

**RESOLUTION**

A regular meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened on April 11, 2022 at 11:00 a.m. local time via videoconference as authorized by Chapter 417 of the Laws of 2021, which took effect on September 2, 2021 and was amended effective January 14, 2022 and further amended effective March 16, 2022.

The meeting was called to order by Chairperson Suzanne Loughlin, and, upon the roll being called, the following members of the Agency were:

	<u>PRESENT</u>	<u>ABSENT</u>
Suzanne Loughlin	[    ]	[    ]
Edward T. Sykes	[    ]	[    ]
Carol Roig	[    ]	[    ]
Howard Siegel	[    ]	[    ]
Scott Smith	[    ]	[    ]
Paul Guenther	[    ]	[    ]
Sean Brooks	[    ]	[    ]

The following persons were also present:

- Jennifer M. Flad, Executive Director
- John W. Kiefer, Chief Executive Officer
- Julio Garaicoechea, Project Manager
- Walter F. Garigliano, General Counsel
- William A. Frank, Special Transaction Counsel

The following resolution was duly offered by \_\_\_\_\_, and seconded by \_\_\_\_\_, to wit:

Resolution No. \_\_ - 22

***RESOLUTION OF THE AGENCY APPOINTING FSH LODGE AT NEVERSINK, LLC (“FSH LODGE”) AND 7491 STATE ROUTE 55 PROPERTY CO., LLC (“7491 SR 55,” TOGETHER WITH FSH LODGE, COLLECTIVELY, THE “COMPANY”) AS ITS AGENT FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, RECONSTRUCTING, RENOVATING, REHABILITATING, INSTALLING AND EQUIPPING THE PROJECT (HEREINAFTER DEFINED); MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT AND PROJECT AGREEMENT BETWEEN THE AGENCY AND THE COMPANY; AUTHORIZING THE AGENCY TO EXECUTE THE LEASE TO AGENCY (“LEASE”), LEASEBACK TO COMPANY (“LEASEBACK”), PAYMENT IN***

***LIEU OF TAX AGREEMENT (“PILOT AGREEMENT”) AND RELATED DOCUMENTS WITH RESPECT TO THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION, REHABILITATION, INSTALLATION AND EQUIPPING OF THE PROJECT***

***WHEREAS***, by Title 1 of Article 18-A of the General Municipal Law of the State of New York ("State"), as amended, and Chapter 560 of the Laws of 1970 of the State, as amended and codified as Section 960 of the General Municipal Law (collectively, the “Act”), the Agency was created with the authority and power to own, lease and sell property as authorized by the Act; and

***WHEREAS***, on or about March 15, 2022, the Company presented an application to the Agency (“Application”), 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, construction, reconstruction, renovation, rehabilitation, installation and equipping of nine (9) existing buildings aggregating approximately 30,000 +/- square feet, intended to be used as a wellness retreat including thirty-four (34) guest rooms, spa, restaurant and related amenities (“Buildings”) situate on two (2) parcels of real estate consisting of approximately 229.5 +/- acres located at 7491 State Route 55 and Seeman Road, Town of Neversink (“Town”), County of Sullivan (“County”), State of New York and identified on the Town tax map as Section 30, Block 1, Lots 39.1 and 39.3 (“Land”); (ii) acquisition, construction and installation thereon and therein of certain furniture, fixtures, machinery, equipment and tools (“Equipment”); (iii) construction of improvements to the Buildings, the Land and the Equipment (collectively, the Buildings, the Land and the Equipment are referred to as the “Project”); and (iv) lease of the Project from the Agency to the Company; and

