

PROJECT AUTHORIZING RESOLUTION

(Tupper Lake Crossroads, LLC Project)

A regular meeting of the County of Franklin Industrial Development Agency was convened on Tuesday, March 23, 2021 at 10:04 am.

The meeting was called to order by the Justus Martin, Board Chair, with the following members being:

PRESENT: Sherry Boyea
James Ellis
Stephen Erman
Madelyn Fleury
Justus Martin
ABSENT: Michael Doran
Archie McKee

THE FOLLOWING PERSONS

WERE ALSO PRESENT: Maria Bourgeois, Operations Manager
Jeremy Evans, CEO
Russ Kinyon, Economic Development Director
Jacob Wright, Skyward Hospitality
Dan McClelland, Tupper Lake Free Press
Patricia Littlefield, Tupper Lake Town Supervisor
Barton Pitts, Nexamp Solar

On motion duly made by Mr. Ellis and seconded by Mr. Erman, the following resolution was placed before the members of the County of Franklin Industrial Development Agency:

Resolution No. **2021-09**

RESOLUTION OF THE COUNTY OF FRANKLIN INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) APPOINTING TUPPER LAKE CROSSROADS, LLC (COLLECTIVELY, THE "COMPANY") AS ITS AGENT TO UNDERTAKE A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW); (ii) ADOPTING A NEGATIVE DECLARATION FOR THE PROJECT IN ACCORDANCE WITH THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT ("SEQRA"); (iii) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT; (iv) AUTHORIZING THE PROVISION OF CERTAIN FINANCIAL ASSISTANCE TO THE COMPANY (AS FURTHER DEFINED HEREIN); AND (v) AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS WITH RESPECT TO THE PROJECT

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 453 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **COUNTY OF FRANKLIN INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **TUPPER LAKE CROSSROADS, LLC**, for itself and/or on behalf of an entity or entities to be formed (collectively, the “Company”), has submitted an application to the Agency requesting the Agency’s assistance with a certain project (the “Project”) consisting of (i) (i) the acquisition by the Agency of a leasehold interest in approximately 1.2 acres of real property located at 129 Park Street, 131 Park Street, 133 Park Street, 62 Lake Street, 64 Lake Street, 7 Mill Street and 9 Mill Street, each in the Village of Tupper Lake, New York (the “Land”, being more particularly described as tax parcel Nos. 490.59-4-13, 490.59-4-12, 490.59-4-11, 490.59-4-18, 490.59-4-19, 490.59-4-15 and 490.59-4-14, respectively, as may be merged) along with the existing improvements thereon consisting principally of approximately 28,000 square feet commercial, single-family and multi-family building space (the “Existing Improvements”); (ii) demolition of certain of the Existing Improvements and the planning, design, construction and operation upon the Land of a hotel and restaurant facility containing 44 hotel rooms, along with a bar and restaurant, meeting room, fitness area and other related amenities, site work, exterior access and egress improvements, curbage, signage, utility and related exterior improvements (collectively, the “Improvements”); (iii) the acquisition of and installation in and around the Land, the Existing Improvements, and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the “Equipment” and, collectively with, the Land, the Existing Improvements and the Improvements, the “Facility”); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the “Straight Lease Transaction”); and

WHEREAS, on November 18, 2020, the Agency adopted an initial resolution (the “Initial Project Resolution”) which (i) accepted the Company’s application, (ii) authorized the scheduling and conduct of a public hearing in compliance with the Act, (iii) described the contemplated forms of financial assistance to be provided by the Agency (the “Financial Assistance”, as described herein); and (iv) authorized the negotiation of an Agent and Financial Assistance and Project Agreement (the “Agent Agreement”), Lease Agreement (the “Lease Agreement”), Leaseback Agreement (the “Leaseback Agreement”) and Payment-in-lieu-of-Tax agreement (the “PILOT Agreement”) to be entered into with respect to the Project; and

WHEREAS, in accordance with the Initial Project Resolution, the Agency published and forwarded a Notice of Public Hearing to the Town of Tupper Lake (the “Town”), the Village of Tupper Lake (the “Village”), the County of Franklin (the “County”), and the Tupper Lake Central School District (the “School”, and together with the Town and County, the “Affected Tax Jurisdictions) at least ten (10) days prior to said Public Hearing are attached hereto as **Exhibit A**; and

WHEREAS, pursuant to Section 859-a of the Act, the Agency held a public hearing on January 5, 2021 at 4pm local time, at the Village of Tupper Lake Municipal Offices, 53 Park Street, Tupper lake, New York 12986 with respect to the Project (the “Public Hearing”) and the proposed Financial Assistance (as further defined herein) being contemplated by the Agency whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views, a copy of the minutes of the Public Hearing also being attached hereto within **Exhibit A**; and

