



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

**Hamburg Industrial Development Agency
Board of Directors Meeting
MEETING AGENDA
Wednesday, July 19, 2023, 7:30 AM
Blasdell Village Hall, Court Room, 121 Miriam Avenue, Blasdell, New York**

Join Zoom Meeting

<https://us02web.zoom.us/j/85621954900?pwd=bVRuNDdwVTcySEZFNHczU2pxV2VrZz09>

Meeting ID: 856 2195 4900

Passcode: 14075

1. Roll Call
2. Reading and Approval of June 2023 Minutes
3. Report of the Treasurer

- June Treasurer Report
- 2nd Quarter Update

4. Executive Director Update

New Business

- Interest Rates
- Betlem/Upstate Steel consent to refinance

Unfinished Business

- Resolution to Adopt - Standard Project Agent Agreement
- 2023 Sexual Harassment Training – proof of training to Mary

5. Privilege of the Floor
6. Executive Session
7. Adjournment

Next meeting: August 16, 2023 7:30 AM Blasdell Village Hall



Unapproved/draft
(BOD motion for approval at 7/19/23 meeting)

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**Hamburg Industrial Development Agency
Board of Directors Meeting
June 21, 2023, 7:30am
Blasdell Village Hall**

Present

Bob Reynolds
Tom Moses
Davis Podkulski
Bob Hutchison
Janet Plarr
Andy Palmer
Cam Hall
Wence Valentin
Jamel Perkins

Excused

Guests

Jennifer Strong, Neill & Strong
Mary Doran, HIDA

Executive Director

Sean Doyle

- Pledge of Allegiance

-Roll Call

-Motion to open the board meeting at 7:44am

Moved: Cam Hall

Seconded: Bob Reynolds

Ayes: Moses, Podkulski, Hutchison, Plarr, Palmer, Reynolds, Hall, Perkins, Valentin

Nays: none

Carried

-Motion to approve the May 2023 board meeting minutes

Moved: Janet Plarr

Seconded: Davis Podkulski

Ayes: Moses, Podkulski, Hutchison, Plarr, Palmer, Reynolds, Hall, Perkins, Valentin

Nays: none

Carried

Treasurer, Bob Reynolds, gave an update on the financials. May had interest income of \$3,978.58. Monthly expenses totaled \$13,280.95 of which \$10,977.45 was for payroll. Expenses over income resulted in -\$9,302.27 total liabilities and equity equal \$980,258.11.

-Motion to approve the May 2023 Treasurer Report

Moved: Janet Plarr

Seconded: Wence Valentin

Ayes: Moses, Podkulski, Hutchison, Plarr, Palmer, Reynolds, Hall, Perkins, Valentin

Nays: none

Carried

Executive Director Update:

- K&H and Staub as well as Mission Hills have not closed. Mission Hills will need an extension if not closed by August.

- The Employee Retention Credit was submitted to the IRS in May for a refund of approximately \$21,000, there is no tracking mechanism to check the status of the filing.

-Project activity; 10.6 acres of land is for sale on Jeffrey Boulevard. The multi-family 290 Lake Street Project which was approved but never commenced is moving in a different direction currently with the Village of Hamburg Planning Board for an auto collision facility. The 90 million dollar Feedmore Project in Hamburg was officially announced last week, the local not for profit is working with the HIDA on bond financing. Cedarland Development plans to submit their application to the HIDA for the Gateway building in July. The old Dick's Sporting Goods Store (McKinley Mall site) is moving along with a project to become a distribution center for costume supplies. The Iovate building on Jeffery is up for lease it is approximately 200,000sqft.

