

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**  
**Agenda – 542<sup>nd</sup> Meeting**  
**Friday, August 25, 2023-8:30 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. Bureau Veritas, Inc. and Northpointe  
Commerce Park, LLC
10. Adjournment

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**

**Minutes of the 541<sup>st</sup> Meeting  
Friday, June 16, 2023 – 8:34 am  
James J. Allen Boardroom  
Agency Offices, 4287 Main Street**

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

**ABSENT:** Hadar Borden  
Hon. Timothy Drury

**GUESTS :** AIDA Staff  
Sean Hopkins, Hopkins & Sgroi  
David Tytka

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 William Tuyn and unanimously carried, the minutes of the March 2023 meeting were approved as presented.

**BILLS & COMMUNICATIONS**

The board was provided a copy of the Town of Amherst 2023 PILOT Exemption Report which found that the PILOTs collected in 2023 were in order and that there were no reportable findings. There were no comments.

**TREASURER’S REPORT**

Treasurer Agostino reviewed the highlights of the Treasurer’s Reports for March, April and May 2023.

Upon a motion by Frank LoTempio, seconded by William Tuyn and unanimously carried, the Treasurer’s Reports for March, April and May 2023 were approved as presented.

**PUBLIC COMMENT**

There was no Public Comment at this meeting.

**EXECUTIVE DIRECTOR’S REPORT**

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

## **COMMITTEE REPORTS**

There were no Committee Reports presented at this meeting.

## **UNFINISHED BUSINESS**

There was no Unfinished Business presented at this meeting.

## **NEW BUSINESS**

### I. Authorization Resolution – Amherst Portfolio Equities, LLC (415 Lawrence Bell Drive)

The applicant proposes to demolish an existing 37,949 square feet flex building and build a new 60,000 square feet state of the art warehouse on that site. A majority of the existing building has been vacant since the applicant took ownership in 2015, most notably 20,000 square feet of office space. COVID-19 and the general decline in office space demand further diminished demand for the space, which hasn't had a tour of available space in over three-years.

The applicant intends to transition the use on the property to a product that is lacking in the marketplace with the construction of the warehouse facility. AIDA incentives are necessary to offset not only rising construction, material and labor costs, but also the cost to demolish the existing building and prepare the site for redevelopment. The project will maintain the existing taxes collected on the building, roughly \$46,350, and create new economic value to the community through new taxable assessment, increased property taxes and employment.

Executive Director Mingoia reviewed the Project Profile and Cost/Benefit Analysis with the board. After a brief discussion Frank LoTempio made a motion to approve the Amherst Portfolio Equities, LLC project. William Tuyn seconded the motion to approve. Votes of aye to approve the project were cast by Brock, Tuyn, Agostino, LoTempio and Gavigan. Motion to approve passed by a vote of 5-0.

### II. Bonadio & Company, LLP – Proposed Audit Fees 2023-2026

Executive Director Mingoia informed the board that the Agency had received a letter from Bonadio & Company, LLP outlining increased audit fees for 2023-2026 and that the matter was discussed at the June 2023 Executive Committee meeting. Mr. Mingoia reminded the board that he surveyed many of the area's IDAs as to their current audit fees. It was determined that the fee request was in line with the IDAs in WNY.

Frank LoTempio made a motion to approve accept the Bonadio & Company LLP proposal for audit fees for 2023-2026. Anthony Agostino seconded the motion to approve. Votes of aye to approve were cast by Brock, Tuyn, Agostino, LoTempio and Gavigan.

Chairman Brock cautioned the board the Agency needs to be careful accepting these types of increases in services in the future.

8:59 am – Frank LoTempio made a motion to adjourn the meeting. Nicole Gavigan seconded the motion. The motion to adjourn passed unanimously.

## **MEMORANDUM**

August 18, 2023

TO: Amherst IDA Board of Directors

FROM: David Mingoia

RE: Bureau Veritas Benefits Termination

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In August of 2017, the AIDA Board of Directors approved two related projects totaling \$9.1 million consisting of the construction of a 43,500 square foot expansion of an existing building located at 100 Northpointe Parkway and the acquisition of and installation of new machinery and equipment. Zaepfel Development (through its affiliate, Northpointe Commerce Park, LLC) as the landlord, undertook the building expansion while Bureau Veritas undertook the equipment investment. This project was for Bureau Veritas to expend \$1,819,000 in capital expenditures for improvements to the premises and to retain the existing 260 full-time and 4 part-time jobs and add 4 full-time jobs. For the purpose of Agency review, the company was to meet and retain a job goal of 266 full-time equivalent positions during the period of time that the PILOT benefit was in place, as well as meeting the capital expenditure requirement.

