

**Final Authorizing Resolution  
Harbor Point Lodging Associates, LLC  
Facility**

Date: December 11, 2017

At a meeting of the City of Utica Industrial Development Agency, Utica, New York (the "Agency"), held at 12:00 p.m. at Fort Schuyler Club, Genesee Street, Utica, New York on the 11th day of December 2017, the following members of the Agency were:

**Members Present:** John Buffa, John Zegarelli, Emmett Martin

**Member Excused:** Vin Gilroy

**Also Present:** Jack Spaeth (Executive Director), Laura Ruberto & Linda Romano (BS&K –Agency Counsel)

**Others:** Mayor Robert Palmieri, Sonny Greco, Brian Thomas, Gene Allen, Alyssa McIlhenney, Andrew Brindisi (UED Staff)

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of a leasehold interest in and financing of a certain industrial development facility more particularly described below (Harbor Point Lodging Associates, LLC Facility) and the leasing of the facility to Harbor Point Lodging Associates, LLC.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

John Buffa voting aye;  
Emmett Martin voting aye; and  
John Zegarelli voting aye.

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE THE LEASE AGREEMENT, LEASEBACK AGREEMENT, THE PILOT AGREEMENT, THE ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT, MORTGAGE, AND RELATED DOCUMENTS WITH RESPECT TO THE HARBOR POINT LODGING ASSOCIATES, LLC FACILITY LOCATED AT 119 NORTH GENESEE STREET IN THE CITY OF UTICA, ONEIDA COUNTY AND MAKING CERTAIN FINDINGS RELATING TO THE FACILITY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 710 of the Laws of 1981 of the State of New York (collectively, the "Act"), 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, Harbor Point Lodging Associates, LLC (the "Company") has requested the Agency assist in a certain industrial development facility consisting of acquisition of a 1.23± acre parcel of land located at 119 North Genesee Street, City of Utica, Oneida County, New York (the "Land"), construction on the Land of a four-story, 89 room hotel and all amenities to service the same (the "Improvements") and acquisition and installation of equipment in the Improvements (the "Equipment"), all to be used for the purpose of providing a Home2 Suites by Hilton franchised extended-stay, all-suite hotel, and enhancing economic development in downtown Utica (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction, renovation and equipping of the Facility is referred to as the "Project"); and

WHEREAS, the Company has agreed to lease the Facility to the Agency pursuant to a Lease Agreement (the "Lease Agreement") between the Agency and the Company; and

WHEREAS, the Agency has agreed to lease the Facility back to the Company pursuant to a Leaseback Agreement between the Agency and the Company (the "Leaseback Agreement") for its operation; and

WHEREAS, Bank of Utica, a New York banking corporation with offices at 222 Genesee Street, Utica, New York 13502 (the "Bank") intends to finance a portion of the costs of the Facility by making a loan to the Company in the approximate amount of \$8,750,000.00, to be secured by a mortgage from the Agency and the Company to the Bank (the "Mortgage"); and

WHEREAS, the Agency contemplates granting financial assistance to the company in the form of exemptions from sales tax, exemptions from mortgage recording tax and reduced real property taxes for a period of ten years (the "Financial Assistance"), which Financial Assistance is a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"); and

WHEREAS, the Agency by resolution duly adopted on November 3, 2017 (the "Resolution") decided to proceed under the provisions of the Act to lease the Facility and directed that a public hearing be held so that all persons with views in favor of or opposed to either the financial assistance contemplated by the Agency, or the location or nature of the Facility, could be heard; and

WHEREAS, the Agency determined by way of a Statement of Findings dated December 11, 2017 (the "Statement of Findings") that the Facility is located in a "highly distressed area" as such term is defined in Section 854(18) of the General Municipal Law of the State of New York because the Facility is located in a designated Empire Development Zone as described in Article 18-B of the General Municipal Law, that the predominant purpose of the Project is to make available services which would not, but for the Project, be reasonably accessible to the residents of the City of Utica because of a lack of reasonably accessible retail trade facilities offering such services, and the Facility will preserve and increase the overall number of permanent, private sector jobs in the State; and

WHEREAS, in accordance with Section 862(c) of the General Municipal law of the State of New York, the Agency is submitting the Statement of Findings to the Mayor of the City of Utica so that he may sign a Certificate of Chief Executive Officer (the "Certificate of Chief Executive Officer"), confirming the proposed action of the Agency with respect to the Facility; and

WHEREAS, on December 5, 2017 the Agency provided written notice to all affected taxing jurisdictions describing the Financial Assistance and citing the reasons it intends to deviate from the Policy, and inviting all to make comment on the Financial Assistance before considering this resolution; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities which may arise in connection with the transaction contemplated by the lease of the land and the transfer of a leasehold interest in the Facility.

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

Section 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 Facility constitutes a “project”, as such term is defined in the Act; and

(c) The acquisition, constructing and equipping of the Facility, the leasing of the Facility to the Company, and the financing of the Facility through the Bank will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the City of Utica and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The acquisition, construction, equipping and financing of the Facility is reasonably necessary to induce the Company to maintain and expand its business operation in the State of New York; and

(e) Based upon representations of the Company and the Company's Counsel, the Facility conforms with the local zoning laws and planning regulations of the City of Utica and all regional and local land use plans for the area in which the Facility is located; and

(f) It is desirable and in the public interest for the Agency to acquire a leasehold interest in the Facility and lease the Facility to the Company; and

(g) The SEQRA findings adopted by the Agency on November 3, 2017, encompassed the actions to be undertaken by this resolution and no changes have been made since that time to the proposed action that would create new or increased adverse environmental impacts; and

(h) The Lease Agreement will be an effective instrument whereby the Company conveys to the Agency a leasehold interest in the Facility; and

(i) the Leaseback Agreement will be an effective instrument whereby the Agency leases the Facility back to the Company; and

(j) The Environmental Compliance and Indemnification Agreement (the “Environmental Compliance and Indemnification Agreement”) by and between the Agency and the Company will be an effective instrument whereby the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the

Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws; and

(k) The Payment-In-Lieu-of-Tax Agreement (the "PILOT Agreement") between the Agency and the Company will be an effective instrument whereby the Company agrees to make payments in lieu of taxes for the term of the Leaseback Agreement; and

(l) The Mortgage will be an effective instrument whereby the Agency grants the Bank a security interest in the Facility.

Section 2. In consequence of the foregoing, and subject to receipt of the signed Certificate of Chief Executive Officer, the Agency hereby determines to: (i) acquire a leasehold interest in the Facility from the Company pursuant to the Lease Agreement; (ii) execute, deliver and perform the Lease Agreement; (iii) lease the Facility back to the Company pursuant to the Leaseback Agreement, (iv) execute, deliver and perform the Leaseback Agreement, (v) execute, deliver and perform the Environmental Compliance and Indemnification Agreement, (vi) execute, deliver and perform the PILOT Agreement; (vii) grant the Bank a security interest in the Facility; (viii) execute, deliver and perform the Mortgage; and (ix) deviate from Policy and grant the Financial Assistance.

Section 3. The Agency is hereby authorized to accept a leasehold interest in the real property described in Exhibit A to the Lease Agreement and the personal property described in Exhibit B to the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 4. The form and substance of the Lease Agreement, the Leaseback Agreement, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and the Mortgage (each in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 5.

(a) The Chairman, Vice Chairman, Secretary or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Lease Agreement, the Leaseback Agreement, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and the Mortgage, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Secretary or

any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "Closing Documents"). The execution thereof by the Chairman, Vice Chairman, or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, Secretary or 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 Leaseback Agreement).

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 Closing 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 Closing Documents binding upon the Agency.

Section 7. This resolution shall take effect immediately.

