

## **DESTINY USA REAL ESTATE, LLC**

### **INDUCEMENT RESOLUTION**

At a regular meeting of the Onondaga County Industrial Development Agency convened in public session on April 12, 2016 at 8:00.a.m. at 333 West Washington Street, Syracuse, New York, the following members were:

#### **PRESENT:**

Janice Herzog  
Patrick Hogan  
Steve Morgan  
Susan Stanczyk

#### **ABSENT:**

Daniel Queri  
Victor Ianno  
Jessica Crawford

#### **ALSO PRESENT:**

Julie Cerio, Executive Director  
Anthony P. Rivizzigno, Esq., Agency Counsel  
Barry Carrigan, Esq., Nixon Peabody LLP Special Counsel

Upon motion made and seconded, the following resolution was duly adopted by the Agency with its members voting as follows:

Aye

Nay

Patrick Hogan  
Janice Herzog  
Steve Morgan  
Susan Stanczyk

**RESOLUTION TAKING PRELIMINARY OFFICIAL ACTION TOWARD  
ACQUIRING, CONSTRUCTING AND INSTALLING A CERTAIN COMMERCIAL  
PROJECT FOR DESTINY USA REAL ESTATE, LLC (the "Company")**

**WHEREAS**, the Onondaga County Industrial Development Agency (the "**Agency**") is authorized and empowered by 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 1970 Laws of New York, 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 industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, educational or cultural facilities, railroad facilities, horse racing facilities, and continuing care retirement communities, among others, for the purpose of promoting, attracting, encouraging and developing, recreation, and 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 and to improve their recreation opportunities, 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, improve, maintain, equip or furnish one or more "projects" (as defined in the Act); to sell, convey, mortgage, lease, pledge, exchange or otherwise dispose of said project; and to issue bonds and provide for the rights of the holders thereof; and

**WHEREAS**, the Company has presented an application, as amended (the "**Application**") to the Agency, a copy of which was presented at this meeting and copies of which are on file at the office of the Agency, requesting the Agency consider undertaking a project (the "**Project**") consisting of the following: the acquisition of a parcel of land located at 311-371 Hiawatha Boulevard, Syracuse, New York 13204 (the "**Land**") and the construction and equipping of an approximately 183,000 square foot, 209 key all suites hotel to be located thereon (the "**Improvements**"), together with the acquisition and installation of furniture, fixtures and equipment (the "**Equipment**") to provide a full range of services to the business and leisure traveler visiting the City of Syracuse, County of Onondaga; and

**WHEREAS**, the Agency has given due consideration to the Application and to representations made by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the project will be an inducement to the Company to undertake the Project in Onondaga County, New York; and (B) the completion of the Project will not result in the removal of a facility or a plant of the project occupant from one part of the State of New York to another area of the State of New York or in the abandonment of one or more plants or facilities of the project occupant located within the State of New York; and

**WHEREAS**, in compliance with the provisions of Section 859-A of the Act, the Assistant Secretary of the Agency (A) caused notice of a public hearing (the "**Public Hearing**") of the Agency to hear all persons interested in the Project and the Financial Assistance being



contemplated by the Agency with respect to the Project to be mailed to the chief executive officer of the county and of each city, town, village and school district in which the Project is to be located; (B) caused notice of the Public Hearing to be published in *The Post-Standard*, a newspaper of general circulation available to the residents of the City of Syracuse; (C) conducted the Public Hearing at the Onondaga County Legislature's Chamber located at 401 Montgomery Street in the City of Syracuse, County of Onondaga, New York; and (D) prepared a report of the Public Hearing which fairly summarized the views presented at the Public Hearing and distributed same to the members of the Agency; and

**WHEREAS**, the Project will be used in making retail sales to customers who visit the project and would be considered a "retail facility" in accordance with the provisions of Section 862(a) of the Act, however, based upon the representations and warranties of the Company in the Application, the project is a "Tourism Destination" as defined in Section 862(2)(a) of the Act and therefore not subject to the prohibitions on retail facilities contained in Section 862(2)(a) of the Act; 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, "**SEQRA**"), the Agency adopted a resolution (the "**Environmental Resolution**") on April 12, 2016 by which the Agency determined that the Project will not have a significant impact on the environment, and therefore that an environmental impact statement is not required to be prepared with respect to the Project; and

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

Section 1. Based upon the representations made by the Company to the Agency, the Agency hereby makes the following findings and determinations:

- (A) The Project constitutes a "project" within the meaning of the Act;
- (B) The completion of the Project will not result in the removal of a facility or plant of the Project occupant from one part of the State of New York to another area of the State of New York or in the abandonment of one or more plants or facilities of the Project occupant located within the State of New York;
- (C) The granting of the Financial Assistance by the Agency with respect to the Project, will promote the job opportunities, health, general prosperity and economic welfare of the citizens of Onondaga County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;
- (D) It is desirable and in the public interest for the Agency to undertake the Project; and



- (E) the Project will be used in making retail sales to customers who visit the project and would be considered a "retail facility" in accordance with the provisions of Section 862(a) of the Act, however, based upon the representations and warranties of the Company in the Application, the project is a "Tourism Destination" as defined in Section 862(2)(a) of the Act and therefore not subject to the prohibitions on retail facilities contained in Section 862(2)(a) of the Act.

