

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**  
**Agenda – 534<sup>th</sup> Meeting**  
**Friday, April 22, 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
4. Treasurer's Report
5. Public Comment
  - a. Speakers Limited to Three (3) Minutes
6. Executive Director's Report
7. Committee Reports
8. Unfinished Business
9. New Business
  - I. Sutton Place Preservation Limited Partnership
    - SEQRA Resolution
    - Bond Resolution
10. Adjournment

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**  
**Minutes of the 533<sup>rd</sup> Meeting**  
**Friday, March 25, 2022 – 8:30 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](http://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](http://www.AmherstIDA.com)

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

EXCUSED: Hadar Borden

GUESTS via Zoom: AIDA Staff  
Jacqualine Berger, TOA Councilmember  
Randall Shepard, Bonadio Group  
Sean Hopkins, Esq.  
Robert G. Murray, Esq.  
Kate Donnelly, Remedy  
Erik Wagner, Ciminelli Real Estate Corp

Chairman Carlton N. Brock, Jr. 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 William Tuyn and unanimously carried, the minutes of the February 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 William Tuyn and unanimously carried, the Treasurer's Report for February 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**

**Audit & Finance Committee** – Anthony Agostino informed the board that the Audit & Finance Committee had met with the Agency's auditor, Randy Shepard from The Bonadio Group in February. Mr. Shepard was invited to speak to the board. Mr. Shepard gave the board a presentation of the 2021 Audited Financial Statements.

William Tuyn made a motion to accept the 2021 Audited Financial Statements as presented. Frank LoTempio seconded the motion. Votes of aye to accept the 2021 Audited Financial Statements were made by Brock, Tuyn, Agostino, Drury, LoTempio and Gavigan. Motion to approve passed 6-0.

**Executive Committee** – The Executive Committee recommended the approval the 2021 Mission Statement and Measurement Report as presented by Executive Director Mingoia. Frank LoTempio made a motion to approve the 2021 Mission Statement and Measurement Report. Nicole Gavigan seconded the motion. Votes of aye were cast by Brock, Tuyn, Agostino, Drury, LoTempio. And Gavigan. Motion to approve passed 6-0.

## **UNFINISHED BUSINESS**

There was no Unfinished Business presented at this meeting.

## **NEW BUSINESS**

### **Authorization Resolution – 199 Park Club Lane LLC and Amherst 203 APL RKC, LLC (203 Park Club Lane)**

The proposed project consists of the construction of 30,000 sf building in which Roswell Park Cancer Institute (RPCI) will be the sole tenant. Under an approved Certificate of Need from the NYS Department of Health, Roswell will operate an off-campus hospital extension facility providing clinical, educational and research needs of cancer patients in the Northtowns as well as regional patients throughout Western and Central New York and Canada. This will allow RPCI to expand its capacity to provide comprehensive cancer care to patients.

The project qualifies under the Countywide Uniform Tax Exemption Policy and New York State Industrial Development Agency Statute as it will provide an expanded offering of medical services not currently available. The applicant provided a Certificate of Need from the NYS Department of Health certifying the need for this hospital grade facility that will provide state of the art radiology screening & diagnostic facilities, comprehensive infusion center, and a clinical laboratory with phlebotomy patient service center. As the tenant is not subject to sales and property taxes, this project would be wholly tax-exempt if it was undertaken solely by RPCI

Executive Director reviewed the Project Profile and Cost Benefit Analysis for the project. Frank LoTempio made a motion to approve the project. William Tuyn seconded the motion to approve.

Agency counsel Kevin Zanner took a roll-call of the votes. Brock, approve; Tuyn, approve; Agostino, approve, Drury, approve; LoTempio, approve; Gavigan, approve. The motion to approve the authorization of the 203 Park Club Lane project passed by a vote of 6-0.

**Assignment of Lease – 111 North Maplemere, LLC to Amherst 111 APL RKC, LLC**

111 North Maplemere LLC has informed the Agency that it has entered into a purchase and sale transaction with Amherst 111 APL RKC, LLC.

In connection with the purchase and sale transaction, Amherst 111 APL RKC, LLC has submitted a request that the Agency consent to an assignment of, and assume the rights and obligations of 111 North Maplemere LLC.

After a brief discussion, Frank LoTempio made a motion to approve the request by 111 APL RKC, LLC to assign the rights and obligations of 111 North Maplemere, LLC, to them. William Tuyn seconded the motion to approve.

Agency counsel Kevin Zanner took a roll-call of the votes. Brock, approve; Tuyn, approve; Agostino, approve, Drury, approve; LoTempio, approve; Gavigan, approve. The motion to approve the assignment of lease request by Amherst 111 APL RKC, LLC passed by a vote of 6-0.

9:09 am – Anthony Agostino made a motion to adjourn the meeting. William Tuyn seconded the motion. Motion to adjourn passed unanimously.

## **Executive Director's Report**

April 22, 2022

### **New York State Budget**

The Governor and State Legislature agreed to a \$220 Billion Budget, up from \$212 Billion, that included a number of program expansions and uses record Federal Aid for the majority of the increased spending. Federal Aid usually represents a third of the State Budget, and has increased to 38-39% in the last few years due to pandemic assistance.

A number of economic development programs were fully funded and created, highlighted by the following:

- FAST-NY - \$200 Million for a Shovel-Ready Grant Program
- RESTORE NY - \$200 Million for Community/Economic Development Programs
- Downtown Revitalization Fund - \$200 Million for Area Redevelopment Plans
- Empire Digital Gaming Tax Credit - \$25 million
- Land Banks - \$50 Million
- Brownfield Clean-Up Program – Extended 10-years
- Accelerates Middle Class Tax Cuts by 2-years
- Small Business Tax Cuts and COVID tax credits
- Workforce Development - \$350 million

Language prohibiting natural gas hook-ups as early as 2024 was removed from the final budget, but still is under consideration through the Climate Action Council ([www.climate.ny.us](http://www.climate.ny.us)) discussed at last month's Board of Directors Meeting.

The budget also invested heavily in human services and childcare highlighted and summarized by:

- Childcare credits and subsidies - \$7 billion
- Affordable Housing Plan - \$25 Billion
- COLA Increase for many non-profit providers
- Suspension of certain motor vehicle and diesel taxes from June to December 2022
- Criminal Justice Reforms focused on bail related items
- School Aid and Universal Pre-K received several billion dollar increases

The budget did not include IDA reform items, but we are still awaiting the creation of the Incentives Board, appointed by the Governor and Legislature, that was enacted in the FY 2021 budget whose purpose is to promulgate regulations on the prevailing wage bill for projects over \$5 million in construction and receiving more than 30% in incentives. In addition, there are over 50 bills we are tracking through the New York State Economic Development Council that

would have some impact on IDAs and are working to ensure that many of them do not become law.