-Advocacy & Legislation; a proposal to withdraw the school portion of abatement from HIDA approved incentives and have developers present directly to school boards is on the table. The narrative presented to support this new legislation is school districts are "losing dollars" and "taking money from the children". On the contrary, there has been substantial school tax generation on HIDA projects \$1.2 million for the 2022/2023 school year. Without the IDA would that have been generated at all? Doyle will be sending a letter to the local press. The communication will highlight:

- Without commercial businesses that pay taxes it will increase the tax burden to local tax payers
- Going to the school board adds yet another layer to the development process, developers potentially seeking other opportunities not so cumbersome
- NYSEDC identified that for every \$1 of taxes discounted \$6.57 is created in NYS tax revenue
- NYS Comptroller stated in 2022 1.1 billion was awarded in tax exemptions which generated 126 billion in taxable value as well as created 221,305 new jobs

The board agreed; control the narrative and push the benefits. Celebrate the hard work and investments this board has exerted. Every IDA needs:

- Good boards with representatives from ALL jurisdictions
- Good Attorney
- Good Executive Director

Among all of the IDAs in NYS, it only takes 1 or 2 to go off base then all of the IDAs are put under the microscope. Bob Hutchison stated education is necessary. People are continually misinformed of the facts.

New Business

Doyle read the following resolution for Fisher Rental Properties LLC

RESOLUTION OF THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY CONSENTING TO A MORTGAGE AND A GENERAL ASSIGNMENT OF RENTS IN AN AMOUNT NOT TO EXCEED \$2,500,000.00 IN CONNECTION WITH THE REFINANCING OF THE 2008 FISHER RENTAL PROPERTIES LLC PROJECT

WHEREAS, to accomplish the purposes of the Act, the Agency induced FISHER RENTAL PROPERTIES LLC a limited liability company to commence with the construction of an approximately 18,000 square foot building on an approximately 7.87 acre parcel of land located at 5173 Southwestern Boulevard, Hamburg, New York and the acquisition and installation of machinery and equipment required in connection therewith for lease to the Agency to be subleased to the Lessee for sub-sublease to the Fisher Moving & Storage, Inc. and Niagara Scenic Tours, Inc., all for the operation of a commercial storage, repair and office facility and in furtherance of said purpose the Agency adopted its Inducement Resolution on October 16, 2007 and amended the same of August 26, 2008 authorizing the Project; and

WHEREAS, pursuant to such Inducement Resolution, the Agency acquired a leasehold interest in the Facility pursuant to a certain Lease to Agency, dated as of December 1, 2008, between FISHER RENTAL PROPERTIES LLC as lessor, and the Agency, as lessee, (the "Lease to Agency") and leased the Facility back to FISHER RENTAL PROPERTIES LLC. pursuant to a certain Leaseback Agreement, dated as of December 1, 2008, between the Agency, as lessor, and FISHER RENTAL PROPERTIES LLC, as lessee, (the "Leaseback Agreement");

WHEREAS, the Agency has now received a request for the Agency's consent to the execution and delivery by FISHER RENTAL PROPERTIES LLC, of a Mortgage and a General Assignment of Rents in an amount not to exceed \$2,500,000.00 to M&T BANK. (the "Mortgage Documents");

WHEREAS, the facility will remain a commercial storage, repair and office facility; accordingly, there will be no change in the Payment in Lieu of Taxes ("PILOT") Provisions attached as Exhibit C to the Leaseback Agreement.

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:

Section 1. The Agency hereby consents to the execution and delivery of a Mortgage and a General Assignment of Rents, with respect to the Lease to Agency and the Leaseback Agreement.

Section 2. The execution and delivery of the Mortgage Documents in the 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 Certificate. The execution and delivery of the Mortgage Documents shall be conclusive evidence of due authorization and approval.

Section 3. The Agency determines that the PILOT provisions shall remain unchanged as there is no change in use or in the occupancy of the Facility.

Section 4. FISHER RENTAL PROPERTIES LLC agrees that it will pay all Agency Administrative Fees and legal fees due at closing.

Section 5. This resolution shall take effect immediately.

Adopted: June 21, 2023

Accepted: June __, 2023

-Motion to approve the above resolution for consent to mortgage of Fisher Rental Properties LLC
Moved: Cam Hall **Seconded:** Andy Palmer

Bob Reynolds clarified Fisher Rental Properties LLC is not getting any new tax breaks, they are just continuing what has already been approved.

Ayes: Moses, Podkulski, Hutchison, Plarr, Palmer, Reynolds, Hall, Perkins, Valentin

Nays: none

Carried

- Project & Agent Agreement is being reviewed to align with agency policy will be meeting with council for further review.

