unanimously carried, the Treasurer's Report for March 2022 was approved as presented.

PUBLIC COMMENT

There was no Public Comment at this meeting.

EXECUTIVE DIRECTOR’S REPORT

Attached to the minutes is the Executive Director’s Report.

COMMITTEE REPORTS

There were no Committee Reports presented at this meeting.

UNFINISHED BUSINESS

There was no Unfinished Business presented at this meeting.

NEW BUSINESS

I. Sutton Place Preservation, Limited Partnership

The applicant is Lincoln Avenue Capital (LAC) through Sutton Place Preservation Ltd. LAC is an affordable housing developer with a portfolio of approximately 95 properties with over 17,000 units in 16 states. Their team works to provide low-income families with quality affordable housing through federal, state and local programs.

LAC intends to acquire and rehab approximately 246 units located at 113 Travers Blvd. in Amherst utilizing tax exempt bonds fully collateralized through various sources. The applicant is planning a \$23,457,084 full site renovation including in-unit upgrades (kitchens, bathrooms, lighting and electric and finishes such as blinds and painting) plus exterior work (roof replacements, new windows, siding, painting, sidewalk and patio repairs, playground upgrades and parking lot improvements). The applicant has been working closely with the Town of Amherst Planning and Building Departments to ensure optimal outcomes. The Clubhouse will also be redesigned and will include new space for community events.

Sutton Place Preservation, Ltd seeking Amherst IDA assistance in the form of a \$45,000,000 tax exempt bond and is requesting sales and mortgage tax exemptions.

A. SEQR RESOLUTION

Upon a motion by Anthony Agostino, seconded by Frank LoTempio and with a roll call vote, the SEQR Resolution was unanimously approved by a vote of 6-0. Roll call vote as follows:

- Tuyn: aye
- Agostino: aye
- Drury: aye
- Borden: aye
- LoTempio: aye
- Gavigan: aye

B. BOND RESOLUTION

Upon a motion by Anthony Agostino, seconded by Frank LoTempio and with a roll call vote, the Bond Resolution was unanimously approved by a vote of 6-0. Roll call vote as follows:

- Tuyn: aye
- Agostino: aye
- Drury: aye
- Borden: aye
- LoTempio: aye
- Gavigan: aye

9:05 am – Timothy Drury made a motion to adjourn the meeting. Hadar Borden seconded the motion to adjourn. Votes to adjourn the meeting were cast by Tuyn, Agostino, Drury, Borden, LoTempio and Gavigan. Motion passed by a vote of 6-0.



TOWN OF AMHERST
OFFICE OF TOWN COMPTROLLER

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EXAMINATION REPORT
Town of Amherst Industrial Development Agency
Payment In Lieu of Taxes

05/09/2022

Background:

On February 4th, 2008, the Town Board adopted Resolution 2008-193, “Full Accounting of Amherst IDA PILOT Program Payments”.

The Town of Amherst Industrial Development Agency (AIDA) is a public benefit corporation created in 1973 in accordance with Article 18-A of New York State General Municipal Law. The Town of Amherst is the sole member of the corporation and the AIDA is a discretely presented component unit of the Town of Amherst.

The AIDA enters into contractual arrangements with client companies that have outstanding industrial development revenue bonds. The client companies make payments to the AIDA in lieu of taxes. Special District taxes are on the property tax bill sent out by the Town Clerk. The AIDA then collects and remits these payments to the various taxing jurisdictions.

PILOT payments for properties located in the Town of Amherst include the tax rates from the General Fund, Central Alarm, and Highway Fund. For properties located within the Village of Williamsville, the tax rates include the General Fund (Village’s Share) and Central Alarm.

Scope:

The scope of our exam was to review that the Town of Amherst is receiving in full the PILOTS that are due, the accuracy of such payment calculations, including contractual agreements, and that such PILOT’s assessed value agrees with the Town Assessor’s records. We reviewed the 2022 AIDA PILOT payments.

The Office of the Town Comptroller in the scope of the work performed did not audit and does not express an opinion on the assessed values of properties in the Town of Amherst.

The Office of the Town Comptroller in the scope of the work performed does not express an opinion on the contractual agreements entered into with client companies and the AIDA.

