

TOWN OF AMHERST DEVELOPMENT CORPORATION
Agenda – 171st Meeting
Friday, April 21, 2023 – 8:30 am

James J. Allen Boardroom
Corporation Offices, 4287 Main Street

1. Roll Call
2. Reading and Approval of Minutes
3. Committee Reports
 - I. Audit & Finance Committee
 - Modification to tax exempt bond issue
2013 Asbury Pointe, Inc.
 - Modification to tax exempt bond issue
2017 Beechwood Health Care Center, Inc.
4. New Business
 - I. Modification to tax exempt bond issue
2013 Asbury Pointe, Inc.
 - II. Modification to tax exempt bond issue
2017 Beechwood Health Care Center, Inc.
5. Adjournment

TOWN OF AMHERST DEVELOPMENT CORPORATION
Minutes of the 170TH Meeting
Friday, March 17, 2023 – 8:30 am
James J. Allen Boardroom
Agency Offices, 4287 Main Street

PRESENT: Carlton N. Brock, Jr.
William Tuyn
Anthony Agostino
Timothy Drury
Frank LoTempio, III
Jacqueline Berger, TOA Councilperson
David S. Mingoia, Executive Director
Kevin J. Zanner, Hurwitz & Fine PC

ABSENT: Hadar Borden
Nicole Gavigan

GUESTS : AIDA Staff
David Tytko, Uniland Development Co.

Chairman Carlton Brock 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 February 2023 meeting were approved as presented.

COMMITTEE REPORTS

Governance Committee – The Governance Committee met earlier in the month and recommended the approval of the 2022 Mission Statement and Measurement Report as presented. After a brief discussion, Frank LoTempio made a motion to approve the 2022 Mission Statement and Measurement Report. Anthony Agostino seconded the motion. Votes of aye were cast by Brock, Tuyn, Agostino, Drury and LoTempio. Motion to approve passed 5-0.

NEW BUSINESS

There was no New Business presented at this meeting.

8:35 am – Frank LoTempio made a motion to adjourn the meeting. Anthony Agostino seconded the motion. The motion to adjourn passed unanimously.

**APPROVING RESOLUTION
MODIFICATIONS RELATING TO THE ASBURY POINTE, INC. PROJECT**

A regular meeting of the Town of Amherst Development Corporation (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 21, 2023 at 8:30 o’clock, a.m., local time.

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

PRESENT:

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

ABSENT:

ALSO PRESENT:

David S. Mingoia	Chief Executive Officer
Kevin J. Zanner, Esq.	Issuer Counsel
Terrence M. Gilbride, Esq.	Bond Counsel
Christopher C. Canada, Esq.	Bond Counsel

The following resolution was offered by _____, seconded by _____, to wit:

RESOLUTION AUTHORIZING THE EXECUTION OF CERTAIN AMENDMENTS BY THE TOWN OF AMHERST DEVELOPMENT CORPORATION (THE “ISSUER”) TO (A) THE ISSUER’S SENIOR LIVING FACILITY REVENUE BONDS (ASBURY POINTE, INC. PROJECT), SERIES 2013A ISSUED BY THE ISSUER ON JULY 3, 2013 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$5,137,970.24 AND DEEMED REISSUED BY THE ISSUER ON OCTOBER 31, 2020 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$3,018,599.22 AND (B) THE EXECUTION OF RELATED DOCUMENTS.

WHEREAS, Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the “Enabling Act”) (A) authorizes any county, city, town or village to cause a not-for-profit local development corporation to be incorporated by public officers for, among other things, the public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest, (B) declares that in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, such corporations will be performing essential governmental functions, and (C) authorizes each such corporation to acquire real and personal property, to borrow

money and issue negotiable bonds, notes and other obligations therefore, and 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 carry out its corporate purposes in the territory in which the operations of such corporation are principally to be conducted; and

WHEREAS, pursuant to the provisions of the Enabling Act and Revenue Ruling 57-187 and Private Letter Ruling 200936012, the Town Board of the Town of Amherst, New York (the “Town Board”) adopted a resolution (the “Sponsor Resolution”) (A) authorizing the reincorporation of the Issuer under the Enabling Act and (B) appointing the initial members of the board of directors of Town of Amherst Development Corporation (the “Issuer”), who serve at the pleasure of the Town Board; and

WHEREAS, on February 3, 2010, a certificate of reincorporation was filed with the New York Secretary of State’s Office (the “Certificate of Reincorporation”) creating the Issuer pursuant to the Enabling Act as a public instrumentality of the Town of Amherst, New York; and