Remote/Quasi-Virtual Meetings were authorized in the State Budget, but not to the extent we have enjoyed during the pandemic. Meetings are allowed to have a virtual component, but only if a quorum of the entity is present physically at a location, or at multiple locations publicly accessible.

### Marketing

The Martin Group Medical/Marketing Branding effort is under way and the company has completed an initial audit of our efforts. Overall, the firm feels that a more elevated, active brand presence with updated collateral – both digital and physical – would position the Agency better for those seeking to do business in Amherst. As we work on the Medical Sector Branding, one eye will remain on that as we look towards the future and improvement in several areas:

- Suite of up-to-date print and digital pieces that represent the accomplishments of the Agency and its positive impact in the business community and Town;
- Social Media plan with content and targeted to industry leaders and stakeholders;
- Improving the website and integrating it with the collateral and social media; and
- Evolution of the AIDA logo that would be integrated into the medical effort and other future initiatives.

# PROJECT PROFILE: SUTTON PLACE PRESERVATION, LTD

\$77,184,882

April 22, 2022



## ELIGIBILITY

- Commercial Project under NYS Law
- Affordable Housing

## COMPANY INCENTIVES (EST.)

- Sales Tax = \$787,900
- Mortgage Tax = \$337,500

## PROJECT BENEFITS (EST.)

- Income taxes = \$601,567
- Sales taxes = \$209,111

## EMPLOYMENT

- 157 Construction Jobs Created
- 5 Full Time Jobs Retained
- Site Payroll - \$320,000

## PROJECT SCHEDULE

- June 2022 - Work begins
- June 2023 - Project Complete

## Project Address:

113 Travers Blvd  
Amherst, New York 14228  
(Sweet Home School District)

## Investment:

Acquisition: \$40,770,000  
Construction: \$23,457,084  
Financing: \$12,488,588  
Soft/Other Costs: \$469,210



## Company Description:

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.

## Project Description:

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.

The applicant is seeking Amherst IDA assistance in the form of a \$45,000,000 tax exempt bond and is requesting sales and mortgage tax exemptions to make the project financially feasible for this significant upgrade to this affordable housing project. LAC is receiving a PILOT directly with the Town of Amherst. Completion of the project protects the affordability of 100% of the units for at least 30 years, which is the term of the regulatory agreements.

**PROJECT PROFILE:**  
**SUTTON PLACE PRESERVATION, LTD**  
**\$77,184,882**

**AIDA COMPANY HISTORY:**

None

**MATERIAL TERMS:**

1. Investment of not less than \$65,607,149 million at the project location as noted in the application.
2. Maintenance of 5 Full Time Equivalent Positions two-years after project completion.
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 1, 2022  
 Project Title: Sutton Place Affordable Housing  
 Project Location: 113 Travers Boulevard



### Economic Impacts

Summary of Economic Impacts over the Life of the PILOT

#### Project Total Investment

\$23,457,084

#### Temporary (Construction)

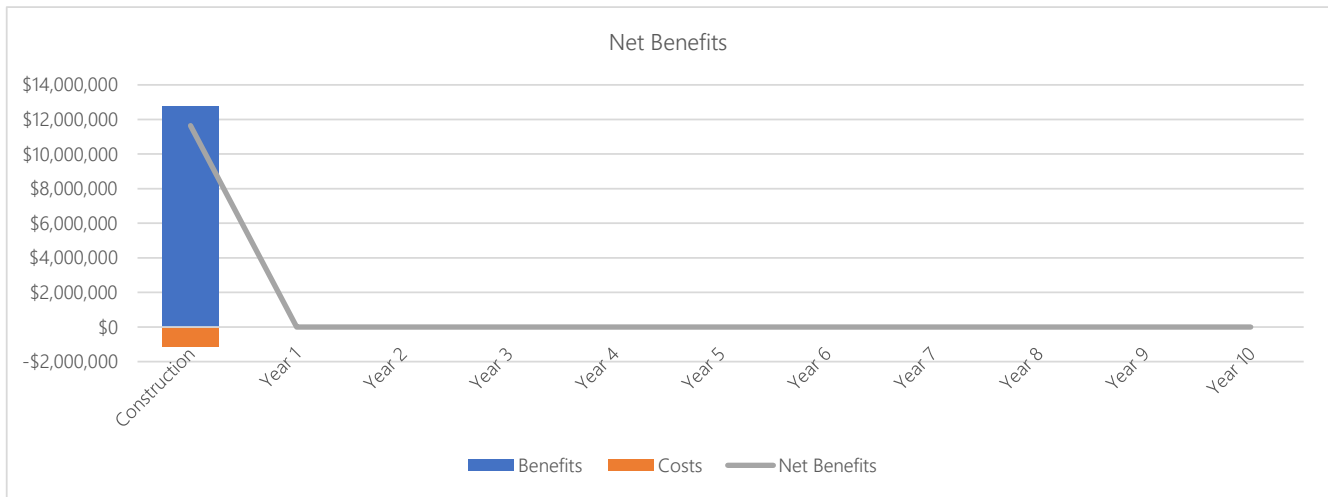
|             | Direct       | Indirect     | Total        |
|-------------|--------------|--------------|--------------|
| Jobs        | 82           | 75           | 157          |
| Earnings    | \$7,760,293  | \$4,281,781  | \$12,042,075 |
| Local Spend | \$18,765,667 | \$13,286,023 | \$32,051,690 |

#### Ongoing (Operations)

Aggregate over life of the PILOT

|          | Direct    | Indirect  | Total       |
|----------|-----------|-----------|-------------|
| Jobs     | 0         | 0         | 0           |
| Earnings | \$750,000 | \$576,086 | \$1,326,086 |

