

RESOLUTION

A special meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened in public session on February 20, 2020, at 4:00 p.m., local time, at the Sullivan County Government Center, 100 North Street, Monticello, New York 12701.

The meeting was called to order by Chairman Ira Steingart, and, upon roll being called, the following members of the Agency were:

	<u>PRESENT</u>	<u>ABSENT</u>
Ira Steingart	[√]	[]
Suzanne Loughlin	[√]	[]
Edward T. Sykes	[√]	[]
Howard Siegel	[√]	[]
Scott Smith	[]	[√]
Paul Guenther	[]	[√]
Joseph Perrello	[√]	[]
Carol Roig	[√]	[]

The following persons were also present:

- Jennifer M. Flad, Executive Director
- Edward T. Sykes, Chief Executive Officer
- Julio Garaicoechea, Project Manager
- Walter F. Garigliano, Agency General Counsel

The following resolution was duly offered by Joseph Perrello and seconded by Carol Roig, to wit:

Resolution No. 07-20

RESOLUTION AUTHORIZING A SECOND AMENDMENT TO THE AMENDED AND RESTATED PAYMENT IN LIEU OF TAXATION AGREEMENT RELATED TO THE RH PROJECT (AS HEREINAFTER DEFINED)

WHEREAS, the Agency was created by Chapter 560 of the Laws of 1970 of the State of New York, as amended, pursuant to Title I 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, on or about January 1, 2001, RH Lodging Services, LLC (“RH Lodging”) and the Agency entered into a sale/leaseback transaction (“RH Project”) under which RH Lodging as agent of the Agency pursuant to an Agent Agreement, dated as of the 1st day of September, 2000 (“Agent Agreement”) agreed to (i)(A) reconstruct, renovate, rehabilitate and equip the former Howard Johnson’s Motor Lodge to be operated as a seventy (70)± room hotel with a business

conference center (“Motel”) and (i)(B) construct and equip a freestanding virtual reality facility consisting of approximately ten thousand (10,000) square feet to house an indoor swimming pool, exercise room, basketball courts and a multitude of arcade and virtual reality games (“Recreation Center” and together with the Motel, collectively, the “RH Building”) situate on two (2) parcels of real estate consisting of approximately 54± acres located along Rock Hill Drive in the Town of Thompson, County of Sullivan, State of New York and identified on the tax map as Thompson Section 35, Block 1, Lot 7.1 and Section 51, Block 2, Lot 12 (“RH Land”) to which the Agency took title pursuant to a Deed, dated January 1, 2001 from RH Lodging to the Agency, which RH Land was leased back to RH Lodging by the Agency pursuant to a Lease Agreement, dated as of the 1st day of January, 2001, which Lease was amended by that certain Amendment of Lease, dated as of the 11th day of July, 2003 to facilitate financing for the RH Project, which lease was further amended by that certain Omnibus Amendment to Project Documents, dated the 14th day of November, 2006 to authorize the conveyance of real property (specifically the transfer of a 9.17 acre parcel from the Agency to RH Lodging and the transfer of a 7.81 parcel from RH Lodging to the Agency) (collectively, the “Lease”); (ii) acquire and install thereon and therein certain furniture, fixtures, machinery, equipment and tools (“RH Equipment”), which RH Equipment was transferred pursuant to a bill of sale, dated as of the 1st day of January, 2001 from the Agency to RH Lodging (“Bill of Sale”); and (iii) construct and reconstruct improvements to the RH Building, the RH Land and the RH Equipment (“RH Facility”); and

WHEREAS, on or about April 21, 2012, RH Lodging assigned all of its rights to the Lease, the RH Facility and the RH Project to RHH Land, LLC (“Company”) (including all rights to use, occupy and ultimately acquire the RH Land, RH Building and RH Equipment from the Agency) pursuant to a certain Assignment, dated as of the 21st day of April, 2012; and

WHEREAS, on or about March 30, 2012, the Company presented an application (“Application”) to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project consisting of the (i) acquisition, reconstruction, renovation, rehabilitation, installation and equipping of a 74 room hotel formerly operated as “The Lodge” (“Building”) situate on three (3) separate parcels of real estate consisting of approximately 54.13+/- acres of Land located along Rock Hill Drive in the Town of Thompson, County of Sullivan, State of New York and identified on the tax map as Thompson 35-1-7.1, 35-1-7.4 and 51-2-12 (“Land”) and related facilities and to be owned by the Agency; (ii) acquiring and installing thereon and therein certain furniture, fixtures, machinery and equipment (“Equipment”); and (iii) rehabilitating and reconstructing improvements to the Building, the Land and the Equipment (collectively, the Building, Land and Equipment referred to as the “Facility” or the “Project”) and (iv) amending and extending the existing lease on the Facility from the Agency to RH Lodging, which was assigned to the Company; and

WHEREAS, in order to induce the Company to renovate, rehabilitate, install and equip the Facility, the Agency took title to the land, improvements and personal property constituting the Facility and leased said land, improvements and personal property back to the Company pursuant to the terms and conditions of that certain Amended and Restated Lease Agreement, dated April 21, 2012 between the Company and the Agency (“Lease Agreement”); and