WHEREAS, on July 3, 2013, the Issuer issued its Senior Living Facility Refunding Revenue Bonds (Asbury Pointe, Inc. Project), Series 2013A in the aggregate principal amount of \$5,137,970.24 (the “Series 2013A Bond”) pursuant to a resolution adopted by the members of the board of directors of the Issuer on June 21, 2013 (the “Bond Resolution”), a certificate of determination dated July 3, 2013 (the “Certificate of Determination”) executed by an authorized officer of the Issuer and a bond purchase agreement dated as of July 1, 2013 (the “Initial Bond Purchase Agreement”) by and among the Issuer, Asbury Pointe, Inc., a New York not-for-profit corporation (the “Company”) and Manufacturers and Traders Trust Company, as initial holder of the Series 2013A Bond (the “Holder”); and

WHEREAS, proceeds of the Series 2013A Bond were used to finance a project (the “Project”) consisting of the following: (A) the refunding of the Town of Amherst Industrial Development Agency Revenue Bonds (Asbury Pointe, Inc. Project), Series 1999A in the original aggregate principal amount of \$8,130,000 (the “Series 1999A Bonds”) issued on March 3, 1999, which Prior Bonds were issued to finance a portion of the following project (the “Series 1999A Project”): (1) the acquisition of an approximately 5.3 acre parcel of then vacant land located at 50 Stahl Road in the Town of Amherst, Erie County, New York (the “Land”), (2) the construction thereon of an approximately 91,500 square foot, 3 story building to be used for approximately 66 independent living apartment units and community common areas for the elderly, approximately 23,000 square feet of basement and underground parking space, and the construction of other site improvements (the “Facility”), and (3) the acquisition and installation of elevators, appliances, furnishings and other related items (the “Equipment”) (the Land, the Facility and the Equipment being collectively referred to as the “Project Facility”); (B) the financing of all or a portion of the costs of the foregoing by the issuance of the Series 2013A Bond; (C) the paying of all or a portion of the costs incidental to the issuance of the Series 2013A Bond, including issuance costs of the Series 2013A Bond and any reserve funds as may be necessary to secure the Series 2013A Bond; (D) the granting of certain other financial assistance with respect to the foregoing, including potential exemptions from certain real estate transfer taxes and mortgage recording taxes (collectively with the Series 2013A Bond, the “Financial Assistance”); and (E) the making of a loan (the “Loan”) of the proceeds of the Series 2013A Bond to the Company or such other person as may be designated by the Company and agreed upon by the Issuer; and

WHEREAS, in August 2020 the Issuer received a request from the Holder (the “2020 Request”) (A) indicating that, in lieu of exercising its option to require the mandatory tender of the Series 2013A Bond on July 1, 2020 pursuant to the Initial Bond Purchase Agreement, and as a result of current market conditions, the Holder would agree to certain modifications to the Initial Bond Purchase Agreement relating to the calculation of interest payable on the Series 2013A Bond and (B) requesting that the Issuer agree to make certain amendments and modifications to the Initial Bond Purchase Agreement and the

related financing documents (collectively, the “2020 Financing Documents”) necessary or incidental to the 2020 Request (such amendments and modifications being collectively referred to hereinafter as the “2020 Modifications”); and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the board of directors of the Issuer on September 18, 2020, the Issuer authorized the execution of the 2020 Financing Documents in order to implement the 2020 Modifications including, but not limited to, any documents approved by counsel to the Issuer with respect thereto; and

WHEREAS, the Issuer, the Company and the Holder entered into a first omnibus amendment to bond purchase agreement and related financing documents dated as of October 1, 2020 (the “First Omnibus Amendment” and together with the Initial Bond Purchase Agreement, the “Supplemented Bond Purchase Agreement”) by and among the Issuer, the Company and the Holder for purposes of implementing the 2020 Modifications; and

WHEREAS, in connection with the implementation of the 2020 Modifications, the Series 2013A Bond was deemed reissued on October 31, 2020 for federal income tax purposes (as so reissued, the “Reissued Bond”); and

WHEREAS, the Issuer received a letter dated March 1, 2023 from the Company (the “Modification Request Letter”) (A) indicating the intention of the Company to replace the current interest rate index used to calculate interest on the Reissued Bond while bearing interest at the Tax-Exempt Rate (as defined in the Supplemented Bond Purchase Agreement) from LIBOR (as defined in the Supplemented Bond Purchase Agreement) to the Secured Overnight Financing Rate (SOFR) as more specifically described in the Modification Request Letter, with a copy of such Modification Request Letter being attached hereto as Exhibit A, and (B) requesting that the Issuer enter into modifications to the Reissued Bond and the related Financing Documents necessary to implement the Modification Request; and

WHEREAS, in connection therewith, the Issuer, the Company and the Holder desire to enter into (A) a second omnibus amendment to the Bond Purchase Agreement and related financing documents (the “Second Omnibus Amendment”) by and among the Issuer, the Company and the Holder and (B) certain other documents modifying the terms of the Financing Documents (the Second Omnibus Amendment and such other documents are hereinafter referred to as the “Modification Documents”) in order to implement the Proposed Action; and