Steps and Procedures Performed:

1. We read the 2021 Audited Financial Statements of the AIDA.
2. Obtain the PILOT listing for the current year from the AIDA.
3. Obtain the RPS Assessor Data Base listing of exemption code 18020 from the Assessor's Department.
4. We selected a sample of PILOT properties for 2022 and performed the following:
 - a. Re-calculated the PILOT and compared the results with the AIDA calculations.
 - b. Compared the assessed value used by the AIDA to the Assessor's RPS listing.
 - c. Traced the PILOTS payments to the cash receipts received by the Town of Amherst.
 - d. Reviewed the contracts/property file of AIDA properties in our sample and compared the tax abatement percentage used in the calculation of taxes to the contract/property file.
5. Compared the PILOT listing from the AIDA with the Assessor's RPS listing for completeness.
6. Reviewed and reconciled all cash receipts with the AIDA listing.

Findings:

There were no reportable findings for 2022.

86.85% or \$784,534.43 of the \$903,322.95 total PILOTS due were collected by the February 15th due date. The balance of \$118,788.52 was collected past the due date with interest. (93.79% or \$863,069.24 of the \$920,194.76 for 2021, the balance of \$57,125.52 was collected past the due date with interest).

Conclusion:

It appears that Amherst Industrial Development Agency is calculating the PILOTS correctly based on the contractual requirements and assessed values of record with the Town of Amherst, and are remitting the proper amounts to the Office of the Town Comptroller, except as noted above.

Recommendation:

The Office of the Town Comptroller, on an annual basis, will perform the steps and procedures (as per above) of all new PILOTS added in the current year and a random sample of ten (10) existing PILOTS.

Other:

The workpapers of this examination are open for review in the Office of the Town Comptroller.

Executive Director's Report

May 20, 2022

Audubon Base Study

One of the projects identified in the Town of Amherst Recovery Plan is a baseline analysis of commercial space in the in Audubon Office Park, which is an area roughly bounded by Millersport Highway and North Forest to the north of the University at Buffalo. We brought on contract assistance to undertake the GIS analysis and gather information on roughly forty (40) commercial properties through a windshield tour, online mining and direct outreach to ascertain tenancy, vacancy, and lease rates. We anticipate completing the analysis by July.

Agricultural Park Feasibility

Camoin Associates is under AIDA contract to analyze the supply chain and market opportunities and provide a feasibility analysis for an Agricultural Park and/or Building(s). The question we want answered is if there is a market for a facility(s) in Amherst that can support and enhance the Town's agriculture economy and possibly adjoining communities. In addition to studying the viability of a few selected sites under consideration in the Millersport/I-990 area, Camoin is conducting interviews with existing and prospective agriculture users. We anticipate a final report early Summer.

Marketing

The Martin Group has begun its work on the Medical Branding portion of its scope of work. An audit of current AIDA marketing and Strategic Development Brand Brief are complete. Now begins the actual work of developing the Brand, the logo, digital presence and media to roll it out. Once the Brand starts to take shape, we will present it at a future meeting.

PROJECT PROFILE:
6842 MAIN STREET LLC - MIXED-USE
\$18,700,000
May 20, 2022



ELIGIBILITY

- Commercial Project under NYS Law
- Town Designated Enhancement Area and Retrofit Zoning District

COMPANY INCENTIVES (EST.)

- Property Tax = \$559,180
- Sales Tax = \$623,437
- Mortgage Tax = \$112,125

PROJECT BENEFITS (EST.)

- Property Taxes = \$810,320
- Income Taxes = \$336,334
- Sales Taxes = \$114,148

EMPLOYMENT

- 98 Construction Jobs Created
- 3 Part Time Positions Created
- \$62,500 in Ongoing Payroll

PROJECT SCHEDULE (EST.)

- Work begins September 2022
- Project completion January 2024

Project Address:

6842-6846 Main St.
 Amherst, New York 14221
 (Clarence School District)

Investment:

Acquisition: \$1,440,000
 Construction: \$15,000,000
 Soft/Other Costs: \$2,260,000



Company Description:

The project developer is Paul Bliss who has focused on specialty, mixed-use, projects throughout the Town of Amherst. Mr. Bliss’s projects are known for their visual and construction quality with several successful developments in the community.

Project Description:

The applicant acquired the property at 6842-6846 Main St, with the intention of building a mixed-use project comparable to the recently completed building at 6770-6790 Main St. The site is currently vacant and generates \$38,839 in annual town, county & school taxes.