Bureau Veritas, as a consumer products testing company, was significantly affected by the COVID pandemic across all of its divisions. Customers of the Amherst facility in the retail sector were hit the hardest, directly affecting revenues and headcount at the site. The company has cooperated and worked with AIDA staff and the Executive Committee in a transparent manner in providing information on its plan to grow its employment and maintain the Amherst location as an integral part of the company. However, even with the introduction of new services and diversification of its services portfolio, employment is not likely to return to pre-pandemic levels given the state of the industry.

Under its agreements with Bureau Veritas and NorthPointe Commerce Park LLC, AIDA has the authority to terminate all benefits and require the companies to repay all prior financial assistance received. The company's investment has generated new property taxes, and other project commitments, including the requisite investments in construction and equipment, and the utilization of local labor in construction of the building have been satisfied. To this end, the company met its obligations of the capital expenditure portion of the project mentioned above. The company has also committed to maintaining the facility in Amherst and maintain a minimum of 202 employees through December 31, 2029. Based on that, AIDA staff and the Executive Committee are proposing to terminate the remaining seven (7) years of school property tax and 6 years of town/county property tax incentives through the payment in lieu of tax (PILOT) agreement, along with the expiration of \$29,679 in sales tax benefits. If Bureau Veritas is unable to maintain the new minimum employment requirement, the Agency retains the right to recapture all or a portion of \$762,750 of tax incentives previously realized by the respective entities.

Attached to this memo are the Resolution and accompanying agreements that detail these terms, which have been reviewed and agreed to by Bureau Veritas. We are requesting that the Board approve the Resolution as presented.

**RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE TERMINATION OF FINANCIAL ASSISTANCE TO BUREAU VERITAS CONSUMER PRODUCTS SERVICES, INC. AND NORTHPOINTE COMMERCE PARK LLC, THE TERMINATION OF THE PILOT AGREEMENT AND LEASE AGREEMENTS BETWEEN THE AGENCY AND NORTHPOINTE COMMERCE PARK, LLC, AND THE TAKING OF OTHER ACTIONS.**

**WHEREAS**, the Town of Amherst Industrial Development Agency (the “Agency”) is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Section 914-a of the General Municipal Law, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

**WHEREAS**, on August 18, 2017, the Agency approved two related projects (the “Project”) consisting of: (i) the construction of a 43,500+/- square foot expansion of an existing building located at 100 Northpointe Parkway (the “Premises”) by Northpointe Commerce Park, LLC (the “Landlord”); and (ii) the acquisition and installation of machinery and equipment by Bureau Veritas Consumer Products Services, Inc. (the “Company”) to expand the Company’s testing capabilities at the Premises; and

**WHEREAS**, the Landlord entered into agreements with the Agency for the provision of financial assistance to the Landlord, including a project agreement dated October 30, 2017 (the “LL Project Agreement”), a company lease from the Landlord to the Agency dated as of June 1, 2018 (the “Company Lease”), a leaseback agreement from the Agency to the Landlord dated as of June 1, 2018 (the “Agency Lease”) and a ten (10) year payment-in-lieu-of-taxes agreement dated as of September 1, 2018 (the “PILOT Agreement”) (collectively, the “Landlord Project Documents”); and

**WHEREAS**, the Company entered into agreements with the Agency for the provision of financial assistance to the Company consisting of a project agreement dated October 30, 2017 (the “Company Project Agreement”) and an installment sale agreement dated February 1, 2021 (the “Installment Sale Agreement”, and together with the Company Project Agreement, the “Company Project Documents”); and

**WHEREAS**, the financial assistance provided by the Agency to Landlord and the Company for the Project was premised in part upon the commitment to the creation and retention

by the Company of certain jobs at the Premises throughout the Compliance Period (the “Employment Commitment”); and

**WHEREAS**, the Company informed the Agency that due to the COVID-19 pandemic and resultant disruption to the Company’s customers, and other unanticipated matters impacting its business, it has been unable to fulfill the Employment Commitment and does not anticipate accomplishing the Employment Commitment going forward; and

**WHEREAS**, the Landlord Project Documents and the Company Project Documents provide that if the Agency determines that the Company and/or the Landlord is not in compliance with the Employment Commitment, the Agency may, in its discretion require repayment of all or a portion of, or modify the amount or terms of any financial assistance provided to the Company and the Landlord, including all sales and use tax exemptions, mortgage recording tax exemptions, and exemptions from real property taxes; and

**WHEREAS**, the Agency in accordance with its Policy for Recapture and/or Termination of Financial Assistance adopted by the Agency on June 17, 2016 (the “Recapture Policy”) has informed the Landlord and the Company that the Agency intends: (i) to terminate all Financial Assistance being provided to the Company and Landlord; (ii) to modify the Employment Commitment to reflect the Company’s commitment to retain 202 full-time equivalent employees at the Premises (the “Modified Employment Commitment”) for the period commencing on the Effective Date of this Agreement and continuing through December 31, 2029 (the “Modified Compliance Period”); and (iii) to refrain at this time from recapturing all prior financial assistance provided to the Company and Landlord, provided that the Landlord and Company remain in compliance with the Modified Employment Commitment during the Modified Compliance Period.

**NOW, THEREFORE, THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** The Agency hereby determines to terminate all Financial Assistance to the Company and Landlord effective as of the date of this resolution due to non-compliance with the Employment Commitment.

**Section 2.** The Agency hereby approves the Modified Employment Commitment as described in these resolutions and shall not require the repayment of all prior financial assistance received by the Company and Landlord at this time, provided that the Landlord and Company remain in compliance with the Modified Employment Commitment during the Modified Compliance Period. In the event the Company fails to comply with the Modified Employment Commitment at any time during the Modified Compliance Period, the Agency reserves the right to require that the Company and/or Landlord pay to the Agency an amount equal to all or a portion (as determined by the Agency in its sole discretion) of: (i) the total value of all sales and use tax exemptions claimed by the Company and/or Landlord and any agents of the Company and/or the Landlord previously granted; and/or (ii) the total value of any exemption from real estate taxes received by the Landlord

by reason of the Agency's leasehold interest and/or (iii) the total value of any exemption from mortgage recording tax received by reason of the Agency's involvement with the Project.

**Section 3.** The Executive Director of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Financial Assistance Modification Agreement and related agreements all in the form attached hereto, with such modifications as the Executive Director may deem appropriate in consultation with Agency counsel, and is further authorized to do all such further acts and things as may be necessary or, in the opinion of the Executive Director, desirable and proper to effectuate the purposes of the foregoing Resolution.

**Section 4.** This Resolution shall take effect immediately.

Dated: August 25, 2023



**FINANCIAL ASSISTANCE MODIFICATION AGREEMENT**

**THIS FINANCIAL ASSISTANCE MODIFICATION AGREEMENT** (“Agreement”), made and entered into as of the \_\_\_ day of August, 2023, is by and between **TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY** (the “Agency”), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, with an office at 4287 Main Street, Amherst, New York 14226; and **BUREAU VERITAS CONSUMER PRODUCTS SERVICES, INC.** (the “Company”), a corporation organized under the laws of the State of Massachusetts, with an office at 100 Northpointe Parkway, Amherst, New York 14228.

**RECITALS:**

A. On August 18, 2017, the Agency approved two related projects consisting of: (i) the construction of a 43,500+/- square foot expansion of an existing building located at 100 Northpointe Parkway (the “Premises”) by Zaepfel Development Company, through its affiliate Northpointe Commerce Park, LLC (the “Landlord”); and (ii) the acquisition and installation of machinery and equipment by the Company to expand the Company’s testing capabilities at the Premises.

B. Landlord entered into agreements with the Agency for the provision of financial assistance to the Landlord, including a project agreement dated October 30, 2017 (the “LL Project Agreement”), a company lease from the Landlord to the Agency dated as of June 1, 2018 (the “Company Lease”), a leaseback agreement from the Agency to the Landlord dated as of June 1, 2018 (the “Agency Lease”) and a ten (10) year payment-in-lieu-of-taxes agreement dated as of September 1, 2018 (the “PILOT Agreement”) (collectively, the “Landlord Project Documents”).

C. The Company entered into agreements with the Agency for the provision of financial assistance to the Company consisting of a project agreement dated October 30, 2017 (the “Company Project Agreement”) and an installment sale agreement dated February 1, 2021 (the “Installment Sale Agreement”, and together with the Company Project Agreement, the “Company Project Documents”).

D. The Landlord Project Agreement and Company Project Agreement each reflect as a “Material Factor” the commitment to the creation and retention by the Company of certain jobs at the Premises throughout the Compliance Period (the “Employment Commitment”).

E. The Landlord Project Documents and the Company Project Documents provide that if the Agency determines that the Company and/or the Landlord is not in compliance with a Material Factor, including the Employment Commitment, the Agency may, in its discretion: (i) require repayment of all or a portion of, or modify the amount or terms of any financial assistance provided to the Company and the Landlord, including all sales and use tax exemptions, mortgage recording tax exemptions, and exemptions from real property taxes (the “Recapture Provisions”).

G. The Company has informed the Agency that due to several unanticipated economic factors, including the COVID-19 pandemic and the resultant disruption to the Company's customers, it has been unable to fulfill the Employment Commitment and is not projecting to meet the Employment Commitment going forward.

I. The Company has requested that the Agency modify the Employment Commitment to reflect the Company's commitment to retain 202 full-time equivalent employees at the Premises for the period commencing on the Effective Date of this Agreement and continuing through December 31, 2029 (the "Modified Compliance Period").

J. The Agency has elected to terminate all Financial Assistance being provided to the Company and the Landlord, and is willing to refrain at this time from requiring the Company and the Landlord to repay all prior financial assistance provided to the Company and the Landlord, provided that the Landlord and the Company remain in compliance with the Modified Employment Commitment (as defined herein) at all times during the Modified Compliance Period.

**NOW THEREFORE**, in consideration of the foregoing, the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Termination of the Landlord Project Documents. The Agency has elected to exercise its right to terminate the Landlord Project Documents. In furtherance of such termination, the Agency and the Landlord shall execute (i) a Company Lease Termination Agreement in substantially the form attached hereto as Exhibit A, (ii) an Agency Lease Termination Agreement, in substantially the form attached hereto as Exhibit B (collectively, the "Lease Termination Agreements"), and (iii) a PILOT Termination Agreement, with an effective termination date of February 28, 2024, in substantially the form attached hereto as Exhibit C (the "PILOT Termination Agreement").

2. Modified Employment Commitment by Company. The Company represents to the Agency that it currently has 202 full-time equivalent employees at the Premises. The Company agrees to maintain 202 full-time equivalent jobs at the Premises throughout the Modified Compliance Period (the "Modified Employment Commitment").

3. Company Reporting Requirements. The Company shall comply with all reporting requirements in the Company Project Documents throughout the Modified Compliance Period, including but not limited to the Company's obligation under Section 5.1 of the Installment Sale Agreement to provide to the Agency: (i) an annual certified statement enumerating information relating to job creation and retention and salary and fringe benefit averages of the jobs retained and created; and (ii) a copy of its NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return for the fourth quarter of each year.

4. Survival of Installment Sale Agreement Provisions. The Company acknowledges that nothing in this Agreement shall modify those provisions within the Installment Sale Agreement which survive the expiration or termination of the Installment Sale Agreement.

5. Reservation of Agency's Right to Recapture Prior Financial Assistance. In the event that Company fails to comply with the Modified Employment Commitment at any time during the Modified Compliance Period, the Agency reserves the right to require that the Company and/or Landlord pay to the Agency an amount equal to all or a portion (as determined by the Agency in its sole discretion) of: (i) the total value of all sales and use tax exemptions claimed by the Company and/or Landlord and any agents of the Company and/or the Landlord previously granted; and/or (ii) the total value of any exemption from real estate taxes received by the Landlord by reason of the Agency's leasehold interest and/or (iii) the total value of any exemption from mortgage recording tax received by reason of the Agency's involvement with the Project. If the Agency makes such a determination and requires repayment of all or a portion of the financial assistance received by the Company and/or Landlord, the Company agrees and covenants that it will: (A) cooperate with the Agency in its efforts to recover or recapture any or all financial assistance; and (B) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s).

6. Recitals/Exhibits. The Recitals set forth above and the Exhibits attached hereto are material to and incorporated into this Agreement by reference.

7. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery in .PDF format, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or .PDF signature page were an original thereof.

*[Remainder of Page Intentionally Left Blank]*

*[Signature Page to Financial Assistance Modification Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

TOWN OF AMHERST INDUSTRIAL  
DEVELOPMENT AGENCY

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By: David S. Mingoia  
Title: Executive Director

BUREAU VERITAS CONSUMER  
PRODUCTS SERVICES, INC.

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By:  
Title:

**Exhibit A**

**Company Lease Termination Agreement**

See attached.

**TERMINATION OF COMPANY LEASE**

THIS TERMINATION OF COMPANY LEASE, dated as of \_\_\_\_, 2023, between **NORTHPOINTE COMMERCE PARK LLC**, a limited liability company duly formed existing under and by virtue of the laws of the State of New York with offices at 100 Northpointe Parkway, Amherst, New York 14228 (the "Landlord"), and the **TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**, a governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, having an office at 4287 Main Street, Amherst, New York 14226 (the "Agency").

**WITNESSETH:**

**WHEREAS**, Landlord, by an Amended and Restated Company Lease, dated as of June 1, 2018 (the "Company Lease"), leased the property, more particularly described on Schedule A attached hereto and made a part hereof (the "Premises") to the Agency, a memorandum of which was recorded in the Erie County Clerk's Office on June 15, 2018 in Liber 11330 of Deeds at Page 5513; and;

**WHEREAS**, the Agency has elected to terminate the Company Lease due to the failure of Bureau Veritas Consumer Products Services, Inc. (the "Company"), Landlord's tenant, to fulfill the employment commitment under Section 6 of the Project Agreement dated October 30, 2017 by and between the Agency and Landlord (the "Project Agreement"); and

**WHEREAS**, the Agency is willing to refrain at this time from requiring the Landlord to repay all prior financial assistance provided to the Landlord so long as the Company maintains its modified commitment to retain 202 full-time equivalent jobs at the Premises (the "Modified Employment Commitment"), at all times through December 31, 2029 (the "Modified Compliance Period"); and

**WHEREAS**, the Agency and the Landlord wish to enter into this instrument for the purpose of surrendering the Company Lease and canceling the same of record.

**NOW, THEREFORE**, in consideration of payment by the Landlord of the sum of ONE and 00/100 DOLLAR (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the Agency and the Landlord agree as follows:

1. Recitals and Definitions. The above recitals and definitions are hereby incorporated herein as if fully rewritten.

2. Termination of Leasehold Interests. The Agency and the Landlord hereby extinguish and cancel the Company Lease with respect to the Premises. The Agency hereby gives, grants and surrenders to the Landlord all of its right, title and interest in and to the Premises pursuant to the Company Lease as of the date of this Termination of Company Lease.

3. Releases. The Agency and the Landlord hereby release each other from all liability under the Company Lease with respect to the Premises.

[Remainder of Page Intentionally Left Blank, Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have signed and delivered this instrument as of the day and year first above written.

TOWN OF AMHERST INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
David S. Mingoia  
Executive Director

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

On the \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public in and for said state, personally appeared David S. Mingoia, personally known to me or proved to me on the basis of satisfactory evidence to by the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

\_\_\_\_\_  
Notary Public



IN WITNESS WHEREOF, the parties hereto have signed and delivered this instrument as of the day and year first above written.

NORTHPOINTE COMMERCE PARK LLC

By: \_\_\_\_\_

Name:

Its:

STATE OF )  
 ) SS.:  
COUNTY OF )

On the \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

\_\_\_\_\_  
Notary Public

[signature page to Termination of Company Lease]

SCHEDULE "A"

**ALL THAT TRACT OR PARCEL OF LAND** situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 83, Township 12, Range 7 of the Holland Land Company's Survey, bounded and described as follows:

**COMMENCING** at the point of intersection of the north line of Northpointe Parkway (80' wide) and the west line of Sweet Home Road (66 feet wide); thence westerly along the north line of Northpointe Parkway, a distance of 1,500.00 feet to the true point of beginning; thence westerly and southerly along the northerly line of Northpointe Parkway the following courses and distances:

- 1.) S 89° 45' 43" W, a distance of 226.43 feet to a point; thence.
- 2.) Along a curve to the left having a radius of 280.00 feet an arc distance of 493.38 feet to a point of tangency; thence S 11° 49" E a distance of 52.65 feet to a point; thence S 89° 58' 17" W a distance of 338.42 feet to the east line of Map Cover No. 2500; thence N 00° 13' 11" W, a distance of 107.89 feet; thence S 89° 46' 49" W, a distance of 5.94 feet; thence N 01° 20' 33" W, a distance of 313.39 feet to the south line of Map Cover No. 2505; thence N 88° 39' 27" E, a distance of 37.52 feet to the east line of Map Cover No. 2505; thence N 01° 20' 33" W, a distance of 226.77 feet to the south line of lands conveyed to Central School District No. 7 by Deed recorded in the Erie County Clerk's Office in Liber 6640 of Deeds at page 209; thence N 89° 45' 43" E along said School District's lands, a distance of 808.52 feet; thence S 00° 14' 17" E a distance of 265.00 feet to the point or place of beginning.

**ALSO ALL** that tract or parcel of land, situate in the Town of Amherst, County of Erie and State of New York and being part of Lot No. 83, Township 12, Range 7 of the Holland Land Company Survey (so-called), bounded and described as follows:

**COMMENCING** at the intersection of south line of Northpointe Parkway (80.0 feet wide) and the west line of Sweet Home Road (66.0 feet wide); **RUNNING THENCE** westerly, along the south line of Northpointe Parkway, a distance of 1406.96 feet to the to the point or place of **BEGINNING** of the parcel herein described; **THENCE** South 5 degrees 13 minutes 37 seconds east, a distance of 85.10 feet to a point; **THENCE** North 84 degrees 46 minutes 23 seconds east, a distance of 74.81 feet to a point; **THENCE** South 05 degrees 13 minutes 37 seconds east, a distance of 139.0 feet to a point; **THENCE** South 84 degrees 46 minutes 37 seconds west, a distance of 74.81 feet to a point; **THENCE** South 05 degrees 13 minutes 37 seconds east, a distance of 284.54 feet to a point; **THENCE** South 84 degrees 46 minutes 23 seconds west, a distance of 170.04 feet to a point on the southerly extension of the east line of lands formerly conveyed to the Town of Amherst Industrial Development Agency by deed recorded in the Erie County Clerk's Office in Liber 10492 of Deeds at Page 5547; **THENCE** North 05 degrees 13 minutes 37 seconds west, along the east line of said Town of Amherst Industrial Development Agency lands and its extension southerly, a distance of 523.48 feet to a point on the south line of Northpointe Parkway; **THENCE** North 89 degrees 45 minutes 43 seconds east, along the south line of Northpointe Parkway, a distance of 170.69 feet to the point or place of **BEGINNING**.

**Exhibit B**

**Agency Lease Termination Agreement**

See attached.

**TERMINATION OF AGENCY LEASE AGREEMENT**

**THIS TERMINATION OF AGENCY LEASE AGREEMENT**, dated as of \_\_\_\_\_, 2023, between the **TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**, a governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, having an office at 4287 Main Street, Amherst, New York 14226 (the "Agency"), and **NORTHPOINTE COMMERCE PARK LLC**, a limited liability company duly formed existing under and by virtue of the laws of the State of New York with offices at 100 Northpointe Parkway, Amherst, New York 14228 (the "Landlord").

**WITNESSETH:**

**WHEREAS**, the Agency, by an Amended and Restated Agency Lease Agreement, dated as of June 1, 2018 (the "Agency Lease Agreement"), leased the property more particularly described on Schedule A attached hereto and made a part hereof (the "Premises") to Landlord, by a memorandum of which was recorded in the Erie County Clerk's Office on June 15, 2018 in Liber 11310 at Page 5513; and

**WHEREAS**, the Agency has elected to terminate the Agency Lease Agreement and the Second Amended and Restated PILOT Agreement, dated as of September 1, 2018, due to the failure of Bureau Veritas Consumer Products Services, Inc. (the "Company"), Landlord's tenant, to fulfill the employment commitment under Section 6 of the Project Agreement dated October 30, 2017 by and between the Agency and Landlord (the "Project Agreement"); and

**WHEREAS**, the Agency is willing to refrain at this time from requiring the Landlord to repay all prior financial assistance provided to the Landlord so long as the Company maintains its modified commitment to retain 202 full-time equivalent jobs (the "Modified Employment Commitment"), at all times through December 31, 2029 (the "Modified Compliance Period"); and

**WHEREAS**, the Agency and the Landlord wish to enter into this instrument for the purpose of terminating the Agency Lease Agreement with respect to the Premises and canceling the same of record as to the Premises.

**NOW, THEREFORE**, in consideration of payment by the Landlord of the sum of ONE and 00/100 DOLLAR (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the Agency and the Landlord agree as follows:

1. Recitals and Definitions. The above recitals and definitions are hereby incorporated herein as if fully rewritten.
2. Surrender of Leasehold Interests. The Agency and the Landlord hereby extinguish and terminate the Agency Lease Agreement with respect to the Premises. The Landlord hereby gives, grants and surrenders to the Agency all of its right, title and interest in and to the Premises pursuant to the Agency Lease Agreement as of the date of this Termination of Agency Lease Agreement.

