

RESOLUTION
(Project Hotel 2010, LLC Project)

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on December 2, 2010, at 4:00 p.m.

The following resolution was duly offered and seconded, to wit:

Resolution No. 12/2010-01

RESOLUTION (i) ACCEPTING THE APPLICATION WITH RESPECT TO A CERTAIN HOTEL CONSTRUCTION PROJECT (AS MORE FULLY DESCRIBED BELOW), (ii) DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED BY THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER WITH RESPECT TO SUCH PROJECT AND (iii) AUTHORIZING A PUBLIC HEARING WITH RESPECT TO SUCH PROJECT

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (hereinafter, 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 civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, the Agency has received an application (the "Application") requesting the Agency's assistance with respect to a certain project (the "Project") for the benefit of an entity to be formed (the "Company") consisting of: (i) the acquisition of a leasehold interest in, an approximately 2.4 acre parcel of land located at 4356 Commerce Drive in the Town of Batavia, Genesee County, New York (the "Land"), (ii) the acquisition, construction and equipping on the Land of an approximately 41,000 square foot, four-story hotel consisting of approximately 80 hotel rooms, a fitness room, an indoor pool, a lobby area and meeting space (the "Improvements"), and (iii) the acquisition of and installation in and around the Improvements of certain machinery, equipment and items of personal property (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, pursuant to Article 18-A of the General Municipal Law, the Agency desires to adopt a resolution describing the Project and the financial assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will hold a public hearing and (i) negotiate an agent agreement (the "Agent Agreement"), pursuant to which the Agency will appoint the Company as its agent for the purpose of acquiring, constructing and equipping the Project (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease

Agreement"), leaseback agreement (the "Leaseback Agreement") and payment-in-lieu-of-tax agreement (the "PILOT Agreement") with the Company, (iii) take title to, or a leasehold interest in, the Land, the Improvements, the Equipment and personal property constituting the Facility (once the Lease Agreement, Leaseback Agreement and PILOT Agreement have been negotiated), and (iv) provide financial assistance to the Company in the form of: (a) sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project, (b) partial real property tax abatement through the PILOT Agreement, and (c) a mortgage recording tax exemption for the financing related to the Project (collectively, the "Financial Assistance"); and

WHEREAS, pursuant to Section 859-a of the Act, prior to the Agency providing any Financial Assistance to any project, the Agency, among other things, must hold a public hearing with respect to the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AS FOLLOWS:

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application, 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) The Agency has the authority to take the actions contemplated herein under the Act; and

(C) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Genesee County, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

(D) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

Section 2. The Chairman, Vice Chairman and/or the President/CEO of the Agency are hereby authorized, on behalf of the Agency, to hold (a) a public hearing in compliance with

the Act and (b) negotiate (but not execute or deliver) the terms of (i) an Agent Agreement, pursuant to which the Agency appoints the Company as its agent to undertake the Project, (ii) a Lease Agreement, pursuant to which the Company leases the Project to the Agency, (iii) a related Leaseback Agreement conveying the Project back to the Company, (iv) a PILOT Agreement, whereby the Company agrees to make certain projects in lieu of real property taxes and (v) related documents; provided (A) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (B) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 3. The Agency is hereby authorized to conduct a public hearing in compliance with the Act.

Section 4. 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 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 documents executed for and on behalf of the Agency.

Section 5. These Resolutions 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>
John F. Andrews	[x]	[]	[]	[]
James L. Vincent	[x]	[]	[]	[]
James W. Fulmer	[x]	[]	[]	[]
Hollis D. Upson	[x]	[]	[]	[]
Charlie Cook	[x]	[]	[]	[]
L. William Benton	[x]	[]	[]	[]
Wolcott T. Hinchey	[x]	[]	[]	[]

The Resolutions were thereupon duly adopted.