Figure 1



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

Figure 2

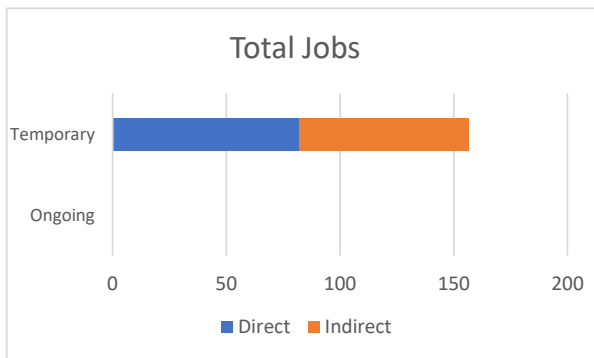
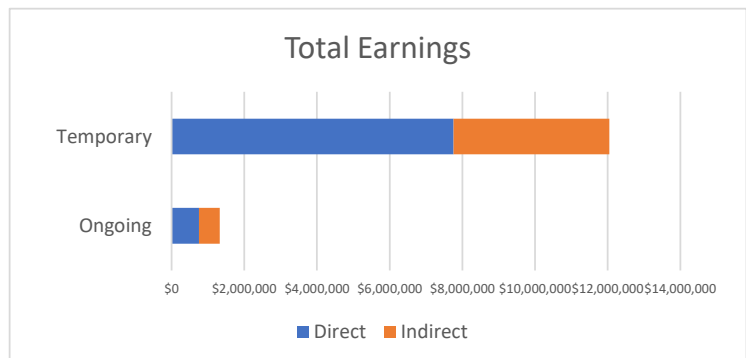


Figure 3



# Fiscal Impacts



Cost-Benefit Analysis Tool powered by MRB Group

## Estimated Costs of Exemptions

|  | Nominal Value      | Discounted Value*  |
|--|--------------------|--------------------|
| Property Tax Exemption                 | \$0                | \$0                |
| Sales Tax Exemption                    | \$787,500          | \$787,500          |
| Local Sales Tax Exemption              | \$427,500          | \$427,500          |
| State Sales Tax Exemption              | \$360,000          | \$360,000          |
| Mortgage Recording Tax Exemption       | \$337,500          | \$337,500          |
| Local Mortgage Recording Tax Exemption | \$112,500          | \$112,500          |
| State Mortgage Recording Tax Exemption | \$225,000          | \$225,000          |
| <b>Total Costs</b>                     | <b>\$1,125,000</b> | <b>\$1,125,000</b> |

## State and Local Benefits

|   | Nominal Value       | Discounted Value*   |
|---|---------------------|---------------------|
| <b>Local Benefits</b>                       | <b>\$13,481,678</b> | <b>\$13,435,297</b> |
| To Private Individuals                      | \$13,368,161        | \$13,322,299        |
| Temporary Payroll                           | \$12,042,075        | \$12,042,075        |
| Ongoing Payroll                             | \$1,326,086         | \$1,280,224         |
| Other Payments to Private Individuals       | \$0                 | \$0                 |
| To the Public                               | \$113,517           | \$112,998           |
| Increase in Property Tax Revenue            | \$0                 | \$0                 |
| Temporary Jobs - Sales Tax Revenue          | \$100,100           | \$100,100           |
| Ongoing Jobs - Sales Tax Revenue            | \$13,417            | \$12,898            |
| Other Local Municipal Revenue               | \$0                 | \$0                 |
| <b>State Benefits</b>                       | <b>\$697,161</b>    | <b>\$694,660</b>    |
| To the Public                               | \$697,161           | \$694,660           |
| Temporary Income Tax Revenue                | \$541,893           | \$541,893           |
| Ongoing Income Tax Revenue                  | \$59,674            | \$57,610            |
| Temporary Jobs - Sales Tax Revenue          | \$84,295            | \$84,295            |
| Ongoing Jobs - Sales Tax Revenue            | \$11,299            | \$10,862            |
| <b>Total Benefits to State &amp; Region</b> | <b>\$14,178,839</b> | <b>\$14,129,956</b> |

## Benefit to Cost Ratio

|                    | Benefit*            | Cost*              | Ratio       |
|--------------------|---------------------|--------------------|-------------|
| Local              | \$13,435,297        | \$540,000          | 25:1        |
| State              | \$694,660           | \$585,000          | 1:1         |
| <b>Grand Total</b> | <b>\$14,129,956</b> | <b>\$1,125,000</b> | <b>13:1</b> |

\*Discounted at 2%

### Additional Comments from IDA

The Town negotiated a PILOT agreement directly with the developer that included a community benefits agreement.

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

**SEQRA RESOLUTION  
SUTTON PLACE PRESERVATION LIMITED PARTNERSHIP PROJECT**

A regular meeting of the members of the Town of Amherst Industrial Development Agency (the “Issuer”) was convened in public session at the offices of the Issuer located at 4287 Main Street in the Town of Amherst, Erie County, New York on April 22, 2022 at 8:30 o’clock, a.m., local time.

The meeting was called to order by the (Vice) Chairperson of the Issuer and, upon roll being called, the following members of the Issuer were:

PRESENT:

|                       |                  |
|-----------------------|------------------|
| Carlton N. Brock, Jr. | Chairperson      |
| William W. Tuyn       | Vice Chairperson |
| Anthony Agostino      | Treasurer        |
| Hon. Timothy Drury    | Secretary        |
| Hadar Borden          | Member           |
| Frank L. LoTempio III | Member           |
| Nicole Gavigan        | Member           |

ABSENT:

ISSUER STAFF PRESENT INCLUDED THE FOLLOWING:

|                            |                         |
|----------------------------|-------------------------|
| David S. Mingoia           | Chief Executive Officer |
| Kevin J. Zanner, Esq.      | Issuer Counsel          |
| Terrence M. Gilbride, Esq. | Bond Counsel            |

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

Resolution No. \_\_

RESOLUTION DETERMINING THAT ACTION TO UNDERTAKE A PROJECT FOR THE BENEFIT OF SUTTON PLACE PRESERVATION LIMITED PARTNERSHIP IS A “TYPE II ACTION” AND NO FURTHER ACTION IS REQUIRED UNDER SEQRA WITH RESPECT THERETO.

