



6122 South Park Avenue
Hamburg, New York 14075
716.648.4145
www.HamburgIDA.com

**Hamburg Industrial Development Agency
Board of Directors Meeting
April 20, 2022, 7:30am
Blasdell Village Hall**

Present

Andy Palmer
Tom Moses
Davis Podkulski
Bob Hutchison
Janet Plarr
Bob Reynolds

Excused

Wence Valentin
Cam Hall

Guests

Jennifer Strong, Neill & Strong - Zoom
Mary Doran, HIDA
Francesca Bond, Hamburg Sun - Zoom
Patrick Ogiony, 290 Lake Ave Holdings - Zoom

Executive Director

Sean Doyle

-Pledge of Allegiance

-Roll Call

-Motion to open the board meeting at 7:35am.

Moved: Andy Palmer **Seconded:** Tom Moses
Ayes: Moses, Podkulski, Palmer, Plarr, Reynolds, Hutchison
Nays: none
Carried

-Motion to approve the March 2022 board meeting minutes

Moved: Janet Plarr **Seconded:** Andy Palmer
Ayes: Moses, Podkulski, Palmer, Plarr, Reynolds, Hutchison
Nays: none
Carried

Treasurer, Bob Reynold's gave an update on the financials. The annual audit was paid at a cost of \$4,500, payroll was approximately \$11,300 and expenses totaled \$17,104.84 for the month of March. Income totaled \$756.01 which left a total balance of \$1,026,513.84.

-Motion to approve the March 2022 Treasurer Report

Moved: Tom Moses **Seconded:** Janet Plarr
Ayes: Moses, Podkulski, Palmer, Plarr, Reynolds, Hutchison
Nays: none
Carried

Bob Reynolds also gave an update on the annual audit. He stated it was reviewed by the Audit Committee consisting of himself, Bob Hutchison and Davis Podkulski (Doyle was also at the meeting). Reynolds stated there were no red flags and the organization is running very well.

-Motion to approve the 2021 Annual Audit

Moved: Bob Reynolds **Seconded:** Janet Plarr

Ayes: Moses, Podkulski, Palmer, Plarr, Reynolds, Hutchison

Nays: none

Carried

Executive Director Update:

-E-One is supposed to close tomorrow per the resolution at the last meeting on the sales tax only portion of their project for which they completed a new application and submitted on March 24, 2022. Doyle and Strong have been in contacted them multiple times to try to get this done by tomorrow, it does not look promising.

-Board insurance, still researching. The policy Doyle received excluded companies that offered tax exemptions. AIDA has a policy with Philadelphia, however they were grandfathered in. Doyle completed a new insurance application and submitted to Travelers. Additionally, Plarr referred an agent (Hank Chapman) to Doyle. Currently the HIDA has \$100,000 of exposure/deductible before the Town of Hamburg's insurance can be utilized.

-Project activity, Doyle had a good meeting with Sinatra regarding the South Park and Sowles development which has been moving along thru the Planning Department. There is an HDC meeting tomorrow, three applications (totaling \$132,000) for the CARES Grant are likely to be accepted into the program with an additional 8 applications still being completed.

-Public Hearing regarding the Climate Leadership and Community Protection Act will take place at the Erie County Central Library on April 27, 2022 at 3:30pm. The entire plan can be read at the following website:

<https://climate.ny.gov/Our-Climate-Act/Draft-Scoping-Plan>. The board discussed the plan which would eliminate the use of natural gas to new developments after 2024 and by 2030 require existing users of natural gas to switch to electric. The board was in agreement it would be detrimental to new businesses, the current grid could not support and it is just not feasible. Under New Business a motion will be made to draft a letter of non-support to state representatives, the governor, as well as federal representatives on behalf of the board.

-Invest Buffalo Niagara has established an Economic Gardening Program which is an economic development program focused on helping Second Stage companies grow. Traditional economic development focuses on recruiting companies to come to town (economic hunting). This program focuses on growing local companies (economic gardening). Eaton Brothers, a Hamburg landscaping company has been selected to the program which is free of charge.