WHEREAS, in connection with the Modification Request, the Issuer now desires to authorize the following actions (collectively, the “Action”): (1) to make the amendments to the Financing Documents and the Reissued Bond, (2) to make certain related amendments to the Financing Documents and the Reissued Bond, and (3) if (and only if) the Action results, in the opinion of Hodgson Russ, LLP, bond counsel to the Issuer (“Bond Counsel”), in a deemed reissuance of the Reissued Bond (such Reissued Bond being referred to hereinafter as a “Further Reissued Bond”) and a deemed purchase of such Reissued Bond by the Holder, pursuant to the provisions of the Internal Revenue Code of 1986, as amended (the “Code”), to delegate to the Chairperson, Vice Chairperson, Chief Executive Officer, Secretary or Assistant Secretary of the Issuer (each, an “Authorized Officer”) to determine the final details of such Further Reissued Bond, including but not limited to (a) the authorized principal amount of such Further Reissued Bond, (b) the purpose or purposes for which such Further Reissued Bond is being issued, (c) the date or dates, the maturity date or dates and principal amounts of such Further Reissued Bond, (d) the interest rate or rates of such Further Reissued Bond, (e) the denomination or denominations of and the manner of numbering and lettering such Further Reissued Bond, (f) the redemption price or purchase in lieu of redemption price or redemption prices or purchase in lieu of redemption prices, if any,

and the redemption or purchase in lieu of redemption terms, if any, for such Further Reissued Bond, (g) the form of such Further Reissued Bond and (h) any other provisions deemed advisable by the Authorized Officer not in conflict with the provisions of this resolution (collectively, the “Further Reissued Bond Details”); and

WHEREAS, in connection therewith, the Issuer, the Company and the Holder desire to enter into (A) a second omnibus amendment to bond purchase agreement and related financing documents (the “Second Omnibus Amendment”) by and among the Issuer, the Company and the Holder and (B) certain other documents modifying the terms of the Financing Documents (the Second Omnibus Amendment and such other documents are hereinafter referred to as the “Modification Documents”); and

WHEREAS, if (and only if) the Action results, in the opinion of Bond Counsel, in a deemed reissuance of the Reissued Bond and a deemed purchase of such Further Reissued Bond by the Holder pursuant to the provisions of the Code in order to demonstrate compliance with the provisions of the Code relating to the Action, (A) the Company will (1) execute a tax regulatory agreement dated the date of delivery of such Further Reissued Bond (the “Further Reissued Tax Regulatory Agreement”) concerning the requirements in Section 148 of the Code relating to such Further Reissued Bond, (B) the Issuer will (1) execute an arbitrage certificate dated the date of delivery of such Further Reissued Bond (the “Further Reissued Arbitrage Certificate”) relating to certain requirements set forth in Section 148 of the Code relating to such Further Reissued Bond, (2) execute a completed Internal Revenue Service Form 8038 (Information Return for Tax-Exempt Private Activity Bonds) relating to such Further Reissued Bond (the “Further Reissued Information Return”) pursuant to Section 149(e) of the Code, and (3) file the Further Reissued Information Return with the Internal Revenue Service and (C) the Holder will execute a letter relating to such Further Reissued Bond confirming the issue price of such Further Reissued Bond for purposes of Section 148 of the Code, and further confirming the difference between the interest rate payable on such Further Reissued Bond and the interest rate payable on such Further Reissued Bond immediately preceding the execution and delivery of the Modification Documents (the Reissued Bond, any Further Reissued Bond, the Modification Documents, the Further Reissued Tax Regulatory Agreement, the Further Reissued Arbitrage Certificate and the Further Reissued Information Return are hereinafter referred to as the “Bond Documents”); and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TOWN OF AMHERST DEVELOPMENT CORPORATION AS FOLLOWS:

Section 1. Pursuant to SEQRA, the Issuer hereby finds and determines that:

(A) Pursuant to Section 617.5(c)(26) of the Regulations, the Action (including but not limited to the execution and delivery of the Bond Documents) is a “Type II action” (as said quoted term is defined in the Regulations).

(B) Accordingly, the Issuer hereby determines that no environmental impact statement or any other determination or procedure is required under SEQRA with respect to the Action.

Section 2. The Issuer hereby finds and determines that:

(A) By virtue of the Enabling Act, the Issuer has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Enabling Act and to exercise all powers granted to it under the Enabling Act.

(B) It is desirable and in the public interest for the Issuer to enter into the Bond Documents.

Section 3. In consequence of the foregoing, the Issuer hereby determines to: (A) authorize the Action; (B) subject to approval of the form and substance of the Bond Documents by Bond Counsel and counsel to the Issuer, approve the form and substance of the Bond Documents; (C) subject to (i) compliance with the terms and conditions contained in the existing documents relating to the Reissued Bond and (ii) compliance with state and federal law applicable to the Action, authorize the execution and delivery of the Bond Documents.

