

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**  
**Minutes of the 484<sup>th</sup> Meeting**  
**September 23, 2016 – 8:30 am**  
**Agency Offices, 4287 Main Street**

The meeting of the above captioned Agency was called to order by Chairman Carlton Brock.

**PRESENT:**

Carlton N. Brock, Jr.  
Michele F. Marconi  
Aaron Stanley  
E. Marshal Wood, Jr.  
Steven Sanders  
Edward F. Stachura  
Michael R. Szukala  
David S. Mingoia, Interim Executive Director  
Kevin J. Zanner, Hurwitz & Fine PC  
Diane K. Church, Hurwitz & Fine PC

**GUESTS:**

AIDA Staff  
Timothy Creenan, Amherst Alarm  
Mary Ann Creenan, Amherst Alarm  
Michael Drennan, Amherst Alarm  
Pionne Corbin, GEICO  
Jonathan Epstein, Buffalo News  
David Tytka, Uniland Development Co.

Chairman Brock called the meeting to order and reminded everyone that the meeting was being audio recorded.

**MINUTES**

The minutes of August 19<sup>th</sup> meeting were approved with an amendment indicating that the Annual Net Exemption report be issued no later than the March board meeting and be included as a supplement to the Annual Performance Measurements report.

The minutes of the August 25<sup>th</sup> Special Meeting were approved as presented.

**BILLS & COMMUNICATIONS**

Interim Executive Director David Mingoia indicated that each board member had received an invitation of the Northtown Kia grand opening event. The invitations were at each member's seat.

**TREASURER'S REPORT**

Treasurer Aaron Stanley reviewed the August 2013 Treasurer's Report with the board. He noted that there continues to be a substantial deficit on the income side, but it was expected to be lessened due to upcoming closings, along with receipt of payment of outstanding invoices.

Vice Chairperson Michele Marconi questioned the status of several contracts under the Professional Services line item for the remainder of 2016.

David Mingoia noted that the two contracts in question provided for a 30-day termination notice.

8:40 am – Michael Szukala entered the meeting.

After a brief discussion, Steven Sanders made a motion to have Interim Executive David Mingoia send letters to Masiello, Martucci, Calabrese & Associates and Paul Leone to give them notice of termination of their contracts. Michele Marconi seconded the motion.

Votes of aye were made by Brock, Marconi, Stanley, Wood, Stachura, Sanders and Szukala. The motion passed 7-0.

The August Treasurer's Report was then unanimously approved as presented.

## **EXECUTIVE DIRECTOR REPORT**

Interim Executive Director David Mingoia presented the Executive Director's Report, updating the Board of Directors on the Amherst Comprehensive Plan and Zoning Project and Village of Williamsville Strategic Market Plan.

## **COMMITTEE REPORTS**

There were no Committee Reports presented at this meeting.

## **UNFINISHED BUSINESS**

### **I. Approval of AIDA By-Laws**

David Mingoia informed the board that Agency Counsel reviewed the Section 7 of the proposed By-Laws amendment in relation to Ballot Voting. David Mingoia noted that Agency Counsel found the language to be in order and recommended approval of the By-Laws.

Michele Marconi made a motion to approve the Town of Amherst Industrial Development Agency By-Law amendments. Aaron Stanley seconded the motion.

Votes of aye were made by Brock, Marconi, Stanley, Wood, Stachura, Sanders and Szukala. The motion passed 7-0.

## **NEW BUSINESS**

### **I. Policy for Recapture and/or Termination of Financial Assistance-Project Material Terms**

On June 17, 2016, the Board of Directors approved a *Policy for Recapture and/or Termination of Financial Assistance* as required by Sections 874 and 875 of the New York State General Municipal Law.

A discussion centering on Material Factors utilized by Empire State Development and Erie County IDA took place and those benchmarks as Agency Policy began.

Michele Marconi stated that she was concerned with two issues regarding the 85% performance standard. Mrs. Marconi said that she was struggling with providing 100% of incentives for an 85% performance standard and didn't think that was fair.

The other issue Michele Marconi had was that it was her belief the material factors contained in the Recapture Policy adopted in June were on an interim basis until the board discussed further. She noted that it was useful to know what other economic development entities were doing, but felt that the Amherst IDA board needs to discuss and develop its own methodology for setting the material factors.

Carlton Brock asked David Mingoia if the board could establish certain material factors on a case by case basis.

David Mingoia responded by stating he believed the board could do so, but there would be pitfalls to such practice, but that it would affect the competitive landscape, should Amherst require 100% performance standard and Cheektowaga or other Erie County municipalities only require 85%.

Carlton Brock stated that if a company were to leave Amherst in favor of another community because of certain criteria – it is what it is. He went on to say that he doesn't feel it to be unreasonable to look at projects differently and that the board have the ability to rate projects on their merits, and possibly if it's a large or small project.

Steven Sanders stated that he felt that the board should have the ability to evaluate projects on a case by case basis, but the he did understand the need to be predictable. He noted that he was concerned in adopting a policy that required 100% performance standard may force applicants to be less forthcoming with actual employment projections.

Marshall Wood questioned what would determine a large project or a small project.

Carlton Brock stated that that would have to be part of future board discussions and would like to see something developed that was fair and reasonable, not absolute.

Michael Szukala stated that he agreed with both Michele Marconi and Steven Sanders. He also noted that employment can vary due to many factors including seasonal and bad hires.

Carlton Brock requested a motion on the adoption of Project Material Terms for the Recapture Policy.

Steven Sanders made a motion that in order to move the two projects on the September 23<sup>rd</sup> agenda forward, the board utilize the Material Factors presented at this meeting, providing that the board discuss Project Material Factors matter at upcoming meetings to make a final determination. Aaron Stanley seconded the motion.

By a show of hands, vote of aye were made by Brock, Stanley, Wood, Stachura, Sanders and Szukala. A vote of no was cast by Michele Marconi. The motion passed 6-1.

## **II. Authorization Resolution – Amherst Alarm, Inc.**

Amherst Alarm Inc. requested a lease transaction for its proposed \$3 million project to purchase and renovate 18,500 square feet located at 2361 Wehrle Drive. The company projects to have 65 full-time jobs retained and create 6 new Jobs 2-years after project completion. Salary ranges from \$35,000 to \$70,000 annually plus benefits. The Public Hearing for the project was held on Friday, September 9, 2016.

Aaron Stanley moved to approve the project. Edward Stachura seconded the motion.