-Motion to table the standard Project & Agent Agreement resolution

Moved: Janet Plarr

Seconded: Wence Valenin

Ayes: Moses, Podkulski, Hutchison, Plarr, Palmer, Reynolds, Hall, Perkins, Valentin

Nays: none

Carried

-Key Capture Energy Tour will be Friday June 23rd at 2:00pm at their facility on Electric Avenue in Blasdel open to any board member who can attend.

Unfinished Business

-PARIS reporting as stated previously 5 companies are below the employment goals set on their application for incentives. After meeting with Executive Committee letters will be issued giving them 6 months to meet their goals or face recapture. Most companies only need a few jobs filled.

Recapture Policy with Material Terms, amendment to compliance period section, employment must be maintained for length of time receiving abatement.

-Motion to approve the Policy for Recapture and /or Termination and or Modification of Financial Assistance as amended.

Moved: Bob Hutchison

Seconded: Jamel Perkins

Ayes: Moses, Podkulski, Hutchison, Plarr, Palmer, Reynolds, Hall, Perkins, Valentin

Nays: none

Carried

Fee Schedule Policy, amendment to policy will include a \$300 processing fee for each six-month sales tax extension.

-Motion to approve the Fee Schedule Policy as amended.

Moved: Bob Hutchison

Seconded: Bob Reynolds

Ayes: Moses, Podkulski, Hutchison, Plarr, Palmer, Reynolds, Hall, Perkins, Valentin

Nays: none

Carried

* **Reminder** to the board annual sexual harassment training is required by law for all board members. Training thru current employer is acceptable please forward the HIDA proof of completion.

-Privilege of the Floor – no comments

-Motion to adjourn at 8:21am

Moved: Tom Moses

Seconded: Jamel Perkins

Ayes: Moses, Podkulski, Hutchison, Plarr, Palmer, Reynolds, Hall, Perkins, Valentin

Nays: none

Carried

Sincerely,

Sean Doyle, Executive Director

Next meeting: July 19, 2023 7:30AM Blasdell Village Hall

Town of Hamburg Industrial Development Agency

Treasurer's Report

As of June 30, 2023

	Jun 30, 23	Dec 31, 22
ASSETS		
Current Assets		
Checking/Savings		
Cash		
Cash-Checking	12,893.17	6,521.18
Cash-Savings	706,852.87	816,472.57
CD Mature 4/2024	250,000.00	250,000.00
Total Cash	<u>969,746.04</u>	<u>1,072,993.75</u>
Total Checking/Savin...	<u>969,746.04</u>	<u>1,072,993.75</u>
Total Current Assets	<u>969,746.04</u>	<u>1,072,993.75</u>
TOTAL ASSETS	<u><u>969,746.04</u></u>	<u><u>1,072,993.75</u></u>
LIABILITIES & EQUITY		
Equity		
Opening Balance Eq...	499,980.27	499,980.27
Retained Earnings	573,013.48	565,034.84
Net Income	-103,247.71	7,978.64
Total Equity	<u>969,746.04</u>	<u>1,072,993.75</u>
TOTAL LIABILITIES & EQ...	<u><u>969,746.04</u></u>	<u><u>1,072,993.75</u></u>