Section 4. Subject to the satisfaction of the conditions described in Section 3 hereof, the Authorized Officer of the Issuer is hereby authorized, on behalf of the Issuer, to (a) determine, on behalf of the Issuer, the Bond Details relating to a Further Reissued Bond (if applicable) and (b) execute and deliver the Bond Documents and the other documents related thereto and, where appropriate, the Assistant Secretary of the Issuer is hereby authorized to affix the seal of the Issuer thereto and to attest the same, all in substantially the forms thereof approved by Bond Counsel and counsel to the Issuer, with such changes, variations, omissions and insertions as the Authorized Officer of the Issuer shall approve, the execution thereof by the Authorized Officer of the Issuer to constitute conclusive evidence of such approval.

Section 5. Subject to the execution and delivery of the other Bond Documents, the Issuer determines to execute and deliver the Reissued Bond or any Further Reissued Bond (as the case may be), provided that:

(A) The Reissued Bond or any Further Reissued Bond (as the case may be) authorized to be issued, executed, sold and delivered pursuant to this Section 5 shall (1) be issued, executed and delivered at such time as the Authorized Officer of the Issuer shall determine, and (2) bear interest at the rate or rates, be issued in such form, be subject to redemption prior to maturity and have such other terms and provisions and be issued in such manner and on such conditions as are set forth in the Reissued Bond or any Further Reissued Bond (as the case may be) and the other Bond Documents or as are hereinafter approved by the Authorized Officer of the Issuer in accordance with Section 4 hereof, which terms are specifically incorporated herein by reference with the same force and effect as if fully set forth in this resolution.

(B) Neither the directors nor officers of the Issuer, nor any person executing the Reissued Bond or any Further Reissued Bond (as the case may be) or any of the other Bond Documents 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 Reissued Bond or any Further Reissued Bond (as the case may be), and the interest thereon are not and shall never be a debt of the State of New York, the Town of Amherst, New York or any political subdivision thereof (other than the Issuer), and neither the State of New York, the Town of Amherst, New York nor any political subdivision thereof (other than the Issuer) shall be liable thereon.

(C) The Reissued Bond or any Further Reissued Bond (as the case may be), together with interest payable thereon, are and shall be special obligations of the Issuer payable solely from certain of the revenues and receipts derived from the operation, sale or other disposition of the Project Facility or from the enforcement of the security provided by the Bond Documents and the other security pledged to the payment thereof.

(D) Notwithstanding any other provision of this resolution, the Issuer covenants that it will make no use of the proceeds of the Reissued Bond or any Further Reissued Bond (as the

case may be) or of any other funds of the Issuer which, if said use had been reasonably expected on the date of issuance of the Reissued Bond or any Further Reissued Bond (as the case may be), would have caused the Reissued Bond or any Further Reissued Bond (as the case may be) to be an “arbitrage bond” within the meaning of Section 148 of the Code.

Section 6. 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 for by the provisions of the Bond Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of this resolution and to cause compliance by the Issuer with all of the terms, covenants and provisions of the Bond Documents binding upon the Issuer.

Section 7. 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 T. Agostino	VOTING	_____
Hon. Timothy Drury	VOTING	_____
Hadar Borden	VOTING	_____
Frank LoTempio III	VOTING	_____
Nicole Gavigan	VOTING	_____

The foregoing resolution was thereupon declared duly adopted.

[Remainder of page left blank intentionally]

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

I, the undersigned (Assistant) Secretary of the Town of Amherst Development Corporation (the “Issuer”), DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the board of directors of the Issuer (the “Board of Directors”) held on April 21, 2023, including the resolution contained therein, with the original thereof on file in my office, and that the same is a true and correct copy of said original 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 Board of Directors 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 of the State of New York (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 Board of Directors 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 this ___ day of April, 2023.

Assistant Secretary

EXHIBIT A
MODIFICATION REQUEST LETTER

See attached.

March 1, 2023

Town of Amherst Development Corporation
4287 Main Street
Amherst, New York 14221

**Re: Request for Bond Modifications – 2013 Refunding Bonds
LIBOR based rate of interest to SOFR based rate of interest**

Dear Mr. Mingoia:

We are writing to request that the Town of Amherst Development Corporation (the "Issuer") consider and approve certain modifications relating to the bonds described below (collectively, the "Bonds") in order to change the variable rate index used to determine the Tax-Exempt Bond Rate and the Taxable Bond Rate (as such terms are defined in the underlying financing documents) from the one-month London Inter-Bank Offered Rate ("LIBOR"), which is being discontinued, to the Secured Overnight Financing Rate ("SOFR"):

- \$5,137.970 original principal amount Town of Amherst Development Corporation Senior Living Facility Revenue Bonds (Asbury Pointe Project) Series 2013A originally issued on July 3, 2013 as modified and deemed reissued for federal income tax purposes on October 31, 2020

We are not requesting any new financial assistance. The maturity dates of the Bonds will not be affected (extended or shortened) as a result of the requested modifications and no new money will be borrowed. The request is limited to the modifications to the Bonds and underlying financing documents necessary to implement the change from LIBOR to SOFR. We have been in contact with Manufacturers and Traders Trust Company, as the holder of the Bonds (the "Holder"), with respect to this matter and have provided a copy of the Holder's financing proposal for your convenience.