Section 2. The Agency will (A) acquire an interest in the Project from the Company pursuant to a lease leaseback agreement or other documentation to be negotiated between the Agency and the Company (the "**Acquisition Agreement**"); (B) construct the Project on the Land and acquire and install the Equipment in the Project or elsewhere on the Land; (C) lease (with an obligation to purchase) or sell the Project to the Company pursuant to a lease leaseback agreement (the "**Project Agreement**") between the Agency and the Company whereby the Company will be obligated, among other things, (1) to make payments to the Agency in amounts and at times so that such payments will be adequate to enable the Agency to timely pay all amounts due on the Acquisition Agreement and (2) to pay all costs incurred by the Agency with respect to the Project, including all costs of operation and maintenance, all taxes and other governmental charges, any required payments in lieu of taxes, and reasonable fees and expenses incurred by the Agency with respect to or in connection with the Project; and (D) provide the Financial Assistance with respect to the Project, in accordance with the Agency's uniform tax exemption policy, including (1) exemption from sales taxes relating to the acquisition, construction and installation of the Project Facility, (2) exemption from transfer taxes on real estate transfers to and from the Agency with respect to the Project, and (3) exemption from real estate taxes (but not including special assessments and special ad valorem levies) relating to the Project, subject to the obligation of the Company to make payments in lieu of taxes with respect to the Project.

Section 3. The Company is appointed the true and lawful agent of the Agency to acquire, construct and install the Project and to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general do all things which may be requisite or proper for acquiring, constructing and installing the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf.

Section 4. The undertaking of the Project by the Agency, and the granting of Financial Assistance with respect to the Project as contemplated by Section 2 of this Resolution, shall be subject to: (A) agreement by the Agency and the Company on mutually acceptable terms for the acquisition by the Agency of an interest in the Land; (B) agreement between the Agency and the Company as to payment by the Company of payments in lieu of taxes with respect to the Project, together with the administrative fee of the Agency with respect to the Project; (C) the Financial Assistance granted by the Agency with respect to the Project must be consistent with the Agency's uniform tax exemption policy, or, if any portion of the Financial Assistance to be granted by the Agency with respect to the Project is not consistent with the Agency's uniform tax exemption policy, the Agency shall follow the procedures for deviation from such policy set forth in Section 874(b) of the Act prior to granting such portion of the Financial Assistance; and



(D) the following additional condition(s): (i) the Company shall use reasonable efforts to utilize and otherwise encourage participation in the construction of the Project by firms that meet the definition of minority-owned business enterprises (MBE) and women-owned business enterprises (WBE), as such terms are defined and used under Article 15-A of the Executive Law and to achieve a documented participation rate of 15% (fifteen percent) for such firms on work related to the construction of the Project, and (ii) the Company agrees to work with the SUNY Employment Opportunity Center and the New York State Department of Labor to specifically recruit residents of the City of Syracuse to work at the Project during operations. The Company has agreed that a minimum of 50% of the total jobs at the Project during the operations to be tested at the opening and the one year anniversary of the opening will be filled by residents of the City of Syracuse.

Section 5. 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 \$22,000,000, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$1,750,000. 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.

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, 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 is 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 6. All actions taken by the Executive Director of the Agency with respect to the Public Hearing with respect to the Project is hereby ratified and confirmed.

Section 7. The Chairman, Vice Chairman, Executive Director or Assistant Secretary of the Agency are hereby authorized and directed to distribute copies of this

Resolution to the Company and to do such further things and perform such further acts as may be necessary or convenient to implement the provisions of this Resolution, including, without limitation, executing such documents and instruments as may be necessary to establish the agency relationship approved in these resolutions.

Section 8. This Resolution shall take effect immediately.



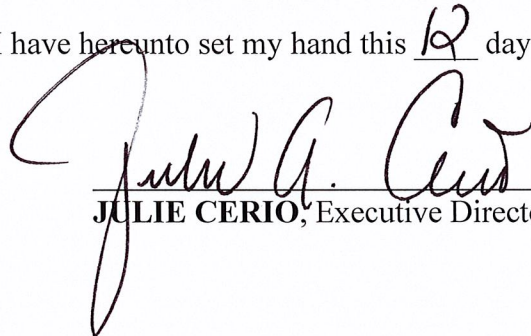
STATE OF NEW YORK                    )  
  : SS.:  
COUNTY OF ONONDAGA                )

I, the undersigned Executive Director 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 12, 2016 with the original thereof on file in my office, and that the same is a true and correct copy of the 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 said 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"), 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 12 day of April, 2016.

  
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**JULIE CERIO**, Executive Director