WHEREAS, the Project was previously reviewed and approved by the Adirondack Park Agency (“APA”) through APA Permit 2020-0136 (the “APA Permit”), and the Company also secured necessary approvals from the Tupper Lake Joint Planning Board and Village of Tupper Lake Zoning Board of Appeals; and

WHEREAS, while projects seeking APA permits or approvals are deemed “Type II” Projects pursuant to 6 NYCRR Part 617.5(45) of the State Environmental Quality Review Act, as codified under Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, “SEQRA”), the Agency’s undertaking of the Straight-Lease Transaction requires review pursuant to SEQRA, for which the Agency has determined constitutes a Type I action under SEQRA, and it arranged for the preparation of a full Environmental Assessment Form (“EAF”) including parts 1, 2 and 3 of it in order to assess the potential impacts associated with the Project as further detailed herein. Further, the Agency arranged for a duly issued notice of its intent to act as SEQRA lead agency including part I of the EAF to be transmitted to each involved agency in order to conduct a coordinated review of the Project and it undertook the required hard look review of the Project pursuant to SEQRA by analyzing the impacts and potential impacts associated with same including reviewing applicable documents associated with same attached hereto as **Exhibit B**; and

WHEREAS, as proposed, the Project will entail customers personally visiting the Facility, and thereby the Facility constitutes a “retail” project as defined under Section 862 of the Act, and based upon representations made by the Company and the Agency’s prior review of the Application, along with other supporting documentation, the Agency determined that the project is located in an area designated as an empire zone pursuant to Article 18-A of the General Municipal Law and therefore the Project is located in a “highly distressed area” as defined pursuant to the Act; and

WHEREAS, in furtherance of the foregoing, the Agency desires to authorize (i) the appointment of the Company as agent of the Agency to undertake the Project; (ii) the execution and delivery of the Agent Agreement, Lease Agreement, the Leaseback Agreement, the PILOT Agreement, and related documents; (iii) the provision of the Financial Assistance to the Company, which shall include (a) an exemption from all state and local sales and use taxes with respect to the qualifying personal property included in or incorporated into the Facility or used in the construction and equipping of the Facility, (b) a partial real property tax abatement through the execution of an agreement with the Agency regarding payments in lieu of real property taxes to be made for the benefit of the Affected Tax Jurisdictions and (c) a mortgage recording tax exemption for financings undertaken to construct the Facility; and (iv) the review and ratification of findings pursuant to SEQRA in connection with the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE COUNTY OF FRANKLIN INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Based upon the representations made by the Company to the Agency in the Application, the Agency hereby finds and determines that:

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

(B) It is desirable and in the public interest for the Agency to (i) acquire title to or other interest in the Land, the Existing Improvements, Improvements and the Equipment constituting the Facility, (ii) lease or sell the Agency’s interest in the Land, Existing Improvements, Improvements and Equipment constituting the Facility to the Company pursuant to a lease agreement or sale agreement, and (iii) enter into a Straight Lease Transaction with the Company; and

(C) The action to be taken by the Agency will induce the Company to undertake the Project, thereby increasing employment opportunities in the Town of Tupper Lake and the Village of Tupper Lake, each of which are located within Franklin County, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

(D) The Project will not result in the removal of a facility or plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's Application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other facility or plant to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(E) Based upon a review of the Application, APA Permit and related materials, and the EAF (including parts 1, 2 and 3 of it) and all the materials submitted to the Agency associated with the foregoing, the Agency hereby:

(i) confirms the Project is a Type I action, as such term is defined pursuant to SEQRA, and the Agency arranged for notice of its intent to act as SEQRA lead agency to be transmitted to each involved agency which included part I of the EAF, and 30 days have elapsed since such notice was transmitted, and no involved agency objected to the Agency acting as lead agency so the Agency has conducted a coordinated review of the Project, within the meaning of, and for all purposes of complying with SEQRA;

(ii) based on the information provided the Agency acknowledges and as appropriate adopts and/or ratifies the referenced proceedings undertaken by the APA and the findings contained within the APA Permit with respect to the construction and equipping of the Facility also known as the Project ; and

