

APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on July 18, 2017, at 8:30 o'clock a.m. in the in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon the roll being duly called, the following members were:

PRESENT: William Ryan, M. Catherine Richardson, Steven Thompson, Kenneth Kinsey

EXCUSED: Donald Schoenwald

The following persons were **ALSO PRESENT:** **Staff:** Honora Spillane, Judith DeLaney, Susan Katzoff, Esq., Meghan Ryan, Esq., John Vavonese, Debra Ramsey-Burns; **Others:** Aggie Lane, Richard Engel, Al Gough, Alex Marion, Christopher Bianchi, Robert Smith, Kevin Caraccioli, Esq, Brian Sinsabaugh, Elnore Davis; **Media:** Rick Moriarty

The following Resolution was offered by M. Catherine Richardson and seconded by Steven Thompson:

RESOLUTION APPROVING (1) AN EXTENSION OF THE COMPANY'S AGENCY APPOINTMENT; (2) AN INCREASE IN FINANCIAL ASSISTANCE IN THE FORM OF EXEMPTION FROM STATE AND LOCAL SALES AND USE TAX AND MORTGAGE RECORDING TAX; AND (3) THE WAIVER OF THE AGENCY'S ADMINISTRATIVE FEE

WHEREAS, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended (the "**Enabling Act**"), together with Section 926 of the General Municipal Law, as amended (said Section and the Enabling Act, 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, railroad facilities and certain horse racing facilities, 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, 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, lease and sell real property and grant financial assistance in connection with one or more “projects” (as defined in the Act); and

WHEREAS, by resolution adopted on March 5, 2014 (the “*Inducement Resolution*”), the Agency approved the appointment of Syracuse Community Hotel Restoration Company 1, LLC (the “*Company*”) as the Agency’s agent for purposing of undertaking and completing a project (the “*Project*”) at the request of the Company consisting of: (A)(i) the acquisition by the Agency of a leasehold or fee interest in an approximately 1.014 acre lot of improved real property located at 100-08 Onondaga St. E. and Warren Street in the City of Syracuse, New York (the “*Land*”) (ii) the transfer by the Agency of its interest in the Land and Facility to the company by quit claim deed; (iii) the renovation and reconstruction of the existing approximate 413,000 square foot 11 story historic hotel (formerly known as the Hotel Syracuse) located on the Land for use as an approximate 261 room full service hotel with one or more restaurants, lobby, lounge and bar, with approximately 66,775 square feet of meeting space and approximately 35,000 square feet of retail/commercial space, together with landscaping and site improvements, all located on the Land and all to be designated as the “Convention Center Hotel” in connection with the Onondaga County OnCenter located near the Project (the “*Facility*”); (iv) the acquisition and installation thereon of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use taxation and mortgage recording tax (the “*Original Financial Assistance*”); (C) the appointment of the Company as an agent of the Agency in connection with the acquisition, renovation, reconstruction and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease or sale agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company and the Corporation¹ to the Agency; and the sublease of the Project Facility back to the Company and the Corporation pursuant to a sublease agreement; and

WHEREAS, among other things, pursuant to the Inducement Resolution, the Agency appointed the Company as an agent of the Agency for purposes of renovating, equipping and completing the Project and benefitting from the State and local sales and use tax exemption (the “*Appointment*”) and authorized the Company to appoint Additional Agents (as defined in the Inducement Resolution); and

WHEREAS, in October, 2015 the Agency and the Company closed on the lease transaction in connection with the Project (the “*Closing*”) and the Agency issued a Sales Tax Appointment Letter (“*Letter*”) to the Company and filed a Form ST-60 – IDA Appointment of Project Operator or Agency for Sales Tax Purposes with the New York State Department of Taxation and Finance. The Letter and the Company’s appointment originally were set to expire on June 1, 2016; and

¹ Corporation shall mean Syracuse Community Hotel, Inc., a corporation organized and existing under the laws of the State of New York having an address of 500 South Warren Street, P.O. Box 998, Syracuse, New York 13201 and its permitted successors and assigns.

WHEREAS, thereafter, at the request of the Company, the Appointment was extended from June 1, 2016 through and including September 30, 2016, to provide the Company additional time to complete the Project in accordance with historic preservation (the “*First Extension*”); and

WHEREAS, by correspondence dated April 6, 2017, the Company advised the Agency that while the hotel portion of the Project was completed and is open for business, certain of the public spaces within the Project Facility were still under renovation and they requested the re-appointment of the Company as the Agency’s agent for the sole purpose of completing these spaces as originally anticipated; and

WHEREAS, on April 18, 2017, the Agency re-appointed the Company as its agent through and including October 1, 2017 for purposes of completing the public spaces as set forth herein (the “*Reappointment*”). At that time, the Company did not request any additional Financial Assistance; and

WHEREAS, the amount State and local sales and use tax exemptions originally approved by the Agency as part of the Original Financial Assistance was an amount not to exceed \$1,481,000 (the “*Original Sales Tax Exemption*”); and