We respectfully ask that the Issuer consider this request expeditiously so that we can complete the modification as soon as reasonably possible.

Please let us know if you have any questions or need further information. Questions can be directed to Kristin Anderson (kanderson@beechwoodcare.org) or 716-810-7302.

Sincerely,



Kristin Anderson
Chief Financial Officer

059957.00013 Business 23164588v2

**APPROVING RESOLUTION
MODIFICATIONS RELATING TO
BEECHWOOD HEALTH CARE CENTER, INC. PROJECT**

A regular meeting of the Town of Amherst Development Corporation (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 21, 2023 at 8:30 o’clock, a.m., local time.

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

PRESENT:

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

ABSENT:

ALSO PRESENT:

David S. Mingoia	Chief Executive Officer
Kevin J. Zanner, Esq.	Issuer Counsel
Terrence M. Gilbride, Esq.	Bond Counsel
Christopher C. Canada, Esq.	Bond Counsel

The following resolution was offered by _____, seconded by _____, to wit:

RESOLUTION AUTHORIZING THE EXECUTION OF CERTAIN AMENDMENTS BY THE TOWN OF AMHERST DEVELOPMENT CORPORATION (THE “ISSUER”) TO (A) THE ISSUER’S TAX-EXEMPT REVENUE BOND (BEECHWOOD HEALTH CARE CENTER, INC. PROJECT), SERIES 2017 ISSUED BY THE ISSUER ON SEPTEMBER 14, 2017 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$9,675,000 AND DEEMED REISSUED BY THE ISSUER ON MAY 28, 2020 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$7,305,000 AND (B) THE EXECUTION OF RELATED DOCUMENTS.

WHEREAS, Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the “Enabling Act”) (A) authorizes any county, city, town or village to cause a not-for-profit local development corporation to be incorporated by public officers for, among other things, the public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest, (B) declares that in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, such corporations will be performing essential governmental

functions, and (C) authorizes each such corporation to acquire real and personal property, to borrow money and issue negotiable bonds, notes and other obligations therefore, and 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 carry out its corporate purposes in the territory in which the operations of such corporation are principally to be conducted; and

WHEREAS, pursuant to the provisions of the Enabling Act and Revenue Ruling 57-187 and Private Letter Ruling 200936012, the Town Board of the Town of Amherst, New York (the "Town Board") adopted a resolution (the "Sponsor Resolution") (A) authorizing the reincorporation of the Issuer under the Enabling Act and (B) appointing the initial members of the board of directors of Town of Amherst Development Corporation (the "Issuer"), who serve at the pleasure of the Town Board; and

WHEREAS, on February 3, 2010, a certificate of reincorporation was filed with the New York Secretary of State's Office (the "Certificate of Reincorporation") creating the Issuer pursuant to the Enabling Act as a public instrumentality of the Town of Amherst, New York; and

WHEREAS, on September 14, 2017, the Issuer issued its Tax-Exempt Revenue Bond (Beechwood Health Care Center, Inc. Project), Series 2017 in the original principal amount of \$9,675,000 (the "Series 2017 Bond") pursuant to a resolution adopted by the members of the board of directors of the Issuer on July 21, 2017 (the "Bond Resolution"), a certificate of determination dated September 14, 2017 (the "Certificate of Determination") executed by an authorized officer of the Issuer and a bond purchase and disbursing agreement dated as of September 1, 2017 (the "Initial Bond Purchase Agreement") by and among the Issuer, Beechwood Health Care Center, Inc., a New York not-for-profit corporation (the "Company"), M&T Bank, as initial holder of the Series 2017 Bond (the "Holder") and M&T Bank, as disbursing agent (the "Disbursing Agent"); and