(iii) Based upon the review by the Agency of the APA Permit, the EAF and related documents including those delivered by the Company to the Agency and other representations made by the Company to the Agency in connection with the Project, the Agency hereby finds that after: (i) conducting a thorough and comprehensive review of the Applications, completed EAF, including the completed EAF Mapper and other materials associated with the APA process and Permit, as well as reviewing involved agency and other correspondence (if any), and reviewing each of the other materials provided associated with the underlying SEQRA review of the development proposed for the Project by the Company and other information provided in order to identify the relevant areas of environmental concern with respect to potential impacts from them to land, storm water and groundwater, wetlands, historic, archaeological and other recognized and/or protected resources, threatened or endangered species, community character and cumulative impacts, if any, and other potential impacts as required by applicable regulation; (ii) considering the criteria set forth in 6 NYCRR § 617.7(c); and (iii) thoroughly analyzing the identified areas of relevant environmental concern. Based on its review of the above-referenced materials and the analysis it conducted as referenced, as well as based on proceedings previously undertaken pursuant to the APA for the Project, the Agency hereby further ratifies the APA findings, as well as adopting by reference the completed parts 2 and 3 of the EAF, and based on its own review and analysis of the of the foregoing documents and its own review and analysis of the information and the Project will not have a

significant negative impact on the environment (as such quoted term is defined under SEQRA) therefore no environmental impact statement will be prepared for the Project.

(iv) the Agency further resolves that this negative declaration determination shall take effect immediately, and that it has completed all matters associated with SEQRA for the Project and further resolves that it will publish in the manner required by applicable regulations a notice of this negative declaration

(F) Based upon the Agency's prior review of the Application submitted by the Company, along with supporting materials, the Project will include facilities or property that are primarily used in making retail sales, as defined within Section 862(2) of the Act, to customers who personally visit the Facility. Notwithstanding the foregoing, and based upon the Application and supporting materials prepared and presented by the Company to the Agency, the Project is located in a "highly distressed" area by virtue of being within an area which was designated an empire zone pursuant to Article 18-B of the Act. In accordance with the foregoing, and pursuant to Section 862(2)(c) of the Act, the Agency hereby finds that the undertaking of the Project will serve the public purposes of the Act by preserving permanent, private sector jobs and/or increasing the overall number of permanent, private sector jobs in the State.

Section 2. Subject to (i) the Company executing the Agent Agreement and Leaseback Agreement, (ii) delivery of a confirming certificate from the County Manager of Franklin County, New York in accordance with Section 862(2)(c), and (iii) the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, renovation, construction, reconstruction, rehabilitation and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Agent Agreement shall expire on July 31, 2022 (*unless extended for good cause by the Chief Executive Officer of the Agency*).

Section 3. Based upon the representation and warranties made by the Company the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately **\$5,625,000.00**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$450,000.00**. The Agency agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

Section 4. Pursuant to Section 875(3) of the Act, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases

for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; (iv) the Company has made a material false statement on its application for financial assistance; (v) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project; and/or (vi) the Company obtains mortgage recording tax benefits and/or real property tax abatements and fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project (collectively, items (i) through (vi) hereby defined as a "Recapture Event").

As a condition precedent of receiving sales and use tax exemption benefits and real property tax abatement benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, mortgage recording tax benefits and/or real property tax abatements abatement benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

Section 5. The Chairman, Vice Chairman and/or the Chief Executive Officer of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agent Agreement, Lease Agreement, Leaseback Agreement, PILOT Agreement, PILOT Mortgage, and related documents with such changes as shall be approved by the Chairman, Vice Chairman, and/or the Chief Executive Officer and counsel to the Agency upon execution.

Section 6. The Chairman, Vice Chairman, and/or the Chief Executive Officer of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter with the Straight Lease Documents, the "Agency Documents"); and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, and/or the Chief Executive Officer of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman, and/or the Chief Executive Officer of the Agency to constitute conclusive evidence of such approval; provided, that, in all events, recourse against the Agency is limited to the Agency's interest in the Project.

Section 7. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such 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 the foregoing resolutions and to cause

compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 8. These Resolutions shall take effect immediately upon adoption.

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

	YEA	NEA	ABSTAIN	ABSENT
JUSTUS MARTIN	X			
JAMES ELLIS	X			
SHERRY BOYEA	X			
STEPHEN ERMAN	X			
ARCHIE MCKEE				X
MICHAEL DORAN				X
MADELYN FLEURY	X			

Resolution #2021-09 was thereupon duly adopted.

STATE OF NEW YORK)
COUNTY OF FRANKLIN) SS:

I, the undersigned Secretary of the County of Franklin Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the County of Franklin Industrial Development Agency (the "Agency"), including the resolution contained therein, held on March 23, 2021, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency 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 modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 23rd day of March, 2021.


Sherry Boyea (Mar 23, 2021 15:39 EDT)

Sherry Boyea, Secretary

Mar 23, 2021

EXHIBIT A

PUBLIC HEARING MATERIALS

EXHIBIT B
SEQRA MATERIALS

2021-03-23 IDA Resolution 2021-09 TLC Project Authorizing Resolution

Final Audit Report

2021-03-23

Created:	2021-03-23
By:	Maria Bourgeois (mbourgeois@franklinida.org)
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"2021-03-23 IDA Resolution 2021-09 TLC Project Authorizing Resolution" History

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