

RESOLUTION

A recessed meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened on May 16, 2022, at 10:00 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 most recently amended on [April 15, 2022].

The meeting was called to order by Chairperson Suzanne Loughlin, and, upon 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	[]	[]
Philip Vallone	[]	[]

The following persons were also present:

- Jennifer M. Flad, Executive Director
- John W. Kiefer, Chief Executive Officer
- Julio Garaicoechea, Project Manager
- Walter F. Garigliano, Agency General Counsel

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

Resolution No. __-22

RESOLUTION (I) AUTHORIZING EXECUTION OF A FIRST AMENDED LEASE SUBORDINATION AGREEMENT (“FALSA”) IN FAVOR OF THE BANCORP BANK (“BANCORP”) AND EMPIRE STATE CERTIFIED DEVELOPMENT CORPORATION (“ESCDC”) IN CONNECTION WITH FINANCING OF THE CATSKILL HOSPITALITY HOLDING LLC (“CHH”) AND CATSKILL HOSPITALITY OPERATING LLC (“CHO” AND TOGETHER WITH CHH, COLLECTIVELY, THE “COMPANY”) PROJECT; AND (II) AUTHORIZING THE CHAIRPERSON OR EXECUTIVE DIRECTOR TO EXECUTE AND DELIVER THE FALSA AND ALL RELATED DOCUMENTS NECESSARY TO EFFECUATE THE FOREGOING

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 April 5, 2016, the Company presented an application ("Application") to the Agency, a copy of which is on file with the Agency, requesting the Agency's assistance with respect to a certain project consisting of the: (i) acquisition, construction, installation and equipping of an approximately 56,000 square foot building intended to be used as a limited service hotel ("Building") situate on one (1) parcel of real estate consisting of approximately 6.59± acres located along Golden Ridge Road, Town of Thompson ("Town"), County of Sullivan ("County"), State of New York and identified on the Town tax map as a portion of Section 13, Block 3, Lot 38.1 ("Land"); (ii) acquisition, construction and equipping of the Building; (iii) acquisition, construction and installation thereon and therein of certain furniture, fixtures, machinery, equipment and tools ("Equipment"); (iv) construction of improvements to the Building, the Land and the Equipment (collectively, the Building, the Land and the Equipment are referred to as the "Facility" or the "Project"); and (v) lease of the Project from the Agency to the Company; and

WHEREAS, on June 20, 2016, by Resolution #22-16, the Agency authorized the Company to act as its agent for the purposes of acquiring, constructing, installing and equipping the Facility and conferred on the Company certain financial assistance consisting of: (a) an exemption from all New York State and local sales and use tax for the 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, installation or equipping of the Facility, (b) an exemption from mortgage recording tax, and (c) a partial abatement from real property taxes conferred through a certain payment in lieu of tax agreement requiring the Company to make payments in lieu of taxes ("PILOT") for the benefit of each municipality and school district having taxing jurisdiction over the Project, (collectively, the sales and use tax exemption, the mortgage recording tax exemption, and the partial abatement from real property taxes, are hereinafter collectively referred to as the "Financial Assistance"). Provision of Financial Assistance is subject to the Company entering into the Agent and Project Agreement; and

WHEREAS, on September 12, 2016, by Resolution #32-16, the Agency approved the execution and delivery of one or more mortgages in favor of Jeff Bank in an aggregate amount not to exceed \$8,223,500; and

WHEREAS, the Company was unable to close on the anticipated straight lease transaction with the Agency due to issues associated with Project financing; and

WHEREAS, on February 27, 2017, by Resolution #09-17, the Agency authorized taking title to the Land from the present owner as nominee of the Company; and

WHEREAS, the Agency took title to the Land by Bargain & Sale Deed, dated March 13, 2017 which Deed was recorded on March 22, 2017 in the Sullivan County Clerk's Office as Instrument Number 2017-2254; and

WHEREAS, on or about March 17, 2017, the Company and the Agency entered into the following:

1. Agent and Project Agreement; and
2. Environmental Compliance and Indemnification Agreement; and

WHEREAS, on August 23, 2017, by Resolution #42-17, the Agency approved the execution and delivery of three (3) or more mortgages in favor of Bancorp in an aggregate amount not to exceed \$12,000,000; and

WHEREAS, in order to obtain Project financing, the Company requested that title to the Land be re-conveyed by the Agency to the Company; and

