

A SUPPLEMENTAL RESOLUTION OF THE ONTARIO COUNTY INDUSTRIAL AGENCY AUTHORIZING THE ENTRY INTO A PAYMENT IN LIEU OF TAXES AGREEMENT WITH L, R, R & M, LLC, A DELAWARE LIMITED LIABILITY COMPANY, ON BEHALF OF ITSELF AND/OR AN ENTITY TO BE FORMED ON BEHALF OF THE FOREGOING, IN CONNECTION WITH THE ACQUISITION, RENOVATION, CONSTRUCTION AND EQUIPPING OF A CERTAIN INDUSTRIAL DEVELOPMENT PROJECT MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF 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 533 of the Laws of 1971 of the State of New York, as may be amended from time to time (collectively, the “**Act**”), the Ontario County Industrial Development Agency (the “**Agency**”), was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, pursuant to a resolution adopted by the Agency on December 17, 2018, (the “**Authorizing Resolution**”) L, R, R & M, LLC, a Delaware limited liability company, on behalf of itself and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), entered into a transaction in which the Agency assisted in the acquisition of a leasehold interest in an approximately 9.1441 acre parcel of land located at 770 South Main Street, in the City of Canandaigua, Ontario County, New York 14424 (more particularly described as Tax Parcel No. 84.17-1-51 (the “**Land**”), and the demolition of existing structures located on the Land and the construction, furnishing and equipping of three (3) buildings with an aggregate size of approximately 100,000 square feet to be located on the Land (the “**Improvements**”), (the Land and the Improvements hereinafter described as the “**Project**”); an

WHEREAS, pursuant to the Authorizing Resolution the Agency acquired a leasehold interest in the Project from the Company pursuant to a certain Company Lease Agreement, dated as of December 1, 2018 (the “**Company Lease**”), by and between the Company and the Agency; and

WHEREAS, pursuant to the Authorizing Resolution the Agency subleased the Project to the Company pursuant to a certain Lease and Project Agreement, dated as of December 1, 2018 (the “**Agency Lease Agreement**”), by and between the Agency and the Company to be used by the Company as a Conference Center, Event Center and Hotel; and

WHEREAS, the Company has indicated that it has encountered an unforeseen and substantial increase in the costs of construction for the Project which has rendered the completion and operation of the Project unfeasible without additional financial benefits from the Agency; and

WHEREAS, the Company has applied to the Agency for an amendment to the Agency Lease Agreement to include additional financial benefits in the nature of an abatement of Real Property Taxes pursuant to provisions in the Agency Lease Agreement whereby the Company

Agrees to make payments pursuant to a payment in lieu of taxes (“PILOT”) schedule (the “**Amendment**”); and

WHEREAS, a public hearing (the “**Hearing**”) was held on July 23, 2019, so that all persons with views in favor of or opposed to the financial assistance contemplated by the Agency, could be heard; and

WHEREAS, notice of the Hearing hereinabove described was given in the Canandaigua Daily Messenger on June 30, 2018 and in the Finger Lakes Times on June 30, 2019, and such notice (together with proof of publication), was substantially in the form annexed hereto as Exhibit A; and

WHEREAS, the report of the Hearing along with a stenographic transcript thereof is annexed hereto as Exhibit B; and

WHEREAS, as part of its request for the Amendment, the Company submitted a Revised Feasibility Economic Impact Study dated June 18, 2019 (the “**Revised Study**”); and

WHEREAS, the Revised Study provided detailed descriptions of the increase in costs of building the Project as well as the economic impact of such cost increases on the feasibility of completing and operating the Project and concluded that without the Amendment the completion and operation of the Project was financially unfeasible; and

WHEREAS, the Agency contemplates that if it approves the Amendment it will provide financial assistance to the Company in the form abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof), consistent with the policies of the Agency consistent with the policies of the Agency; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Project and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Agency has given due consideration to the request for the Amendment of the Company and to representations by the Company that the proposed Project is either an inducement to the Company to maintain and expand the Project in Ontario County or is necessary to maintain the competitive position of the Company in its respective industry; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “**SEQR Act**” or “**SEQR**”), the Agency constitutes a “State Agency”; and

WHEREAS, to aid the Agency in determining whether the Project may have a significant effect upon the environment, the Company prepared and submitted to the Agency an Environmental Assessment Form (“**EAF**”) and related documents (the “**Questionnaire**”) with respect to the Project, a copy of which is on file at the office of the Agency; and

WHEREAS, the Agency constitutes an “Involved Agency” (as defined in SEQR); and

WHEREAS, the Company received a site plan approval from the City of Canandaigua Planning Commission (the “City”) in conjunction that approval the City adopted a SEQR Negative Declaration dated June 26, 2018; and

NOW, THEREFORE, BE IT RESOLVED by the Ontario County Industrial Development Agency (a majority of the members thereof affirmatively concurring) as follows:

Based upon the Environmental Assessment Form completed by the Company and reviewed by the Agency and other representations and information furnished by the Company regarding the Project, the Agency previously determined by its resolution adopted December 17, 2018, that the action relating to the acquisition, renovation, equipping, and operation of the Project was an “unlisted” action, as that term is defined in the SEQR Act. The Agency also determined that the action will not have a “significant effect” on the environment, and, therefore, an environmental impact was not prepared.

