

PRELIMINARY RESOLUTION
(Empire Hotel Development, Inc. 2016 Project)

A Regular meeting of the Dutchess County Industrial Development Agency was convened in public session on April 19, 2016 at 8:00 a.m., local time, at the office of the Dutchess County Industrial Development Agency, Three Neptune Road, Poughkeepsie, New York.

The meeting was called to order by the Chairman, with the following members being:

PRESENT: Charles Daniels, III, Chairman
Timothy Dean, Vice Chairman
Phyllis DiStasi Keenan, Secretary/Treasurer
Angela E. Flesland
Edward Summers
Mark Doyle
Alfred D. Torreggiani

ABSENT:

ALSO PRESENT: Donald Cappillino, Counsel
Sarah Lee, Chief Executive Officer

On motion duly made by _____ and seconded by _____, the following resolution (the “**Resolution**”) was placed before the members of the Dutchess County Industrial Development Agency:

Resolution (i) Taking official action toward the issuance of financial assistance to Empire Hotel Development, Inc. (Hyatt Place Hotel Project) in the form of potential exemption from sales and use taxes, real estate transfer taxes and mortgage recording taxes, and; (ii) appointing Empire Hotel Development, Inc. as agent of the Agency for the purpose of acquiring, constructing, furnishing, equipping, improving and renovating the facilities to be the subject of the financial assistance; and (iii) authorizing the execution and delivery of an agreement by and between the Agency and Empire Hotel Development, Inc. with respect to such financial assistance.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively the “**Act**”), the Dutchess County Industrial Development Agency (the “**Agency**”) was created with the authority and power to provide financial assistance for the purpose of, among other things, acquiring, constructing and equipping certain facilities as authorized by the Act; and

WHEREAS, Empire Hotel Development, Inc., a New York corporation with an office located at P.O. Box 355, Oneonta, New York 13820 (the “**Company**”), has applied to the Agency for Financial Assistance (as hereinafter defined) to finance the acquisition, construction,

installation, furnishing and equipping of a certain facility (the “**Facility**”) consisting of the construction of an approximately 59,526 square foot, four-story hotel containing approximately 93 to 95 rooms to be built on an 8.43 acre parcel located in the Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map No. 134689-6159-01-287638-0000, the Facility to be utilized further as a banquet and conference center (collectively, the “**Project**”); and

WHEREAS, the Agency has given due consideration to the application submitted by the Company, in which it is represented by the Company that the financial assistance (as defined herein) for the Facility will not result in the removal or abandonment of a facility of the Company located elsewhere in the State of New York; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted by the Department of Environmental Conservation of the State of New York (the laws and regulations hereinafter collectively referred to as “**SEQRA**”), the Agency is required to determine whether the financial assistance (as defined herein) for the Facility may have a significant effect on the environment and therefore require the preparation of an Environmental Impact Statement; and

WHEREAS, the Agent has yet to make a determination of environmental significance on this application but will do so prior to its grant of any financial assistance; and

WHEREAS, the proposed financial assistance to be granted by the Agency to the Company consists of the exemption from sales and use taxes, real estate transfer taxes and mortgage recording taxes (the “**Financial Assistance**”) which is consistent with the Dutchess County Uniform Tax Exemption Policy (the “**Policy**”); and

WHEREAS, the Agency has not yet held hearings pursuant to §147(f) of the Code, and pursuant to §859-a of Article 18-A of the General Municipal Law of the State of New York; and

WHEREAS, although the resolution authorizing the Financial Assistance has not yet been presented for approval by the Agency, a Preliminary Agreement relative to the proposed Financial Assistance has been presented for approval by the Agency.