The project is located within a Town Designated Enhancement Zone and an adopted Retrofit Zoning District and includes approximately 80,000 square feet of apartments and 10,000 square feet of retail/office space. The project will contain 67 apartments with the developer targeting ten units for workforce housing to enhance live, work play opportunities in a walkable setting.

The applicant states that Agency assistance is necessary to complete the project as approved by the Town given the enhanced building materials and improvements required in the mixed-used districts and the design advisory board. Project financing is now much more difficult due to COVID-19 and now requires increased equity on already higher construction and labor costs. Projects including commercial space are less attractive to lenders. The inclusion of the workforce housing priced for employees working at nearby businesses is an additional cost to the project.

PROJECT PROFILE:

6842 MAIN STREET LLC - MIXED-USE

\$18,700,000

AIDA COMPANY HISTORY:

In April 2020, the AIDA Board approved incentives for a \$5.6 million Mixed Use project at 6770 Main Street.

MATERIAL TERMS:

1. Investment of not less than \$15,895,000 at the project location as noted in the application.
2. Creation of 1 full time equivalent job and maintenance of that job throughout the PILOT term.
3. Compliance with the Agency's Local Labor Policy in connection with the construction of the Project.

Town of Amherst Industrial Development Agency

MRB Cost Benefit Calculator

Date: April 28, 2022
 Project Title: 6842 Main Street LLC, Mixed-Use Project
 Project Location: 6842-6846 Main Street



Economic Impacts

Summary of Economic Impacts over the Life of the PILOT

Project Total Investment

\$15,000,000

Temporary (Construction)

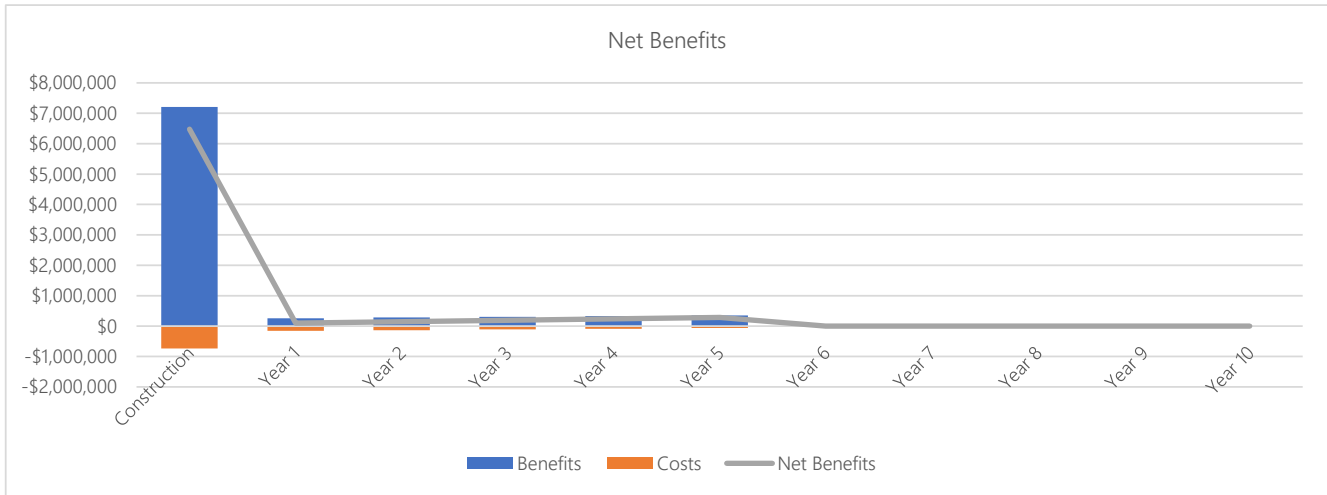
	Direct	Indirect	Total
Jobs	56	42	98
Earnings	\$4,400,756	\$2,400,784	\$6,801,540
Local Spend	\$10,500,000	\$7,434,097	\$17,934,097

Ongoing (Operations)

Aggregate over life of the PILOT

	Direct	Indirect	Total
Jobs	1	1	2
Earnings	\$312,500	\$360,054	\$672,554

Figure 1



Net Benefits chart will always display construction through year 10, irrespective of the length of the PILOT.