Town of Hamburg Industrial Development Agency

07/05/23

Treasurer's Report

Accrual Basis

June 2023

	Jun 23	Jan - Jun 23
Ordinary Income/Expense		
Income		
Interest Earnings	1,842.24	10,389.45
Interest Earnings CD	1,170.45	3,890.31
Refund	0.00	198.83
Total Income	3,012.69	14,478.59
Gross Profit	3,012.69	14,478.59
Expense		
Business Expenses		
Meetings/luncheons	0.00	676.38
Mileage	86.46	610.12
Total Business Expenses	86.46	1,286.50
Cell Phone	83.33	499.98
Complete Payroll		
Employer Payroll Taxes	916.89	5,959.14
Payroll and Benefits	11,363.89	67,639.32
Processing Payroll	116.94	917.56
Total Complete Payroll	12,397.72	74,516.02
Grants	0.00	25,000.00
Legal & Professional Services		
Audit	0.00	4,500.00
Legal & Professional Services - Ot...	0.00	625.00
Total Legal & Professional Services	0.00	5,125.00
Membership Dues	0.00	5,000.00
Office Expenses		
Office Equipment	0.00	1,045.51
Postage	0.00	180.23
Subscriptions	0.00	198.04
Supplies	0.00	231.52
Office Expenses - Other	0.00	-2.45
Total Office Expenses	0.00	1,652.85
Payroll Expenses/Insurance	107.25	2,497.95
Public Hearings	0.00	68.00
Sponsorship	850.00	1,300.00
Training	0.00	780.00
Total Expense	13,524.76	117,726.30
Net Ordinary Income	-10,512.07	-103,247.71
Net Income	-10,512.07	-103,247.71

12 Month CD

	Bank of Montreal	KeyBank	Upstate Bank	Demand Deposit		Savings	
	5%	5%	4%	Bank on Buffalo	Bank on Buffalo	Bank on Buffalo	Bank on Buffalo
Rate				4.44%	4.80%		2.96%
Balance HIDA	\$250,000.00	\$250,000.00	\$250,000.00	\$730,258.00	\$730,258.00	\$230,258.00	\$230,258.00
Balance HNYLDC	\$250,000.00	\$250,000.00	\$250,000.00	\$850,000.00	\$850,000.00	\$350,000.00	\$350,000.00
Interest	\$25,000.00	\$25,000.00	\$19,500.00	\$70,163.46	\$75,852.38	\$17,175.64	\$17,175.64

EXP 4/2024

Scenario 1- Open 2 new accounts for 12 Month CD's at 5%, keep remaining balance in standard savings account. EST. \$86,675 annual interest

Scenario 2- Demand Deposit account with Bank on Buffalo and Upstate bank CD. Est. \$92,507 annual interest.

- Cash is liquid
- Streamlined accounts. Not managing several CD accounts.

Scenario 2 is recommended

PROJECT AND AGENT AGREEMENT

THIS PROJECT AND AGENT AGREEMENT (hereinafter, the "Agent Agreement"), made as of the day of _____, 20____, by and between the TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, with offices at 6122 South Park Avenue, Hamburg, New York 14075(the "Agency"), and {COMPANY}, a {Entity Type} duly organized, validly existing and in good standing under the laws of the State of {New York}, with offices at {Company Address} (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 784 of the Laws of 1986 of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: {Project Description}; and

WHEREAS, by Resolution adopted on _____ Agency authorized the Company to act as its agent for the purposes of undertaking the Project subject to the Company entering into this Agent Agreement, and pursuant to the Resolution and this Agent Agreement, the Company has the power to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses including but not limited to the individuals and entities described on **SCHEDULE A** attached hereto (collectively, the "Subagent"). The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency; and

WHEREAS, by its Resolution, the Agency has conferred on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use tax exemption benefits for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility, (b) an exemption benefit from mortgage recording tax, and (c) a partial abatement from real property taxes benefit through a _____ year "payment in lieu of tax- agreement" (the "PILOT Agreement") with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project, (collectively, the sales and use tax exemption benefit, the mortgage recording tax benefit, and the partial abatement from real property taxes benefit, are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, pursuant to and in accordance with Sections 859-a and 874 of the Act, the Agency requires, as a condition and as an inducement for it to provide any Financial Assistance, that the Company enter into this Agent Agreement for the purposes of, among other things, to govern administration of and provide assurances with respect to the provision and recapture of said Financial Assistance upon the terms herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

WHEREAS, no agent status in favor of the Company or any subagent thereof, nor any amount of Financial Assistance shall be provided to the Company by the Agency prior to the

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

1. Purpose of Project and Scope of Agency. The purpose of the Agency's provision of Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project facility to advance job opportunities, health, general prosperity and economic welfare of the people of the Town of Hamburg and to specifically promote the activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation thereof in and around the Facility. The right of the Company to act as agent of the Agency shall expire on {STP Expiration Date}, unless extended as contemplated by the Resolution. The aggregate amount of work performed as agent for the Agency shall not exceed the amounts identified in the Resolution and Section 2(h)(i) of this Agreement. All contracts entered into as agent for the Agency shall include the following language set forth as **APPENDIX A.**

2. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Project/Facility:

(a) The Company is a {Entity Type} duly organized, validly existing and in good standing under the laws of the State of {New York}, has the authority to enter into this Agent Agreement, and has duly authorized the execution and delivery of this Agent Agreement.

