

RESOLUTION

A regular meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened on February 13, 2023, at 11:00 a.m. local time at 548 Broadway, Monticello, New York 12701.

The meeting was called to order by Vice Chairman Edward T. Sykes, 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	[     ]	[     ]
Philip Vallone	[     ]	[     ]

The following persons were also present:

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

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

Resolution No. \_\_ - 23

*RESOLUTION DIRECTING THE RECAPTURE OF UNAUTHORIZED SALES AND USE TAX BENEFITS FROM AMYTRA DEVELOPMENT LLC (“AMYTRA”), ELDRED ENTERTAINMENT LLC (“ELDRED ENTERTAINMENT”) AND ELDRED HOSPITALITY LLC (“ELDRED HOSPITALITY” AND TOGETHER WITH AMYTRA AND ELDRED ENTERTAINMENT, COLLECTIVELY THE “COMPANY”)*

*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 19, 2018, 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) reconstruction, renovation, rehabilitation, installation and equipping of a former restaurant and motel facility to include (a) approximately 3,064 square foot area of event space (“Event Space”); (b) approximately 10,629 square foot of restaurant space (“Restaurant”); (c) approximately 6,953 square foot of office space (“Office”); and (d) approximately 29,536 square foot of accommodation space (“Inn” together with Event Space, Restaurant collectively the, “Building”) situate on one (1) parcel of real estate consisting of approximately 37.93 acres located at 1040 Route 55, Town of Highland (“Town”), Highland, County of Sullivan (“County”), State of New York and identified on the Town tax map as Section 4, Block 1, Lot 3.1 (“Land”); (ii) construction and equipping of the Building; (iii) 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*, since the proposed financial assistance exceeds the sum of \$100,000.00 a public hearing on due notice was held on April 16, 2018 at 9:00 a.m., local time, at the Town of Highland Town Hall, 4 Proctor Road, Eldred, County, State of New York at which hearing comments relating to the proposed financial assistance were solicited; and

*WHEREAS*, by resolution, dated April 20, 2018, the Agency authorized the Company to act as its agent for the purposes of reconstructing, renovating, rehabilitating, installing and equipping the Facility and conferred on the Company certain financial assistance consisting of: (a) an exemption from all 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 reconstruction, renovation, rehabilitation, 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 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 this Agreement; and

*WHEREAS*, on April 20, 2018, the Agency and the Company entered into an Agent and Project Agreement pursuant to which the Agency designated the Company its agent (“Agent Agreement”); and

*WHEREAS*, by letter, dated November 6, 2019, the Company notified the Agency of an increase in the estimated cost of the Project to \$30,000,000 and requested the Agency increase the otherwise taxable authorized purchases to \$18,000,000, which would result in an increase in the sales tax exemption to \$1,440,000; and

*WHEREAS*, by its November 6, 2019, letter, the Company notified the Agency that two (2) acres of an adjoining parcel depicted on the Town of Highland tax map as 4-1-2 would be added to the Land for the purpose of including additional recreational amenities for the Project; and

*WHEREAS*, on November 18, 2019, the Agency by Resolution # 52-19 approved the increase of authorized purchases and addition of the two- (2) acre recreational site to the Project for purposes of the Agent Agreement, only; and

*WHEREAS*, effective November 18, 2019, the Agency and Company entered into the Amended and Restated Agent and Project Agreement to increase the Financial Assistance to the Company in the form of additional sales and use tax exemption for the Project and to amend the Project description to include the two-(2) acre recreational site to the Agent Agreement, only; and

*WHEREAS*, by letter dated February 3, 2021, the Company notified the Agency of an estimated cost of the Project to \$35,000,000 and requested the Agency increase the otherwise taxable purchases to \$21,000,000, which would result in an increase in the sales tax exemption to \$1,680,000; and

*WHEREAS*, on March 8, 2021, the Agency by Resolution # 08-21 approved the increase of authorized purchases; and

*WHEREAS*, on March 8, 2021, the Agency and the Company entered into a Second Amended and Restated Agent and Project Agreement for the purposes of, among other things, to govern administration of and provide assurances with respect to the provision and recapture of Financial Assistance; and

*WHEREAS*, the Company has submitted Monthly Purchase Reports to the Agency indicating the taxable purchases made without payment of sales tax, and has submitted annual ST-340 Forms to the New York State Department of Taxation and Finance, indicating the total sales and use tax exemptions claimed; and

*WHEREAS*, during a review of these documents, the Agency became aware that the Company made purchases following the termination of the sales tax exemption period on October 31, 2022; and

*WHEREAS*, as contemplated by Section 874 (10)-(12) of the General Municipal Law (“GML”), the Agency established a Project Recapture and Termination Policy which requires the recapture of financial assistance including sales and use tax exemption amounts not authorized by the Agency; and

*WHEREAS*, in accordance with Section 875(3) of the GML, if the Agency determines sales and use tax exemptions claimed by the Company were not authorized by the Agency, then the Agency shall recapture such sales and use tax benefits from the Company; and

*WHEREAS*, Tax Bulletin ST-385 (TB-ST-385) sets forth the procedure to be followed in the event the Agency must recapture unauthorized sales and use tax exemption benefits claimed.

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

Section 1. The Agency hereby makes the following findings:

- A. The Company made purchases during the month of November 2022 without payment of sales tax, after the sales tax exemption period ended on October 31, 2022; and
- B. The total value of the sales and use tax exemption benefits claimed by the Company during the month of November 2022 was in the amount of \$986.89.

Section 2. The Executive Director of the Agency is hereby authorized and directed to recapture the amount of sales and use tax exemption benefits claimed by the Company and not authorized by the Agency, which amount is \$986.89.

Section 3. 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 4. 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	[ ] 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

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 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 13, 2023 at 11:00 a.m. at 548 Broadway, Village of Monticello, Sullivan County, New York, 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 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 103(a) 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 13<sup>th</sup> day of February, 2023.

---

Carol Roig, Secretary