



Industrial Development Agency

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PROJECT AUTHORIZING RESOLUTION

(Branch Commercial Development, LLC Project – Malone Holiday Inn Express Renovation)

A regular meeting of the County of Franklin Industrial Development Agency was convened on Wednesday, December 11, 2024.

The meeting was called to order by the Chairman, with the following members being:

PRESENT: Sherry Boyea
James Ellis
Melissa Mills
Nate Monette
Clyde Rabideau

ABSENT: Archie McKee
Nick Russell

THE FOLLOWING PERSONS WERE ALSO PRESENT:

Jeremy Evans, CEO
Paul Ellis, CFO
Rachel Karp, Operations Manager

On motion duly made by Sherry Boyea and seconded by Melissa Mills, the following resolution was placed before the members of the County of Franklin Industrial Development Agency:

Resolution No. **2024-22**

RESOLUTION OF THE COUNTY OF FRANKLIN INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”) (i) APPOINTING BRANCH COMMERCIAL DEVELOPMENT, LLC (THE “COMPANY”) AS ITS AGENT TO UNDERTAKE A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW); (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT AGREEMENT, AMENDED AND RESTATED LEASE AGREEMENT, AMENDED AND RESTATED LEASEBACK AGREEMENT, AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT, PILOT MORTGAGE AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT; (iii) AUTHORIZING THE PROVISION OF CERTAIN FINANCIAL ASSISTANCE TO THE COMPANY (AS FURTHER DEFINED HEREIN); (iv) ADOPTING FINDINGS WITH RESPECT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (“SEQRA”); 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, pursuant to a certain Authorizing Resolution adopted by the Agency on July 9, 2009, the Agency previously appointed **BRANCH COMMERCIAL DEVELOPMENT, LLC** (the “Company”) as agent to undertake a certain project (the “2010 Project”) consisting of (i) the acquisition by the Agency of a leasehold interest in an approximately 3 acre parcel of real property located at 3351 State Route 11, Malone, New York 12953 (the “Land”, being more particularly described as tax parcel No. 112.-1-1.300); (ii) the planning, design, construction and operation of an approximately 49,000 square foot hotel facility containing 81 hotel rooms, along with other related amenities, site work, exterior access and egress improvements, parking, curbage, signage, utility and related exterior improvements (collectively, the “2010 Improvements”); (iii) the acquisition of and installation in and around the Land and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the “2010 Equipment” and, collectively with, the Land and the Improvements, the “2010 Facility”); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act); and

WHEREAS, the Agency and Company undertook the Project pursuant to the straight lease transaction, which included the following agreements, each dated as of January 13, 2010: (i) a certain Lease to Agency (and memorandum thereof), (ii) a certain Lease Agreement (and memorandum thereof), (iii) a certain PILOT Agreement, (iv) a certain PILOT Mortgage, and (v) related documents (herein, the “2010 Project Documents”, which expire as of January 1, 2025); and

WHEREAS, the Company has submitted an application to the Agency requesting the Agency’s assistance with a certain project (the “Project”) consisting of (i) the appointment of the Company as agent of the Agency to undertake the planning, design, reconstruction, renovation and reequipping of the 2010 Facility, including a full interior remodel and reequipping of all hotel room units and common areas, along with other interior and exterior improvements to the Land and 2010 Facility (collectively, the “Improvements”); (iii) the acquisition of and installation in and around the Land, 2010 Improvements and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the “Equipment” and, collectively with, the Land and the Improvements, the “Facility”); and

WHEREAS, on November 21, 2024, 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”) and related documents 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 Malone (the “Town”), the County of Franklin (the “County”), and the Malone 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 Wednesday, December 11, 2024 at 12:00 p.m. local time, at the offices of the Franklin County Economic Development Corporation, at 360 West Main Street, Malone, New York 12953 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, pursuant to 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"), and upon review of the Application, the Agency has identified the Project as a "Type II" Action pursuant to SEQRA for which no formal review is required; 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 and related documents; (iii) the provision of the Financial Assistance to the Company, which shall include 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; 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 appoint the Company as agent to undertake the Project; and
- (C) The action to be taken by the Agency will induce the Company to undertake the Project, thereby increasing employment opportunities in 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, the Agency has identified the Project as a "Type II" Action pursuant to SEQRA for which no formal review is necessary.
- (F) Based upon the Agency's prior review of the Application submitted by the Company, along with supporting materials, and in accordance with the findings of the Agency within the Initial Project Resolution, 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, and pursuant to Section 862(2)(b) of the Act, the Project will be located in a "Highly Distressed Area", as defined pursuant to 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, and (ii) 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 on its own behalf; *provided, however*, the Agent Agreement shall expire on December 31, 2025 (*unless extended for good cause by the Executive Director or 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 **\$1,959,375.00**, which result in New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) not to exceed **\$156,750.00**. 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, 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 the Executive Director and/or the Chief Executive Officer of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agent Agreement and related documents with such changes as shall be approved by the Chairman, Vice Chairman, the Executive Director and/or the Chief Executive Officer and counsel to the Agency upon execution.

Section 6. The Chairman, Vice Chairman, the Executive Director 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, the Executive Director and/or the Chief Executive Officer of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman, the Executive Director 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:

	Yay	Nay	Absent	Abstain
Sherry Boyea	x			
Nate Monette				x
James Ellis	x			
Nick Russell			x	
Melissa Mills	x			
Clyde Rabideau	x			
Archie McKee			x	

The Resolution 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 December 11, 2024, 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 11th day of December, 2024.

Nicholas Russell
Nicholas Russell (Dec 11, 2024 13:39 MST)
Secretary

[SEAL]