

PROJECT AUTHORIZING RESOLUTION
(1046 Old Seneca Turnpike LLC Project)

A regular meeting of the Onondaga County Industrial Development Agency was convened on Tuesday, September 13, 2022, at 8:00 a.m.

The following Resolution was duly offered by Victor Ianno and seconded by Susan Stanczyk, to wit:

Resolution No. 2022 - _____

RESOLUTION OF THE ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (1) APPOINTING 1046 OLD SENECA TURNPIKE LLC OR AN ENTITY FORMED OR TO BE FORMED BY IT OR ON ITS BEHALF (COLLECTIVELY, THE "COMPANY") AS ITS AGENT TO UNDERTAKE A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW); (2) AUTHORIZING THE EXECUTION AND DELIVERY OF A PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, AND RELATED DOCUMENTS WITH THE COMPANY WITH RESPECT TO THE PROJECT; (3) AUTHORIZING FINANCIAL ASSISTANCE THE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE PROJECT AND (B) A PARTIAL EXEMPTION FROM MORTGAGE RECORDING TAXES AS PERMITTED BY NEW YORK LAW; AND (4) AUTHORIZING THE EXECUTION OF A MORTGAGE AND RELATED DOCUMENTS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 435 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called the "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, the Act authorizes the Agency (1) to promote the economic welfare, recreational opportunities and prosperity of the inhabitants of the Onondaga County, and (2) to promote, attract, encourage and develop recreation and economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration; and

WHEREAS, **1046 OLD SENECA TURNPIKE LLC**, a New York limited liability company, for itself or on behalf of an entity formed or to be formed by it or on its behalf (collectively, the "Company"), previously submitted an application (the "Application") to the Agency requesting that the Agency undertake a certain project (the "Project") consisting of: (i) the

Agency taking title to or a leasehold (or other) interest in an approximately 31±-acre parcel of land located at 1046 Old Seneca Turnpike, Town of Skaneateles, Onondaga County, New York (being more particularly identified as tax map number 028.-01-03.0) (the "Land"); (ii) the construction on the Land of (a) an approximately 98,000 square foot 88-room full-service boutique hotel with a lower level and 2-story building above grade and containing such amenities as a full-service restaurant with banquet capacity, indoor pool, indoor whirlpool, outdoor pool, fitness room and gift shop, and (b) other site improvements consisting of surface parking, freestanding signage, landscaping and sidewalks (collectively, the "Improvements"); and (iii) the acquisition and installation by the Company in and around the Land and the Improvements of items of equipment and other tangible personal property (the "Equipment"; and, together with the Land and the Improvements, the "Facility"); and

WHEREAS, pursuant to a resolution adopted by the Agency on August 16, 2022 (the "Resolution") the Agency (i) accepted the Application of the Company, (ii) authorized a public hearing (the "Public Hearing") to be held in connection with the Project and the Financial Assistance (as defined in the Resolution) being contemplated by the Agency with respect to the Project, and (iii) described the forms of Financial Assistance being contemplated for the benefit of the Company by the Agency; and

WHEREAS, pursuant to Section 859-a of the Act, on Wednesday, September 7, 2022, at 10:30 a.m., local time, at the Skaneateles Town Hall, 24 Jordan Street, Skaneateles, New York 13152, the Agency held the Public Hearing with respect to the Project and the proposed Financial Assistance 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 Notice of Public Hearing, Notice Letter, Affidavit of Publication of *The Post-Standard* and Minutes of Public Hearing are attached hereto as **Exhibit A**; and

WHEREAS, the Agency desires to provide financial assistance (the "Financial Assistance") to the Company in the form of (i) an exemption from sales and use taxes otherwise payable upon the purchase or lease of materials, furnishings, fixtures and equipment, and other taxable personal property and (ii) an exemption from mortgage recording taxes in connection with the acquisition financing, construction financing and/or permanent financing or any subsequent refinancing of the costs of the acquisition, construction, renovation, reconstruction, refurbishing and equipping of the Facility as permitted by New York State law, as set forth in the Application; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project; and

WHEREAS, the Skaneateles Planning Board (the "Planning Board"), as lead agency, conducted a coordinated review of the Project pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and its implementing regulations at 6 N.Y.C.R.R. Part 617 (collectively referred to as "SEQRA"), which resulted in the

issuance of a negative declaration by the Planning Board on February 18, 2020 (the "Negative Declaration") attached hereto as **Exhibit B**, concluding the SEQRA process; and