Michele Marconi questioned if the Planning Board approved the SEQR on the project and was informed that because this was an existing facility there was no SEQR and that review of the EAF put it as an Unlisted action.

Steven Sanders questioned if the motion should be amended to identify actually number of jobs to be created. He noted that his calculation of 85% of 6 is 5.1 jobs.

After a brief discussion, Steven Sanders made a motion to amend the original motion to include that at the end of two years and upon completion of the project, full time employment will be 70. Aaron Stanley seconded the amendment to the motion. Aye votes were cast by Brock, Stanley, Wood, Stachura, Sanders and Szukala. A vote of no was made by Michele Marconi. The motion passed 6-1.

A motion to approve the amended project resolution was made by Aaron Stanley, seconded by Edward Stachura. Vote of aye were made by Brock, Stanley, Wood, Stachura, Sanders and Szukala. Michele Marconi cast a no vote. The motion passed 6-1.

## **II. Authorization Resolution – GEICO**

GEICO is requesting a \$11,004,255 installment sale transaction for the renovation and equipping of a recently leased space located at 150 Crosspoint Parkway and to its existing building located at 300 Crosspoint Parkway. The company projects to have 2,677 full-time and 57 part-time jobs retained and create 278 new jobs 2-years After Project Completion. Salary ranges from \$32,000 to \$54,000 annually plus benefits.

Michael Szukala questioned if this company had received previous abatement incentives and was informed that the this is the Agency's third project with GEICO. It was noted that the company has consistently surpassed its employment projections.

Michael Szukala noted that the he is very pleased the GEICO is located in Amherst and that they have proven success here, but he expressed concern as to when they will no longer need incentives.

Interim Executive Director Mingoia noted that GEICO has locations throughout the country and that these incentives are reasonably necessary to allow GEICO to expand their presence in NYS.

Edward Stachura noted that by approving the investment of \$475,000 in sales tax exemption, the sales tax generated by the just the 278 new hires reach \$1.2 million with two years. He stated that this was more than a reasonable investment of tax dollars over the life of the project.

Aaron Stanley made a motion to approve the project. Marshall Wood seconded the motion.

Michele Marconi questioned what the \$4 million ESDC grant was being used for.

David Mingoia introduced Pionne Corbin, Regional Vice President of GEICO and asked her to provide Mrs. Marconi with the information.

Ms. Corbin indicated that the funds are considered Excelsior Tax Credits that are based on certain employment benchmarks and capital outlay over the six-year term of the project.

After additional discussion, Steven Sanders made a motion to amend the original motion to include that at the end of two years and upon completion of the project, full time employment will be 2941. Aaron Stanley seconded the amendment to the motion. Aye votes were cast by Brock, Stanley, Wood, Stachura, Sanders and Szukala. A vote of no was made by Michele Marconi. The motion passed 6-1.

A motion to approve the amended project resolution was made by Steven Sanders, seconded by Edward Stachura. Votes of aye were made by Brock, Stanley, Wood, Stachura and Sanders. Michele Marconi and Michael Szukala cast a no votes. The motion passed 5-2.

9:35 am – meeting adjourned.