WHEREAS, by Quitclaim Deed, dated August 10, 2018 the Agency conveyed legal title to the Land to the Company, which Deed was recorded on August 16, 2018 in the Sullivan County Clerk's Office as Instrument Number 2018-5714; and

WHEREAS, on August 1, 2018, the Agency and the Company entered into the following documents:

1. Amended and Rested Agent and Project Agreement, dated August 1, 2018;
2. Environmental Compliance and Indemnification Agreement, dated August 1, 2018;
3. Bill of Sale to Agency, dated August 1, 2018;
4. Bill of Sale to Company, dated August 1, 2018;
5. Lease to Agency and memorandum thereto, dated August 1, 2018;
6. Leaseback to Company and memorandum thereto, dated August 1, 2018; and
7. Payment in Lieu of Tax Agreement, dated August 1, 2018 ("PILOT Agreement");

(Items 1-7 collectively referred to as the "2018 Transaction Documents")

; and

WHEREAS, on or about August 10, 2018, the Company borrowed \$5,345,379 as evidenced by a Promissory Note payable to Bancorp ("TPL Loan"); and

WHEREAS, the TPL Loan was secured by a Mortgage and Security Agreement ("TPL Mortgage") and an Assignment of Leases and Rents ("TPL ALR") and was to be disbursed as contemplated by a Building Loan Agreement ("TPL BLA"); and

WHEREAS, on or about August 10, 2018, the Company borrowed \$3,207,227 as evidenced by a Promissory Note payable to Bancorp ("Interim Loan"); and

WHEREAS, the Interim Loan was secured by a Mortgage and Security Agreement ("Interim Mortgage") and an Assignment of Leases and Rents ("Interim ALR") and was to be disbursed as contemplated by a Building Loan Agreement ("Interim BLA"); and

WHEREAS, on or about August 10, 2018, the Company borrowed \$205,000 as evidenced by a Note payable to Bancorp ("SBA Loan" and together with the TPL Loan and Interim Loan, the "2018 Project Financing"); and

WHEREAS, the SBA Loan was secured by a Mortgage and Security Agreement (“SBA Mortgage”) and an Assignment of Leases and Rents (“SBA ALR”); and

WHEREAS, at the time of the Application and the execution of the PILOT Agreement, it was anticipated that the Project would be completed and open for business by the end of 2018; and

WHEREAS, as a result of delays in development of the Project, the Company requested the Agency delay each applicable year of the exemptions contemplated by the PILOT Agreement; and

WHEREAS, on February 10, 2020, the Agency adopted Resolution #04-20 authorizing an amendment of the PILOT Agreement to delay the exemptions for one year, it then being anticipated the Project would be completed in 2020, but after the March 1, 2020 taxable status date; and

WHEREAS, it is the Agency’s intent to provide the benefits contemplated by the Agency’s Tourism Destination Uniform Tax Exemption Policy (“TDUTEP”) over the operating life of the Project; and

WHEREAS, the Company and the Agency entered into an Omnibus Amendment to Project Documents (“Omnibus Amendment”), effective as of February 10, 2020, to delay each applicable year of the exemption contemplated by the PILOT Agreement by one year and to provide for a PILOT payment equal to what taxes would have been if the Agency was not involved in the Project for the payment due February 1, 2020; and

WHEREAS, in July 2020, the Company notified the Agency that the development of the Project would be further delayed; and

WHEREAS, by resolution #37-20, adopted on August 10, 2020 the Agency authorized a Second Amended Payment in Lieu of Tax Agreement to further delay each applicable year of the exemption contemplated by the PILOT Agreement for one (1) additional year; and

WHEREAS, the Company and the Agency entered into a Second Omnibus Amendment to Project Documents (“Second Omnibus Amendment”), effective as of August 10, 2020, to delay each applicable year of the exemption contemplated by the Omnibus Amendment by an additional one-year period and to provide for a PILOT payment equal to what taxes would have been if the Agency was not involved in the Project for the payment due February 1, 2021; and

WHEREAS, by letter from Brijesh Patel, dated January 8, 2021, the Company notified the Agency that the Project will not be completed until July 2021 (after the 2021 taxable status day of March 1, 2021) and that an additional one-year delay of each applicable year of the exemption contemplated by the Second Omnibus Amendment was requested; and

