

RESOLUTION

A regular meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened on December 9, 2024 at 11:00 a.m. local time at the Sullivan County Government Center, 100 North Street, Monticello, New York 12701.

The meeting was called to order by Chairman Howard Siegel, and, upon the roll being called, the following members of the Agency were:

| | <u>PRESENT</u> | <u>ABSENT</u> |
|-----------------|----------------|---------------|
| Howard Siegel | [] | [] |
| Kathleen Lara | [] | [] |
| Carol Roig | [] | [] |
| Philip Vallone | [] | [] |
| Scott Smith | [] | [] |
| Paul Guenther | [] | [] |
| Sean Brooks | [] | [] |
| Ira Steingart | [] | [] |
| Joseph Perrello | [] | [] |

The following persons were also present:
Jennifer M. Flad, Executive Director
Ira Steingart, Chief Executive Officer
Julio Garaicoechea, Project Manager
Bethanii Padu, Economic Development Coordinator

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

Resolution No. __ - 24

RESOLUTION DIRECTING THE RECAPTURE OF SALES AND USE TAX BENEFITS EXCEEDING THE AMOUNT AUTHORIZED FROM FSH LODGE AT NEVERSINK, LLC AND 7491 STATE ROUTE 55 PROPERTY CO., LLC (COLLECTIVELY, THE “COMPANY”)

WHEREAS, the Agency was created by Chapter 560 of the Laws of 1970 of the State of New York, as amended pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, on or about March 15, 2022, the Company presented an application to the Agency (“Application”), a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project consisting of the: (i) acquisition, construction, reconstruction, renovation, rehabilitation, installation and equipping of nine (9) existing buildings

aggregating approximately 30,000 +/- square feet, intended to be used as a wellness retreat including thirty-four (34) guest rooms, spa, restaurant and related amenities (“Buildings”) situate on two (2) parcels of real estate consisting of approximately 229.5+/- acres located at 7491 State Route 55 and Seeman Road, Town of Neversink (“Town”), County of Sullivan, State of New York and identified on the Town tax map as Section 30, Block 1, Lots 39.1 and 39.3 (“Land”); (ii) acquisition, construction and installation thereon and therein of certain furniture, fixtures, machinery, equipment and tools (“Equipment”); (iii) construction of improvements to the Buildings, the Land and the Equipment (collectively, the Buildings, the Land and the Equipment are referred to as the “Project”); and (iv) lease of the Project from the Agency to the Company; and

WHEREAS, on or about April 11, 2022, by duly adopted Resolution No. 15-22, the Agency approved the Application and the Agency agreed to undertake the Project; and

WHEREAS, pursuant to Resolution No. 15-22, the Agency (i) designated the Company as its agent for the purpose of reconstructing, renovating, rehabilitating, installing and equipping the Project; (ii) negotiated and entered into an Agent and Project Agreement dated as of June 1, 2022; (iii) authorized the negotiation and entry into the Lease to Agency (“Lease”), the Leaseback to Company (“Leaseback”) and the Payment in Lieu of Taxation Agreement (“PILOT Agreement”) with the Company; (iv) agreed to hold a leasehold interest in the Land, the improvements and personal property thereon which constitute the Project; and (v) agreed to provide financial assistance to the Company in the form of (a) sales tax exemption for purchases related to the reconstruction, renovation, rehabilitation, installation and equipping of the Project; (b) a real property tax abatement on increased value resulting from improvements to the Land through the PILOT Agreement, which Agreement shall include language permitting the Company to seek enhanced benefits, in accordance with the Agency’s recently amended Tourism Industry Program in the event that the Company or any entity acting on the Company’s behalf, applies to the appropriate governmental authorities and receives all necessary approvals to construct market rate workforce housing at a location at or within twenty-five (25) miles of the Project site, with said location to be determined at a future date, and such market rate workforce housing is actually constructed; and (c) a mortgage tax exemption for financing related to the Project; and

WHEREAS, on or about June 1, 2022, the Agency and the Company entered into an Agent and Project Agreement (“Agent Agreement”) pursuant to which the Agency designated the Company as the Agent of the Project; and

WHEREAS, subsequent to the adoption of Agency Resolution No. 15-22, the Company made application to Walden Savings Bank (“Walden”) for financing in connection with the Project and by Commitment Letter dated June 15, 2022, Walden agreed to loan FSH Holding, LLC for the benefit of the Project the sum of \$7,738,498.00 (the “Loan”) in the form of a twelve-month construction phase of advances which will thereafter convert to permanent financing upon completion of the construction phase of the Project; and

WHEREAS, the Loan was conditioned upon, among other collateral, a first mortgage lien upon the Land, which is subject to the Lease and Leaseback; and

WHEREAS, the Agency authorized execution of one or more mortgages and related documents in favor of Walden as security for the Loan; and

WHEREAS, Sections II and III(G) of the Application for Agency benefits both stated that the requested mortgage recording tax exemption related to the lender financing component of the Project would not exceed \$68,000.00 and Paragraph 4(e) of the Agent Agreement reflected the aforesaid mortgage recording tax exemption limit; and

WHEREAS, without an Agency exemption, the Sullivan County mortgage recording tax associated with the Loan would have exceeded the originally authorized exemption amount and may have reached the sum of \$77,385.00 necessitating the amendment of: i) the Application; ii) Agency Resolution No. 15-22; and iii) the Agent Agreement; and

WHEREAS, Paragraph 7(a) of the Agent Agreement required that all insurance policies procured and maintained by the Company in connection with the Project shall have deductible amounts not exceeding \$2,500.00; and