NOW, THEREFORE, BE IT RESOLVED by the Dutchess County Industrial Development Agency, as follows:

1. Based upon the representations made by the Company to the Agency, the Agency hereby finds and determines that:

- (a) The Facility constitutes a “project” within the meaning of the Act;
- (b) The Financial Assistance will not result in the removal or abandonment of a facility of the Company located elsewhere in the State of New York;

- (c) The Financial Assistance for the Facility is consistent with the Policy of the Agency provided this Project is approved by the Town of Poughkeepsie;
 - (d) The Financial Assistance will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of Dutchess County, New York, and improve their standard of living, and thereby serve the public purposes of the Act;
 - (e) Pursuant to the April 1, 2016 report of Fairweather Consulting and the March 25, 2016 report of Dutchess Tourism, the Facility is “tourism destination facility” as defined in Section 862(2)(a) of the N.Y. General Municipal Law and therefore is not subject to the prohibitions contained therein; and
 - (f) It is desirable and in the public interest for the Agency to assist the Company by granting the Financial Assistance.
2. Subject to the conditions set forth in ¶3 of this Resolution, the Agency will:
- (a) acquire an interest in the the Facility; and
 - (b) lease (with option to purchase) the Project to the Company pursuant to an agreement by and between the Agency and the Company.
3. The provision of Financial Assistance herein, as contemplated by ¶2 of this Resolution, shall be subject to:
- (a) the execution and delivery by the Company of the Preliminary Agreement attached hereto as Exhibit “A” setting forth certain conditions for the provision of the Financial Assistance;
 - (b) the Company’s compliance with the Agency’s existing policies and procedures; and
 - (c) the consent of the Town of Poughkeepsie to this Project.
4. The form and substance of a proposed Preliminary Agreement (in substantially the form presented to this meeting) by and among the Agency, the Company setting forth the undertakings of the Agency and the Company with respect to the provision of Financial Assistance are hereby approved. The Executive Director or Deputy Executive Director of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Preliminary Agreement and the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency hereto and to attest to this meeting, with such changes in terms and conditions as the Executive Director and/or Deputy Executive Director shall constitute conclusive evidence of such approval.

5. The Company is hereby appointed the true and lawful agents of the Agency (i) to acquire the Facility; and (ii) to make, execute, acknowledge, and deliver any contracts, orders, receipts, writings, and instructions, as the designated agent for the Agency, and in general to do all things which may be requisite or proper for the acquisition, construction, installation, furnishing, equipping, erection and completion of the Facility.

6. Pursuant to Section 875(3) of the Act and under the Agency policy concerning Maintaining Performance Based Incentives (the “MPBI”), the Agency may recover, recapture or receive from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; and/or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project in the manner approved by the Agency in connection with the Project (collectively, items (i) through (iv) hereby defined as a “**Recapture Event**”). The MPBI Policy provides for the return of other Incentives as set forth therein.

7. As a condition precedent of receiving sales and use tax exemption benefits (and real property tax abatement benefits), the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

8. Counsel to the Agency is hereby authorized to work with counsel to the Company and others to prepare for submission to the Agency, all documents necessary to effect the authorization and provision of Financial Assistance. The Company shall be responsible for the fees of Agency and Agency’s Counsel in relation to this Project and the provision of Financial Assistance.

9. The Agency hereby authorizes the Chairman of the Agency, prior to the granting of any Financial Assistance with respect to the Project, after consultation with counsel to the Agency and Transaction Counsel, (i) to establish the time, date and place for a public hearing of the Agency to hear all person interested in the Project and the proposed Financial Assistance being contemplated by the Agency with respect to the Project, said public hearing to be held in the Town of Poughkeepsie, Dutchess County, New York; (ii) to cause notice of such public hearing

to be given to the public by publishing a notice in accordance with the applicable provisions of the N.Y. General Municipal Law, as well as, at the same time, provide notice of the hearing to the chief executive officer of each affected tax jurisdiction; (iii) to conduct such public hearing or cause such hearing to be conducted by his designee; and (iv) to cause a stenographic transcript of said public hearing to be promptly prepared and cause copies of said report to be made available to the member of the Agency.

10. The Executive Director and/or Deputy Executive Director of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution. The Agency hereby appoints each Member of the Agency and the Agency Counsel to serve as an Assistant Secretary of the Agency for purposes of this project.