(b) Neither the execution and delivery of this Agent Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agent Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, and building laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (c).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public Board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agent Agreement.

(e) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) that the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Agency upon demand.

(f) Any personal property acquired by the Company in the name of the Agency shall be located in the Town of Hamburg.

(g) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolution, the Company covenants and agrees that it may be subject to a Recapture Event Determination (as hereinafter defined) resulting in the potential recapture and/or termination of any and all Financial Assistance, as described below, if the Company receives, or its Subagents receives any Financial Assistance from the Agency, and it is determined by the Agency that:

- (1) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Projects not entitled to the sales and-use-tax-exemption-benefits; or
- (2) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or
- (3) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

- (4) the Company has made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect) on its application for Financial Assistance; or
- (5) the Company fails to meet and maintain the thresholds and requirements representing certain material terms and conditions including the Investment Commitment, the Construction Commitment, the Employment Commitment and the Local Labor Commitment two (2) years following the construction completion date (the "Project Completion Date" being defined as the "Material Terms and Conditions Monitoring Period):

(a) Construction Commitment-the Company must complete the Building substantially in accordance with the provisions of the Company's application for financial assistance no later than _____, but may be subject to modifications as long as the Facility as constructed meets the needs of the Company and that the Company will build/renovate a _____ square foot _____ and maintain such employment for the term of the PILOT inducement, being defined as the "Material Terms and Conditions Monitoring Period").

(b) Investment Commitment, the total investment actually made with respect to the Project at the Project Completion Date must equal 85% of the project cost (\$ _____) as set forth in the application for Financial Assistance. The Company shall have the right to establish that it did not meet the requirements due to cost savings achieved by the Company and that the benefits that the Company has received have been reduced proportionately in accordance with the reduction in investment.

(c) Employment Commitment-that they will retain ___ FTE and ___ PTE and hire ___ FTE and ___ PTE as stated in the Company's application for Financial Assistance (the "Baseline FTE") and the Company fails to maintain employment at 85% of the total of the Baseline new FTE. The Company shall have the right to establish that the failure to comply with the Employment Commitment was due to circumstances beyond their control.

(d) Local Labor Commitment-that the Company adheres to and undertakes or has undertaken construction activities in compliance with the Agency's Local Labor Workforce Policy, attached as **EXHIBIT A**.

(e) Project Reporting Commitment-that the Company must supply the information required by this Agreement to allow the Agency to evaluate whether the Company is in compliance with the requirements of this Agreement. The reporting requirements are set forth in paragraph below.

(f) the Company agrees that it will occupy the Facility and utilize the Facility as a _____ (the "Project Use Commitment").

(g) the Company agrees to make the payment-in-lieu-of taxes to the municipalities within the time frame required (the "Payment-in-Lieu-of-Taxes Commitment").

(h) the Company agrees to maintain the insurance requirements as required in connection with this Agreement and the Leaseback Agreement and to provide copies to the Agency as required herein (the "Insurance Commitment").

In order to accomplish the foregoing, the Company shall provide annually, to the Agency, a certified statement and documentation: i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the financial assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and (iii) such other information, as so requested from time to time, to enable the Agency to assess the progress of the Project toward achieving the investment, job retention, job creation, or other objectives of the Project indicated in the Application for Financial Assistance. The Company shall annually complete and submit to the Agency the Annual Certification Report in the form attached hereto as **EXHIBIT B**. Failure by the Company to complete and submit said form to the Agency by February 15 of each year during the Material Terms and Conditions Monitoring Period shall constitute an Event of Default hereunder, whereby the Agency, in its sole and absolute discretion, may terminate this Agreement and/or the PILOT Agreement and undertake a Recapture Event Determination.