***WHEREAS***, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of reconstructing, renovating, rehabilitating, installing and equipping the Project; (ii) negotiate and enter into an Agent and Project Agreement, the Lease, the Leaseback and the PILOT Agreement with the Company (collectively, the “Transaction Documents”); (iii) hold a leasehold interest in the Land, the improvements and personal property thereon which constitute the Project; and (iv) provide financial assistance to the Company in the form of (a) sales tax exemption for purchases related to the reconstruction, renovation, rehabilitation, installation and equipping of the Project; (b) a real property tax abatement on increased value resulting from improvements to the Land through the PILOT Agreement, which Agreement shall include language permitting the Company to seek enhanced benefits, in accordance with the Agency’s recently amended Tourism Industry Program in the event that the Company or any entity acting on the Company’s behalf, applies to the appropriate governmental authorities and receives all necessary approvals to develop, through construction or renovation, market rate workforce housing at a location at or within twenty-five (25) miles of the Project site, with said location to be determined at a future date, and such market rate workforce housing is actually developed; and (c) a mortgage tax exemption for financing related to the Project; and

***WHEREAS***, the total financial assistance being contemplated by the Agency is greater than \$100,000; and

**WHEREAS**, the Agency determined that the Application which involves the adaptive reuse of the existing buildings is a Type II Action under SEQR and no further action is required; and

**WHEREAS**, the Agency has given due consideration to the Application of the Company and to representations by the Company that the proposed financial assistance is an inducement to the Company to undertake the Project; and

**WHEREAS**, the Agency has considered the following matters as more fully set forth in its Uniform Tax Exemption Policies:

- A. Permanent private sector job creation and retention;
- B. Estimated value of the tax exemption;
- C. Whether the affected taxing jurisdictions shall be reimbursed by the Company if the Project does not fulfill the purposes for which the exemption was granted;
- D. Impact of Project on existing and proposed business or economic development projects;
- E. The amount of private sector investment generated or likely to be generated by the Project;
- F. Demonstrated public support for the Project;
- G. Likelihood of accomplishing the Project in a timely fashion;
- H. Environmental impact;
- I. Extent to which the Project will require additional services including, but not limited to educational, police, transportation, EMS and fire;
- J. Extent to which the Project will provide additional revenues; and
- K. Extent to which the Project will serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State;

; and

**WHEREAS**, the Agency desires to encourage the Company to advance the job opportunities, health, general prosperity and economic welfare of the people of Sullivan County, New York by providing the contemplated financial assistance and undertaking the Project; and

**WHEREAS**, the Executive Director has negotiated the Transaction Documents with the Company; and

**WHEREAS**, the Transaction Documents have been prepared by Agency Special Transaction Counsel.

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

- Section 1. The Company has presented to the Agency, among other things:
- (A) An Application in form acceptable to the Agency and

- (B) A Cost/Benefit Analysis relating to the proposed financial assistance.

Section 2. Based upon (i) the representations made by the Company to the Agency and (ii) related documents, the Agency hereby determines that:

- (A) The Project consists of the adaptive reuse of existing buildings;
- (B) The Project is a Type II action under SEQRA 6 NYCRR 617.5(c)(2) and accordingly, no further action is needed; and
- (C) The Project qualifies for financial assistance under the Agency's Uniform Tax Abatement Policy.

A copy of this resolution, together with the attachments thereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

Section 3. The Agency has determined that the proposed financial assistance exceeds the sum of \$100,000.00 and therefore a public hearing on due notice was held on April 11, 2022 at 8:30 a.m., local time, in the Board Room at the Town of Neversink Town Hall, 273 Main Street, Grahamsville, New York at which hearing comments relating to the proposed financial assistance were solicited. Said public hearing was open to the general public and public notice of the time and place of said public hearing was duly given in accordance with the applicable provisions of the General Municipal Law of the State.

Section 4. Based upon representations made by the Company to the Agency, the Agency hereby makes, finds and determines as follows:

- (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;
- (B) It is desirable and in the public interest for the Agency to (i) acquire an interest in the Land and to take a leasehold interest in the improvements and personal property constituting the Project; (ii) appoint the Company as its agent for purposes of reconstructing, renovating, rehabilitating, installing and equipping the Project, and (iii) lease the Land, improvements and personal property constituting the Project to the Company pursuant to the Lease and the Leaseback, subject to the PILOT Agreement;
- (C) The Agency has the authority to take the actions contemplated therein under the Act; and
- (D) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in the County and otherwise furthering the purposes of the Agency as set forth in the Act.