WHEREAS, proceeds of the Series 2017 Bond were used to finance a project (the "Project") consisting of the following: (A) (1) the financing of all or a portion of the costs of (a) the renovation and reconstruction of portions of the existing buildings constituting a 272-bed skilled nursing facility which provides both long term care programs and short term care sub-acute services and containing in the aggregate approximately 325,000 square feet of space (collectively, the "Facility") located on a parcel of real estate containing approximately 16.346 acres and having an address of 2235 Millersport Highway in the Town of Amherst, Erie County, New York (the "Land"), and (b) the acquisition and installation therein and thereon of various machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), and (2) the refunding, in whole or in part, of the Town of Amherst Industrial Development Agency's Tax-Exempt Civic Facility Revenue Bonds (Beechwood Health Care Center, Inc. Project), Series 2006A in the original aggregate principal amount of \$14,860,000 (the "Prior Bonds"), which Prior Bonds were issued on January 18, 2007 to undertake a project (the "Prior Project") consisting of the following: (a) the financing of prior capital projects relating to the Project Facility, including, but not limited, to the reconstruction and renovation of the Facility, the construction of additions to the Facility and the acquisition and installation of machinery and equipment, and (b) the refinancing of certain indebtedness incurred by the Company in undertaking certain capital improvements at the Project Facility; (B) the financing of all or a portion of the costs of the foregoing by the issuance of the Series 2017 Bond; (C) the paying of all or a portion of the costs incidental to the issuance of the Series 2017 Bond, including issuance costs of the Series 2017 Bond and any reserve funds as may be necessary to secure the Series 2017 Bond; (D) the granting of certain other financial assistance with respect to the foregoing, including potential exemptions from certain real estate transfer taxes and mortgage recording taxes (collectively with the Series 2017 Bond, the "Financial Assistance"); and (E) the making of a loan (the "Loan") of the proceeds of the Series 2017 Bond to the Company or such other person as may be designated by the Company and agreed upon by the Issuer; and

WHEREAS, by e-mail dated February 5, 2020, from counsel to the Company (the “2020 Modification Request”), counsel to the Company (A) informed the Issuer that the Company and the Holder proposed to amend the terms of the Series 2017 Bond and the Financing Documents (as defined in the Initial Bond Purchase Agreement) so as to revise the amortization schedule for the repayment of the Series 2017 Bond and (B) requested that the Issuer agree to make certain amendments and modifications to the Initial Bond Purchase Agreement and the related Financing Documents (as defined in the Initial Bond Purchase Agreement) (collectively, the “2020 Financing Documents”) necessary or incidental to the 2020 Modification Request (such amendments and modifications being collectively referred to hereinafter as the “2020 Modifications”); and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of board of directors of the Issuer on March 27, 2020, the Issuer authorized the execution of the 2020 Financing Documents in order to implement the 2020 Modifications including, but not limited to, any documents approved by counsel to the Issuer with respect thereto; and

WHEREAS, the Issuer, the Company and the Holder entered into a first omnibus amendment to bond purchase and disbursing agreement and related financing documents dated as of May 1, 2020 (the “First Omnibus Amendment” and together with the Initial Bond Purchase Agreement, the “Supplemented Bond Purchase Agreement”) by and among the Issuer, the Company and the Holder for purposes of implementing the 2020 Modifications; and

WHEREAS, in connection with the implementation of the 2020 Modifications, the Series 2017 Bond was deemed reissued on May 28, 2020 for federal income tax purposes (as so reissued, the “Reissued Bond”); and

WHEREAS, the Issuer received a letter dated March 14, 2023 from the Company (the “Modification Request Letter”) (A) indicating the intention of the Company to replace the current interest rate index used to calculate interest on the Reissued Bond while bearing interest at the Tax-Exempt Rate (as defined in the Supplemented Bond Purchase Agreement) from LIBOR (as defined in the Supplemented Bond Purchase Agreement) to the Secured Overnight Financing Rate (SOFR) as more specifically described in the Modification Request Letter, with a copy of such Modification Request Letter being attached hereto as Exhibit A, and (B) requesting that the Issuer enter into modifications to the Reissued Bond and the related Financing Documents necessary to implement the Modification Request; and

WHEREAS, in connection therewith, the Issuer, the Company and the Holder desire to enter into (A) a second omnibus amendment to the Bond Purchase Agreement and related financing documents (the “Second Omnibus Amendment”) by and among the Issuer, the Company and the Holder and (B) certain other documents modifying the terms of the Financing Documents (the Second Omnibus Amendment and such other documents are hereinafter referred to as the “Modification Documents”) in order to implement the Proposed Action; and

WHEREAS, in connection with the Modification Request, the Issuer now desires to authorize the following actions (collectively, the “Action”): (1) to make the amendments to the Financing Documents and the Reissued Bond, (2) to make certain related amendments to the Financing Documents and the Reissued Bond, and (3) if (and only if) the Action results, in the opinion of Hodgson Russ, LLP, bond counsel to the Issuer (“Bond Counsel”), in a deemed reissuance of the Reissued Bond (such Reissued Bond being referred to hereinafter as a “Further Reissued Bond”) and a deemed purchase of such Reissued Bond by the Holder, pursuant to the provisions of the Internal Revenue Code of 1986, as amended (the “Code”), to delegate to the Chairperson, Vice Chairperson, Chief Executive Officer, Secretary or Assistant Secretary of the Issuer (each, an “Authorized Officer”) to determine the final