WHEREAS, the Company has represented to the Agency that the Project is likely to attract a significant number of visitors from outside the economic development region (as established by Section 230 of the New York State Economic Development Law), and therefore the Project constitutes a "tourism destination" as defined in Section 862(2) of the Act and make available goods or services which would not, but for the Project, be reasonably accessible to the residents of Onondaga County because of a lack of reasonably accessible facilities offering similar services.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Planning Board has conducted a review of the Project pursuant to SEQRA. In addition to classifying the Project as an Unlisted Action on December 17, 2019, pursuant to SEQRA, the Planning Board issued a Negative Declaration on February 18, 2020, determining that the Project does not pose a potential significant adverse environmental impact. The Agency, having reviewed the materials presented by the Company, including, but not limited to, the Full Environmental Assessment Form attached hereto as **Exhibit C**, further determines that the Project does not pose a potential significant adverse environmental impact and thus ratifies the Negative Declaration previously issued by the Planning Board pursuant to 6 N.Y.C.R.R. § 617.7.

Section 2. (a) Based upon the Agency's review of the Application submitted by the Company, along with supporting materials, the Agency finds that 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;

(b) Notwithstanding the foregoing, and based upon the Application and supporting materials prepared and presented by the Company to the Agency, the Agency finds that the predominant purpose of the Project is (i) likely to attract a significant number of visitors from outside the economic development region (as established by Section 230 of the New York State Economic Development Law), and therefore the Project constitutes a "tourism destination" as defined in Section 862(2) of the Act and (ii) make available goods or services which would not, but for the Project, be reasonably accessible to the residents of Onondaga County because of a lack of reasonably accessible facilities offering such goods or services;

(c) The Agency finds that undertaking 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 of New York; and

(d) Pursuant to Section 862(2) of the Act, the Agency shall obtain the confirming approval of the chief executive officer of Onondaga County, New York, prior to providing the Financial Assistance to the Company.

Section 3. The Agency is hereby authorized to provide the Company with the Financial Assistance.

Section 4. Based upon representations and warranties made by the Company in the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project, that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$13,550,000**, which result in New York State and local sales and use tax exemption benefits ("Sales and Use Tax Exemption Benefits") in an amount not to exceed **\$1,084,800**. 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 5. 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; 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 to 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, shall (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 6. Subject to the Company executing the Project Agreement and the delivery to the Agency of a binder, certificate or other evidence of a liability insurance policy for the Facility satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the undertaking of the Facility and hereby appoints the Company as the true and lawful agent of the Agency, pursuant to the provisions of the Project Agreement: (i) to construct, reconstruct, renovate, refurbish and equip the Facility; (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 Facility, all with the same powers and the same validity that the Agency could do if acting in its own behalf; provided, however, the Company's status as agent of the Agency and related sales tax exemption

letter shall expire on **December 31, 2023** (unless extended for good cause by the Executive Director or other authorized representative of the Agency).

Section 7. (a) The Chair or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver a Lease Agreement, Leaseback Agreement, Project Agreement and related documents (collectively, the "Agency Documents") dated such dates and in the forms acceptable to the Executive Director of the Agency. The execution of the Agency Documents by the Agency shall constitute conclusive evidence of such approval.

(b) The Chair or the Executive Director are further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives of the Agency.

Section 8. The Chair and the Executive Director of the Agency are hereby further 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 and/or finance or re-finance acquisition and Project costs, equipment and other personal property and related transactional costs (the "Lender Documents"; and together, with the Agency Documents, the "Project Documents") and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Project Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chair or the Executive Director of the Agency shall approve, the execution thereof by the Chair or the Executive Director of the Agency to constitute conclusive evidence of such approval; provided, in all events, recourse against the Agency is limited to the Agency's interest in the Project.

Section 9. 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 the Project Documents and 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 Project Documents executed for and on behalf of the Agency.

Section 10. Due to the complex nature of this transaction, the Agency hereby authorizes its Chair or Executive Director to approve, execute and deliver such further agreements, documents and certificates as the Agency may be advised by counsel to the Agency to be necessary or desirable to effectuate the foregoing, such approval to be conclusively evidenced by the execution of any such agreements, documents or certificates by the Chair or the Executive Director of the Agency.

Section 11. 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:

	<u>Yea</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
Patrick Hogan	X			
Janice Herzog	X			
Victor Ianno	X			
Susan Stanczyk	X			
Kevin Ryan	X			
Steve Morgan			X	
Fanny Villarreal			X	

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EXHIBIT A

[Notice Documents with respect to Public Hearing held on September 7, 2022]

Attached hereto

EXHIBIT B

[Negative Declaration issued by the Town of Skaneateles]

Attached hereto

EXHIBIT C

[Full Environmental Assessment Form]

Attached hereto