WHEREAS, contemporaneously with execution of the Lease Agreement, the Company and Agency entered into an Amended and Restated Payment in Lieu of Taxation Agreement (“A&R PILOT”) pursuant to which the Company agreed to make certain payments in lieu of tax (each, a “PILOT Payment”) to the Agency for the benefit of the Town, County and Monticello Central School District; and

WHEREAS, the Company and the Agency entered into a First Amendment to Amended and Restated Payment in Lieu of Tax Agreement the 1st day of March, 2019 (“First Amended PILOT and together with the A&R PILOT, the “PILOT Agreement”) to extend the Company’s time for payment of the 2019 PILOT Payment; and

WHEREAS, the Company is unable to timely make the PILOT Payment due February 1, 2020 and has requested the Agency forebear from terminating the Project and allowing the PILOT Payment to be made after the applicable 2020 due date; and

WHEREAS, as a result of a prior default related to the 2019 PILOT Payment, there is a PILOT Mortgage in place dated March 1, 2019 securing the unpaid 2020 PILOT Payment due the Agency; and

WHEREAS, the Agency is willing to forebear from terminating the Project upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

- Section 1. The Chairman, Chief Executive Officer or Executive Director of the Agency, each acting individually, are hereby authorized, on behalf of the Agency, to execute and deliver the Second Amendment to the Amended and Restated Payment in Lieu of Taxation Agreement to modify the date for payment of the 2020 PILOT Payment, subject to the following conditions:
- 1) The applicant establishes an escrow account (“Escrow Account”) to be funded on a monthly basis so that by each January during the term of the PILOT Agreement sufficient funds are available to pay the next ensuing PILOT Payment, with the minimum escrow account balance to be not less than one hundred ten (110%) percent of the prior year PILOT Payment; and
 - 2) The Escrow Account shall be funded by a current payment in the amount of Twenty-Four Thousand Eight Hundred Seventy-four and 60/100 (\$24,874.60) Dollars plus monthly payments of Seven Thousand Five Hundred and 00/100 (\$7,500.00) Dollars per month for the ten- (10) month period beginning April 1, 2020 and ending with the escrow payment due January 1, 2021, which funds shall be utilized to pay the following amounts:
 - a) The 2020 PILOT Payment, together with penalty interest thereon;
 - b) The 2020 Lease payment due the Agency;
 - c) The fees and expenses of the Agency related to this forbearance; the Second Amendment to the Amended and Restated Payment in Lieu of Taxation Agreement and modification of the PILOT Mortgage;

- and
 d) The 2021 PILOT Payment, when due.

Section 2. 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 3. These Resolutions shall take effect immediately

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

Ira Steingart	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Suzanne Loughlin	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input checked="" type="checkbox"/> Abstain
Edward T. Sykes	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Howard Siegel	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Scott Smith	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Paul Guenther	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Joseph Perrello	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Carol Roig	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain

and therefore, the resolution was declared duly adopted.

STATE OF NEW YORK :
:SS
COUNTY OF SULLIVAN :

I, the undersigned (Assistant) Secretary of the Agency DO HEREBY CERTIFY THAT:

1. I have compared the foregoing copy of a resolution of the Agency with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of such resolution and of the proceedings of the Agency in connection with such matter.
2. Such resolution was passed at a meeting of the Agency duly convened in public session on February 20, 2020 at 4:00 p.m. at the Sullivan County Government Center, 100 North Street, Monticello, New York, at which the following members were present:

	<u>PRESENT</u>	<u>ABSENT</u>
Ira Steingart	[<input checked="" type="checkbox"/>]	[]
Suzanne Loughlin	[<input checked="" type="checkbox"/>]	[]
Edward T. Sykes	[<input checked="" type="checkbox"/>]	[]
Howard Siegel	[<input checked="" type="checkbox"/>]	[]
Scott Smith	[]	[<input checked="" type="checkbox"/>]
Paul Guenther	[]	[<input checked="" type="checkbox"/>]
Joseph Perrello	[<input checked="" type="checkbox"/>]	[]
Carol Roig	[<input checked="" type="checkbox"/>]	[]

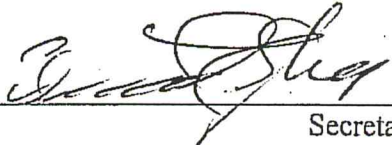
3. The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

Ira Steingart	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Suzanne Loughlin	[] Yes	[] No	[] Absent	[<input checked="" type="checkbox"/>] Abstain
Edward T. Sykes	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Howard Siegel	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Scott Smith	[] Yes	[] No	[<input checked="" type="checkbox"/>] Absent	[] Abstain
Paul Guenther	[] Yes	[] No	[<input checked="" type="checkbox"/>] Absent	[] Abstain
Joseph Perrello	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Carol Roig	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain

and therefore, the resolution was declared duly adopted.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections 103a and 104, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the 20th day of February, 2020.


Secretary