WHEREAS, Town of Amherst Development Agency (the “Issuer”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 579 of the 1973 Laws of New York, constituting Section 914-a of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Issuer is authorized and empowered by the provisions of the Enabling Act to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities, and lessen the burdens of government and act in the public interest, and in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, the Enabling Act declares that the Issuer will be performing essential governmental functions; and

WHEREAS, to accomplish its stated purposes, the Issuer is authorized and empowered under the Enabling Act to acquire real and personal property; to borrow money and issue negotiable bonds, notes and other obligations therefore; to lease, sell, mortgage or otherwise dispose of or encumber any of its real or personal property upon such terms as it may determine; and otherwise to carry out its corporate purposes in the territory in which the operations of the Issuer are principally to be conducted; and

WHEREAS, on January 4, 2022, Sutton Place Preservation Limited Partnership, a New York limited partnership, on behalf of itself and/or an entity or entities formed or to be formed on behalf of the foregoing (the "Institution"), submitted an application (the "Application") to the Issuer, a copy of which Application is on file at the office of the Issuer, which Application requested that the Issuer consider undertaking a project (the "Project") for the benefit of the Institution, said Project consisting of the following: (A) (1) the acquisition of a leasehold interest in a portion of approximately 21.77 acres of land located at 113 Travers Boulevard in the Town of Amherst, New York (the "Land"), (2) the acquisition, reconstruction and renovation of twenty-four (24) existing two-story facilities consisting of 246 apartment units and containing approximately 213,100 square feet in the aggregate known as the Sutton Place Apartments located on the Land (the "Facility") and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to hereinafter as the "Project Facility"), all of the foregoing to constitute a low-income housing facility to be operated by the Institution and leased to residential tenants, and any other directly and indirectly related activities; (B) the financing of all or a portion of the costs of the foregoing by the issuance of taxable and/or tax-exempt revenue bonds of the Issuer in one or more issues or series in an aggregate principal amount sufficient to pay the cost of undertaking the Project, together with necessary incidental costs in connection therewith, in an aggregate principal amount not to exceed \$50,000,000 (the "Obligations"); (C) the payment of a portion of the costs incidental to the issuance of the Obligations, including issuance costs of the Obligations and any reserve funds as may be necessary to secure the Obligations; (D) the granting of certain other "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemption from certain sales taxes, deed transfer taxes and mortgage recording taxes (collectively with the Obligations, the "Financial Assistance"); and (E) the lease (with an obligation to purchase) or sale of the Project Facility to Sutton Place Housing Development Fund Company, Inc., a New York not-for-profit corporation (the "HDFC"), as nominee for and on behalf of the Institution or such other person as may be designated by the Institution and agreed upon by the Issuer; and

WHEREAS, the Chief Executive Officer of the Issuer (A) caused notice of the public hearing of the Issuer (the "Public Hearing") pursuant to Section 859-a(2) of the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), to hear all persons interested in the Project and the financial assistance being contemplated by the Issuer with respect to the Project, to be published on March 23, 2022 in the Amherst Bee, a newspaper of general circulation available to the residents of the Town of Amherst, Erie County, New York, (B) caused notice of the Public Hearing to be mailed on March 18, 2022 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is (or will be) located, (C) conducted the Public Hearing remotely on April 7, 2022 at 8:30 o'clock a.m., local time via Zoom as part of a meeting of the Executive Committee of the Issuer and (D) prepared a report of the Public Hearing (the "Public Hearing Report") which fairly summarized the views presented at such Public Hearing and caused copies of said Public Hearing Report

to be made available to the members of the Issuer and to the Town Board of the Town of Amherst, New York (the “Town Board”); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), the Issuer must satisfy the requirements contained in SEQRA and the Regulations prior to making a final determination whether to undertake the Project; and

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

WHEREAS, the Project appears to constitute a “Type II action” (as said quoted term is defined in the Regulations), and therefore it appears that no further determination or procedure under SEQRA is required with respect to the Project;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Issuer has received copies of, and has reviewed, the Application and, based upon said Application and the representations made by the Institution to the Issuer at this meeting, and based further upon the Issuer’s knowledge of the area surrounding the Project Facility and such further investigation of the Project and its environmental effects as the Issuer has deemed appropriate, the Issuer makes the following findings and determinations with respect to the Project: The Project consists of the rehabilitation or reconstruction of a structure or facility, in kind, on the same site.

Section 2. Based upon the foregoing, the Issuer makes the following findings and determinations with respect to the Project:

(A) Pursuant to Sections 617.5(c)(2) of the Regulations, the Project is a “Type II action” (as said quoted term is defined in the Regulations); and

(B) Therefore, the Issuer hereby determines that no environmental impact statement or any other determination or procedure is required under the Regulations.

Section 3. The Chairperson of the Issuer is hereby directed to file a copy of this resolution with respect to the Project in the office of the Issuer.

Section 4. This resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

|                       |        |       |
|-----------------------|--------|-------|
| Carlton N. Brock, Jr. | VOTING | _____ |
| William W. Tuyn       | VOTING | _____ |
| Anthony Agostino      | VOTING | _____ |
| Hon. Timothy Drury    | VOTING | _____ |
| Hadar Borden          | VOTING | _____ |
| Frank LoTempio III    | VOTING | _____ |
| Nicole Gavigan        | VOTING | _____ |

The foregoing resolution was thereupon declared duly adopted.

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STATE OF NEW YORK                    )  
  ) SS:  
COUNTY OF ERIE                     )

I, the undersigned Assistant Secretary of Town of Amherst Industrial Development Agency (the “Issuer”), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Issuer, including the resolution contained therein, held on April 22, 2022 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Issuer had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Issuer present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Issuer this \_\_\_ day of April, 2022.

\_\_\_\_\_  
Assistant Secretary

(SEAL)

**BOND RESOLUTION**

**SUTTON PLACE PRESERVATION LIMITED PARTNERSHIP PROJECT**

A regular meeting of the members of the Town of Amherst Industrial Development Agency (the “Issuer”) was convened in public session at the offices of the Issuer located at 4287 Main Street in the Town of Amherst, Erie County, New York on April 22, 2022 at 8:30 o’clock, a.m., local time.

The meeting was called to order by the (Vice) Chairperson of the Issuer and, upon roll being called, the following members of the Issuer were:

PRESENT:

|                       |                  |
|-----------------------|------------------|
| Carlton N. Brock, Jr. | Chairperson      |
| William W. Tuyn       | Vice Chairperson |
| Anthony Agostino      | Treasurer        |
| Hon. Timothy Drury    | Secretary        |
| Hadar Borden          | Member           |
| Frank LoTempio III    | Member           |
| Nicole Gavigan        | Member           |

ABSENT:

ISSUER STAFF PRESENT INCLUDED THE FOLLOWING:

|                            |                         |
|----------------------------|-------------------------|
| David S. Mingoia           | Chief Executive Officer |
| Kevin J. Zanner, Esq.      | Issuer Counsel          |
| Terrence M. Gilbride, Esq. | Bond Counsel            |

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

Resolution No. \_\_\_\_

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE BY TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY OF ITS REVENUE BONDS (SUTTON PLACE PRESERVATION LIMITED PARTNERSHIP PROJECT) IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$50,000,000 AND THE EXECUTION OF RELATED DOCUMENTS.