Figure 2

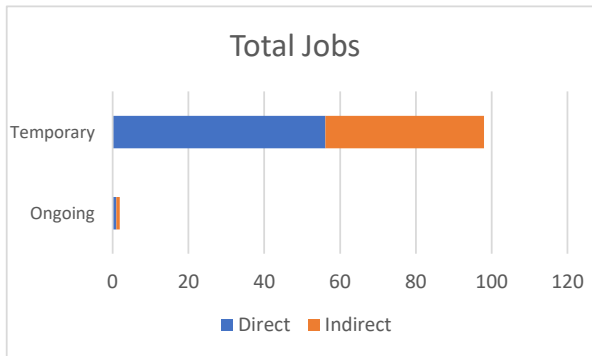
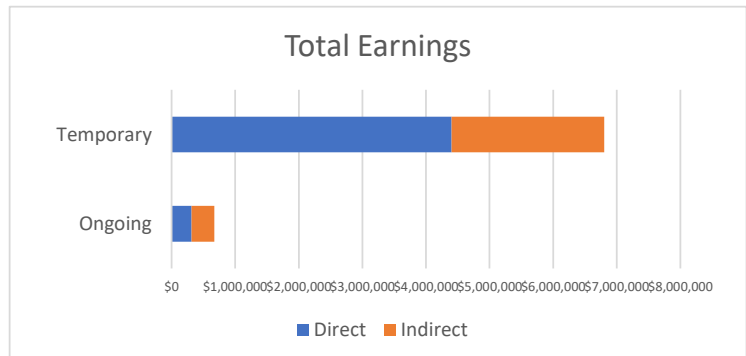


Figure 3



Ongoing earnings are all earnings over the life of the PILOT.

Fiscal Impacts



Cost-Benefit Analysis Tool powered by MRB Group

Estimated Costs of Exemptions

	Nominal Value	Discounted Value*
Property Tax Exemption	\$559,180	\$531,571
Sales Tax Exemption	\$623,437	\$623,437
Local Sales Tax Exemption	\$338,437	\$338,437
State Sales Tax Exemption	\$285,000	\$285,000
Mortgage Recording Tax Exemption	\$112,125	\$112,125
Local Mortgage Recording Tax Exemption	\$37,375	\$37,375
State Mortgage Recording Tax Exemption	\$74,750	\$74,750
Total Costs	\$1,294,742	\$1,267,133

State and Local Benefits

	Nominal Value	Discounted Value*
Local Benefits	\$8,346,542	\$8,256,805
To Private Individuals	\$7,474,094	\$7,435,551
Temporary Payroll	\$6,801,540	\$6,801,540
Ongoing Payroll	\$672,554	\$634,011
Other Payments to Private Individuals	\$0	\$0
To the Public	\$872,448	\$821,254
Increase in Property Tax Revenue	\$810,320	\$759,446
Temporary Jobs - Sales Tax Revenue	\$56,538	\$56,538
Ongoing Jobs - Sales Tax Revenue	\$5,591	\$5,270
Other Local Municipal Revenue	\$0	\$0
State Benefits	\$388,653	\$386,649
To the Public	\$388,653	\$386,649
Temporary Income Tax Revenue	\$306,069	\$306,069
Ongoing Income Tax Revenue	\$30,265	\$28,531
Temporary Jobs - Sales Tax Revenue	\$47,611	\$47,611
Ongoing Jobs - Sales Tax Revenue	\$4,708	\$4,438
Total Benefits to State & Region	\$8,735,195	\$8,643,453

Benefit to Cost Ratio

	Benefit*	Cost*	Ratio
Local	\$8,256,805	\$907,383	9:1
State	\$386,649	\$359,750	1:1
Grand Total	\$8,643,453	\$1,267,133	7:1

*Discounted at 2%

Additional Comments from IDA

Infill Project in a Town Designated Enhancement Area and Retrofit Zoning District.

