

TOWN OF AMHERST DEVELOPMENT CORPORATION

**Finance & Audit Committee Meeting
Agenda**

**January 9, 2025 – 8:30 am
Agency Offices, 4287 Main Street**

1. Roll Call of Members
2. Reading an approval of Minutes
3. New Business
 - a. Summit Center, Inc. – Bond Modification
4. Adjournment

TOWN OF AMHERST DEVELOPMENT CORPORATION
Minutes of the Finance & Audit Committee Meeting
March 7, 2024 – 8:30 AM
Agency Office, 4287 Main Street

Audit & Finance Committee: Anthony Agostino
 Hadar Borden

Guests: Carlton Brock, Jr.
 William W. Tuyn
 Frank LoTempio III
 Hon. Timothy Drury
 Jacqui Berger
 Kevin Zanner
 David S. Mingoia
 Frank Guido
 Xavier Eddy
 Randy Sheppard (via Zoom)

Mr. Agostino opened the meeting at 8:43 AM and requested a motion to approve the previous meeting's minutes. Ms. Borden made the motion and it carried unanimously.

Mr. Mingoia introduced Mr. Sheppard from the Bonadio Group who provided detail on the draft 2023 ADC Audit. After discussion, Mr. Borden made a motion to forward the draft ADC Audit to the Board of Directors for review and it carried unanimously.

Mr. Mingoia presented a request from Asbury Pointe to appoint B.C. Ziegler and Company as the remarketing agent for an existing bond, replacing M&T Bank. After discussion, Ms. Borden made a motion to forward the item to the Board of Directions and it carried unanimously.

Ms. Borden made a motion to adjourn the meeting at 8:49 AM, and it carried unanimously.

**RESOLUTION TO RECOMMEND MODIFICATIONS
THE SUMMIT CENTER, INC. PROJECT**

A regular meeting of the Finance and Audit Committee (the “Committee”) 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 January 9, 2025 at 8:30 o’clock, a.m., local time.

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

PRESENT:

Anthony T. Agostino	Chairperson
Hadar Borden	Member
Nicole Gavigan	Member

ABSENT:

ISSUER STAFF PRESENT INCLUDED THE FOLLOWING:

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

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

Resolution No. ____

RESOLUTION RECOMMENDING THAT THE BOARD OF DIRECTORS OF TOWN OF AMHERST DEVELOPMENT CORPORATION (THE “ISSUER”) ADOPT A RESOLUTION TO AUTHORIZE (A) CERTAIN AMENDMENTS BY THE ISSUER RELATING TO ITS TAX-EXEMPT REVENUE BOND (THE SUMMIT CENTER, INC. PROJECT), SERIES 2017A ORIGINALLY ISSUED BY THE ISSUER ON DECEMBER 28, 2017 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$5,917,799 AND (B) THE EXECUTION OF SUCH DOCUMENTS RELATED THERETO.

WHEREAS, pursuant to a requirement under Chapter 506 of the 2009 Laws of the State of New York (the “Public Authorities Reform Act”), the Finance and Audit Committee (the “Committee”) of the Town of Amherst Development Corporation (the “Issuer”) is responsible for reviewing proposals for the issuance of debt by the Issuer and its subsidiaries and making recommendations on such issuances; and

WHEREAS, on December 28, 2017, the Issuer issued its Tax-Exempt Revenue Bond (The Summit Center, Inc. Project), Series 2017A in the original principal amount of \$5,917,799 (the “Bond”); and

WHEREAS, the Bond was issued pursuant to a resolution adopted by the board of directors of the Issuer on December 8, 2017 (the “Bond Resolution”), a certificate of determination dated December 28.

2017 executed by the Chairman, Vice Chairman, Chief Executive Officer, Secretary or Assistant Secretary of the Issuer (“Certificate of Determination”) and a bond purchase and disbursing agreement dated as of December 1, 2017 by and among the Issuer, The Summit Center, Inc. (the “Company”), 233 Genesee Street Corporation, as holder of the Bond (the “Holder”) and M&T Bank, as disbursing agent (the “Disbursing Agent”), as amended and supplemented by a first omnibus amendment to bond purchase agreement and related financing documents dated as of February 15, 2023 (as so amended and supplemented, the “Bond Purchase Agreement”) by and among the Issuer, the Company, the Holder, the Disbursing Agent and M&T Bank, as collateral agent (the “Collateral Agent”); and

WHEREAS, the Bond was issued for the purpose of financing a portion of the costs of a certain project (the “Project”) undertaken for the benefit of the Company consisting of the following: (A) the refinancing of certain outstanding obligations incurred by the Company with respect to the construction and equipping of various facilities providing educational services for developmentally disabled children and adults, located at 150 Stahl Road, 165 Creekside Drive, 25 Woodridge Drive and 55-75 Pineview Drive in the Town of Amherst, Erie County, New York (collectively, the “Project Facility”); (B) the financing of all or a portion of the costs of the foregoing by the issuance of the Bond; and (C) paying a portion of the costs incidental to the issuance of the Bond, including issuance costs of the Bond and any reserve funds as may be necessary to secure the Bond; and

WHEREAS, in connection with the issuance of the Bond, the Company and the Holder entered into a continuing covenant agreement dated as of December 1, 2017 (the “Continuing Covenant Agreement”), pursuant to which the Company, among other things, covenanted to meet a Cash Flow Coverage Ratio (as defined in the Continuing Covenant agreement) on an annual basis; and

WHEREAS, (A) pursuant to the Continuing Covenant Agreement, a failure by the Company to meet the Cash Flow Coverage Ratio is an event of default under the Continuing Covenant Agreement and (B) pursuant to the Bond Purchase Agreement, an event of default under the Continuing Covenant Agreement triggers an event of default under the Bond Purchase Agreement, whereby the Bond shall accrue interest at the Default Bond Rate; and

WHEREAS, the Issuer has been notified by the Company and the Holder that (A) the Company failed to meet the Cash Flow Coverage Ratio for its 2024 fiscal year and (B) the Holder desires to waive its right to charge interest on the Bond at the Default Bond Rate (the “Proposed Waiver”); and

WHEREAS, the Issuer received a letter dated January 3, 2025 from the Company (the “Modification Request”), with a copy of such Modification Request being attached hereto as Exhibit A, (A) requesting that the Issuer consider and approve certain modifications to the Continuing Covenant Agreement and the Bond Purchase Agreement to reflect that the accrual of the Default Bond Rate on the Bond shall be at the discretion of the Holder as more specifically described in the Modification Request, (B) requesting that the Issuer enter into modifications to the Continuing Covenant Agreement, the Bond Purchase Agreement and such other documents necessary to implement the Modification Request (collectively, the “Modifications”) and (C) acknowledging that the Proposed Waiver by the Holder shall result in a reissuance of the Bond for federal income tax purposes (as so reissued, the “Reissued Bond”); and

WHEREAS, in connection therewith, the Issuer desires to execute (A) a Form 8038 (Information Return for Tax-Exempt Private Activity Bonds) in connection with the Reissued Bond (the “Reissued Information Return”) and (B) the Bond Purchase Agreement and certain other documents (the Reissued Information Return, the Bond Purchase Agreement and such other documents being referred to hereinafter as the “Modification Documents”) in order to implement the Modifications (collectively, the “Action”); and

WHEREAS, Issuer staff and counsel to the Issuer have provided information to the Committee respecting the Action and the Modification Documents; and

WHEREAS, the members of the Committee have reviewed such further information and have discussed same with Issuer staff and counsel to the Issuer;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE FINANCE AND AUDIT COMMITTEE OF THE TOWN OF AMHERST DEVELOPMENT CORPORATION AS FOLLOWS:

Section 1. Based on the foregoing recitals, the members of the Committee hereby recommend that the board of directors of the Issuer adopt a resolution to authorize the Action and the execution of the Modification Documents in connection therewith.

Section 2. 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:

Anthony T. Agostino	VOTING	_____
Hadar Borden	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 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 Finance and Audit Committee of the Issuer (the “Committee”), including the resolution contained therein, held on January 9, 2025 with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Committee and of such resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Committee 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 Committee present throughout said meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Issuer this 9th day of January, 2025.

BY: _____
Assistant Secretary

(SEAL)

EXHIBIT A
MODIFICATION REQUEST LETTER

See attached.

**BOARD OF DIRECTORS**

Mark E. Brand, Esq.
Lisa Burrows-MacLean, Ph.D.
John R. Cinquino, B.S.
Rahsaan DeLain, M.S.
Kathy R. Doody, Ph.D.
Greg Fabiano, Ph.D.
Frederick G. Floss, Ph.D.

David Flynn, J.D.
John T. Gavigan, M.B.A.
Daniel P. O'Neill, J.D.
Cindy Romanowski, M.D.
Eric C. Saenger, M.B.A.
Kenneth L. Sniatecki, B.S.

EMERITUS MEMBERS

Anthony M. D'Auria, B.A.
Colleen M. Seminara, Esq.
Robert E. Spangenthal, Esq.
Sujata Yalamanchili, M.B.A., Esq.

■ **CHIEF EXECUTIVE OFFICER** Lisa A. Foti, CPA

■ **PRESIDENT** Amy L. Jablonski Psy.D., BCBA-D

January 3, 2025

Town of Amherst Development Corporation
4287 Main Street
Amherst, New York 14226
Attention: David Mingoia, Chief Executive Officer

Re: Request for Bond Modifications - Default Rate

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 Issuer's Tax-Exempt Revenue Bond (The Summit Center, Inc. Project), Series 2017A (the "Bond") in order to reflect that the accrual of the default rate on the bond shall be at the discretion of 233 Genesee Street Corporation, as the current holder of the Bond (the "Holder").

We are not requesting any new financial assistance relating to the underlying project financed with proceeds of the Bond. 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 underlying financing documents necessary to implement the above-described modification. As discussed with Hodgson Russ LLP, as the Issuer's bond counsel, we understand that the above-referenced change will create a reissuance of the bond for federal income tax purposes.

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

Please let me know if you have any questions or need further information. I can be reached at dzakes@thesummitcenter.org or (716) 629-3453.

Very truly yours,

Dana Zakes
Chief Financial Officer - The Summit Center

■ **EARLY INTERVENTION & EDUCATION DIVISION** ■ **BEHAVIORAL HEALTH DIVISION** ■ **COMMUNITY DIVISION** ■ **ADULT DIVISION**

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