3. Releases. As of the date of this Termination of Agency Lease Agreement, Landlord shall be automatically released by the Agency from all of Landlord's liabilities and obligations under the Agency Lease Agreement, excepting those as set forth in Appendix A thereof and specifically Sections 8.1, 8.2, 8.5, 19.2 and Article XVIII of the Agency Lease Agreement which shall survive this Agreement until the later of (i) the expiration period stated in the applicable statute of limitations during which a claim or cause of action may be brought, (ii) payment in full or the satisfaction of such claim or cause of action and of all expense and charges incurred by the Agency relating to the enforcement provided in the provisions herein specified, or (iii) full payment and discharge of any other obligations required by the said sections. No further instruments shall be required to effectuate the releases set forth herein.

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IN WITNESS WHEREOF, the parties hereto have signed and delivered this instrument as of the day and year first above written.

TOWN OF AMHERST INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
David S. Mingoia  
Executive Director

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

On the \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, personally appeared David S. Mingoia, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

\_\_\_\_\_  
Notary Public

[signature page to Termination of Agency Lease Agreement]

IN WITNESS WHEREOF, the parties hereto have signed and delivered this instrument as of the day and year first above written.

NORTHPOINTE COMMERCE PARK LLC

By: \_\_\_\_\_  
Name:  
Its:

STATE OF )  
 ) SS.:  
COUNTY OF )

On the \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

\_\_\_\_\_  
Notary Public

SCHEDULE "A"

**ALL THAT TRACT OR PARCEL OF LAND** situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 83, Township 12, Range 7 of the Holland Land Company's Survey, bounded and described as follows:

**COMMENCING** at the point of intersection of the north line of Northpointe Parkway (80' wide) and the west line of Sweet Home Road (66 feet wide); thence westerly along the north line of Northpointe Parkway, a distance of 1,500.00 feet to the true point of beginning; thence westerly and southerly along the northerly line of Northpointe Parkway the following courses and distances:

- 1.) S 89° 45' 43" W, a distance of 226.43 feet to a point; thence.
- 2.) Along a curve to the left having a radius of 280.00 feet an arc distance of 493.38 feet to a point of tangency; thence S 11° 49" E a distance of 52.65 feet to a point; thence S 89° 58' 17" W a distance of 338.42 feet to the east line of Map Cover No. 2500; thence N 00° 13' 11" W, a distance of 107.89 feet; thence S 89° 46' 49" W, a distance of 5.94 feet; thence N 01° 20' 33" W, a distance of 313.39 feet to the south line of Map Cover No. 2505; thence N 88° 39' 27" E, a distance of 37.52 feet to the east line of Map Cover No. 2505; thence N 01° 20' 33" W, a distance of 226.77 feet to the south line of lands conveyed to Central School District No. 7 by Deed recorded in the Erie County Clerk's Office in Liber 6640 of Deeds at page 209; thence N 89° 45' 43" E along said School District's lands, a distance of 808.52 feet; thence S 00° 14' 17" E a distance of 265.00 feet to the point or place of beginning.

**ALSO ALL** that tract or parcel of land, situate in the Town of Amherst, County of Erie and State of New York and being part of Lot No. 83, Township 12, Range 7 of the Holland Land Company Survey (so-called), bounded and described as follows:

**COMMENCING** at the intersection of south line of Northpointe Parkway (80.0 feet wide) and the west line of Sweet Home Road (66.0 feet wide); **RUNNING THENCE** westerly, along the south line of Northpointe Parkway, a distance of 1406.96 feet to the to the point or place of **BEGINNING** of the parcel herein described; **THENCE** South 5 degrees 13 minutes 37 seconds east, a distance of 85.10 feet to a point; **THENCE** North 84 degrees 46 minutes 23 seconds east, a distance of 74.81 feet to a point; **THENCE** South 05 degrees 13 minutes 37 seconds east, a distance of 139.0 feet to a point; **THENCE** South 84 degrees 46 minutes 37 seconds west, a distance of 74.81 feet to a point; **THENCE** South 05 degrees 13 minutes 37 seconds east, a distance of 284.54 feet to a point; **THENCE** South 84 degrees 46 minutes 23 seconds west, a distance of 170.04 feet to a point on the southerly extension of the east line of lands formerly conveyed to the Town of Amherst Industrial Development Agency by deed recorded in the Erie County Clerk's Office in Liber 10492 of Deeds at Page 5547; **THENCE** North 05 degrees 13 minutes 37 seconds west, along the east line of said Town of Amherst Industrial Development Agency lands and its extension southerly, a distance of 523.48 feet to a point on the south line of Northpointe Parkway; **THENCE** North 89 degrees 45 minutes 43 seconds east, along the south line of Northpointe Parkway, a distance of 170.69 feet to the point or place of **BEGINNING**.