Does the IDA believe that the project can be accomplished in a timely fashion? Yes

RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE CONSTRUCTION AND EQUIPPING OF AN APPROXIMATELY 80,000 SQUARE FOOT, MIXED USE BUILDING BY 6842 MAIN STREET, LLC TO BE LOCATED AT 6842 AND 6846 MAIN STREET, AMHERST, NEW YORK FOR SALE OR LEASE TO THE AGENCY AND SUBSEQUENT LEASE OR RECONVEYANCE PURSUANT TO AN INSTALLMENT SALE CONTRACT TO 6842 MAIN STREET, 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, 6842 Main Street, LLC, for itself or for related individuals or entities (the “Company”), has submitted an application to the Agency requesting the Agency to undertake a certain project (the “Project”) consisting of: (i) the acquisition of a leasehold interest in portions of properties located at 6842 and 6846 Main Street in Amherst, New York (SBL #'s 70.17-3-10 and 70.17-3-9)(the “Premises”); (ii) the construction of a four-story mixed-use building consisting of 61 apartments, ten of which are targeted for workforce housing; six, two story apartments with attached garages, and approximately 10,000 square feet of first floor commercial retail/office space, totaling approximately 90,000 square feet for the Project, and on-site parking, detached garages, lighting, landscaping, storm water management and utility improvements and connections and related site improvements (collectively, the “Improvements”), and (iii) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the “Equipment”); and

WHEREAS, the Company 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 construction of a four-story, mixed use building containing commercial space and apartments, six-2 story apartments with attached garages and related site improvements located at 6842 and 6846 Main Street, Amherst, New York for commercial, mixed use, and retail purposes, all at a cost of approximately \$18,700,000.00; that the Company anticipates that three (3) 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) there will be no substantial adverse disruption of existing employment of facilities of a similar nature in the Town of Amherst,

(ii) the Project will retain present employment, provide substantial employment and substantial capital investment; (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 in the Town of Amherst; and

WHEREAS, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on May 5, 2022, 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 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, the Company is expected to undertake and 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 \$7,125,000.00 and which shall not include tenant finishings or equipment with respect to the non-housing elements of the Project, an exemption from mortgage recording taxes for a mortgage having a principal amount not to exceed \$14,950,000.00 and an abatement from real property taxes in accordance with the Agency's standard five (5) 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 throughout the period during which the Company is receiving Financial Assistance from the Agency (the "Compliance Period") to comply with the following covenants and agreements, each of which shall constitute a "Material Factor":

- (a) Investment of no less than \$15,895,000.00 at the Project location as noted in the Application;
- (b) Creation of one (1) full-time equivalent job and maintenance of that job throughout the Project's PILOT term; and
- (c) Compliance with the Agency's Local Labor Policy

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. 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 and Project will promote employment opportunities in which the Project is to be located. The Project will be located in a part of the Town of the Amherst that has been identified as appropriate for mixed-use development of the kind proposed by the Company. The Project is located within a Town Designated Enhancement Area and Retrofit Zoning District and is generally consistent with the policies of the Town of Amherst Bicentennial Comprehensive Plan. The construction of the Project will promote employment opportunities by targeting ten (10) units for workforce 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) A portion of the Project is expected to include facilities or property that are primarily used in making retail sales to customers who personally visit such facilities within the meaning of Section 862(2)(a) of the General Municipal Law. However, based on the representation of the Company in the Application, such facilities or property constitute less than one-third of the total project cost.

Section 4. The Agency hereby authorizes the Company, as agent for the Agency, to proceed with the Project as herein authorized. The Agency is hereby authorized to acquire an interest in the Project site and 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 5. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary of the Agency, and other appropriate officials of the Agency and its agents and employees, are hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and to complete the Project in cooperation with the Company.

Section 6. The Company is authorized, as agents of the Agency, to initiate the construction of a building or building addition 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 \$7,125,000.00 and shall not apply to any other purchase by the Company or any operating expenses of the Company, or any tenant finishings or equipment with respect to the non-housing elements of the Project. 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 construct a facility thereon, and the execution and delivery of a lease by the Lessee to the Agency (the "Company Lease"), an Agency Lease Agreement (the "Agency Lease Agreement") or Installment Sale Contract (the "Installment Sale Contract") between the Agency and the Company, 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 form satisfactory to Agency counsel, are hereby authorized. The PILOT Agreement shall provide for payments in accordance with the Agency's standard five (5) 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. 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 ("Mortgage Agreement"), 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 \$14,950,000.00. 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 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 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 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 and Lessee 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 and Lessee 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: May 20, 2022

ACCEPTED AND AGREED TO: _____, 2022

6842 Main Street, LLC

By: _____

Name:

Title: