

## **TWENTY SIX SUNSET, LLC, Consent Resolution**

A regular meeting of the Nassau County Industrial Development Agency (the “Agency”) was convened in public session at the Theodore Roosevelt Executive & Legislative Building, Ceremonial Chambers, 1550 Franklin Avenue, Mineola, Nassau County, New York on December 16, 2021 at 6:45 p.m., local time.

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

### **PRESENT:**

Richard Kessel	Chairman
Lewis M. Warren	Vice Chairman
Anthony Simon	2 <sup>nd</sup> Vice Chair
Timothy Williams	Secretary
Amy Flores	Treasurer
John Coumatos	Asst. Treasurer
Chris Fusco	Asst. Secretary

### **THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:**

Harry Coghlan	Chief Executive Officer / Executive Director
Danielle Oglesby	Chief Operating Officer/ Deputy Executive Director
Anne LaMorte	Chief Financial Officer
Catherine Fee	Director of Business Development/Chief Marketing Officer
Carlene Wynter	Compliance Assistant
Nicole Gil	Administrative Assistant
Thomas D. Glascock, Esq.	General Counsel
Andrew D. Komaromi, Esq.	Bond/Transactional Counsel

The attached resolution no. 2021-106 was offered by Timothy Williams, seconded by Anthony Simon.

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY AUTHORIZING CERTAIN MATTERS IN CONNECTION WITH  
ITS STRAIGHT LEASING OF A CERTAIN PROJECT FOR TWENTY SIX  
SUNSET, LLC

WHEREAS, the Nassau County Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”), and Chapter 674 of the 1975 Laws of New York, as amended, constituting Section 922 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, TWENTY SIX SUNSET LLC, a limited liability company organized and existing under the laws of the State of New York (the “Applicant”), resented an application for financial assistance (the “Original Application”) to the Agency, which Application requests that the Agency consider undertaking a project (the “Project”) consisting of the following: (A)(1) the acquisition of an interest in an approximately 2.52 acre parcel of land located at 410 Jericho Turnpike, Jericho, Town of Oyster Bay, Nassau County, New York (Section: 12; Block: A; Lot: 1334) (the “Land”), (2) the construction of an approximately 63,386 square foot building (collectively, the “Building”) on the Land, together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the “Equipment”) necessary for the completion thereof (collectively, the “Project Facility”), all of the foregoing for use by the Applicant as a hotel facility containing approximately 93 rooms; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the “Original Financial Assistance”); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, on September 27, 2017, the Agency took official action towards approving the acquisition and straight leasing of a larger version of the Project, a 85,102 square foot, 4 story building on the Land for use by the Applicant as a Marriott Residence Inn hotel facility containing approximately 127 rooms pursuant to Resolution 2017-49 (the “2017 Project”); and

WHEREAS, the Applicant did not proceed with the 2017 Project and elected to submit the Application for approval of the Project as amended (the “2018 Application”); and

Whereas, the Agency granted Preliminary Inducement of the 2018 Application for this Project on December 12, 2018 pursuant to Resolution 2018-70 (the “Original Preliminary Inducement”); and

Whereas, subsequently to the Original Preliminary Inducement, by letter dated February 28, 2020, the Company amended its application by describing increased construction cost of the project by approximately \$2,500,000.00 and a change in the equity ownership of the Company consisting of transfers of portions ownership interests among family members of the principals (together with the Original Application and 2018 Application, as amended, collectively, the “Application”); and

WHEREAS, the Agency approved the project on July 9, 2020 pursuant to an approval resolution (the “Approval Resolution”) and subject to the require that the Applicant will execute and deliver a certain bargain and sale deed, assignment of lease or company lease to the Agency, pursuant to which the Applicant will convey an interest in the Land and the Building to the Agency (the “Conveyance Instrument”), (B) the Applicant will execute and deliver a Uniform Project Agreement between the Agency and the Applicant, pursuant to which the Agency will appoint to the Applicant as its agent (“Project Agreement”) (C) the Applicant will execute and deliver a certain Bill of Sale (the “Bill of Sale to Agency”) to the Agency, pursuant to which the Applicant will convey to the Agency its interest in the Equipment, (D) the Applicant will execute and deliver a Lease Agreement or Sublease Agreement, (the “Lease”) each, between the Agency and the Applicant, pursuant to which the Agency will grant to the Applicant a leasehold interest in the Project Facility, (E) the Applicant will cause to be executed and delivered a certain Environmental Compliance and Indemnification Agreement (the “Environmental indemnification”) pursuant to which the Agency will be indemnified from and against certain losses, costs, damages and liabilities, (F) the Applicant will execute and deliver or cause to be executed and delivered a certain Payment in Lieu of Taxes Agreement (the “PILOT Agreement”) to the Agency, and, to secure the obligations thereunder, a certain Mortgage and Assignment of Leases and Rents in favor of the County of Nassau, New York (the “PILOT Mortgage”), and (F) the Applicant will execute and deliver and/or cause to be executed and delivered certain other certificates, documents, instruments and agreements related to the Project (together with the Conveyance Instrument, the Project Agreement, the Bill of Sale to Agency, the Lease, the Environmental Indemnification, the PILOT Agreement and the PILOT Mortgage, collectively, the “Transaction Documents”); and

WHEREAS, the Agency required that the Transaction Documents be executed within one hundred eighty (180) days from July 9, 2020; and

WHEREAS, pursuant to a notification and consent request letter dated December 7, 2020 (the “Consent Request”), the Company requested an extension to allow the Company to enter into the Transaction Documents evidencing the straight-lease and appointing the company as the Agency’s agent on or before the extension date of June 30, 2021; and