-May 18th is the next board meeting, Bob Reynolds stated he will be out of town and cannot attend.

New Business:

Doyle read the following resolution to the board:

RESOLUTION OF THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY CONFIRMING ITS POLICIES

WHEREAS, the Town of Hamburg Industrial Development Agency has conducted an annual review of its existing policies.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS THAT:

1. *The HAMBURG IDA hereby confirms and re-adopts the following existing policies:*

- *Real Property Acquisition Policy*
- *Access to Agency Records*
- *Combined fee schedule*
- *Data Gathering Procedure*

- Employee Compensation Program
- Recapture Policy

2. Said policies will remain posted on the official website; and
3. This resolution shall take effect immediately.

-Motion to approve the re-adoption of the above policies

Moved: Davis Podkulski **Seconded:** Bob Hutchison
Ayes: Moses, Podkulski, Palmer, Hutchison, Plarr, Reynolds
Nays: none
Carried

Doyle reviewed the following employment agreement amendment for Doran to the board stating the additional hours is a result of marketing activities shifting in-house.

*AMENDMENT TO EMPLOYMENT AGREEMENT FOR
Regular Part-time Executive Assistant
Hamburg Industrial Development Agency*

THIS AMENDMENT to the existing EMPLOYMENT AGREEMENT made on 16th day of June 2021, by and between the Board of Directors of the Hamburg Industrial Development Agency (hereinafter, the "board") and Mary Doran residing at 6767 Powers Road, Orchard Park, NY 14127 (hereinafter, the "Executive Assistant" is made on the 20th day of April, 2022.

WHEREAS, the Board is empowered to modify the agreement upon mutual agreement of the Board and Executive Assistant; and WHEREAS, the parties have mutually agreed upon the following modification to the terms and conditions relative to the Executive Assistant's employment by the Board;

NOW, THEREFORE in consideration of the agreements hereinafter set forth and for other good and valuable consideration, the parties agree as follows:

Executive Assistant's Duties and Responsibilities:

*The Executive Assistant shall perform the duties and obligations outlined in the Job Description Form attached hereto.
(CONTINUED)*

Hours of Work

EFFECTIVE MAY 2, 2022 - Monday through Friday 8:00 AM – 2:00 PM unless otherwise agreed on by both parties.

Complete Agreement

This Agreement constitutes the entire and complete agreement of the parties with respect to the matters it addresses. It may not be changed except by a subsequent writing signed by the parties as set forth herein.

RESOLVED, that the Hamburg Industrial Development Agency Board approve them amendment to the employment agreement as of May 1, 2022.

Moved: Bob Reynolds **Seconded:** Bob Hutchison
Ayes: Moses, Podkulski, Palmer, Hutchison, Plarr, Reynolds
Nays: none
Carried

Doyle read the following resolution to the board:

RESOLUTION OF THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") INCREASING THE AUTHORIZATION OF 290 LAKE STREET HOLDINGS, LLC (THE "LESSEE") TO CONSTRUCT AN APPROXIMATELY 19,260 SQUARE FEET MIXED-USE INFILL DEVELOPMENT ON A FORMER VEHICLE REPAIR FACILITY, CONSISTING OF 12,840 SQUARE FEET OF 10 MARKET RATE APARTMENTS AND 6,420 SQUARE FEET OF SPECULATIVE PROFESSIONAL OFFICE AND / OR RETAIL SPACE LOCATED AT 290 LAKE STREET, IN THE VILLAGE OF HAMBURG, AS AGENT FOR THE AGENCY, FOR LEASEBACK BY THE LESSEE TO THE AGENCY, TO ACQUIRE AND INSTALL MACHINERY, EQUIPMENT, FURNISHINGS AND FIXTURES REQUIRED IN CONNECTION HERewith, AND TO TAKE OTHER PRELIMINARY ACTION.