WHEREAS, by letter dated June 15, 2017, the Company advised that it was presented with various change orders related to the Project’s construction and undertook an audit of the construction contract/budget which revealed certain cost overruns from the original budget. The cost overruns resulted from conditions discovered during reconstruction coupled with the increased costs associated with certain of the local furnishings as those contracts had not yet been finalized at the time of the original budget. In addition, there were costs associated with the renovation of the third ballroom and the state of the art kitchen equipment that were not originally anticipated. The original budget, which was based on best estimates available at the time, was approximately \$56.9 million but actual Project costs incurred are approximately \$81.9 million; and

WHEREAS, the Company is also requesting an additional exemption from mortgage recording tax un the approximate amount of \$30,000 with respect to an additional mortgage of approximately \$4,000,000 to cover certain of the change orders associated with the increased construction costs; and

WHEREAS, in light of these costs, coupled with the scope of the Project and given the usage by the Company of local labor, supplies, equipment and rate of local hiring undertaken by the Company, the Company has requested additional financial assistance in the form of exemptions from State and local sales and use taxes in an amount not to exceed \$674,580, and an exemption from mortgage recording tax in the approximate amount of \$30,000 (collectively, the “*Additional Financial Assistance*”); and

WHEREAS, the grant of Additional Financial Assistance to the Project is subject to, among other things, compliance with Section 875 of the Act and the Agency finding after a

public hearing pursuant to Section 859-a of the Act that the Project will serve the public purposes of the Act by promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State or increasing the overall number of permanent, private sector jobs in the State; and

WHEREAS, the Agency adopted a resolution on June 20, 2017, describing the Project and the proposed financial assistance and authorizing a public hearing (“**Public Hearing Resolution**”); and

WHEREAS, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on July 18, 2017 pursuant to Section 859-a of the Act, notice of which was originally published on July 6, 2017, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated June 30, 2017; and

WHEREAS, in addition to the Additional Financial Assistance, the Company also requested an extension of their appointment as agent of the Agency to and through March 31, 2018 (the “**Extension**”); and

WHEREAS, by letter dated July 14, 2017, the Company further requested the Agency consider waiving any administrative fee associated with the requested Additional Financial Assistance (the “**Waiver**”) given the scope of the Project, the Project overruns and the administrative fee paid to the Agency at Closing in conjunction with the Project; and

WHEREAS, the Extension of the appointment of the Company as agent of the Agency for the purpose of completing the Project, the Waiver and the Additional Financial Assistance is in furtherance of the Financial Assistance previously approved for the Project, which underwent an extensive environmental review by the Agency pursuant to the State Environmental Quality Review Act (“**SEQRA**”), and the requested Extension and Additional Financial Assistance is insubstantial and does not require reconsideration or further review by the Agency under SEQRA; and

NOW, THEREFORE, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

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

(a) The granting of the Extension, the Waiver and the Additional Financial Assistance does not amount to a significant change in the Project from what was originally approved by the Agency, and therefore further review under SEQRA and amendment of the Agency’s prior SEQRA negative declaration shall not be required.

(b) Subject to the terms hereof, the Agency approves the Extension of the sales tax appointment agent status of the Company through and including March 31, 2018, the Waiver and the Additional Financial Assistance.

(c) The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from New York State sales and use exemptions benefits. Notwithstanding anything herein to the contrary, the amount of State and local sales and use tax exemption benefits comprising the Additional Financial Assistance approved herein shall not exceed **\$674,580**.

(2) The Agency is authorized to execute all documents necessary to effectuate the Extension and the granting of the Additional Financial Assistance including but not limited to a new mortgage and related documents and affidavits, a Sales Tax Appointment Extension Letter and completion of the appropriate "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for each of the appointed entities and/or Additional Agents (as defined in the Inducement Resolution); and the Chairman and Vice Chairman of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the documents upon the advice of counsel to the Agency. The execution thereof by the Chairman or Vice Chairman constitutes conclusive evidence of such approval.

(3) As a condition of the Extension, the Waiver and the Additional Financial Assistance, the Company will submit to the Agency the updated contract status report, or other applicable information, requested by the Agency with respect to the Extension and the Additional Financial Assistance; and shall further submit the appropriate applicable legal fees incurred by the Agency in exchange for the Agency's grant of the Extension, the Waiver and the Additional Financial Assistance.

(4) As a further condition of the Extension, the Waiver and the Additional Financial Assistance, the Company shall confirm that there are no events of default that exist under any prior agreements with the Agency and that each such agreement relative to the Project remains in full force and effect.

(5) No covenant, stipulation, obligation or agreement contained in this Resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(6) The Secretary of the Agency is hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(7) A copy of this Resolution, together with any attachments hereto, if any, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

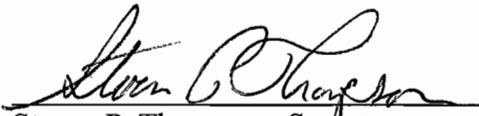
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on July 18, 2017, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104; (iii) the meeting was in all respects duly held; and (iv) there was a quorum present throughout.

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 set my hand and affixed the seal of the Agency this 15th day of August, 2017.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Steven P. Thompson, Secretary

(S E A L)