WHEREAS, Town of Amherst Industrial Development Agency (the “Issuer”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 579 of the 1973 Laws of New York, constituting Section 914-a of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and



WHEREAS, the Issuer is authorized and empowered by the provisions of the Enabling Act to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities, and lessen the burdens of government and act in the public interest, and in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, the Enabling Act declares that the Issuer will be performing essential governmental functions; and

WHEREAS, to accomplish its stated purposes, the Issuer is authorized and empowered under the Enabling Act to issue its revenue bonds to finance the cost of the acquisition, construction and installation of one or more “projects” (as defined in the Enabling Act), to acquire, construct and install said projects or to cause said projects to be acquired, construction and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on January 4, 2022, Sutton Place Preservation Limited Partnership, a New York limited partnership, on behalf of itself and/or an entity or entities formed or to be formed on behalf of the foregoing (the “Institution”) submitted an application (the “Application”) to the Issuer, a copy of which Application is on file at the office of the Issuer, which Application requested that the Issuer consider undertaking a project (the “Project”) for the benefit of the Institution, said Project consisting of the following: (A) (1) the acquisition of a leasehold interest in a portion of approximately 21.77 acres of land located at 113 Travers Boulevard in the Town of Amherst, New York (the “Land”), (2) the acquisition, reconstruction and renovation of twenty-four (24) existing two-story facilities consisting of 246 apartment units and containing approximately 213,100 square feet in the aggregate known as the Sutton Place Apartments located on the Land (the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (the “Equipment”) (the Land, the Facility and the Equipment being collectively referred to hereinafter as the “Project Facility”), all of the foregoing to constitute a low-income housing facility to be operated by the Institution and leased to residential tenants, and any other directly and indirectly related activities; (B) the financing of all or a portion of the costs of the foregoing by the issuance of taxable and/or tax-exempt revenue bonds of the Issuer in one or more issues or series in an aggregate principal amount sufficient to pay the cost of undertaking the Project, together with necessary incidental costs in connection therewith, in an amount then estimated to be approximately \$45,000,000 and in any event not to exceed \$50,000,000 (the “Obligations”); (C) the payment of a portion of the costs incidental to the issuance of the Obligations, including issuance costs of the Obligations and any reserve funds as may be necessary to secure the Obligations; (D) the granting of certain other “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemption from certain sales taxes, deed transfer taxes and mortgage recording taxes (collectively with the Obligations, the “Financial Assistance”); and (E) the lease (with an obligation to purchase) or sale of the Project Facility to Sutton Place Housing Development Fund Company, Inc., a New York not-for-profit corporation (the “HDFC”), as nominee for and on behalf of the Institution or such other person as may be designated by the Institution and agreed upon by the Issuer; and

WHEREAS, the Chief Executive Officer of the Issuer (A) caused notice of the public hearing of the Issuer (the “Public Hearing”) pursuant to Section 859-a(2) of the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), to hear all persons interested in the Project and the financial assistance being contemplated by the Issuer with respect to the Project, to be published on March 23, 2022 in the Amherst Bee, a newspaper of general circulation available to the residents of the Town of Amherst, Erie County, New York, (B) caused notice of the Public Hearing to be mailed on March 18, 2022 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is (or will be) located, (C) conducted the Public Hearing remotely on April 7, 2022 at 8:30 o’clock a.m., local time via Zoom as part of a meeting of the Executive Committee of the Issuer and (D) prepared a report of the Public Hearing (the “Public Hearing Report”) which fairly summarized the views

presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Issuer and to the Town Board (the “Town Board”) of the Town of Amherst, New York (the “Town”); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Issuer on April 22, 2022 (the “SEQR Resolution”), the Issuer determined (A) that pursuant to Sections 617.5(c)(2) of the Regulations, the Project is a “Type II action” (as said quoted term is defined in the Regulations), and (B) that, therefore, no environmental impact statement or any other determination or procedure was required under the Regulations; and

WHEREAS, the Institution reasonably expects that it will (i) pay or incur certain capital expenditures in connection with the Project prior to the issuance of the Initial Bonds (as defined herein), (ii) use funds from sources other than proceeds of the Initial Bonds which are or will be available on a short-term basis to pay for such capital expenditures, and (iii) reimburse itself for the use of such funds with proceeds of the Initial Bonds; and

WHEREAS, it is contemplated that the Initial Bonds will be issued as multifamily housing revenue bonds and, as such, pursuant to Section 142(d) of the Code, at least ninety-five percent (95%) of the net proceeds of the Initial Bonds must be used to provide a “qualified residential rental project,” as defined in Section 142 of the Code to include a project for residential rental property where, for a period of at least as long as such bonds remain outstanding, at least twenty percent (20%) of such units are occupied by individuals whose income is fifty percent (50%) or less of Area Median Gross Income as determined by the United States Department of Housing and Urban Development (“HUD”) or at least forty percent (40%) of such units are occupied by individuals whose income is sixty percent (60%) or less of Area Median Gross Income as determined by HUD; and

WHEREAS, the Issuer now desires to authorize issuance of its Revenue Bonds (Sutton Place Preservation Limited Partnership Project), Series 2022 in an aggregate principal amount not to exceed \$50,000,000 (the “Initial Bonds”) for the purpose of financing a portion of the costs of the Project under this resolution, a trust indenture (the “Indenture”) by and between the Issuer and a financial institution acting as trustee for the holders of the Initial Bonds (the “Trustee”); and

WHEREAS, prior to or simultaneously with the issuance of the Initial Bonds, (A) the Institution, the HDFC and the Issuer will execute and deliver a lease agreement (the “Underlying Lease”), pursuant to which the Institution and the HDFC will agree to lease the Land to the Issuer, (B) the Institution will execute and deliver a bill of sale (the “Bill of Sale”) from the Institution to the Issuer, pursuant to which the Institution will convey to the Issuer the Institution’s interest in the portion of the Project Facility constituting fixtures and other personal property, (C) the Issuer will execute and deliver an installment sale agreement, as modified by a certain HUD addendum (the “Installment Sale Agreement”) by and between the Issuer, as seller, and the Institution and the HDFC, as purchaser, pursuant to the which (1) the Institution will agree (a) to cause the Project to be undertaken and completed, (b) as agent of the Issuer, to undertake and complete the Project, (c) to purchase the Project Facility from the Issuer, and (d) to make certain installment purchase payments (or cause such payments to be made) to or upon the order of the Issuer as the purchase price for the Project Facility, which installment purchase payments shall include amounts equal to the debt service payments due on the Initial Bonds, and (2) the Issuer will agree to (a) undertake the Project, (b) appoint the Institution as agent of the Issuer to undertake and complete the Project, and (c) sell the Project Facility to the Institution and (D) the Institution and the Issuer will execute and deliver (1) a recapture agreement (the