WHEREAS, Due, to increased project costs 290 Lake Street Holdings, LLC (the "Lessee") has entered into renewed negotiations with the officials of the Town of Hamburg Industrial Development Agency (the "Agency") with respect to the acquisition and equipping by the Agency through a lease, lease-back transaction with mortgage for the construction of an approximately 19,260 square feet mixed-use infill development on a former vehicle repair facility, consisting of 12,840 square feet of 10 market rate apartments and 6,420 square feet of speculative professional office and / or retail space located at 290 Lake Street, Hamburg, New York (the "Project"); and

WHEREAS, the Lessee has submitted an Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the "Eligibility Questionnaire") to initiate the accomplishment of the above; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: that the Lessee desires Agency assistance to construct a building on a parcel of land to allow for the continued growth of the Lessee; that at the time of the application the Lessee has no FTE employees and no PTE, if the assistance is granted, the Lessee anticipates hiring 3 FTE and 3 PTE employees at the Project location in the Village of Hamburg within two years following the completion of the Project; that the Project will result in substantial capital investment; that there will be no adverse disruption of existing employment at facilities of a similar nature in the Village of Hamburg; if Agency assistance is disapproved, the Lessee would have to scale back the Project negatively impacting future growth in New York; and that, therefore, Agency assistance is necessary to encourage the Lessee to proceed with the Project in the Village of Hamburg; and

WHEREAS, the Agency has held a public hearing pursuant to Section 859-A of the General Municipal Law on the original application and has held a public hearing on the application for increased benefits; and

WHEREAS, the Agency desires to further encourage the Lessee with respect to the construction and equipping of the Project, if by so doing it is able to induce the Lessee to proceed with the Project in the Village of Hamburg;

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

Section 1. The Agency hereby determines that the construction and installation of the Project and other assistance 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. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee, as follows: (a) it would not have otherwise assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project; (b) that Agency assistance is reasonably necessary to promote economic development and to induce the Lessee to proceed with the Project; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; (d) the Project will allow the Lessee to expand in the Village of Hamburg; (e) the Project will create additional employment and provide substantial capital investment; The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that; (f) the Project as represented is reasonably necessary to provide the purposes of the Act, subject to verification and confirmation of such representations prior to the into a lease only transaction and (g) the Project is an integral part of the Lessee's plan to proceed with the Project in the Village of Hamburg.

Section 2. The Agency hereby authorizes the Lessee to proceed with the Project as herein authorized, which Project will be without financing with a lease only transaction.

Section 3. The Agency will undertake, as soon as it is furnished with sufficient information as to the details of a lease only transaction.

Section 4. The Chairman, Vice Chairman, Executive Director, Secretary and Assistant Secretary of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps

may be necessary to cooperate with the Lessee to assist in the acquisition and construction of the Project.

Section 5. The Lessee is authorized to initiate the construction of an approximately 19,260 square foot building thereon and authorize the Lessee to proceed with the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith at combined cost not to exceed **\$4,520,892.00**, subject to the obtaining of all required approvals from the Village of Hamburg and other involved governmental agencies, and to advance such funds as may be necessary to accomplish such purposes. The Agency is hereby authorized to enter into such agreements with the Lessee as the Chairman, Vice Chairman, Executive Director, Secretary and Assistant Secretary or other officer may deem necessary in order to accomplish the above.

Section 6. The Lessee are authorized to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in a combined amount up to **\$1,560,270.00** which may result in a New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$136,523.63**. The Agency may consider any requests by the Lessee for increases in the amount of sales and use tax benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services necessary for the completion of the Project.

Section 7. Any such action heretofore taken by the Lessee in initiating the acquisition and construction of the Project is hereby ratified, confirmed and approved.

Section 8. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, 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 in good faith with respect to the Project and the financing thereof.

Section 9. The Agency hereby authorizes and approves real property tax abatement benefits structured through a **seven year PILOT** ("PILOT Agreement") estimated to provide **\$267,516.91 in real property tax abatement benefits**, and resulting in estimated total payments in lieu of taxes of **\$69,430.38** over the term of the PILOT Agreement.

Section 10. The Agency hereby authorizes and approves that the value of the mortgage to be placed upon the facility shall not exceed **\$3,100,000.00** and that the mortgage tax exemption benefit shall not exceed **\$23,250.00**.