WHEREAS, by Resolution No. 04-21, the Agency authorized a Third Omnibus Amendment of Project Documents to further delay each applicable year of the exemption contemplated by the PILOT Agreement for one additional year and to provide for a PILOT

payment computed on a Total Value Subject to PILOT of \$900,000 for the payment due February 1, 2022; and

WHEREAS, the Company and the Agency entered into a Third Omnibus Amendment to Project Documents (“Third Omnibus Amendment”), effective as of February 8, 2021, to delay each applicable year of the exemption contemplated by the PILOT Agreement by an additional one-year period and to provide for a PILOT payment computed on a base value of \$900,000 Dollars for the payment due February 1, 2022; and

WHEREAS, the various delays associated with development of the Project had resulted in cost overruns estimated to be \$1,109,242 so that as of June 2021 the Project cost was estimated to be \$11,800,000; and

WHEREAS, to assist the Company to complete the Project, Bancorp and The U.S. Small Business Administration (collectively, “Lenders”) agreed to increase the TPL Loan by \$554,621 to \$5,900,000 and to increase the Interim Loan by \$332,773 to \$3,540,000. As a condition of the additional loans, the Lenders required the Company to increase its equity contribution to the Project by \$221,848 to \$2,360,000; and

WHEREAS, the Lenders expressed a preference to redocument the TPL Loan and Interim Loan and requested that the Agency join in execution of two Mortgages and related documents to secure a TPL Loan of \$5,900,000 and an Interim Loan of \$3,540,000; and

WHEREAS, by Resolution No. 22-21, duly adopted on June 14, 2021, the Agency authorized additional financing for the Project. Resolution No. 22-21 was amended by Resolution No. 25-21, duly adopted on July 12, 2021; and

WHEREAS, on July 30, 2021, the Company and Agency executed and delivered mortgages and related documents to secure the TPL Loan and Interim Loan, as follows:

TPL Loan

- a) Mortgage (New Money) and Security Agreement, dated as of July 30, 2021, executed by CHH and the Agency to Bancorp in the amount of \$554,621.00, and recorded in the Sullivan County Clerk’s Office on August 3, 2021 as Instrument No. 2021-7841;
- b) which Mortgage was consolidated by a Mortgage Consolidation, Extension and Modification and Security Agreement dated as of July 30, 2021, executed by CHH and Agency to Bancorp, in the consolidated amount of \$5,900,000 and recorded in the Sullivan County Clerk’s Office on August 3, 2021 as Instrument No. 2021-7842;

Interim Loan

- a) Mortgage (New Money) and Security Agreement, dated as of July 30, 2021, executed by CHH and the Agency to Bancorp in the amount of \$332,773, and recorded in the Sullivan County Clerk’s Office on August 3, 2021 as Instrument No. 2021-7843;
- b) which Mortgage was consolidated by a Mortgage Consolidation, Extension and Modification and Security Agreement dated as of July 30, 2021, executed by CHH and

Agency to Bancorp, in the consolidated amount of \$3,540,000 and recorded in the Sullivan County Clerk's Office on August 3, 2021 as Instrument No. 2021-7844.

WHEREAS, the terms of the TPL Loan and Interim Loan required loan proceeds to be disbursed not later than 60 months from the date of approval of the Authorization ("Authorization Date"); and

WHEREAS, due to additional delays the loan proceeds were not disbursed within the 60-month period from the Authorization Date; and

WHEREAS, the Lenders have authorized extension of the 60-month period to allow proceeds to be disbursed no later than 64 months after the Authorization Date; and

WHEREAS, the Interim Loan will be paid off by funding provided by ESCDC, which is in the aggregate amount of \$3,619,000 including the principal of the Interim Loan with financial closing costs of \$79,000 ("ESCDC Loan"); and

WHEREAS, as a condition of ESCDC making the ESCDC Loan, the Lenders require the Agency to execute and deliver a FALSA; and

WHEREAS, the Agency desires to authorize execution of the FALSA.

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

Section 1. The Chairperson or Executive Director of the Agency, each acting individually, are hereby authorized, on behalf of the Agency, to execute and deliver a FALSA in favor of Bancorp and ESCDC.

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:

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
Philip Vallone	<input 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 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 via video conference call on May 16, 2022 at 10:00 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	[]	[]	
Philip Vallone	[]	[]	

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
Philip Vallone	[] 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 16th day of May, 2022.

Carol Roig, Secretary