“Section 875 GML Recapture Agreement”) by and between the Institution and the Issuer, required by the Act, regarding the recovery or recapture of certain sales and use taxes and (2) a certain uniform agency project agreement (the “Uniform Agency Project Agreement”) relating to the granting of the Financial Assistance by the Issuer to the Institution; and

WHEREAS, as security for the Initial Bonds, the Issuer will execute and deliver to the Trustee a pledge and assignment (the “Pledge and Assignment”) and acknowledged by the Institution and the HDFC, which Pledge and Assignment will assign to the Trustee certain of the Issuer’s rights under the Installment Sale Agreement; and

WHEREAS, the Initial Bonds will be initially purchased by KeyBanc Capital Markets Inc., acting as underwriter for the Initial Bonds (the “Underwriter”), pursuant to a bond purchase agreement (the “Bond Purchase Agreement”) by and among the Underwriter, the Issuer and the Institution; and

WHEREAS, simultaneous with the issuance of the Initial Bonds, the Institution will assume an existing mortgage loan held by Dwight Capital LLC, a Delaware limited liability company (the “Lender”), in the original principal amount of \$20,000,000.00, insured by the Federal Housing Administration, acting on behalf of the Secretary of the U.S. Department of Housing and Urban Development under Section 207 pursuant to Section 223(f) of the National Housing Act, as amended, (the “223(f) Loan”). The 223(f) Loan is secured by, among other things, a first mortgage encumbering the fee and leasehold interests in the Project Facility executed by the Institution, HDFC and joined by the Issuer (the “223(f) Security Instrument”); and

WHEREAS, the Lender has also agreed to make a supplemental loan to the Institution, in an amount to be determined, to be insured by the Federal Housing Administration, acting on behalf of the Secretary of the U.S. Department of Housing and Urban Development under Section 207 pursuant to Section 241(a) of the National Housing Act, as amended, (the “241(a) Loan”, together, with the 223(f) Loan, collectively, the “HUD Loan”), the proceeds of which will be used to secure the Initial Bonds under the Indenture. The 241(a) Loan will be secured by, among other things, a second mortgage encumbering the fee and leasehold interests in the Project Facility executed by the Institution, HDFC and joined by the Issuer (the “241(a) Security Instrument”); and

WHEREAS, in addition to the 241(a) Loan proceeds to be funded by Lender, the Initial Bonds will be secured by cash collateral including (a) an equity bridge loan from Key Community Development Corporation or its affiliates, and (b) a purchase money loan from Sutton Place of Amherst LLC, a New York limited liability company; and

WHEREAS, the Institution and the HDFC will enter into a certain Tax Regulatory Agreement, dated the date of delivery of the Initial Bonds (the “Tax Regulatory Agreement”), in which the Institution will make certain representations and covenants, establish certain conditions and limitations and create certain expectations, relating to compliance with the requirements imposed by the Code and the Issuer will execute a completed Internal Revenue Service (“IRS”) Form 8038 (Information Return for Private Activity Bonds) relating to the Initial Bonds (“Form 8038”), pursuant to Section 149(e) of the Code and will cause the Form 8038 to be filed with the IRS; and

WHEREAS, it is further contemplated that the Issuer will (i) designate the Institution as its agent for the purpose of undertaking the Project pursuant to the Installment Sale Agreement, (ii) negotiate and enter into the Underlying Lease and the Installment Sale Agreement, pursuant to which the Issuer will retain a leasehold interest in the Project Facility; and (iii) provide (a) an exemption benefit from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition,

construction, reconstruction and/or renovation, rehabilitation or equipping of the Facility and (b) a mortgage recording tax exemption benefit for the financing related to the Project; and

WHEREAS, approval of the Town Board, being the highest elected official of Town, and an allocation of sufficient Volume Cap (as defined herein) are required as conditions to the issuance of the Initial Bonds pursuant to the Code; and

WHEREAS, pursuant to Section 146 of the Code, in order for interest on the Initial Bonds to be excludable from gross income of the holder thereof the Issuer must allocate the private activity volume cap (“Volume Cap”) to the Initial Bonds in an amount equal the face amount of the Initial Bonds; and

WHEREAS, pursuant to a (i) a letter dated January 10, 2022 and (ii) a letter dated February 18, 2022, each from the New York State Department of Economic Development, the Issuer received an allocation of 2022 Volume Cap from the State in an amount equal to the maximum amount of Initial Bonds expected to be issued; and

WHEREAS, the Issuer has given due consideration to the Application and the representations by the Institution that undertaking the Project and issuing the Initial Bonds (a) will be an inducement to the Institution to acquire, renovate, reconstruct, equip and operate the Project Facility in the Town; and (b) will not result in the removal of any commercial, industrial, fabricating or manufacturing plant or facility of the Institution or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Institution or any other proposed occupant of the Project Facility located in the State; and

WHEREAS, the Issuer has considered the policy, purposes and requirements of the Enabling Act in making its determinations with respect to taking official action regarding the Project; and

WHEREAS, as required by Section 2824(8) of the New York Public Authorities Law, the Issuer’s Finance and Audit Committee, on April 22, 2022, reviewed the proposal for the issuance of debt by the Issuer related to the Project, recommended that the Issuer undertake the Project and proceed with the issuance thereof, and determined that it is in the best interest of economic development in the Town for the Issuer to issue the Initial Bonds.

NOW, THEREFORE, be it resolved by the Issuer as follows:

Section 1. It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration.