Section 11. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution or (b) the Agency enters into a lease only transaction or (c) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 12. The execution and delivery of a Project Agreement, Lease to Agency and a Leaseback Agreement between the Agency and the Lessee, each being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director Secretary or Assistant Secretary is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 13. 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 Lessee's purposes or needs. The Lessee is satisfied that the Project is suitable and fit for Lessee's 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 Lessee hereby indemnifies and holds the Agency harmless from any such loss, damage or expense. SEORA Review has been completed by the Village of Hamburg.

Section 14. The provisions of the new Section 875 of the General Municipal Law which became effective on March 28, 2013 shall apply to this Project. In the event it is determined that an agent, project operator or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized or which are for property or services not authorized or taken in cases where such Lessee, its agents, project operators or other person or entity failed to comply with a material term or condition to use property or services in the manner required by Agreements entered into between the Agency and the applicant with respect to the Project, the agent, project operator or other person or entity shall

comply with all the provisions of Section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 15. Should the Agency's participation in this Project be challenged by any party, in the courts or otherwise, the Lessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from 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 Lessee hereunder or otherwise.

Section 16. This resolution is subject to compliance with all local building and zoning requirements.

Section 17. The provisions of the Town of Hamburg Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance adopted by the Agency on June 15, 2016 shall be applicable to this Project.

Section 18. This resolution shall take effect immediately.

ADOPTED: April 20, 2022

-Motion to approve the above resolution to 290 Lake Street Holdings, LLC.

Moved: Bob Reynolds

Seconded: Andy Palmer

The public hearing on the 290 Lake Street Holdings, LLC was held on Monday April 18, 2022 with no comments from the public. The increased investment to complete the same project by the owner is \$1,360,445. This resulted in the additional incentives of \$98,000. Tom Tallman, Village of Hamburg Mayor, stated at the public hearing their current permit is only good thru September 30th, if project does not break ground by then would have to start the permit process again.

Ayes: Moses, Podkulski, Palmer, Hutchison, Plarr, Reynolds

Nays: none

Carried

Unfinished Business:

Please submit your sexual harassment training to Mary if you have not already done so.

Doyle read the following resolution to the board:

**RESOLUTION OF THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY")
AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A PROJECT AND AGENT
AGREEMENT AND AN INSTALLMENT SALE AGREEMENT WITH BILLY-LEE, L.L.C. (THE "LESSEE")
AND TO TAKE OTHER ACTION AND AMENDING THE ASSISTANCE PREVIOUSLY APPROVED BY THE
AGENCY.**

WHEREAS, Town of Hamburg 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 I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, 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, civic and commercial 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, in February, 2022 Billy-Lee, L.L.C. (the "Lessee") entered into additional negotiations with the Town of Hamburg Industrial Development Agency (the "Agency") with respect to an installment sale transaction with respect to acquisition and installation of machinery, equipment furniture and fixtures as part of the construction of an approximately 10,000 square foot addition to an existing building located at 4760 Camp Road, Hamburg, New York, by the Lessee, as Agent for the Agency (the "Revised Project"); and

WHEREAS, due to its inability to meet the closing requirements the Lessee has submitted a Third Application and other materials and information to the Agency to accomplish the Revised Project and withdrawing the Lessee's request for mortgage tax abatement and a payment in lieu of tax agreement; and

WHEREAS, the First Application of the Lessee dated December 6, 2019 (requesting mortgage tax abatement, sales and use tax exemption, and a payment in lieu of tax agreement) and the Second Application of the Lessee dated July 16, 2021 (requesting sales and use tax exemption, and a payment in lieu of tax agreement) are withdrawn by the Lessee; and

WHEREAS, the assistance contemplated by the Agency will include sales tax exemption on any materials and/or equipment purchased for incorporation into the Revised Project; and

WHEREAS, the Agency has held a public hearing on the First Application pursuant to Section 859-A of the General Municipal Law and has held a second public hearing on the Second Application pursuant to Section 859 A of the General Municipal Law; and