WHEREAS, the Company requested that given the scope and size of the Project, it is reasonable for such policies to include deductible amounts not exceeding \$10,000.00 and the Agency was of the opinion that \$10,000.00 deductibles under such policies are acceptable; and

WHEREAS, given the overall benefits of the Project as set forth in the findings section of Resolution No. 15-22, the Agency determined that it was in the public interest to (i) accept the amendment of the Application; ii) Amendment of the Agency Resolution No. 15-22; and iii) amend the Agent Agreement to increase the originally authorized mortgage recording tax exemption limit and modify insurance deductibles; and

WHEREAS, on July 11, 2022, by Resolution No. 30-22, the Agency authorized i) the amendment of the Application; ii) Amendment of the Agency Resolution No. 15-22; and iii) amendment the Agent Agreement to increase the originally authorized mortgage recording tax exemption limit and modify insurance deductibles; and

WHEREAS, effective as of July 1, 2022, the Agency and the Company entered into a First Amendment to Agent and Project Agreement to increase the originally authorized mortgage recording tax exemption limit and modify insurance deductibles; and

WHEREAS, the Agency authorized sales and use tax exemption benefits for the Project “not to exceed \$274,888”, which maximum amount was memorialized in the Agent Agreement; and

WHEREAS, the Company, as Agent for the Agency, has exceeded the maximum authorized sales and use tax exemptions for the Project; and

WHEREAS, as contemplated by Section 874 (10)-(12) of the General Municipal Law (“GML”), the Agency established a Project Recapture and Termination Policy which requires the

recapture of financial assistance including sales and use tax exemption amounts exceeding the benefits authorized; and

WHEREAS, in accordance with Section 875(3) of the GML, if the Agency determines sales and use tax exemptions claimed by the Company were in excess of the amounts authorized by the Agency, then the Agency shall recapture such sales and use tax benefits from the Company; and

WHEREAS, Tax Bulletin ST-385 (TB-ST-385) sets forth the procedure to be followed in the event the Agency must recapture sales and use tax exemption benefits claimed in excess of amounts authorized.

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

Section 1. The Agency hereby makes the following findings:

- A. The maximum sales and use tax exemption benefits authorized for the Project were \$274,888; and
- B. The total value of the sales and use tax exemption benefits claimed by the Company were in the amount of \$279,131.27.

Section 2. The Executive Director of the Agency is hereby authorized and directed to recapture the amount of sales and use tax exemption benefits claimed by the Company in excess of the exemption benefit authorized by the Agency, which amount is \$4,243.27.

Section 3. 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 4. 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:

| | | | | |
|-----------------|------------------------------|-----------------------------|---------------------------------|----------------------------------|
| Howard Siegel | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Absent | <input type="checkbox"/> Abstain |
| Kathleen Lara | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Absent | <input type="checkbox"/> Abstain |
| Carol Roig | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Absent | <input type="checkbox"/> Abstain |
| Philip Vallone | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Absent | <input type="checkbox"/> Abstain |
| Scott Smith | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Absent | <input type="checkbox"/> Abstain |
| Paul Guenther | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Absent | <input type="checkbox"/> Abstain |
| Sean Brooks | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Absent | <input type="checkbox"/> Abstain |
| Ira Steingart | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Absent | <input type="checkbox"/> Abstain |
| Joseph Perrello | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Absent | <input type="checkbox"/> Abstain |

The resolution was thereupon duly adopted.

STATE OF NEW YORK :
:SS
COUNTY OF SULLIVAN :

I, the undersigned Secretary of the Agency DO HEREBY CERTIFY THAT:

1. I have compared the foregoing copy of a resolution of the County of Sullivan Industrial Development Agency (“Agency”) with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of such resolution and of the proceedings of the Agency in connection with such matter.

2. Such resolution was passed at a meeting of the Agency duly convened in public session on December 9, 2024 at 11:00 a.m. at the Sullivan County Government Center, 100 North Street, Village of Monticello, Sullivan County, New York, at which the following members were present:

| | <u>PRESENT</u> | <u>ABSENT</u> |
|-----------------|----------------|---------------|
| Howard Siegel | [] | [] |
| Kathleen Lara | [] | [] |
| Carol Roig | [] | [] |
| Philip Vallone | [] | [] |
| Scott Smith | [] | [] |
| Paul Guenther | [] | [] |
| Sean Brooks | [] | [] |
| Ira Steingart | [] | [] |
| Joseph Perrello | [] | [] |

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

| | | | | |
|-----------------|---------|--------|------------|-------------|
| Howard Siegel | [] Yes | [] No | [] Absent | [] Abstain |
| Kathleen Lara | [] Yes | [] No | [] Absent | [] Abstain |
| Carol Roig | [] Yes | [] No | [] Absent | [] Abstain |
| Philip Vallone | [] Yes | [] No | [] Absent | [] Abstain |
| Scott Smith | [] Yes | [] No | [] Absent | [] Abstain |
| Paul Guenther | [] Yes | [] No | [] Absent | [] Abstain |
| Sean Brooks | [] Yes | [] No | [] Absent | [] Abstain |
| Ira Steingart | [] Yes | [] No | [] Absent | [] Abstain |
| Joseph Perrello | [] Yes | [] No | [] Absent | [] Abstain |

and therefore, the resolution was declared duly adopted.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103(a) and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections 103(a) and 104, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the 9th day of December, 2024.

Carol Roig, Secretary