Section 2. It is among the purposes of the Issuer to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

Section 3. The Institution has presented an Application in a form acceptable to the Issuer. Based upon representations made by the Institution to the Issuer and any other correspondence submitted by the Institution to the Issuer, public hearing comments, if any, the Issuer’s review of and recommendations related to the Project, Issuer board member review, discussion, and consideration of

same, and such other information and investigation as the Issuer has deemed appropriate, the Issuer makes the following findings and determinations and hereby authorizes the undertaking of the Project and the provision of the Financial Assistance to the Institution as described herein:

- (a) The Project constitutes a “project” within the meaning of the Act.
- (b) The issuance of the Initial Bonds and the grant of the other Financial Assistance will be an inducement to the Institution to acquire, renovate, construct, equip and operate the Project Facility in the Town, thereby advancing job opportunities, general prosperity and economic welfare of the people of the State and the Town in furtherance of the Act.
- (c) It is desirable and in the public interest for the Issuer to appoint the Institution as its agent for purposes of acquiring, reconstructing and/or renovating and equipping the Project.
- (d) The Issuer has the authority to take the actions contemplated herein under the Act.
- (e) (1) The Project does not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, and accordingly the Project is not prohibited by the provisions of Section 862(2)(a) of the Act, and (2) accordingly the Issuer is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act.
- (f) The Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York.
- (g) The Issuer has prepared a written cost-benefit analysis identifying the extent to which the Project will create or retain permanent, private sector jobs, the estimated value of any tax exemption to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the Project in a timely fashion, and the extent to which the Project will provide additional sources of revenue for municipalities and school districts, and any other public benefits that might occur as a result of the Project.
- (h) It is desirable and in the public interest for the Issuer to issue the Initial Bonds to finance the costs of the Project, together with certain related costs, reserves and other amounts, in an aggregate principal amount not to exceed \$50,000,000.
- (i) The Issuer reasonably expects to reimburse the Institution for expenses made for the Project from the Initial Bonds.
- (j) The Institution has provided a written statement confirming that the Project as of the date of the Application is in substantial compliance with all provisions the Act.
- (k) The issuance of the Initial Bonds by the Issuer with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of the Town and the State and improve their standard of living, and thereby serve the public purposes of the Act.

(l) The Project qualifies for the Financial Assistance as it meets and is consistent with the Issuer's evaluative criteria for projects, said criteria established by the Issuer as required under General Municipal Law Section 859-a(5).

Section 4. The Chairperson, Vice Chairperson or Chief Executive Officer of the Issuer are hereby appointed as authorized officers of the Issuer (the "Authorized Officer") for purposes of the Project, including (a) negotiating and approving the form and substance of the various documents and (b) executing and delivering such documents; and, where appropriate, the Secretary (or Assistant Secretary) of the Issuer is hereby authorized to affix the seal of the Issuer thereto and to attest the same, all in the forms thereof as the Chairperson, Vice Chairperson or Chief Executive Officer of the Issuer, as Authorized Officer, shall approve, the execution thereof by the Chairperson, Vice Chairperson or Chief Executive Officer to constitute conclusive evidence of such approval.

Section 5. The Issuer hereby authorizes the Authorized Officer to approve the Underlying Lease, the Indenture, the Installment Sale Agreement, the Pledge and Assignment, the Section 875 GML Recapture Agreement, the Uniform Agency Project Agreement, the Bond Purchase Agreement, the 223(f) Security Instrument and the 241(a) Security Instrument (collectively, the "Financing Documents") in forms consistent with the intent and substance of this resolution, such approval to be conclusively evidenced by the execution of such documents by the Authorized Officer in accordance with Section 7 hereof.

Section 6. The Issuer hereby determines to execute the Form 8038 in such form as is hereafter approved by the Authorized Officer in accordance with Section 7 hereof, and to file the same with the IRS.

Section 7. (a) The Authorized Officer is hereby authorized, on behalf of the Issuer, to execute and deliver the Financing Documents, and the Secretary of the Issuer is hereby authorized to affix the seal of the Issuer thereto where appropriate and to attest the same, all in substantially the forms thereof presented to this meeting with such changes (including without limitation any change in the dated date of such documents), variations, omissions and insertions as the Authorized Officer shall approve. The execution of the Financing Documents and the Form 8038 by the Authorized Officer shall constitute conclusive evidence of such approval.

(b) The Authorized Officer is hereby further authorized and directed, on behalf of the Issuer, to approve, without further action of the Issuer, any variations in the terms of the Initial Bonds from those set forth in the form of the Initial Bonds, respectively, submitted to this meeting, including, without limitation, the aggregate principal amounts of the Initial Bonds (not in excess of the maximum aggregate principal amount authorized in Section 3(h) of this resolution), the interest rates, maturities, redemption premiums, optional redemption dates and sinking fund redemption dates and amounts.

(c) The Authorized Officer is further hereby authorized, on behalf of the Issuer, to designate any additional authorized representatives of the Issuer.

Section 8. The officers, employees, and agents of the Issuer are hereby authorized and directed for and in the name and on behalf of the Issuer to do all acts and things required or provided by the provisions of the Financing Documents, and to execute and deliver all such additional certificates, instruments and documents, including the Financing Documents and the Form 8038, and to do all such further acts as may be necessary or in the opinion of the officer, employee, or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Issuer with all of the terms, covenants, and provisions of the Financing Documents binding upon the Issuer.

Section 9. Subject to the conditions set forth herein and the Institution executing the Uniform Agency Project Agreement and the delivery to the Issuer of a binder, certificate or other evidence of insurance for the Project satisfactory to the Issuer, the Issuer hereby authorizes the Institution to proceed with the acquisition, renovation, construction, upgrading and equipping of the Project and hereby appoints the Institution as the true and lawful agent of the Issuer: (i) to acquire, renovate, reconstruct, upgrade and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Issuer with the authority to delegate such Issuer, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Institution chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Issuer could do if acting in its own behalf. With respect to the foregoing, and based upon the representations and warranties made by the Institution in its application for Financial Assistance, the Issuer hereby authorizes and approves the Institution, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax, which may result in New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) not to exceed \$787,500 and a New York State mortgage recording tax exemption benefits (the “mortgage recording tax exemption benefits”) not to exceed \$117,750, respectively.

The Issuer may consider any requests by the Institution for increases to the amount of sales and use tax exemption benefits authorized by the Issuer upon being provided with appropriate documentation detailing the additional purchases of property or services. Pursuant to Section 875(3) of the Act, and per the policies of the Issuer, the Issuer may recover or recapture from the Institution, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any New York State and local sales and use tax exemption benefits, and/or mortgage recording tax exemption benefits taken or purported to be taken by the Institution, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Institution, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the State and local sales and use tax exemption benefits; (ii) the State and local sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Institution, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the State and local sales and use tax exemption benefits are for property or services not authorized by the Issuer as part of the Project; (iv) the Institution has made a material false statement on its application for Financial Assistance; and/or (v) the State and local sales and use tax exemption benefits and/or mortgage recording tax exemption benefits are taken in cases where the Institution, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with the Institution commitments as identified in the Uniform Agency Project Agreement, being a material term or condition to use property or services in the manner approved by the Issuer in connection with the Project. As a condition precedent of receiving Financial Assistance, the Institution, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) cooperate with the Issuer in its efforts to recover or recapture any Financial Assistance, and (ii) promptly pay over any such amounts to the Issuer that the Issuer demands. As an additional condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Issuer in connection with the Project, the Institution covenants and agrees and understands that it must, subject to potential modification, termination and/or recapture of Financial Assistance for failure to meet and maintain its commitments, submit, on an annual basis or as otherwise indicated below through the conclusion of the later of two (2) years following either (i) the construction completion date, or (ii) the termination of the Uniform Agency Project Agreement, a certification, as so required by the Issuer confirming compliance with the Institution commitments identified in the Uniform Agency Project Agreement.