Town of Amherst  
Industrial Development Agency  
Net Exemption Report-2015

Sorted by Job %  
Dated 8/17/2016

Property Address	Amount of Tax Exemptions						Payments In Lieu of Taxes (PILOTs)						Employment				NOTES
	Primary Tenant	Sales Tax	Property Tax	Mort Rec	Total	PILOT	Start	County	TOA	School	District	Total PILOTs	Net Exemptions	Information			
														Emp Prior	Est Create	Current Emp	
Property Address	Tenant	Sales Tax	Tax	Tax	Exemptions	PILOT	Start	County	TOA	School	District	Total PILOTs	Net Exemptions	To IDA	Create	Current Emp	
105 CrossPoint	Uniland-MT	-	84,087	-	84,087	2007	6,978	5,685	30,977	43,640	40,447	65	55	31	26%		
125 Lawrence Bell	Uniland-MT	-	61,597	-	61,597	2005	11,152	9,086	41,359	61,597	-	0	120	38	32%		
Iskalo 5454 Main - (10/03)	Iskalo-MT	-	15,235	-	15,235	2005	2,758	2,247	10,230	15,235	-	0	15	5	33%		
20 Northpointe	Zaepfel-MT	-	113,009	-	113,009	2007	11,847	9,652	54,245	75,744	37,265	0	295	104	35%		
Bryant & Stratton (02/11)	Bryant & Stratt	-	105,464	-	105,464	2004	6,296	5,129	29,283	40,708	64,756	85	10	34	36%		
2150 Wehrle Dr. (12/15)	Nidus Dev-MT	-	-	27,000	27,000	2018	-	-	-	-	27,000	6	10	6	38%		
5727 Main, LLC (01/11)	Iskalo - MT	-	23,374	-	23,374	2013	3,708	3,021	13,995	20,724	2,650	0	18	7	39%		
5839 Main St. Inc. (10/02)	Iskalo - MT	-	21,343	-	21,343	2004	3,864	3,148	14,331	21,343	-	0	20	8	40%		
Iskalo 52 S.U. (06/07)	Iskalo-MT	11,633	56,153	-	67,786	2009	8,794	7,164	33,886	49,844	17,942	0	75	30	40%		
Silvestri Dev (03/01)	LocalNet	-	15,249	-	15,249	2003	1,832	1,492	6,792	10,116	5,133	0	15	6	40%		
550 Centerpointe(09/00)	Ciminelli - MT	-	100,336	-	100,336	2002	18,166	14,800	67,370	100,336	-	0	169	75	44%		
Iskalo 2410 NF	Iskalo-MT	134	156,773	19,580	176,487	2013	10,071	8,205	42,201	60,477	116,010	0	295	137	46%		
Bryant Woods Partners, LLC	SoftTreck Tech	-	41,331	-	41,331	2004	5,243	4,271	19,444	28,958	12,373	40	35	35	47%		
NF Properties (2390)-(09/04)	NF Prop-MT	-	41,195	-	41,195	2006	5,061	4,123	27,522	36,706	4,489	0	65	34	52%		
390 Youngs Rd. (4/26)	Gelia Wells-MT	-	63,348	-	63,348	2007	6,523	5,314	27,248	39,085	24,263	0	140	80	57%		
60 Northpointe Assoc, LLC	Zaepfel-MT	-	62,288	-	62,288	2003	5,504	4,484	25,202	35,190	27,098	33	5	23	61%		
Sachel, LLC	Reeds Jewlers	-	13,033	-	13,033	2005	1,793	1,461	8,212	11,466	1,567	11	35	28	61%		
IIMAK-F (06/94)	IIMAK	-	137,610	-	137,610	1995	21,523	17,535	98,552	137,610	-	520	40	361	65%		
Stenclik (04/016)	Superior Design	-	61,997	-	61,997	2007	9,553	7,783	36,461	53,797	8,200	111	22	86	65%		
150 CrossPoint Pkwy	Uniland-MT	-	170,512	-	170,512	2003	16,540	13,475	61,340	91,355	79,157	445	343	520	66%		
SB Holding (Pizza Plant) (05/11)	Pizza Plant	-	41,103	-	41,103	2013	5,642	4,596	21,757	31,995	9,108	0	50	33	66%		
5020 Main St. (03/14)	Iskalo Hyatt	382,944	41,302	-	424,246	2017	6,657	5,424	29,221	41,302	382,944	0	43	29	67%		
AHO of NY (1880 SH) - 10/12	Sr. Apts.- Clover	-	131,992	-	131,992	2015	4,387	3,574	20,086	28,047	103,945	0	3	2	67%		
1760 Wehrle Dr	PHH Mort	219,979	17,689	-	237,668	2017	3,040	2,476	11,273	16,789	220,879	0	467	317	68%		
8600 Transit (11/14)	Iskalo-MT	-	48,041	7,300	55,341	2007	3,898	3,176	17,424	24,498	30,843	20	20	27	68%		
Old Dutchman's (11/14)	Old Dutch	60,918	9,959	-	70,877	2017	-	-	9,959	9,959	60,918	10	5	11	69%		
3500 Sheridan Dr	Buffalo Pharm	-	39,594	-	39,594	2012	6,193	5,045	28,356	39,594	-	8	9	12	71%		
Grover Cleveland Press (05/98)	Grover Cleve	-	13,036	-	13,036	1999	2,101	1,712	9,223	13,036	-	10	4	10	71%		
NF Properties (1961)- (03/03)	NF Prop-MT	-	39,906	-	39,906	2005	7,225	5,886	26,795	39,906	-	0	120	88	73%		
St. Gobain (05/02)	St. Gobain	-	35,671	-	35,671	2003	2,932	2,384	13,424	18,740	16,931	68	0	50	74%		
Laux Sporting Good, Inc. (09/03)	Laux	-	21,117	-	21,117	2005	3,217	2,621	14,637	20,475	642	21	6	21	78%		
500 Creekside Dr. (11/99)	Mr. Snacks	-	32,220	-	32,220	2001	5,039	4,106	23,075	32,220	-	22	5	23	85%		
CrossPoint Pkwy-475 (09/99)	M & T Bank	-	79,604	-	79,604	2000	43,866	35,738	-	79,604	-	785	255	922	89%		
AAA of WNY, Inc. (04/07)	AAA of WNY	-	182,358	-	182,358	2008	19,000	15,479	70,463	104,942	77,416	205	45	228	91%		
6500 Sheridan	Uniland-MT	1,968	143,090	-	145,058	2012	10,057	8,193	41,819	60,069	84,989	0	214	197	92%		
Columbus McKinnon	Columb McKin	180,916	-	60,000	240,916	2017	-	-	-	-	240,916	130	10	130	93%		
10 Curtwright Drive (10/15)	Ashton Potter	-	-	30,000	30,000	2018	-	-	-	-	30,000	120	5	120	96%		
30 North Union (10/02)	Northtown Orth	-	58,285	-	58,285	2004	10,553	8,597	39,135	58,285	-	0	54	52	96%		
6400 Main I - (05/00)	Ciminelli-MT	-	87,936	-	87,936	2002	15,921	12,971	59,044	87,936	-	340	200	535	99%		

Town of Amherst  
Industrial Development Agency  
Net Exemption Report-2015

Sorted by Job %  
Dated 8/17/2016

Property Address	Amount of Tax Exemptions					Payments In Lieu of Taxes (PILOTs)					Employment			NOTES	
	Primary Tenant	Sales Tax	Property Tax	Mort Rec	Total	Made by Project Operators					Information				
						PILOT Start	County	TOA	School District	Total PILOTs	Net Exemptions	To IDA	Emp Prior Create	Est Emp Current	
Property Address	Tenant	Sales Tax	Tax	Tax	Exemptions	PILOT Start	County	TOA	School District	Total PILOTs	Net Exemptions	To IDA	Emp Prior Create	Est Emp Current	
Watson Bowman	Watson Bowman	-	14,989	-	14,989	2002	1,222	995	5,594	7,811	7,178	97	16	117	104%
Iskalo 5178 Main - (06/12)	Iskalo-EvansBnk	-	24,514	-	24,514	2014	2,776	2,262	10,980	16,018	8,496	0	6	9	105%
36 North Union (10/02)	Iskalo-MT	-	14,634	-	14,634	2004	2,649	2,159	9,826	14,634	-	0	17	18	106%
GEICO (300 CP) 03/05	GEICO	-	544,328	-	544,328	2007	40,842	33,275	187,151	261,268	283,060	0	2500	2,693	108%
Dopkins & Co, LLP (02/02)	Dopkins & Co	-	52,583	-	52,583	2003	6,862	5,591	25,449	37,902	14,681	90	7	107	110%
RQC Ltd (12/03)	RQC Ltd.	-	25,469	-	25,469	2005	3,725	3,035	13,814	20,574	4,895	27	4	35	113%
5195 Main St.	MxdUse-Ellicott	-	326,087	-	326,087	2015	32,723	26,659	171,501	230,883	95,204	0	44	51	116%
60 Lawrence Bell, LLC (02/12)	TP Woodside	-	25,654	-	25,654	2013	3,406	2,775	12,632	18,813	6,841	28	3	36	116%
100 Northpointe Pkwy	Zaepfel-MT	-	120,433	-	120,433	2000	18,836	15,346	86,251	120,433	-	174	10	217	118%
Prime Wines Corp ((09/11))	Premier Liq.	-	161,677	-	161,677	2013	16,927	13,791	82,292	113,010	48,667	35	5	47	118%
Prometheus Books (05/95)	Prometheus Bks	-	29,399	-	29,399	2013	4,021	3,276	18,412	25,709	3,690	20	2	26	118%
15 Limestone Drive	Somerset Labs	-	14,806	-	14,806	2000	8,159	6,647	-	14,806	-	23	4	32	119%
BlackRock, Inc. (10/15)	BlackRock	3,245,813	-	-	3,245,813	2017	-	-	-	-	3,245,813	0	25	-	119%
AIP-115 LBD (06/97)	Uniland-MT	-	99,764	-	99,764	1999	18,062	14,715	66,987	99,764	-	96	48	174	121%
Gintzler Graphics (09/03)	Gintz Graph	-	63,763	-	63,763	2005	10,517	8,568	39,002	58,087	5,676	54	4	70	121%
60 John Glenn (09/12)	Amherst Stainless	-	47,183	-	47,183	2015	5,926	4,828	27,135	37,889	9,294	43	3	56	122%
Ivoclар, Inc. (01/00)	Ivocl Inc.	-	144,849	-	144,849	2016	11,467	9,342	65,803	86,612	58,237	162	38	260	130%
Brompton Heights, Inc. (09/05)	Asst Living	-	216,632	91,625	308,257	2007	30,345	24,722	112,537	167,604	140,653	58	5	83	131%
S & K Realty(155CP)-(01/00)	ATTO Tech	-	85,450	-	85,450	2001	8,534	6,953	57,375	72,862	12,588	86	13	131	132%
Northtown Automotive-3845	North Auto	-	160,084	-	160,084	2013	17,546	14,295	81,546	113,387	46,697	58	12	94	134%
130 Bryant Woods South	Lougen Valenti	-	23,231	-	23,231	2009	2,352	1,916	8,722	12,990	10,241	0	20	27	135%
6363 Main Street, Inc. (11/94)	National Fuel	-	428,275	-	428,275	1006	77,539	63,172	287,564	428,275	-	590	75	902	136%
45 Bryant Woods I (07/04)	Chiampou et.al	-	50,595	-	50,595	2006	6,437	5,244	23,871	35,552	15,043	46	14	82	137%
3925 Sheridan (PEP)-12/03	Excelsior Orth	-	304,159	-	304,159	2006	46,782	38,113	215,191	300,086	4,073	50	75	188	150%
Enhanced Tool, Inc.	Enhanced Tool	-	8,047	-	8,047	2000	1,457	1,187	5,403	8,047	-	17	2	29	153%
NF Properties 1408 - (11/05)	NF Prop-MT	-	41,601	-	41,601	2007	4,276	3,483	19,577	27,336	14,265	0	97	148	153%
540 CrossPoint (Citigroup)	CitiGroup	-	213,056	32,360	245,416	2008	16,086	13,105	59,657	88,848	156,568	0	362	566	156%
Sheridan Properties (3980A)11/08	Dent Neuro	-	99,711	-	99,711	2011	12,835	10,457	50,826	74,118	25,593	0	38	62	163%
9500 Transit (03/13)	Sr. Housing	-	338,551	38,450	377,001	2015	8,157	6,645	30,247	45,049	331,952	0	3	5	167%
375 Essjay (08/97)	Ciminelli - IHA	-	159,613	-	159,613	1999	28,890	23,545	107,178	159,613	-	168	0	300	179%
205 Bryant Woods (04/99)	Acct. Solu. Group	-	61,959	-	61,959	2001	7,429	6,052	41,602	55,083	6,876	85	166	519	200%
Iskalo 6467 Main - (05/99)	Iskalo-MT	-	111,166	-	111,166	2001	20,127	16,397	74,642	111,166	-	0	100	222	222%
1955 Wehrle Dr	The Advantage	87,500	60,143	-	147,643	2009	5,820	4,742	21,585	32,147	115,496	50	6	125	223%
Davis Ulmer Sprink (10/90)	Davis Ulmer	-	34,787	-	34,787	1991	5,441	4,433	24,913	34,787	-	30	7	84	227%
Asbury Point, Inc.- (03/99)	Sr. Apts	-	121,673	-	121,673	2001	22,029	17,947	81,697	121,673	-	0	18	46	256%
20 Lawrence Bell Dr.	Buffalo Pharm	-	51,294	-	51,294	2008	5,878	4,789	23,204	33,871	17,423	0	50	130	260%
RHDK Ent (237 Comm)-(01/06)	Stellar Technol	-	43,784	-	43,784	2007	5,789	4,717	27,317	37,823	5,961	50	5	151	275%
580 CrossPoint (Citigroup)	CitiGroup	-	312,818	-	312,818	2009	23,060	18,787	85,521	127,368	185,450	0	429	1,328	310%
MCDMapleAyer (02/12)	McGuire Dev - MT	-	59,004	-	59,004	2013	3,427	2,792	13,282	19,501	39,503	0	18	59	327%

Town of Amherst  
Industrial Development Agency  
Net Exemption Report-2015

Sorted by Job %  
Dated 8/17/2016

# PROJECT PROFILE:

## Amherst Alarm, Inc.

### \$3,000,000

September 23, 2016



#### ELIGIBILITY

- NAICS Code—561621 (Security Systems Services)

#### COMPANY INCENTIVES

- Estimated \$94,050 in real property tax savings
  - \$13,398 (Town)
  - \$17,490 (County)
  - \$63,162 (School)
- Estimated \$82,250 in sales tax savings
- Estimated \$30,000 in mortgage recording tax savings

#### PROJECT BENEFITS

- Estimated \$32,958 in PILOT Payments (7-year Schedule)
- Estimated \$669,901 in Income Taxes Generated
- Estimated \$586,023 in Sales Taxes Generated

#### EMPLOYMENT

- 65 Full-Time Jobs Retained
- 6 New Jobs 2-Years After Project Completion
- Salary Ranges From \$35,000 to \$70,000 Annually Plus Benefits

#### Project Address:

2361 Wehrle Drive  
Williamsville, New York 14221  
(Williamsville Central School District)

#### Investment:

Building Purchase:	\$1,500,000
Renovations:	\$900,000
Equipment:	\$400,000
Soft Costs:	\$200,000

#### Company Description:

Amherst Alarm Inc. provides security services for residential and commercial customers in Western New York. A major business component of the company is the in-house monitoring security and fire systems. The company is the only security company to perform these functions in WNY.

#### Project Description:

Amherst Alarm Inc. is proposing to purchase and renovate 18,500 square feet located at 2361 Wehrle Drive, which sits on 4.94 acres and offers room to grow. The building has been on the market since 2011 and mostly vacant for most of this time. The company currently leases 9,000 square feet at 435 Lawrence Bell Drive and seeks to create a purpose built facility tailored to its needs.

Growth is predicated on the company's ability to obtain AIDA incentives to secure financing for this expansion. As a small business, AIDA incentives directly benefit the company's cash flow and allows it to expand its Monitoring Response Center. Without incentives, the company would consider other options including outsourcing those functions to alarm companies out of state.



**PROJECT PROFILE:**

**Amherst Alarm, Inc.**

\$3,000,0000

**Page 2**

**AIDA COMPANY HISTORY:**

1. None

**MATERIAL TERMS:**

**PROJECT SCHEDULE**

- Acquistion of building and construction start: October 2016
- Construction Completion: May 2017
- Occupancy: June 2017

# PROJECT PROFILE:

## GEICO Inc.

\$11,004,255  
September 23, 2016



### ELIGIBILITY

- NAICS Code—524126 (Direct Property and Casualty Insurance)

### COMPANY INCENTIVES

- Estimated 474,874 in sales tax savings

### PROJECT BENEFITS

- Estimated \$13,383,342 in Income Taxes Generated
- Estimated \$8,804,944 in Sales Taxes Generated

### EMPLOYMENT

- 2,677 Full-Time And 57 Part-Time Jobs Retained
- 278 New Jobs 2-Years After Project Completion
- Salary Ranges From \$32,000 to \$54,000 Annually Plus Benefits
- Construction And Equipment

### PROJECT SCHEDULE

- Purchases Commences: October 2016
- Construction Completion: December: 2016

### Project Address:

150 & 300 Crosspoint Parkway  
Amherst, New York 14068  
(Williamsville Central School District)

### Investment:

Renovations: \$5,193,623  
Equipment: \$5,660,632  
Soft Costs: \$150,000



### Company Description:

Government Employees Insurance Company (GEICO) was founded 80 years ago and is the second largest private insurance company in the United States. The company is also the largest private passenger auto insurer in New York State with over 1.7 million policyholders. GEICO employs more than 30,000 associates and maintains 14 major offices around the country, including two locations in New York State.

### Project Description:

GEICO is requesting a \$11,004,255 installment sale transaction for the renovation and equipping of a recently leased space located at 150 Crosspoint Parkway and to its existing building located at 300 Crosspoint Parkway.

The facility in Amherst services the Northeast, with 91% of its business outside of New York State. In making its decision to expand in Amherst, the company included AIDA incentives along with other incentives from New York State in its analysis on where to site this expansion.

**RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE RENOVATION AND EQUIPPING OF AN APPROXIMATELY 18,500 SQUARE FOOT FACILITY BY CMR OKW PROPERTIES LLC AND AMHERST ALARM, INC. TO BE LOCATED AT 2361 WEHRLE DRIVE, AMHERST, NEW YORK FOR SALE OR LEASE TO THE AGENCY AND SUBSEQUENT LEASE OR RECONVEYANCE PURSUANT TO AN INSTALLMENT SALE CONTRACT TO CMR OKW PROPERTIES LLC FOR SUBLEASE TO AMHERST ALARM, INC., THE EXECUTION OF A MORTGAGE AGREEMENT, LEASE AGREEMENT AND/OR INSTALLMENT SALE CONTRACT AND PILOT AGREEMENT AND THE TAKING OF OTHER ACTIONS.**

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

**WHEREAS**, Amherst Alarm, Inc., for itself or for related individuals or entities (the "Company"), has entered into negotiations with officials of the Agency with respect to the renovation and equipping by the Agency without the proceeds of a bond issue of an existing 18,500+/- square foot building to be used for commercial purposes (the "Project") and conveyance of the Project pursuant to an Installment Sale Contract or the lease of the Project to CMR OKW Properties, LLC (the "Lessee") for sublease to the Company, such Project to be located at 2361 Wehrle Drive, Amherst, New York (the "Premises"); and

**WHEREAS**, the Company has submitted an application and other materials and information (collectively, the "Application") to the Agency to initiate the accomplishment of the above; and

**WHEREAS**, the Application sets forth certain information with respect to the Company and the Project, including the following: that the Company desires Agency financing for the renovation of an existing 18,500+/- square foot building and the acquisition and installment of machinery and equipment, all to be located at 2361 Wehrle Drive, Amherst, New York, for the purpose of providing expanded office and warehousing space to support the Company's alarm business and providing expanded space for the Company's Monitor Response Center ("MCR"), all at a cost of approximately \$3,000,000.00; that the Company's current facility does not provide the Company with adequate space to expand its operations and if the Company is unable to expand its MCR, it may be required to out-source its monitoring operations, resulting in the loss of employment; that the Company anticipates that sixty-five (65) full-time employees will be retained and six (6) new full-time jobs will be created as a result of the Project at the end of two (2) years of operation

thereof; that (i) there will be no substantial adverse disruption of existing employment of facilities of a similar nature in the Town of Amherst and (ii) the Project will retain present employment, provide substantial employment and substantial capital investment; and

**WHEREAS**, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on September 9, 2016, and has considered all oral and written presentations made at or in connection with said public hearing;

**WHEREAS**, the Agency has reviewed the Application and a cost-benefit analysis with respect to the Project, including the extent to which the Project will create and retain permanent, private-sector jobs, the value of tax exemptions to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the proposed Project in a timely fashion, the extent to which the proposed Project will provide additional sources of revenue for the municipalities and school district and other public benefits that might occur as a result of the Project; and

**WHEREAS**, the Agency desires to encourage the Company and the Lessee with respect to the consummation of the Project, if by doing so it is able to induce the Company to proceed with the Project in the Town of Amherst; and

**WHEREAS**, the Company will complete the Project by obtaining a conventional loan from a third party, and the Company has requested that the Agency execute any and all documents required by the parties, including any collateral mortgages on the Project given to secure a loan(s) obtained by the Company to finance the cost of the Project; and

**WHEREAS**, the Company has completed and submitted to the Agency Part 1 of an Environmental Assessment Form ("EAF") in accordance with the provisions of the State Environmental Quality Review Act and regulations adopted pursuant thereto (collectively, "SEQRA"); and

**WHEREAS**, the Agency has completed Part 2 of the EAF and has considered the proposed Project and reviewed the EAF and the criteria set forth in SEQRA in order to determine whether the Project will have a significant effect on the environment and wishes to make the findings required of an agency under SEQRA.

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

**Section 1.** The Agency hereby resolves that the proposed Project will not have a significant impact on the environment for the reasons more particularly set forth in the negative declaration prepared by the Agency and, in accordance with SEQRA, hereby adopts such negative declaration with regard to the Project.

**Section 2.** The Project is described in the recitals to this Resolution. The financial assistance to be provided in connection therewith include: an exemption from sales and use taxes for building materials and machinery, equipment, fixtures and furnishings purchased for incorporation into or

use at the Project location having a total cost not to exceed \$1,000,000.00, an exemption from mortgage recording taxes for a mortgage having a principal amount not to exceed \$3,000,000.00 and an abatement from real property taxes in accordance with the Agency's standard 7-year payment in lieu of tax schedule (collectively, the "Financial Assistance"). In addition to any other covenants, obligations and agreements which may be contained in the Project Documents (as hereinafter defined), the provision by the Agency of the Financial Assistance is made subject to the agreement by the Company to comply, throughout the period during which the Company is receiving Financial Assistance from the Agency (the "Compliance Period"), with the following covenants and agreements, each of which shall constitute a "Material Factor":

- (a) compliance with the Agency's Local Labor Policy in connection with the construction of the Project;
- (b) retention of existing full-time employment of 65 jobs;
- (c) creation within two (2) years of Project completion of 5 new full time jobs (resulting in total full time employment within two (2) years of Project completion of 70) and retention of such jobs throughout the Compliance Period; and
- (d) investment of not less than 85% of the total Project cost of \$3,000,000.00 in the construction and equipping of the Project prior to Project completion.

**Section 3.** The Agency hereby determines that the Project and the financing thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act.

**Section 4.** The Agency hereby authorizes the Company and the Lessee, as agents for the Agency, to proceed with the Project as herein authorized. The Agency is hereby authorized to acquire an interest in the Project site and the buildings thereon, if any, and to make renovations or additions thereto. The Lessee and the Company are authorized to proceed with the acquisition and construction of the Project as set forth in any Project Agreement, the Agency Lease Agreement or Installment Sale Contract (as hereinafter defined).

**Section 5.** The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary of the Agency, and other appropriate officials of the Agency and its agents and employees, are hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and to complete the Project in cooperation with the Company and the Lessee.

**Section 6.** The Company and Lessee are authorized, as agents of the Agency, to initiate the construction of building renovations constituting the Project, and the acquisition of machinery and equipment which will be a part thereof or will be used in connection therewith, and to advance such funds as may be necessary to accomplish such purposes. The designation of the Company and Lessee as agent hereunder is limited to purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$1,000,000.00 and shall not apply to any other purchase by the Company or Lessee or any operating expenses of the Company or Lessee. The Company and Lessee shall report to the Agency, at such times as the Agency shall require, or as may otherwise be prescribed by the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner"), the value of all sales and use tax

exemptions claimed by the Company or Lessee or agents of the Company or Lessee or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators under the authority granted pursuant to this Resolution. A failure to report may result in the revocation of the designation of the Company and Lessee as agent and repayment of any sales and use tax exemptions claimed.

**Section 7.** The Agency is hereby authorized to enter into a Project Agreement with respect the provision of the Financial Assistance authorized herein (the “Project Agreement”) and to acquire an interest in the Project site and renovate a facility thereon, and the execution and delivery of a lease by the Lessee to the Agency (the “Company Lease”), an Agency Lease Agreement ( the “Agency Lease Agreement”) or Installment Sale Contract (the “Installment Contract”) between the Agency and the Lessee, a Payment in Lieu of Tax Agreement between the Agency and the Lessee (the “Payment in Lieu of Tax Agreement”), and such other documents as may be necessary to fulfill the intent of the parties to the transaction (collectively, the “Project Documents”), in form satisfactory to Agency counsel, are hereby authorized. The Payment in Lieu of Tax Agreement shall provide for payments in accordance with the Agency’s standard 7-year payment in lieu of tax schedule. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, or any Assistant Secretary are each authorized to execute such documents and to make or approve such amendments or modifications to the Project Agreement, Company Lease, the Agency Lease Agreement, Installment Sale Contract, the Payment in Lieu of Tax Agreement and such other documents executed and delivered in connection therewith as they deem necessary under the circumstances provided, however, that such modifications do not materially alter the risk to the Agency.

**Section 8.** In the event the Company obtains one or more conventional loans to finance the cost of the Project, the Agency is hereby authorized to execute and deliver to the lender(s) one or more collateral mortgages on the Project given to secure such loans, and such other documents as may be necessary to fulfill the intent of the parties to the transaction in form satisfactory to Agency counsel provided that the aggregate amount of such mortgages shall not exceed \$3,000,000.00. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary are each authorized to execute such collateral mortgages and to make or approve such amendment(s) or modifications to such collateral mortgages and other documents executed and delivered in connection therewith as they may deem necessary under the circumstances, provided, however, that such modifications do not materially alter the risk to the Agency.

**Section 9.** Any such action heretofore taken by the Company or Lessee initiating the acquisition, installation and construction of the Project is hereby ratified, confirmed and approved.

**Section 10.** Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Company and Lessee. By acceptance hereof, the Company and Lessee each agrees to pay such expenses and further agrees to indemnify the Agency, its members, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency with respect to the Project and the financing thereof.

**Section 11.** In the event a lease is not executed between the Lessee and the Agency by the expiration date of this Resolution (as such date may be extended as provided herein) or the

termination of this Resolution, the Company and Lessee shall then be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all improvements of the real property and the machinery and equipment which constitute the Project, as if the Agency did not have an interest in the Project from the date the Company or Lessee commenced its acquisition, construction and installation. In addition, in the event, because of the involvement of the Agency, the Company or Lessee claims an exemption from state sales or use tax in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder, or which exemption is in excess of the amounts authorized hereunder, or is otherwise not permitted under this Resolution, or if the Company or Lessee shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company or Lessee as agent for the Agency as set forth in this Resolution or in any document authorized hereunder, then the Company and Lessee shall each be required to remit to the Agency an amount equal to the amount of state sales and use taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company and Lessee by the Commissioner of state sales and use taxes, together with any relevant penalties and interest. In addition to the foregoing, in the event the Agency determines that Company or Lessee is in violation of a Material Factor, or in the event that the Company closes the Project or relocates its operations to a location outside of the Town of Amherst within the time period during which the Company or Lessee is receiving Financial Assistance from the Agency or in the event the Agency determines, in its judgment, that the Company knowingly and intentionally submitted false or intentionally misleading information in its application to the Agency or in any report or certification submitted to the Agency for the purpose of obtaining or maintaining any Financial Assistance from the Agency (each referred to herein as a "Recapture Event"), the Agency may, in accordance with its policies and procedures then in effect, (i) revoke the designation of the Company and Lessee and any agents of the Company and Lessee (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company or Lessee) as agents for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Lessee, commencing with the tax fiscal year next following such Recapture Event make payments in lieu of taxes on the Project with respect to all applicable taxing authorities in such amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project or otherwise modify the amount or terms of any Financial Assistance being provided by the Agency in connection with the Project and/or (iii) require that the Company or Lessee pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of (x) all sales tax exemptions claimed by the Company or Lessee and any agents of the Company or Lessee, including, but not limited to, consultants, sub-contractors, or any equipment lessors of the Company or Lessee under the authority granted under this Resolution and the Project Agreement, (y) any exemption from real estate taxes received by reason of the Agency's leasehold interest in the Project and/or (z) any exemption from mortgage recording tax received by reason of the Agency's involvement with the Project. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company, the Company and Lessee shall (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and Lessee and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed.

to by any affected tax jurisdiction.

**Section 12.** The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Company's or Lessee's purposes or needs. The Company and Lessee each is satisfied that the Project is suitable and fit for its purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Company and Lessee each hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

**Section 13.** Should the appropriate officers of the Agency determine, in their absolute discretion, that there is reason to believe that the activities of any past or present owner or operator of the Premises have resulted in the generation of any "hazardous substance" (as the term has been defined from time to time in any applicable federal or state law, rule or regulation), or that any party has stored, disposed or released any such substance on the Premises or within a one (1) mile radius thereof, the Agency shall be under no obligation to enter into a lease as contemplated by this Resolution.

**Section 14.** No covenant, stipulation, obligation or agreement herein contained or contained in the Project Agreement, Company Lease, the Mortgage Agreement, the Agency Lease Agreement, Installment Sale Contract, the PILOT Agreement or other documents, nor the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit, nor shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity.

**Section 15.** Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Company and Lessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company or Lessee hereunder or otherwise.

**Section 16.** This Resolution shall take effect immediately and shall continue in full force and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Company and Lessee pursuant to Sections 10 and 11 of this Resolution which shall survive any expiration or termination) or (b) allow the Company and Lessee additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions

taken by the Company and Lessee to complete such transactions. Upon any allowance of additional time to close, the Agency may charge the Company an extension fee in accordance with the Agency's fee schedule.

**Section 17.** This Resolution is subject to compliance with all local building and zoning requirements.

ADOPTED: September 23, 2016

ACCEPTED AND AGREED TO: \_\_\_\_\_, 2016

AMHERST ALARM, INC.

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

CMR OKW PROPERTIES, LLC

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

**RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE CONSTRUCTION OF BUILDING RENOVATIONS AND THE ACQUISITION AND INSTALLMENT OF MACHINERY AND EQUIPMENT BY GOVERNMENT EMPLOYEES INSURANCE COMPANY (GEICO) AT FACILITIES LOCATED AT 150 AND 300 CROSSPOINT PARKWAY, AMHERST, NEW YORK FOR SALE TO THE AGENCY AND SUBSEQUENT RECONVEYANCE PURSUANT TO AN INSTALLMENT SALE CONTRACT TO GEICO, THE EXECUTION OF AN INSTALLMENT SALE CONTRACT 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**, Government Employees Insurance Company (GEICO), for itself or for related individuals or entities (the "Company"), has entered into negotiations with officials of the Agency with respect to the construction of building renovations and the acquisition and installation of machinery and equipment to be used for commercial purposes (the "Project") and conveyance of the Project pursuant to an Installment Sale Contract to the Company, such Project to be located at 150 and 300 CrossPoint Parkway, Amherst, New York (the "Premises"); and

**WHEREAS**, the Company has submitted an application and other materials and information (collectively, the "Application") to the Agency to initiate the accomplishment of the above; and

**WHEREAS**, the Application sets forth certain information with respect to the Company and the Project, including the following: that the Company desires Agency financing for the construction of building renovations and the acquisition and installation of machinery and equipment to be located at 150 and 300 CrossPoint Parkway, Amherst, New York, for use in the Company's back-office operations, all at a cost of approximately \$11,004,255.00; that the Company is the second largest private passenger auto insurance company in the United States and maintains offices across the country, including existing back-office operations at 300 CrossPoint Parkway in the Town of Amherst; the Company is expanding its operations and has reviewed options at its various locations and has determined, based on the anticipated Financial Assistance (as hereinafter defined) to be provided by the Agency, to expand its back-office operations within the Town of Amherst to include additional leased space at 150 CrossPoint Parkway in the Town of Amherst; the proposed building renovations and acquisition and installation of machinery and equipment is necessary to accommodate the expanded operations at both 150 and 300 CrossPoint Parkway; that

the Company anticipates that 2,677 full-time employees and 57 part-time employees will be retained and 278 new full-time jobs will be created as a result of the Project at the end of two (2) years of operation thereof; that (i) there will be no substantial adverse disruption of existing employment of facilities of a similar nature in the Town of Amherst and (ii) the Project will retain present employment, provide substantial employment and substantial capital investment; and

**WHEREAS**, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on September 9, 2016, and has considered all oral and written presentations made at or in connection with said public hearing;

**WHEREAS**, the Agency has reviewed the Application and a cost-benefit analysis with respect to the Project, including the extent to which the Project will create and retain permanent, private-sector jobs, the value of tax exemptions to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the proposed Project in a timely fashion, the extent to which the proposed Project will provide additional sources of revenue for the municipalities and school district and other public benefits that might occur as a result of the Project; and

**WHEREAS**, the Agency desires to encourage the Company with respect to the consummation of the Project, if by doing so it is able to induce the Company to proceed with the Project in the Town of Amherst; and

**WHEREAS**, the Company has completed and submitted to the Agency Part 1 of an Environmental Assessment Form ("EAF") in accordance with the provisions of the State Environmental Quality Review Act and regulations adopted pursuant thereto (collectively, "SEQRA"); and

**WHEREAS**, the Agency has completed Part 2 of the EAF and has considered the proposed Project and reviewed the EAF and the criteria set forth in SEQRA in order to determine whether the Project will have a significant effect on the environment and wishes to make the findings required of an agency under SEQRA.

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

**Section 1.** The Agency hereby resolves that the proposed Project will not have a significant impact on the environment for the reasons more particularly set forth in the negative declaration prepared by the Agency and, in accordance with SEQRA, hereby adopts such negative declaration with regard to the Project.

**Section 2.** The Project is described in the recitals to this Resolution. The financial assistance to be provided in connection therewith include: an exemption from sales and use taxes for building materials and machinery, equipment, fixtures and furnishings purchased for incorporation into or use at the Project location having a total cost not to exceed \$5,427,132.00, (the "Financial Assistance"). In addition to any other covenants, obligations and agreements which may be contained in the Project Documents (as hereinafter defined), the provision by the Agency of the

Financial Assistance is made subject to the agreement by the Company throughout the Compliance Period (as defined below) to comply with the following covenants and agreements, each of which shall constitute a “Material Factor”:

- (a) compliance with the Agency’s Local Labor Policy in connection with the construction of the Project;
- (b) retention of existing full-time equivalent employment of 2,705 jobs (which includes conversion of current part time jobs into full time equivalent jobs);
- (c) creation within two (2) years of Project completion of 236 new full time jobs (resulting in total full-time equivalent employment within two (2) years of Project completion of 2,941) and retention of such jobs throughout the Compliance Period; and
- (d) investment of not less than 85% of the total Project cost of \$11,004,255.00 in the renovation and equipping of the Project prior to Project completion.

The “Compliance Period” shall mean the period of time during which the Company is receiving Financial Assistance from the Agency and the three (3) calendar years following the Company initially achieving compliance with the Material Factors.

**Section 3.** The Agency hereby determines that the Project and the financing thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act.

**Section 4.** The Agency hereby authorizes the Company, as agent for the Agency, to proceed with the Project as herein authorized. The Agency is hereby authorized to acquire an interest in the Project. The Company is authorized to proceed with the acquisition, installation and construction of the Project as set forth in any Project Agreement and Installment Sale Contract (as hereinafter defined).

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

**Section 6.** The Company is authorized, as agent of the Agency, to initiate the construction of building renovations constituting the Project, and the acquisition and installation of machinery and equipment which will be a part thereof or will be used in connection therewith, and to advance such funds as may be necessary to accomplish such purposes. The designation of the Company as agent hereunder is limited to purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$5,427,132.00 and shall not apply to any other purchase by the Company or any operating expenses of the Company. The Company shall report to the Agency, at such times as the Agency shall require, or as may otherwise be prescribed by the Commissioner of the New York State Department of Taxation and Finance (the “Commissioner”), the value of all sales and use tax exemptions claimed by the Company or agents of the Company or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators under the authority granted pursuant to this

Resolution. A failure to report may result in the revocation of the designation of the Company as agent and repayment of any sales and use tax exemptions claimed.

**Section 7.** The Agency is hereby authorized to enter into a Project Agreement with respect the provision of the Financial Assistance authorized herein (the “Project Agreement”) and to acquire an interest in the Project and the execution and delivery of an Installment Sale Contract (the “Installment Contract”) between the Agency and the Company, and such other documents as may be necessary to fulfill the intent of the parties to the transaction (collectively, the “Project Documents”), in form satisfactory to Agency counsel, are hereby authorized. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, or any Assistant Secretary are each authorized to execute such documents and to make or approve such amendments or modifications to the Project Agreement, Installment Sale Contract and such other documents executed and delivered in connection therewith as they deem necessary under the circumstances provided, however, that such modifications do not materially alter the risk to the Agency.

**Section 8.** Any such action heretofore taken by the Company initiating the acquisition, installation and construction of the Project is hereby ratified, confirmed and approved.

**Section 9.** Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency with respect to the Project and the financing thereof.

**Section 10.** In the event an installment sale contract is not executed between the Company and the Agency by the expiration date of this Resolution (as such date may be extended as provided herein) or the termination of this Resolution, the Company shall then be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all building renovations and the machinery and equipment which constitute the Project, as if the Agency did not have an interest in the Project from the date the Company commenced its acquisition, construction and installation. In addition, in the event, because of the involvement of the Agency, the Company claims an exemption from state sales or use tax in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder, or which exemption is in excess of the amounts authorized hereunder, or is otherwise not permitted under this Resolution, or if the Company shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company as agent for the Agency as set forth in this Resolution or in any document authorized hereunder, then the Company shall each be required to remit to the Agency an amount equal to the amount of state sales and use taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company by the Commissioner of state sales and use taxes, together with any relevant penalties and interest. In addition to the foregoing, in the event the Agency determines that Company is in violation of a Material Factor, or in the event that the Company closes the Project or relocates its operations to a location outside of the Town of Amherst during the Compliance Period or in the event the Agency determines, in its judgment, that the Company knowingly and intentionally submitted false or intentionally misleading

information in its application to the Agency or in any report or certification submitted to the Agency for the purpose of obtaining or maintaining any Financial Assistance from the Agency (each referred to herein as a “Recapture Event”), the Agency may, in accordance with its policies and procedures then in effect, (i) revoke the designation of the Company and any agents of the Company (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company) as agents for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Company pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of all sales tax exemptions claimed by the Company and any agents of the Company, including, but not limited to, consultants, sub-contractors, or any equipment lessors of the Company under the authority granted under this Resolution and the Project Agreement. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company, the Company shall (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed to by any affected tax jurisdiction.

**Section 11.** The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Company's purposes or needs. The Company is satisfied that the Project is suitable and fit for its purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Company each hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

**Section 12.** No covenant, stipulation, obligation or agreement herein contained or contained in the Project Agreement, or other documents, nor the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit, nor shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity.

**Section 13.** Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

**Section 14.** This Resolution shall take effect immediately and shall continue in full force and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Company and Lessee pursuant to Sections 9 and 10 of this Resolution which shall survive any expiration or termination) or (b) allow the Company additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Company and Lessee to complete such transactions. Upon any allowance of additional time to close, the Agency may charge the Company an extension fee in accordance with the Agency's fee schedule.

**Section 15.** This Resolution is subject to compliance with all local building and zoning requirements.

ADOPTED: September 23, 2016

ACCEPTED AND AGREED TO: \_\_\_\_\_, 2016

GOVERNMENT EMPLOYEES INSURANCE COMPANY

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