

BARBAGALLO'S TAVERN, INC.

**AUTHORIZING EXECUTION OF LENDER DOCUMENTS
(3101-15-02A)**

At a regular meeting of the Onondaga County Industrial Development Agency (the "Agency") convened in public session on April 14, 2020, remotely by conference call or similar service pursuant to New York State Executive Order 202.1, the following members were:

PRESENT: Patrick Hogan
Janice Herzog
Steve Morgan
Susan Stanczyk
Victor Ianno
Kevin Ryan
Fanny Villarreal

ABSENT:

ALSO PRESENT: Robert M. Petrovich, Executive Director
Jeffrey W. Davis, Esq. Agency Counsel
Amanda M. Mirabito, Esq., Agency Counsel

The following resolution was offered by Janice Herzog, seconded by Kevin Ryan, to wit:

**RESOLUTION AUTHORIZING THE EXECUTION OF LENDER
DOCUMENTS IN CONNECTION WITH A CERTAIN PROJECT
FOR BARBAGALLO'S TAVERN, INC AND DETERMINING
OTHER MATTERS IN CONNECTION THEREWITH.**

WHEREAS, Onondaga County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 435 of the Laws of 1970 of the State of New York and Chapter 676 of the Laws of 1975, as amended, constituting Section 895 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York (the "State"), to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in

the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, by resolution adopted by the Agency on or about February 10, 2015, the Agency agreed to undertake a project (the "Project") on behalf of Barbagallo's Tavern, Inc. (the "Company") consisting of the following: (A) the construction of a 35,000 square foot, 54-room Sleep Inn hotel by Choice Hotels in the Town of Dewitt, County of Onondaga (the "Project Facility") (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (subject to certain statutory limitations) (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, in connection with the Project and the granting of the Financial Assistance, the Agency and the Company entered into the following documents: (A) a Lease and Leaseback Agreement (and a memorandum thereof) (the "Lease Agreement") dated as of August 10, 2015 by and between the Company and the Agency, pursuant to which, among other things, the Agency acquired a leasehold interest in the Land (as defined in the Lease Agreement) and the improvements located thereon and the Company agreed to undertake and complete the Project as agent of the Agency and the Company further agreed to lease the Project Facility from the Agency; and (B) various certificates relating to the Project; and

WHEREAS, in order to obtain financing for the Project, the Company obtained from Tioga State Bank (the "Lender") a mortgage loan (the "Loan") in the aggregate principal amount of \$1,000,000.00; and

WHEREAS, in order to secure the Loan, the Company and the Agency executed and delivered to the Lender: (A) a mortgage and security agreement dated November 11, 2015 (as may be amended, modified or assigned from time to time, the "Mortgage"), which Mortgage granted a mortgage lien on and security interest in the Project Facility to the Lender; (B) an assignment of leases and rents dated November 11, 2015 (the "Assignment") from the Company and the Agency to the Lender; and (C) such other documents as were requested by the Lender in connection with the Loan (collectively, the "Initial Lender Documents"); and

WHEREAS, in March 2020, the Company informed the Agency that, in order to obtain additional financing for the Project, the Company will obtain from the Lender a second loan (the "Second Loan") in the approximate principal amount of \$104,857; and

WHEREAS, the Company has asked the Agency to join in the execution of (A) a mortgage by the Agency and the Company to Lender to secure the Second Loan (the "Second Mortgage"); and (B) a consolidation and modification agreement among the Company, the Agency and the Lender (the "Mortgage Consolidation" and, together with the Second Mortgage, the "Second Mortgage Documents") for the purpose of consolidating the Mortgage with the Second Mortgage; and

WHEREAS, the Company is not requesting a mortgage recording tax exemption in connection with Second Mortgage; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the Agency must determine the potential environmental significance of granting a second mortgage to the Lender and executing and delivering the Second Mortgage Documents (collectively, the "Transaction").

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

Section 1. Pursuant to SEQRA, the Agency hereby finds and determines that:

(A) Pursuant to Section 617.5(c)(23) of the Regulations, the Transaction is a "Type II action" (as said quoted term is defined in the Regulations); and

(B) Therefore, the Agency hereby determines that no environmental impact statement or any other determination or procedure is required under the Regulations with respect to the Transaction.

Section 2. The Agency, based upon the representations made by the Company to the Agency, hereby finds and determines that:

(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; and

(B) Granting to the Lender a second mortgage interest in and a lien on the Agency's interest in the Project Facility and executing the Second Mortgage Documents will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of the County of Onondaga, New York and the State of New York and improve their standard of living.

Section 3. In consequence of the foregoing, the Agency hereby determines to grant to the Lender a mortgage interest in and a lien on the Agency's interest in the Project Facility.

Section 4. The Agency is hereby authorized to execute and deliver the Second Mortgage Documents. The form and substance of the Second Mortgage Documents, in substantially the form presented to this meeting are hereby approved.

Section 5. (A) The Executive Director of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Second Mortgage Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the forms thereof presented to this

meeting with such changes, variation, omissions and insertions as the Executive Director shall approve, the execution thereof by the Executive Director to constitute conclusive evidence of such approval.

(B) The Executive Director of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency.

Section 6. 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 or provided for by the provisions of the Second Mortgage Documents, and to execute and deliver all such additional 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 resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Second Mortgage Documents binding upon the Agency.

Section 7. 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>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Patrick Hogan	X		
Janice Herzog	X		
Victor Ianno	X		
Steve Morgan	X		
Susan Stanczyk	X		
Kevin Ryan	X		
Fanny Villarreal	X		

The Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) ss.:
COUNTY OF ONONDAGA)

I, the undersigned Secretary of the Onondaga County Industrial Development Agency, DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on April 14, 2020, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Agency and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matter therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting, (B) said meeting was in all respects duly held, (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), as modified by New York State Executive Order 202.1, said meeting was open to the general public and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law, and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed, or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of April, 2020.



Nancy Lowery, Secretary