Section 10. Subject to the terms of this resolution, the Authorized Officer is hereby authorized, on behalf of the Issuer, to negotiate, execute and deliver (a) the Financing Documents and (b) related documents; provided, however, that the installment purchase payments under the Installment Sale Agreement include payments of all costs incurred by the Issuer arising out of or related to the Project and indemnification of the Issuer by the Institution for actions taken by the Institution and/or claims arising out of or related to the Project.

Section 11. Subject to the conditions set forth herein and in the last sentence of this Section 11, the Issuer will (a) issue the Initial Bonds in such principal amount and with such maturities, interest rate or rates, redemption terms and other terms and provisions as may be determined by the Issuer; (b) acquire a leasehold interest in the Project Facility and acquire, renovate, reconstruct, equip and install the Project Facility; (c) lease with an obligation to purchase or sell the Project Facility to the Institution and the HDFC or its designee pursuant to an agreement to be entered into between the Issuer and the Institution and the HDFC whereby the Institution will be obligated, among other things, to make payments to the Issuer in amounts and at a time so that such payments will be adequate to pay the principal of, premium, if any, and interest on the Initial Bonds; (d) secure the Initial Bonds in such manner as the Issuer, the Institution and the purchaser(s) of the Initial Bonds mutually deem appropriate and (e) grant the other Financial Assistance. The Issuance of the Initial Bonds and the grant of the other Financial Assistance contemplated by this resolution are subject to (i) obtaining all necessary governmental approvals; (ii) agreement by the Issuer, the Institution and the purchaser(s) of the Initial Bonds upon mutually satisfactory terms for the Initial Bonds (and any such additional bonds) and for the sale and delivery thereof; (iii) the condition that there are no changes in the Code and State law, including regulations thereunder, which prohibit or limit the Issuer from fulfilling its obligations hereunder; and (iv) payment by the Institution of the Issuer's administrative fee, the State Bond Issuance Charge and all costs and expenses of the Issuer with respect to the Initial Bonds transaction and the granting of the other Financial Assistance.

Section 12. Subject to the conditions contained within this resolution and the acceptance by the Institution of this resolution, the Institution is appointed the true and lawful agent of the Issuer (1) to acquire, renovate, reconstruct equip and install the Project Facility, and (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent of the Issuer, and in general to do all things which may be requisite or proper for acquiring, renovating, reconstructing, equipping and installing the Project Facility, all with the same powers and same validity as if the Issuer were acting on its own behalf.

Section 13 The law firm of Hodgson Russ LLP is hereby appointed bond counsel to the Issuer in relation to the proposed issuance of the Initial Bonds contemplated by the Application.

Section 14. The Issuer hereby declares that this resolution shall represent its declaration of "official intention" in accordance with Treasury Regulation Section 1.150-2. The Issuer reasonably expects to reimburse the Institution for its expenditures incurred in connection with the Project Facility with the proceeds of the Initial Bonds.

Section 15. Bond counsel for the Issuer are hereby authorized to work with the Institution, the purchaser(s) of the Initial Bonds and others to prepare, for submission to the Issuer, all documents necessary to effect the authorization, issuance, sale and delivery of the Initial Bonds.

Section 16. The Authorized Officer is hereby authorized and directed to distribute copies of this resolution to the Institution and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.



Section 17. No covenant, stipulation, obligation or agreement contained in this resolution shall be deemed to be the covenant, stipulation, obligation or agreement of any member, director, agent or employee of the Issuer in his or her individual capacity and neither the member or directors of the Issuer nor any officer executing the Initial Bonds shall be liable personally on the Initial Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. Neither the member, directors or officers of the Issuer, nor any person executing the Initial Bonds or other documents referred to above on behalf of the Issuer, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution, issuance or delivery thereof. The Initial Bonds and the interest therein shall not be a debt of the State or the Town or any political subdivision thereof (other than the Issuer), and none of the State, the Town nor any political subdivision thereof (other than the Issuer) shall be liable thereon. The Initial Bonds shall be issued solely for the purposes set forth in this resolution. The Initial Bonds and the interest thereon shall constitute a special, limited obligation of the Issuer payable solely from the revenues derived or to be derived from the lease or sale of the Project Facility and from the enforcement of the security pledged to the payment of the Initial Bonds.

Section 18. Any expense incurred by the Issuer with respect to the Project and the financing thereof shall be reimbursed out of the proceeds of the Initial Bonds or another source in the transaction or, in the event such proceeds are insufficient after payment of other costs of the Project, or the Initial Bonds are not issued by the Issuer for any reason whatsoever, shall be paid by the Institution. By acceptance hereof, the Institution hereby agrees to pay such expenses and further agrees to indemnify the Issuer, its members, employees and agents and hold the Issuer 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 Issuer with respect to the Project and the financing thereof.

Section 19. The provision by the Issuer of Financial Assistance with respect to the Project as described herein is subject to the payment of the Issuer's administrative fee calculated in accordance with the Issuer's terms.

Section 20. This resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

|                       |        |       |
|-----------------------|--------|-------|
| Carlton N. Brock, Jr. | VOTING | _____ |
| William W. Tuyn       | VOTING | _____ |
| Anthony Agostino      | VOTING | _____ |
| Hon. Timothy Drury    | VOTING | _____ |
| Hadar Borden          | VOTING | _____ |
| Frank LoTempio III    | VOTING | _____ |
| Nicole Gavigan        | VOTING | _____ |

The foregoing resolution was thereupon declared duly adopted.

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STATE OF NEW YORK                    )  
  ) SS:  
COUNTY OF ERIE                     )

I, the undersigned Assistant Secretary of Town of Amherst Industrial Development Agency (the “Issuer”), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Issuer, including the resolution contained therein, held on April 22, 2022 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Issuer had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Issuer present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Issuer this \_\_ day of April, 2022.

\_\_\_\_\_  
Assistant Secretary

(SEAL)