11. Based upon the Agency’s prior review of the Application submitted by the Company, along with supporting materials, and in accordance with the findings of the Agency within the Preliminary Resolution, the Project will include facilities or property that are primarily used in making “retail sales,” as defined within Section 862(2)(a) of the Act, to customers who personally visit the Facility unless the Facility is considered to be “tourism destination” project. Notwithstanding the foregoing, and based upon the Application and supporting materials prepared by Dutchess Tourism dated March 25, 2016 and the April 1, 2016 report of Fairweather Consulting, each determining that the Facility is a “tourism destination” and presented by the Company to the Agency, the Project will be a “tourism destination” by virtue of bringing increased tourists to the area with the availability of additional lodging in the Town of Poughkeepsie. In accordance with the foregoing, and pursuant to Section 862(2)(a) of the Act, the Agency hereby finds that the undertaking of the Project will serve the public purposes of the Act as a “tourism destination” by preserving permanent, private sector jobs and/or increasing the overall number of permanent, private sector jobs in the State.

12. This Resolution shall take effect immediately.

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

Charles Daniels III, Chairman	VOTING
Timothy Dean, Vice Chairman	VOTING
Phyllis DiStasi Keenan, Secretary/Treasurer	VOTING
Angela E. Flesland	VOTING
Edward Summers	VOTING
Mark Doyle	VOTING
Alfred D. Torreggiani	VOTING

The Resolution was thereupon declared duly adopted.

Adopted: April 19, 2016

PRELIMINARY AGREEMENT
(Empire Hotel Development, Inc. 2016 Project)

THIS PRELIMINARY AGREEMENT (the “Preliminary Agreement”), made as of April 19, 2016 between the **DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation, organized and existing under the General Municipal Law of the State of New York, having offices at Three Neptune Road, Poughkeepsie, New York 12601 (the “Agency”), and **EMPIRE HOTEL DEVELOPMENT, INC.**, a New York corporation having offices at P.O. Box 355, Oneonta, New York 13820 (the “Company”).

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively the “Act”), the Agency was created with the authority and power to provide financial assistance for the purpose of, among other things, acquiring, constructing and equipping certain facilities as authorized by the Act; and

WHEREAS, the Company has applied to the Agency for financial assistance (the “Financial Assistance”) to finance the acquisition, construction, installation, furnishing and equipping of a certain facility (the “Facility”) consisting of the construction of an approximately 59,526 square foot, four-story hotel containing approximately 93 to 95 rooms to be built on an 8.43 acre parcel located in the Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map No. 134689-6159-01-287638-0000, the Facility to be utilized further as a banquet and conference center (collectively, the “Project”); and

WHEREAS, the Facility includes the following, as they relate to the construction and completion of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the renovation of the Facility; and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the construction of the Facility and installation of the equipment for the Facility; and

WHEREAS, the Agency has determined that the financing of the Facility will promote and further the purposes of the Act; and

WHEREAS, on April 19, 2016, the Agency adopted a Preliminary Resolution (the “Preliminary Resolution”) authorizing the Facility and the execution of this Preliminary Agreement; and

WHEREAS, in the Preliminary Resolution the Agency appointed the Company its agents for the purposes of financing the Facility and doing all things requisite and proper for completing the Facility.

WHEREAS, the Agency has given due consideration to the application submitted by the Company, in which it is represented by the Company that the financial assistance (as defined

herein) for the Project will not result in the removal of industrial or manufacturing facilities of the Company or any proposed facility occupant from one area of the State of New York to another area of the State of New York, or in the abandonment of one or more plants or facilities of the Company or any Facility occupant located in the State of New York; and

WHEREAS, the proposed Financial Assistance to be granted by the Agency to the Company consists of the exemption from sales and use taxes and mortgage recording taxes which are consistent with the Dutchess County Uniform Tax Exemption Policy (the “**Policy**”); and

WHEREAS, the Agency has not yet held hearings pursuant to §147(f) of the Code, and pursuant to §859-a of Article 18-A of the General Municipal Law of the State of New York; and

WHEREAS, although the resolution authorizing the Financial Assistance has not yet been presented for approval by the Agency, a Preliminary Agreement relative to the proposed Financial Assistance has been presented for approval by the Agency.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Agency and the Company agree as follows:

1. Undertakings of the Agency. Based upon the statements, representations, and undertakings of the Company and subject to the conditions set forth herein and in the Preliminary Resolution, the Agency agrees as follows:

(a) The Agency shall adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be necessary or advisable for (i) the acquisition, construction, installation, furnishing and equipping of the Facility and the financing of such costs; and (ii) the leasing or sale of the Facility to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

(b) The Agency shall enter into an agreement to lease the Facility to the Company (the “**Lease Agreement**”). The Lease Agreement shall contain all provisions required by law and such other provisions as shall be mutually acceptable to the Agency and the Company.