Section 5. Subject to the Company executing an Agent and Project Agreement in form and

substance approved by the Chief Executive Officer, the Agency hereby authorizes the Company to proceed with the acquisition, construction, reconstruction, renovation, rehabilitation, installation and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency to acquire, construct, reconstruct, renovate, rehabilitate, install and equip the Project on behalf of the Agency; with the authority to delegate its status as agent of the Agency to the Company's agents, subagents, contractors, subcontractors, suppliers, vendors and other such parties as the Company may choose. The appointment described above includes the following activities as they relate to the acquisition, construction, reconstruction, renovation, rehabilitation, installation and equipping of the Project, whether or not the materials, services or supplies described below are incorporated into or become an integral part of the Project; (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, construction, reconstruction, renovation, rehabilitation, installation and equipping of the Project; (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with the acquisition, construction, reconstruction, renovation, rehabilitation, installation and equipping of the Project; and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under the Project, including all repairs and replacements of such property. This Agency appointment includes the power to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agents for the Agency, and in general to do all things which may be requisite or proper for completing the Project, all with the same powers and with the same validity as the Agency could do if acting on its own behalf. The aforesaid appointment of the Company as agent of the Agency to reconstruct and equip the Project shall expire on October 31, 2022 if the Transaction Documents have not been executed and delivered.

Section 6. Based upon the representation and warranties made by the Company in its application for financial assistance, 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 \$3,436,100, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$274,888. 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.

Section 7. Pursuant to Section 875(3) of the New York General Municipal Law, 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; or (iv) 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. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) 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.

Section 8. The Transaction Documents which were negotiated by the Executive Director are hereby approved as to form and substance on condition that: (i) the payments under the Leaseback include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy.

Section 9. The Chairperson, Executive Director or Chief Executive Officer of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Transaction Documents in the form presented at this meeting all with such changes, variations, omissions and insertions as the Chairperson, Executive Director or Chief Executive Officer of the Agency shall approve, the execution thereof by the Chairperson, Executive Director or Chief Executive Officer of the Agency to constitute conclusive evidence of such approval.

Section 10. The officers, employees and agents of the Agency are hereby authorized and directed 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 this resolution 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 11. It is hereby found and determined that all formal actions of the Agency concerning and relating to the adoption of this resolution were adopted in an open meeting of

the Agency; and that all deliberations of the Agency and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

Section 12. The Executive Director, Chief Executive Officer or Counsel to the Agency is hereby authorized and directed (i) to distribute copies of this resolution to the Company; and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 13. This resolution 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:

Suzanne Loughlin	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Edward T. Sykes	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Carol Roig	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Howard Siegel	<input 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 type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Paul Guenther	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Sean Brooks	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain

The resolution was thereupon duly adopted.

STATE OF NEW YORK :  
:SS  
COUNTY OF SULLIVAN :

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

1. I have compared the foregoing copy of a resolution of the County of Sullivan Industrial Development Agency (“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 via video conference call on April 11, 2022 at 11:00 a.m. at which the following members were present:

	<u>PRESENT</u>	<u>ABSENT</u>	
Suzanne Loughlin	[    ]	[    ]	
Edward T. Sykes	[    ]	[    ]	
Carol Roig	[    ]	[    ]	
Howard Siegel	[    ]	[    ]	
Scott Smith	[    ]	[    ]	
Paul Guenther	[    ]	[    ]	
Sean Brooks	[    ]	[    ]	

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

Suzanne Loughlin	[    ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Edward T. Sykes	[    ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Carol Roig	[    ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Howard Siegel	[    ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Scott Smith	[    ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Paul Guenther	[    ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Sean Brooks	[    ] 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 103(a) and (c) and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public via videoconferencing and public notice of the time and place of said meeting was duly given in accordance with such Sections 103(a) and (c) and 104, (iii) the meeting in all respects was duly held via videoconference as authorized by Chapter 417 of the Laws of 2021, and (iv) there was a quorum present throughout.

*IN WITNESS WHEREOF*, I have hereunto set my hand and seal on the 11<sup>th</sup> day of April, 2022.

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Carol Roig, Secretary