The findings made by the Agency with respect to Section 2(g)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 2(g)(5) with respect to the thresholds and requirements as identified in Section 2(g)(5), above, and/or failure to meet the thresholds and requirements as identified in Section 2(g)(5) above, may potentially be determined by the Agency, in accordance with the Agency's "Recapture of Benefits Policy", attached hereto as **EXHIBIT C**, to constitute a failure to comply with Section 875(3) of the New York General Municipal Law, and/or a failure to comply with a material term or condition to use property or services or Agency Financial Assistance in the manner approved by the Agency in connection with the Project, and/or a failure to comply with the Agency's policies and Resolution (collectively, findings and determinations made as described herein with respect to Section 2(g)(1), (2), (3) and/or (4) and/or the failure under Section 2(g)(5) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 2(g)(5) are hereby defined as a "Recapture Event Determination" . If the Agency makes a Recapture Event Determination, the Company agrees and covenants that it will (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). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner and/or County Comptroller may assess and determine the Financial Assistance due from the Company, together with any relevant penalties and interest due on such amounts.

Termination or Modification of Benefits. In addition to the recapture provisions as set forth in Exhibit C above, the Agency reserves the right to terminate the Lease Agreement and Leaseback Agreement and end the Payment-in-Lieu-of Tax benefits to the Company if the Company fails to comply with the Project Use Commitment, the Project Reporting Commitment, the Payment-in-Lieu-of-Taxes Commitment and the Insurance Commitment. In the event that it is determined that based upon the number of employees created or retained, the Company would have been eligible for Financial Assistance but for a less generous Payment-in-Lieu-of-Tax provision, the Agency reserves the right to modify the benefits to reduce the benefits to the benefits that would have been available based upon the actual employment numbers.

In Company acknowledges and understands that a Recapture Event Determination made with respect to Section 3(a)(4) of this Agreement, will, in addition to requiring the repayment of benefits, in addition immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future Financial Assistance with respect to the Project.

(h) In accordance with the Resolution the Company further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$ _____, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 2(g) of this Agent Agreement, cannot exceed \$ _____, (ii) confirms that the mortgage recording tax exemption amount shall be approximately \$ _____ and (iii) and confirms that real property tax abatement benefits to be provided to the Company over the ____ benefit period of the payment in lieu of tax agreement (the "PILOT Agreement"), said-PILOT Agreement attached hereto as **EXHIBIT D** immediately upon its execution, are estimated to be approximately \$ _____.

(i) The Agency following the adoption of the Resolution and the execution and delivery of this Agreement will complete and within thirty (30) days of appointment forward to the State Department of Taxation and Finance the "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (NYS Form ST-60) in the form attached hereto as **EXHIBIT E** for the Project. The Company shall immediately notify the Agency of its appointment of any agents or subagents in connection with the Project and shall, on request of the Agency, complete and submit to the Agency a NYS Form ST-60 for each such agent or subagent.

(j) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123, a copy of which is attached hereto as **EXHIBITS F-1 AND F-2**), and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for

such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill or invoice should state, "I, [NAME OF COMPANY OR SUBAGENT], certify that I am a duly appointed agent of the TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY and that I am purchasing the tangible personal property or services for use in the {COMPANY} Project located at (Project Address}, IDA Project Number " 140 ". For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described in the prior sentence, an "Invoice Rider" (a copy of which is attached hereto as **EXHIBIT F-3**) can be utilized for record keeping purposes.

(k) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340, a copy of which is attached hereto as **EXHIBIT G**) regarding the value of sales and use tax exemptions the Company and its Subagents, if any, have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of same to the Agency; provided, however, in no event later than February 15th of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company's authority to act as agent for the Agency.

(l) The Company acknowledges and agrees that, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

(m) The Company covenants and agrees that at all times during the Material Terms and Conditions Monitoring Period, it will (i) maintain its existence and not dissolve, (ii) continue to be a [Entity Type] subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its property, business or assets. This Agreement may not be assigned in whole or part without the prior written consent of the Agency.