details of such Further Reissued Bond, including but not limited to (a) the authorized principal amount of such Further Reissued Bond, (b) the purpose or purposes for which such Further Reissued Bond is being issued, (c) the date or dates, the maturity date or dates and principal amounts of such Further Reissued Bond, (d) the interest rate or rates of such Further Reissued Bond, (e) the denomination or denominations of and the manner of numbering and lettering such Further Reissued Bond, (f) the redemption price or purchase in lieu of redemption price or redemption prices or purchase in lieu of redemption prices, if any, and the redemption or purchase in lieu of redemption terms, if any, for such Further Reissued Bond, (g) the form of such Further Reissued Bond and (h) any other provisions deemed advisable by the Authorized Officer not in conflict with the provisions of this resolution (collectively, the “Further Reissued Bond Details”); and

WHEREAS, in connection therewith, the Issuer, the Company and the Holder desire to enter into (A) a second omnibus amendment to bond purchase and disbursing agreement and related financing documents (the “Second Omnibus Amendment”) by and among the Issuer, the Company and the Holder and (B) certain other documents modifying the terms of the Financing Documents (the Second Omnibus Amendment and such other documents are hereinafter referred to as the “Modification Documents”); and

WHEREAS, if (and only if) the Action results, in the opinion of Bond Counsel, in a deemed reissuance of the Reissued Bond and a deemed purchase of such Further Reissued Bond by the Holder pursuant to the provisions of the Code in order to demonstrate compliance with the provisions of the Code relating to the Action, (A) the Company will (1) execute a tax regulatory agreement dated the date of delivery of such Further Reissued Bond (the “Further Reissued Tax Regulatory Agreement”) concerning the requirements in Section 148 of the Code relating to such Further Reissued Bond, (B) the Issuer will (1) execute an arbitrage certificate dated the date of delivery of such Further Reissued Bond (the “Further Reissued Arbitrage Certificate”) relating to certain requirements set forth in Section 148 of the Code relating to such Further Reissued Bond, (2) execute a completed Internal Revenue Service Form 8038 (Information Return for Tax-Exempt Private Activity Bonds) relating to such Further Reissued Bond (the “Further Reissued Information Return”) pursuant to Section 149(e) of the Code, and (3) file the Further Reissued Information Return with the Internal Revenue Service and (C) the Holder will execute a letter relating to such Further Reissued Bond confirming the issue price of such Further Reissued Bond for purposes of Section 148 of the Code, and further confirming the difference between the interest rate payable on such Further Reissued Bond and the interest rate payable on such Further Reissued Bond immediately preceding the execution and delivery of the Modification Documents (the Reissued Bond, any Further Reissued Bond, the Modification Documents, the Further Reissued Tax Regulatory Agreement, the Further Reissued Arbitrage Certificate and the Further Reissued Information Return are hereinafter referred to as the “Bond Documents”); and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TOWN OF AMHERST DEVELOPMENT CORPORATION AS FOLLOWS:

Section 1. Pursuant to SEQRA, the Issuer hereby finds and determines that:

(A) Pursuant to Section 617.5(c)(26) of the Regulations, the Action (including but not limited to the execution and delivery of the Bond Documents) is a “Type II action” (as said quoted term is defined in the Regulations).

(B) Accordingly, the Issuer hereby determines that no environmental impact statement or any other determination or procedure is required under SEQRA with respect to the Action.

Section 2. The Issuer hereby finds and determines that:

(A) By virtue of the Enabling Act, the Issuer has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Enabling Act and to exercise all powers granted to it under the Enabling Act.

(B) It is desirable and in the public interest for the Issuer to enter into the Bond Documents.

Section 3. In consequence of the foregoing, the Issuer hereby determines to: (A) authorize the Action; (B) subject to approval of the form and substance of the Bond Documents by Bond Counsel and counsel to the Issuer, approve the form and substance of the Bond Documents; (C) subject to (i) compliance with the terms and conditions contained in the existing documents relating to the Reissued Bond and (ii) compliance with state and federal law applicable to the Action, authorize the execution and delivery of the Bond Documents.

Section 4. Subject to the satisfaction of the conditions described in Section 3 hereof, the Authorized Officer of the Issuer is hereby authorized, on behalf of the Issuer, to (a) determine, on behalf of the Issuer, the Bond Details relating to a Further Reissued Bond (if applicable) and (b) execute and deliver the Bond Documents and the other documents related thereto and, where appropriate, the Assistant Secretary of the Issuer is hereby authorized to affix the seal of the Issuer thereto and to attest the same, all in substantially the forms thereof approved by Bond Counsel and counsel to the Issuer, with such changes, variations, omissions and insertions as the Authorized Officer of the Issuer shall approve, the execution thereof by the Authorized Officer of the Issuer to constitute conclusive evidence of such approval.