WHEREAS, the Agency approved such request, pursuant to and subject to the terms and conditions set forth in its resolution 2020 – 108 adopted December 16, 2020; and

WHEREAS, pursuant to a notification and consent request letter dated June 7, 2021 (the “Consent Request”), the Company requested an extension to allow the Company to enter into the Transaction Documents evidencing the straight-lease and appointing the company as the Agency’s agent on or before the extension date of December 31, 2021 (the “Proposed Extension”); and

WHEREAS, the Agency approved such request, pursuant to and subject to the terms and conditions set forth in its resolution 2021 – 42 adopted June 24, 2021; and

WHEREAS, pursuant to a notification and consent request letter dated December 9, 2021 (the “Consent Request”), the Company requested an extension to allow the Company to enter into the Transaction Documents evidencing the straight-lease and appointing the company as the Agency’s agent on or before the extension date of June 30, 2022 (the “Proposed Extension”); and

WHEREAS, the Agency is willing to consent to the Proposed Extension, subject to the terms of this Resolution; and

WHEREAS, no additional Financial Assistance is being requested by the Applicant with respect to such request and, therefore, no public hearing of the Agency is required pursuant to Section 859-a of the Act.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

1. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Approval Resolution.

2. The Agency determines that the Company's request with respect to a previously approved and unchanged Project is a Type II Action pursuant to SEQRA involving “continuing agency administration” which does not involve “new programs or major reordering of priorities that may affect the environment” (6 NYCRR §617.5(c)(20)) and therefore no Findings or determination of significance are required under Article 8 of the New York Environmental Conservation Law.

3. No additional Financial Assistance is being requested by the Company with respect to this request, and, therefore, no public hearing of the Agency is required pursuant to Section 859-a of the Act.

4. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Chairman, the Vice Chairman, Chief Executive Officer/Executive Director, Chief Operating Officer, and the staff of the Agency with respect to the matters contemplated by this Resolution, including, without limitation, those actions required to ensure full compliance with the requirements of the Act and all other Applicable Laws that relate thereto.

5. The Agency hereby consents to the Proposed Extension as outlined in the Consent Request, subject, however, to the delivery of evidence satisfactory to the Chairman, the Vice Chairman, Chief Executive Officer/Executive Director, Chief Operating Officer or

Administrative Director that (i) staff of the Agency has concluded due diligence to its satisfaction as to the fitness of the Parties to undertake the Project with the Agency.

6. The Chairman, the Vice Chairman, the Chief Executive Officer/Executive Director, Chief Operating Officer and Administrative Director of the Agency are each hereby designated an Authorized Representative of the Agency and each of them is hereby authorized and directed, acting individually or jointly, to execute and deliver any and all consents, agreements, papers, instruments, opinions, certificates, affidavits and other documents required in connection with the Transaction Documents (collectively, the “Consent Documents”), and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, including, without limitation, taking any necessary action to obtain consent of any other person or party necessary with respect to execution, delivery and approval of the Consent Documents.

7. Resolutions 2020 – 57, 2020-108 and 2021 – 42 remain in full force and effect, except as amended and modified hereby.

8. The authorizations set forth in this Resolution are subject to the condition that the Company shall reimburse the Agency for all costs and expenses incurred by the Agency in connection with the transactions contemplated herein, including, without limitation all reasonable attorneys' fees and disbursements incurred by the Agency, including without limitation, the fees and expenses of Special Counsel, Harris Beach PLLC.

9. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution, the Transaction Documents and the Consent Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time; provided, however, that no covenants, stipulations, obligations or agreements of the Agency contained in this Resolution, any Transaction Document or any Consent Document shall give rise to any pecuniary liability of the Agency or a charge against its general credit or shall obligate the Agency in any way except to the extent that the same can be paid or recovered from the Project Facility or the sale or liquidation of the Project Facility or revenues therefrom.

10. No covenant, stipulation, obligation or agreement herein contained or contained in any Transaction Document or any Consent Document shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity and neither the members of the Agency nor any officer executing any Transaction Document or any Consent Document shall be liable personally on the Transaction Documents or the Consent Documents or be subject to any personal liability or accountability by reason of the issuance thereof.

11. The Chairman, the Vice Chairman and the Chief Executive Officer/Executive Director of the Agency are each hereby authorized to approve modifications to the terms approved herein which are not inconsistent with the intent and substance of this Resolution, such approval to be evidenced by the execution by any one of such officers of the Transaction Documents and/or the Consent Documents containing such modifications.

12. This Resolution 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:

Richard Kessel	VOTING	AYE
Lewis M. Warren	VOTING	AYE
Anthony Simon	VOTING	AYE
Timothy Williams	VOTING	AYE
Chris Fusco	VOTING	AYE
Amy Flores	VOTING	AYE
John Coumatos	VOTING	AYE

The foregoing Resolution was thereupon declared duly adopted. .

STATE OF NEW YORK

) SS.:

COUNTY OF NASSAU

We, the undersigned [Vice] Chairman and [Assistant] Secretary of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on December 16, 2021 with the original thereof on file in our office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

WE FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

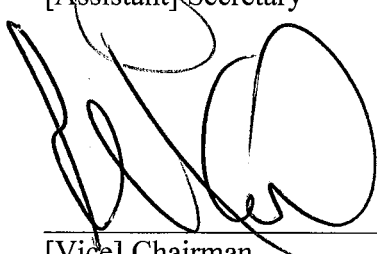
WE FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, we have hereunto set our respective hands and affixed the seal of the Agency this 16<sup>th</sup> day of December 2021.



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[Assistant] Secretary



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[Vice] Chairman

(SEAL)