1. The Agency hereby finds and determines:

(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) The Project constitutes a “project”, as such term is defined in the Act; and

(c) Based upon the Agency’s initial review of the of the Project, by a resolution adopted December 17, 2018 (the “**Original Authorizing Resolution**”) the Agency found and determined that portions of the Project may 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 Project. Notwithstanding the foregoing, and based on representations made by the Company to the Agency within the Application, the Revised Study and otherwise, the Agency determined that the Project is likely to attract a significant number of visitors from outside the Economic Development Region and therefore will constitute a “Tourism Attraction” as defined in Section 862(2)(a) of the Act.

(d) The acquisition, renovation and equipping of the Project and the leasing of the Project to the Company will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Ontario County, and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(e) The acquisition, renovation and equipping of the Project is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

(f) It is desirable and in the public interest for the Agency to enter into the Amendment with the Company; and

(g) The Amendment will be an effective instrument whereby, the Agency the Agency and the Company set forth the terms and conditions of the PILOT Agreement.

2. The Agency has assessed all material information included in connection with the Company's request for the Amendment, including but not limited to, the cost-benefit analysis prepared by the Agency, the Revised Study and such information has provided the Agency a reasonable basis for its decision to provide the financial assistance in the form of the Amendment to the Company.

3. In consequence of the foregoing, the Agency hereby determines to execute, deliver and perform the Amendment and grant an abatement from real property taxes pursuant to the schedule set forth hereinafter at Exhibit C, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such Amendment are hereby approved, ratified and confirmed.

4. The Agency hereby authorizes and approves the following economic benefits to be granted to the Company in connection with the acquisition, renovation and equipping of the Project in the form of the abatement of real property taxes as set forth on Exhibit C.

5. This Supplemental Resolution is conditioned upon the Company agreeing to comply with Section 875 of the Act as well as the Company further agreeing that the abatement of real property taxes provided pursuant to the Act and this Supplemental Resolution is subject to termination and recapture of benefits pursuant to Section 875 of the Act and the recapture provisions of the Agency Lease Agreement, as amended by the Amendment.

6. The form and substance of the Agency Lease Agreement and Company Lease, as amended by the Amendment, (in substantially the form presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) is hereby approved.

7. (a) The Chairman, the Director, the Deputy Director or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Amendment, all in substantially the form presented to this meeting with such changes, variations, omissions and insertions as the Chairman, the Director, the Deputy Director or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this Supplemental Resolution (hereinafter jointly called the "**Agency Documents**"). The execution thereof by the Chairman, the Director, the Deputy Director or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, the Director, the Deputy Director or any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Agency Lease Agreement).

8. 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 Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, 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 Agency Documents binding upon the Agency.

9. Except as amended or modified by this Supplemental Resolution all terms and conditions set forth in the Authorizing Resolution remain in full force and effect and are incorporated herein as if fully set forth herein.

10. Any expenses incurred by the Agency with respect to the Project shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project.

11. This Supplemental Resolution shall take effect immediately.

EXHIBIT A
NOTICE OF PUBLIC HEARING
AND
PROOF OF PUBLICATION

EXHIBIT B

**REPORT OF PUBLIC HEARING
AND STENOGRAPHIC TRANSCRIPT**

EXHIBIT C

PILOT Schedule

Formula for In-Lieu-of-Taxes Payment: Ontario County City of Canandaigua, the Canandaigua City School District and Appropriate Special Districts

Definitions

X = \$4,150,000 the current assessment of the Project site as of August 26, 2019

Y = increase in assessment above X resulting from the acquisition, construction and equipping of the Facility.

Normal Tax Due = Those payments for taxes and assessments, other than special ad valorem levies, special assessments and service charges against real property located in the City of Canandaigua which are or may be imposed for special improvements or special district improvements, that the Company would pay without exemption.

Payment

Formula

Tax Year (following first taxable status date after the election by the Company, more specifically set forth in Agency Lease Agreement)

1	100% normal tax due on X and 0% normal tax due on Y
2	100% normal tax due on X and 0% normal tax due on Y
3	100% normal tax due on X and 0% normal tax due on Y
4	100% normal tax due on X and 0% normal tax due on Y
5	100% normal tax due on X and 0% normal tax due on Y
6	100% normal tax due on X and 20% normal tax due on Y
7	100% normal tax due on X and 40% normal tax due on Y
8	100% normal tax due on X and 60% normal tax due on Y
9	100% normal tax due on X and 80% normal tax due on Y
10 and thereafter	100% normal tax due on X and 100% normal tax due on Y

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

I, the undersigned Executive Director of the Ontario County Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Ontario County Industrial Development Agency (the “**Agency**”), including the resolutions contained therein, held on the 26th^h day of August, 2019, 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 resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents, to which the Agency is a party contained in this transcript of proceedings, are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 132 of the Laws of 1973 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 26th day of August 2019.

By: _____
 Michael J. Manikowski
 Executive Director