WHEREAS, the Applications set forth certain information with respect to the Lessee, including the following: that the Lessee desires Agency assistance to acquire, equip and install machinery, equipment, furniture and fixtures with respect to an addition to an existing building on a 9+ acre parcel of land to allow for the continued growth of the Lessee, the Lessee requires a larger facility which is necessary to support the growth and the expansion of its operations; that at the time of the application the tenant has 120 FTE employees, if the assistance is granted, the tenant will retain its existing employees; that the Revised Project will result in substantial capital investment; that there will be no adverse disruption of existing employment at facilities of a similar nature in the Town of Hamburg; if Agency assistance is disapproved, the Lessee would have to scale back the Revised Project negatively impacting future growth in New York; and that, therefore, Agency assistance is necessary to encourage the Lessee to proceed with the Revised Project in the Town of Hamburg; and

WHEREAS, the Agency desires to further encourage the Lessee with respect to the expansion of the Revised Project, if by so doing it is able to induce the Lessee to proceed with the Revised Project in the Town of Hamburg; and

WHEREAS, the Agency purposes to obtain the aforementioned benefits and to accomplish the purposes of the Act by inducing the Company to acquire and install the Revised Project as agent for the Agency and subsequent installment sale thereof to the Lessee for its use for a fire truck manufacturing facility located at 4760 Camp Road, Hamburg, New York.

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

Section 1. The Agency hereby determines that the acquisition and installation of the Revised Project and the assistance 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. The Agency further hereby determines, on the basis of the Third Application and supplemental information furnished by the Lessee, as follows: (a) it would not have assisted the Revised Project except to induce the location of the Revised Project in the area to be served by the Revised Project as there is a demonstrable need for the Revised Project; (b) that Agency financing and/or other assistance is reasonably necessary to promote economic development and to induce the Lessee to proceed with the Revised Project; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Revised Project in such area; (d) the Revised Project will allow the Lessee to expand its business in the Town of Hamburg; (e) the Revised Project will retain existing employment and provide substantial capital investment; the Agency further determines, on the basis of the Lessee's Third Application that (f) the Revised Project as represented is reasonably necessary to provide the purposes of the Act, subject to verification and confirmation of such representations prior to entering into a lease only transaction and (g) the Revised Project is an integral part of the Lessee's plan to proceed with the Revised Project in the Town of Hamburg.

*Section 2. To accomplish the purposes of the Act, the Agency hereby authorizes the Company to proceed with the Revised Project as herein described with a maximum authorized amount of **\$677,560.00** to be expended without further action of the Agency. The Agency is authorized, subject to the provisions of this Resolution, to acquire title to the Revised Project and to enter into a Closing Agreement, Project and Agent Agreement and an Installment Sale Agreement with the Company and to execute and deliver such other documents and instruments as may be necessary in order to consummate the transaction contemplated by this Resolution.*

Section 3. The execution and delivery of the Closing Agreement, the Installment Sale Agreement, and the Project and Agent Agreement and such other documents and instruments as may be necessary in order to carry out the purposes of this Resolution, each being substantially the form approved by the Agency for prior transactions or approved by the Chairman, Vice-Chairman, Executive Director, Secretary, or Assistant Secretary is hereby authorized. The Chairman, Vice-Chairman, Executive Director, Secretary or Assistant Secretary of the Agency are hereby authorized to execute, acknowledge and deliver each

such Instrument and the Secretary and Assistant Secretary of the Agency are hereby authorized to affix the seal of the Agency on each such Instrument, as applicable, and attest to the same. The execution and delivery of each such document by said officer shall be conclusive evidence of due authorization and approval.

Section 4. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution, the Closing Agreement, the Project and Agent Agreement and in the Installment Sale Agreement and other documents and instruments shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution, the Closing Agreement, the Project and Agent Agreement, the Installment Sale Agreement or other documents and instruments shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenants, stipulation, obligation or agreement herein contained or contained in the Project and Agent Agreement, the Closing Agreement, the Installment Sale Agreement or other documents and instruments shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his individual capacity.