(n) The Company agrees that it will, throughout the term of, this Agent Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. Notwithstanding the foregoing, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to this Section 2(p). In such event, the Company, with the prior written consent of the Agency (which shall not be unreasonably conditioned, delayed or withheld) may fail to comply with the

requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency shall notify the Company that it must comply with such requirement or requirements.

3. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors and assigns harmless from and against, any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company of this Agent Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, rehabilitating, renovating, equipping, owning and leasing of the Equipment or of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective executive director, directors, members, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

4. Insurance Required.

Effective as of the date hereof and until the expiration or termination of the right of the Company to act as agent of the Agency hereunder, the Company shall maintain, or cause to be maintained by its subagent or subcontractors, certain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type, and paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) (i) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well. Such insurance shall have a commercially reasonable deductible.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the

property of others caused by any accident or occurrence, with limits of not less than \$5,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$5,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law.

5. Additional Provisions Respecting Insurance.

(a) All insurance required by Section 8 (c) hereof shall name the Agency as an additional insured, as its interest may appear. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with commercially reasonable deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for at least thirty (30) days prior written notice of the cancellation thereof to the Company and the Agency, except in the event of non-payment, in which at least ten (10) days prior written notice of the cancellation shall be delivered to the Company and the Agency. All insurance requirements in Section 8 may be satisfied by blanket policies subject to the reasonable approval by the Agency; provided, however, that approval or acceptance by a commercial lender (if any) in connection with the financing of the Project shall not require approval by the Agency. All or some of Section 8 insurance requirements may be satisfied by an Owner Controlled Insurance Program ("OCIP") subject to approval by the Agency; provided, however, that approval or acceptance by a commercial lender in connection with the financing of the Project shall not require approval by the Agency.

(b) All such policies of insurance, or a certificate or certificates of insurance that such insurance is in force and effect, shall be deposited with the Agency on the date hereof. Prior to expiration of any such policy, the Company shall furnish evidence to the Agency that the policy has been renewed or replaced or is no longer required by this Agreement.

6. This Agent Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

7. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, or by a nationally recognized overnight courier, addressed as follows:

To the Agency:

TOWN OF HAMURG INDUSTRIAL DEVELOPMENT AGENCY
6122 South Park Avenue
Hamburg, New York 14075

Attention: Executive Director

With a copy to:

To the Company:

With a copy to:

Company Counsel Firm:

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8. This Agent Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Erie County, New York.

9. The warranties, representations, obligations and covenants of the Company under this Agent Agreement shall be absolute and unconditional and shall remain in full force and effect during the term of this Agent Agreement, shall be deemed to have been relied upon by the Agency, and shall survive the delivery and termination of this Agent, regardless of any investigation made by the Agency. This Agent Agreement shall survive any termination or expiration of the Leaseback Agreement or the PILOT Agreement, as described below.

10. The parties are contemplating that, after any applicable public hearing(s), if required, the Agency will negotiate and enter into a lease agreement (the "Lease Agreement"), a leaseback agreement (the "Leaseback Agreement"), and a PILOT Agreement with the Company. The Company agrees not to take title to any real property as agent for the Agency. The Agency will provide the Company with a bill of sale (a form of which is attached hereto as **EXHIBIT H**) which sells, transfers and delivers unto the Company and its successors and assigns, all Equipment which were acquired and installed and/or are to be acquired and installed by the Company as agent for the Agency pursuant to this Agent Agreement which Equipment is located or intended to be located at {Project Address}.

11. By executing this Agent Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (a) legal services, including but not limited to those provided by the Agency's general counsel or bond/transaction counsel, (b) other consultants retained by the Agency, if any, in connection with the Project; in accordance with the terms of the combined agency fee schedule, between the Company and the Agency, and (c) with respect to enforcing this Agent Agreement (including reasonable attorney fees). The Company agrees that the Company is liable for payment to the Agency of all charges Agency in undertaking the Project notwithstanding the occurrence of any of (i) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the

Company to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

(Remainder of page intentionally left blank)