**Exhibit C**

**PILOT Termination Agreement**

See attached.

## TERMINATION OF PILOT AGREEMENT

**THIS TERMINATION OF PILOT AGREEMENT**, dated as of \_\_\_\_\_, 2023, is by and between **TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY** (the “Agency”), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, with an office at 4287 Main Street, Amherst, New York 14226; and **NORTHPOINTE COMMERCE PARK LLC** (the “Landlord”), a New York limited liability company with offices at 100 Northpointe Parkway, Amherst, New York 14228, and entered into in connection with that certain Second Amended and Restated Payment in Lieu of Tax Agreement, dated as of September 1, 2018 (the “PILOT Agreement”), by and between the Agency and the Landlord.

### RECITALS:

**WHEREAS**, the Agency and the Landlord entered into the PILOT Agreement pursuant to which the Agency and Landlord made provisions for payments in lieu of taxes by the Landlord for the benefit of the Town of Amherst, Erie County, and the Sweet Home Central School District for property at 100 Northpointe Parkway in Amherst, New York, being more particularly identified as tax map numbers 26.04-1-30 and 26.04-1-34; and

**WHEREAS**, the Agency has elected to terminate the PILOT Agreement due to the failure of Bureau Veritas Consumer Products Services, Inc. (the “Company”), Landlord’s tenant, to fulfill the employment commitment under Section 6 of the Project Agreement dated October 30, 2017 by and between the Agency and Landlord (the “Project Agreement”); and

**WHEREAS**, the Agency is willing to refrain at this time from requiring the Landlord to repay all prior financial assistance provided to the Landlord so long as the Company maintains its modified employment commitment to retain 202 full-time equivalent jobs at the Premises (the “Modified Employment Commitment”), at all times through December 31, 2029 (the “Modified Compliance Period”).

**NOW, THEREFORE**, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. **Termination of PILOT Agreement.** The Agency and the Landlord hereby terminate the PILOT Agreement, with an effective termination date of February 28, 2024 (the “Effective Termination Date”). Any PILOT payments due between the Effective Date of this Agreement and the Effective Termination Date shall be made by the Landlord on an as-if owned basis, as though the Agency did not have an interest in the Project.

2. **Releases.** As of the Effective Termination Date, Landlord shall be automatically released by the Agency from all of Landlord’s liabilities and obligations under the PILOT Agreement, excepting those as set forth in Section 4(4) and Section 6 of the PILOT Agreement which shall survive this Agreement until the later of (i) the expiration period stated in the

applicable statute of limitations during which a claim or cause of action may be brought, (ii) payment in full or the satisfaction of such claim or cause of action and of all expense and charges incurred by the Agency relating to the enforcement provided in the provisions herein specified, or (iii) full payment and discharge of any other obligations required by the said sections. No further instruments shall be required to effectuate the releases set forth herein.

3. Reservation of Agency's Right to Recapture Prior Financial Assistance. In the event that the Company fails to comply with the Modified Employment Commitment at any time during the Modified Compliance Period, the Agency reserves the right to require that the Company and/or Landlord pay to the Agency an amount equal to all or a portion (as determined by the Agency in its sole discretion) of: (i) the total value of all sales and use tax exemptions claimed by the Company and/or Landlord and any agents of the Company and/or the Landlord previously granted; and/or (ii) the total value of any exemption from real estate taxes received by the Landlord by reason of the Agency's leasehold interest; and/or (iii) the total value of any exemption from mortgage recording tax received by reason of the Agency's involvement with the Project. If the Agency makes such a determination and requires repayment of all or a portion of the financial assistance received by the Company and/or Landlord, the Company agrees and covenants that it will: (A) cooperate with the Agency in its efforts to recover or recapture any or all financial assistance; and (B) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed by any affected tax jurisdiction.

4. Recitals/Exhibits. The Recitals set forth above and the Exhibits attached hereto are material to and incorporated into this Agreement by reference.

5. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery in .PDF format, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or .PDF signature page were an original thereof.

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[Signature Page to Termination of PILOT Agreement]

**TOWN OF AMHERST INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_

Name: David S. Mingoia

Title: Executive Director

**NORTHPOINTE COMMERCE PARK LLC**

By: \_\_\_\_\_

Name:

Title: