

TOWN OF AMHERST DEVELOPMENT CORPORATION
Agenda – 175th Meeting
Friday, January 17, 2025 – 8:30 am

James J. Allen Boardroom
Corporation Offices, 4287 Main Street

1. Roll Call
2. Reading and Approval of Minutes
3. Committee Reports
 - I. Bond Modification – 2017 Summit Center, Inc.
4. New Business
 - I. Bond Modification – 2017 Summit Center, Inc.
5. Adjournment

TOWN OF AMHERST DEVELOPMENT CORPORATION
Minutes of the 174th Meeting
Friday, March 22, 2024 – 8:30 am
James J. Allen Boardroom
Corporation Offices, 4287 Main Street

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

GUESTS : AIDA Staff
Jacqui Berger
Randall Shepard, Bonadio Group, LLC

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 October 2023 meeting were approved as presented.

COMMITTEE REPORTS

- I. Nominating Committee**
 - 1. Election of Officers**
 - 2. Committee Assignments**

The Nominating Committee presented the 2024 slate of Officers and Committee Assignments. Upon a motion by William Tuyn, seconded by Hadar Borden and unanimously carried, the Nominating Committee's slate was approved as presented.

BOARD OF DIRECTORS

Carlton N. Brock, Jr.	Chair
William W. Tuyn	Vice-Chair
Anthony T. Agostino	Treasurer
Honorable Timothy J. Drury	Secretary
Hadar Borden	Member
Frank LoTempio III	Member
Nicole Gavigan	Membe

ASSISTANT SECRETARIES

Kevin J. Zanner

COMMITTEES

Executive Committee

Carlton N. Brock, Jr.
William W. Tuyn
Anthony T. Agostino
David S. Mingoia

Audit/Finance Committee

Anthony T. Agostino
Hadar Borden
Nicole Gavigan

Governance Committee

Carlton N. Brock, Jr. - Chair
Honorable Timothy J. Drury
Frank LoTempio III

II. Finance & Audit Committee -2023 ADC Financial Statements

Anthony Agostino informed the board that the Audit & Finance Committee had met with the Agency's auditor, Randall Shepard from The Bonadio Group earlier in the month. Mr. Shepard was invited to speak to the board. Mr. Shepard gave the board a presentation of the 2023 Audited Financial Statements.

William Tuyn made a motion to accept the 2023 Audited Financial Statements as presented. Frank LoTempio seconded the motion. Votes of aye were cast by Brock, Tuyn, Agostino, Drury, Borden, LoTempio and Gavigan. Motion to approve passed by a vote of 7-0.

III. Governance Committee – 2023 Authority Mission and Performance Measurement Report

The Governance Committee met earlier in the month to review the 2023 Report. The Committee recommended the approval of the 2023 Mission Statement and Measurement Report as presented. Anthony Agostino made a motion to approve the 2023 Mission Statement and Measurement Report. Frank LoTempio seconded the motion. Votes of aye were cast by Brock, Tuyn, Agostino, Drury, Borden, LoTempio and Gavigan. Motion to approve passed 7-0.

NEW BUSINESS

I. 2011 Asbury Pointe, Inc. Bond Issue – Request for Remarketing Agent Replacement

Hadar Borden made a motion to approve the request for the remarketing agency replace for the 2011 Asbury Pointe, Inc. tax exempt bond issue with the new remarketing agent ben B.C. Ziegler and Company. Frank LoTempio seconded the motion. A roll call vote was called and votes of yes were made by Brock, Tuyn, Agostino, Drury, Borden, LoTempio and Gavigan. Motion to approve passed by a vote of 7-0.

8:40 am – Hadar Borden made a motion to adjourn the meeting. Frank LoTempio seconded the motion and the motion to adjourn was carried unanimously.



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

150 Stahl Road | Getzville, New York 14068 | ph 716.629.3400 | fax 716.629.3499 | www.TheSummitCenter.org

**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.

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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.
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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

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**APPROVING RESOLUTION
MODIFICATIONS RELATING TO
THE SUMMIT CENTER, INC. PROJECT**

A regular meeting of the Town of Amherst Development Corporation (the “Issuer”) was convened in public session at the offices of the Issuer located at 4287 Main Street in the Town of Amherst, Erie County, New York on January 17, 2025 at 8:30 o’clock, a.m., local time.

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

PRESENT:

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

ABSENT:

ALSO PRESENT:

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

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

RESOLUTION AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS BY THE TOWN OF AMHERST DEVELOPMENT CORPORATION (THE “ISSUER”) RELATIG TO THE ISSUER’S 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.

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

and otherwise carry out its corporate purposes in the territory in which the operations of such corporation are principally to be conducted; and

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

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

WHEREAS, on 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 Chairperson, Vice Chairperson, 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 (the “Initial Bond Purchase Agreement”) by and among the Issuer, The Summit Center, Inc. (the “Company”), 233 Genesee Street Corporation, as initial holder of the Bond (the “Holder”) and M&T Bank, as disbursing agent (the “Disbursing Agent”) and as collateral agent (the “Collateral Agent”), respectively; 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, contemporaneously with the issuance of the Bond, the Issuer, the Company, the Holder and the Disbursing Agent entered into various documents related to the Bond (hereinafter sometimes collectively referred to as the “Financing Documents”), including but not limited to the following: (A) the Initial Bond Purchase Agreement; and (B) a continuing covenant agreement dated as of December 1, 2017 (the “Continuing Covenant Agreement”) by and between the Company and the Holder; and

WHEREAS, pursuant to the Continuing Covenant Agreement 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 Initial Bond Purchase Agreement, an event of default under the Continuing Covenant Agreement triggers an event of default under the Initial Bond Purchase Agreement, whereby the Bond shall accrue interest at the Default Bond Rate (as defined in the Initial Bond Purchase Agreement); and

WHEREAS, in connection with a letter received by the Issuer from the Company dated December 8, 2022 (the “Prior Modification Request”) (A) indicating the intention of the Company to replace the interest rate index used to calculate interest on the Bond while bearing interest at the Bond Rate (as defined in the Initial Bond Purchase Agreement) from LIBOR (as defined in the Initial Bond Purchase Agreement) to the Secured Overnight Financing Rate (SOFR) and (B) requesting that the Issuer and the Holder enter into modifications to the Bond and the related Financing Documents (as defined in the Initial Bond Purchase Agreement) necessary to implement the Prior Modification Request; and

WHEREAS, pursuant to a resolution adopted by the board of directors of the Issuer on December 16, 2022, the Issuer entered into a first omnibus amendment to bond purchase and disbursing agreement and related financing documents (the “First Omnibus Amendment”) by and among the Issuer, the Company, the Holder, the Disbursing Agent and the Collateral Agent for purposes of implementing the Prior Modification Request (the Initial Bond Purchase Agreement, as amended and supplemented by the First Omnibus Amendment, being referred to hereinafter as the “Bond Purchase Agreement”) 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; and

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

WHEREAS, in connection with the Modification Request, the Issuer now desires to authorize the following actions (collectively, the “Action”): (1) to execute and deliver the Modification Documents and (2) since, based on the nature of the Modifications, the Action will result in a deemed reissuance of the Bond (as so deemed reissued, the “Reissued Bond”) and a deemed purchase of the Reissued Bond by the Holder, pursuant to the provisions of the Internal Revenue Code of 1986, as amended (the “Code”), to delegate to the Chairperson, Vice Chairperson, Chief Executive Officer or Secretary of the Issuer (each, an “Authorized Officer”) to determine the final details of the Reissued Bond, including but not limited to (a) the authorized principal amount of the Reissued Bond, (b) the purpose or purposes for which the Reissued Bond is being issued, (c) the date or dates, the maturity date or dates and principal amounts of the Reissued Bond, (d) the interest rate or rates of the Reissued Bond, (e) the denomination or denominations of and the manner of numbering and lettering the Reissued Bond, (f) the redemption price or purchase in lieu of redemption price or redemption prices or purchase in lieu of redemption prices, if any, and the redemption or purchase in lieu of redemption terms, if any, for the Reissued Bond, (g) the form of the Reissued Bond and (h) any other provisions deemed advisable by the Authorized Officer not in conflict with the provisions of this resolution (collectively, the “Reissued Bond Details”); and

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

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

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

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

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

Section 2. The Issuer hereby finds and determines that:

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

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

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

Section 4. Subject to the satisfaction of the conditions described in Section 3 hereof, the Authorized Officer of the Issuer is hereby authorized, on behalf of the Issuer, to (a) determine, on behalf of the Issuer, the Bond Details relating to the Reissued Bond and (b) execute and deliver the Bond Documents and the other documents related thereto and, where appropriate, the Assistant Secretary of the Issuer is hereby authorized to affix the seal of the Issuer thereto and to attest the same, all in substantially

the forms thereof approved by Bond Counsel and counsel to the Issuer, with such changes, variations, omissions and insertions as the Authorized Officer of the Issuer shall approve, the execution thereof by the Authorized Officer of the Issuer to constitute conclusive evidence of such approval.

Section 5. Subject to the execution and delivery of the other Bond Documents, the Issuer determines to execute and deliver the Reissued Bond, provided that:

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

(B) Neither the directors nor officers of the Issuer, nor any person executing the Reissued Bond or any of the other Bond Documents on behalf of the Issuer, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution, issuance or delivery thereof. The Reissued Bond and the interest thereon are not and shall never be a debt of the State of New York, the Town of Amherst, New York or any political subdivision thereof (other than the Issuer), and neither the State of New York, the Town of Amherst, New York nor any political subdivision thereof (other than the Issuer) shall be liable thereon.

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

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

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

Section 7. This resolution shall take effect immediately.

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

Carlton N. Brock, Jr.	VOTING	_____
William W. Tuyn	VOTING	_____
Anthony T. Agostino	VOTING	_____
Hadar Borden	VOTING	_____
Frank LoTempio III	VOTING	_____
Nicole Gavigan	VOTING	_____

The foregoing resolution was thereupon declared duly adopted.

[Remainder of page left blank intentionally]

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

I, the undersigned (Assistant) Secretary of the Town of Amherst Development Corporation (the “Issuer”), DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the board of directors of the Issuer (the “Board of Directors”) held on January 17, 2025, including the resolution contained therein, with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of January, 2025.

BY: _____
(Assistant) Secretary

EXHIBIT A
MODIFICATION REQUEST

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

150 Stahl Road | Getzville, New York 14068 | ph 716.629.3400 | fax 716.629.3499 | www.TheSummitCenter.org