Section 5. Subject to the execution and delivery of the other Bond Documents, the Issuer determines to execute and deliver the Reissued Bond or any Further Reissued Bond (as the case may be), provided that:

(A) The Reissued Bond or any Further Reissued Bond (as the case may be) authorized to be issued, executed, sold and delivered pursuant to this Section 5 shall (1) be issued, executed and delivered at such time as the Authorized Officer of the Issuer shall determine, and (2) bear interest at the rate or rates, be issued in such form, be subject to redemption prior to maturity and have such other terms and provisions and be issued in such manner and on such conditions as are set forth in the Reissued Bond or any Further Reissued Bond (as the case may be) and the other Bond Documents or as are hereinafter approved by the Authorized Officer of the Issuer in accordance with Section 4 hereof, which terms are specifically incorporated herein by reference with the same force and effect as if fully set forth in this resolution.

(B) Neither the directors nor officers of the Issuer, nor any person executing the Reissued Bond or any Further Reissued Bond (as the case may be) or any of the other Bond Documents 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 Reissued Bond or any Further Reissued Bond (as the case may be), and the interest thereon are not and shall never be a debt of the State of New York, the Town of Amherst, New York or any political subdivision thereof (other than the Issuer), and neither the State of New York, the Town of Amherst, New York nor any political subdivision thereof (other than the Issuer) shall be liable thereon.

(C) The Reissued Bond or any Further Reissued Bond (as the case may be), together with interest payable thereon, are and shall be special obligations of the Issuer payable solely from certain of the revenues and receipts derived from the operation, sale or other disposition of

the Project Facility or from the enforcement of the security provided by the Bond Documents and the other security pledged to the payment thereof.

(D) Notwithstanding any other provision of this resolution, the Issuer covenants that it will make no use of the proceeds of the Reissued Bond or any Further Reissued Bond (as the case may be) or of any other funds of the Issuer which, if said use had been reasonably expected on the date of issuance of the Reissued Bond or any Further Reissued Bond (as the case may be), would have caused the Reissued Bond or any Further Reissued Bond (as the case may be) to be an “arbitrage bond” within the meaning of Section 148 of the Code.

Section 6. 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 for by the provisions of the Bond Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of this resolution and to cause compliance by the Issuer with all of the terms, covenants and provisions of the Bond Documents binding upon the Issuer.

Section 7. 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 T. Agostino	VOTING	_____
Hon. Timothy Drury	VOTING	_____
Hadar Borden	VOTING	_____
Frank LoTempio III	VOTING	_____
Nicole Gavigan	VOTING	_____

The foregoing resolution was thereupon declared duly adopted.

[Remainder of page left blank intentionally]

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

I, the undersigned (Assistant) Secretary of the Town of Amherst Development Corporation (the “Issuer”), DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the board of directors of the Issuer (the “Board of Directors”) held on April 21, 2023, including the resolution contained therein, with the original thereof on file in my office, and that the same is a true and correct copy of said original 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 Board of Directors 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 of the State of New York (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 Board of Directors 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 this ___ day of April, 2023.

Assistant Secretary

EXHIBIT A
MODIFICATION REQUEST LETTER

See attached.



2235 MILLERSPORT HIGHWAY
GETZVILLE • NEW YORK 14068
PHONE 716-810-7000 • FAX 716-636-0026
FINANCE OFFICE FAX 716-636-4564
www.beechwoodcare.org

March 14, 2023

Town of Amherst Development Corporation
4287 Main Street
Amherst, New York 14226-3504
Attn: Mr. David Mingoia, CEO

**Re: Request for Bond Modifications - Series 2017 Bonds
LIBOR based rate of interest to SOFR based rate of interest**

Dear Mr. Mingoia:

We are writing to request that the Town of Amherst Development Corporation (the "Issuer") consider and approve certain modifications relating to the bond described below in order to change the variable rate index used to determine the Tax-Exempt Bond Rate (such terms are defined in the underlying financing documents) from the one-month London Inter-Bank Offered Rate ("LIBOR"), which is being discontinued, to the Secured Overnight Financing Rate ("SOFR"):

- \$9,675,000 original principal amount tax-exempt revenue bond, Series 2017 for Beechwood Health Care Center, Inc.

We are not requesting any new financial assistance. The maturity date of the bond will not be affected (extended or shortened) as a result of the requested modifications and no new money will be borrowed. The request is limited to modifications to the bond and underlying financing documents necessary to implement the change from LIBOR to SOFR.

We respectfully ask that the Issuer consider this request expeditiously so that we can complete the modification by or close to the end of April, 2023.

Please let me know if you have any questions or need further information. I can be reached at kanderson@beechwoodcare.org or 716-810-7302.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kristin M. Anderson".

Kristin M. Anderson
Chief Financial Officer

cc via email: Katherine Baynes

Masters In The Art Of Caring