Section 5. The Agency is hereby authorized to acquire, install and provide the Revised Project, all as particularly authorized by the terms and provisions of the Installment Sale Agreement. Any action heretofore taken by the Company in initiating the acquisition and installation of the Revised Project on behalf of the Agency is hereby ratified, confirmed and approved. The proper officers of the Agency are hereby authorized to accept title to the Revised Project.

Section 6. The Lessee is authorized to make purchases of goods and services relating to the Revised Project that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$677,560.00** which may result in a New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$59,286.00**.

Section 7. Any expenses incurred by the Agency with respect to the Project dating back to December 17, 2019 thereof shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, 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 in good faith with respect to the Revised Project. Agency Fees and Agency Counsel Fees shall be based upon the Project Amount of \$1,505,120.00, plus all applicable extension fees.

Section 8. The provisions of this Resolution shall continue to be effective until **April 21, 2022** whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 6 hereof) unless prior to April 21, 2022 (a) the Agency shall by subsequent resolution extend the effective date of this resolution, or (b) the Agency shall enter into an Installment Sale Agreement.

Section 9. The execution and delivery of a Project and Agent Agreement, Closing Agreement and Installment Sale Agreement between the Agency and the Lessee, each being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 10. 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 Revised Project, its fitness for any particular purpose, the quality or capacity of the materials in the Revised Project, or the suitability of the Revised Project for the Lessee's purposes or needs. The Lessee is satisfied that the Revised Project is suitable and fit for Lessee's 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 Revised 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 Lessee hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 11. The provisions of the new Section 875 of the General Municipal Law apply to this Revised Project. In the event it is determined that an agent, project operator or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized or which are for property or services not authorized or taken in cases where such Lessee, its agents, project operators or other person or entity failed to comply with a material term or

condition to use property or services in the manner required by Agreements entered into between the Agency and the applicant with respect to the Revised Project, the agent, project operator or other person or entity shall comply with all the provisions of Section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 12. Should the Agency's participation in this Revised Project be challenged by any party, in the courts or otherwise, the Lessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from 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 Revised Project, this resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Lessee hereunder or otherwise.

Section 13. This resolution is subject to compliance with all local building and zoning requirements.

Section 14. The Agency hereby determines, based upon information furnished to the Agency by the Applicant and such other information as the Agency has deemed necessary to make this determination, that the Revised Project does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law ("SEQR"), as the contemplated actions are Type II actions that have been determined by SEQR not to have a significant adverse effect on the environment.

Section 15. The provisions of the Town of Hamburg Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance shall be applicable to this Revised Project.

Section 16. This Resolution amends the Resolution of the Agency adopted on December 19, 2019, as amended and/or extended on December 17, 2020; May 20, 2021; July 28, 2021; January 12, 2022 and March 16, 2022.

Section 17. This resolution shall take effect immediately.

ADOPTED: April 20, 2022

-Motion to approve the above resolution to Billy Lee, LLC.

Moved: Janet Plarr

Seconded: Bob Hutchison

This is their 3rd application. It is for sales tax abatement only they withdrew PILOT and mortgage tax abatement. They are required to close by tomorrow April 21, 2022. If they default tomorrow recapture proceedings will begin.

Ayes: Moses, Podkulski, Palmer, Hutchison, Plarr, Reynolds

Nays: none

Carried

-Motion for the Executive Director to draft a letter of non-support on behalf of the board on the Climate Protection Act.

Moved: Andy Palmer

Seconded: Bob Hutchison

Ayes: Moses, Podkulski, Palmer, Hutchison, Plarr, Reynolds

Nays: none

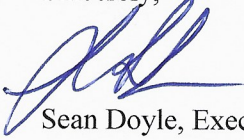
Carried

-Privilege of the Floor – no comments

-Motion to adjourn at 8:15am

Moved: Davis Podkulski **Seconded:** Janet Plarr
Ayes: Moses, Podkulski, Palmer, Hutchison, Plarr, Reynolds
Nays: none
Carried

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Doyle', written over a horizontal line.

Sean Doyle, Executive Director

Next meeting: May 18, 2022, 7:30AM Blasdel Village Hall