(c) The Agency shall appoint and does hereby appoint the Company the true and lawful agent of the Agency: (i) to acquire the Facility; and (ii) to make, execute, acknowledge, and deliver any contracts, orders, receipts, writings, and instructions, as the stated agent for the Agency, and in general, to do all things which may be requisite or proper for construction, installation, furnishing and equipping of the Facility.

(d) The Agency shall take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

2. Representations of the Company. The Company hereby represents to the Agency that:

- (a) The Facility is located in the Dutchess County, New York;
- (b) The proposed financing of the Facility will contribute to increased employment opportunities in Dutchess County, New York;
- (c) The Facility shall be a “tourism destination facility” as defined in Section 862(2) of the Act; and
- (d) The Company intends that the Facility will comply with all applicable federal, state, and local laws, ordinance, rules, and regulations and the Company shall have obtained all necessary approvals and permits required thereunder.

3. Undertakings of the Company. Based upon the statements, representations, and undertakings of the Agency and subject to the conditions set forth herein and in the Preliminary Resolution, the Company agrees as follows:

(a) The Company shall use all reasonable efforts necessary or desirable to enter into a contract or contracts for the acquisition of the Facility and on the terms and conditions set forth in the Lease Agreement, transfer to the Agency, or cause to be transferred to the Agency, title to the Facility.

(b) (i) The Company shall defend and indemnify the Agency and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on: (1) labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of the Facility (including any expense incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the Company acting as agents for the Agency pursuant to this Preliminary Agreement or otherwise; or (2) any untrue statement or alleged untrue statement of a material fact necessary in order to make the statements herein, in the light of the circumstances under which they were made, not misleading.

(ii) The Company shall not permit to stand, and shall at its own expense take all steps reasonably necessary to remove, any mechanic’s or other liens against the Facility for labor for the acquisition, construction, installation, furnishing and equipping of the Facility.

(iii) The Company shall indemnify and hold the Agency harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing, except that the Company shall not be required to indemnify the Agency for the willful or grossly negligent conduct of the Agency.

(c) The Company shall, as agent for the Agency, comply with the requirements of Article 8 of the Labor Law of the State of New York, as amended, to the extent, if any, such Article is applicable to the Facility.

(d) The Company shall take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

4. General Provisions.

(a) This Preliminary Agreement shall take effect on the date of execution hereof until the Lease Agreement becomes effective. It is the intent of the Agency and the Company that this Preliminary Agreement be superseded in its entirety by the Lease Agreement.

(b) It is understood and agreed by the Agency and the Company that the execution of the Lease Agreement and related documents are subject to: (i) obtaining all necessary governmental approvals; and (ii) approval of the members of the Agency.

(c) The Company agrees that it will reimburse the Agency for all reasonable and necessary direct out-of-pocket expenses which the Agency may incur as a consequence of executing this Preliminary Agreement or performing its obligations hereunder, including but not limited to, the cost of causing a notice of any public hearing held with respect to the Facility to be published, the cost of making and transcribing records of said hearings and the reasonable fees and expenses charged and incurred by Agency's Counsel in connection with their representation of Agency in this matter and their preparation of any documents pertaining to the provisions of Financial Assistance.

(d) All commitments of the Agency under ¶1 hereof and of the Company under ¶¶2 and 3 hereof (excepting the obligations of the Company set forth in subparagraphs 3(b) and 4(c) hereof, which shall survive the termination of this Preliminary Agreement) are subject to the condition that the Lease Agreement shall have been executed no later than fifteen (15) months from the date hereof (or such other date as shall be mutually satisfactory to the Agency and the Company).

IN WITNESS WHEREOF, the parties hereto have entered into this Preliminary Agreement as of the 19th day of April, 2016.

DUTCHESS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Sarah Lee, Executive Director

EMPIRE HOTEL DEVELOPMENT, INC.

By: _____
Erfan Khan, President