

FINAL AUTHORIZING RESOLUTION – ASSIGNMENT AND ASSUMPTION
(Inn at Bellefield 2018 Project)

At a regular meeting of the Dutchess County Industrial Development Agency (the “Agency”), held at 8:00 a.m. at Three Neptune Road, Poughkeepsie, New York on the 9th day of October, 2019, the following members of the Agency were:

PRESENT: Timothy Dean, Chairman
Mark Doyle, Vice Chairman
Stacey M. Langenthal, Secretary/Treasurer
Alfred D. Torreggiani
Donald R. Sagliano
Kathleen M. Bauer
Ronald J. Piccone, II

ABSENT:

ALSO PRESENT: Sarah Lee, Executive Director
Marilyn Yerks, Chief Financial Officer
Donald Cappillino, Counsel
Elizabeth A. Cappillino, Counsel

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 the assignment and assumption of a portion of the Agency’s Inn at Bellefield 2018 Facility, the execution and delivery of documents with respect thereto and the leasing of a portion of the Facility to T-Rex/Shaner Hyde Park Hotel, LLC and TR Sewage-Works Corp., as more particularly described below:

RESOLUTION OF THE DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ASSIGNMENT AND ASSUMPTION OF A PORTION OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY TO T-REX/SHANER HYDE PARK HOTEL, LLC AND TR SEWAGE-WORKS CORP. AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS.

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 among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the Agency previously provided its assistance to T-Rex Hyde Park Owner, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York (the “**Original**

CAPPILLINO,
ROTHSCHILD
& EGAN LLP
Attorneys at Law
Seven Broad Street
P.O. Box 390
Pawling, New York
12564-0390
(845) 855-5444

Company”), in the acquisition of an approximately 339.618-acre parcel of land located on the east side of Route 9 near the intersection of Route 9 and West Dorsey Lane in the Town of Hyde Park, County of Dutchess, State of New York, bearing Tax Map Grid No. 133200-6163-01-131849-0000 (the “**Land**”), the construction, installation, furnishing and equipping of an approximately 96,000 square foot 5-story hotel containing approximately 133 rooms to be located on an approximately 3.0 acre parcel of land located in the southwest corner of the Land (to be known as a Residence Inn by Marriot or other such hotel) and including infrastructure installation on the Land (the “**Original Improvements**”), and the acquisition and installation of certain equipment and personal property (collectively, the “**Original Equipment**”; and together with the Land and the Original Improvements, the “**Original Facility**”), all subleased and leased by the Agency to the Original Company to provide services to the business and leisure traveler visiting Dutchess County (the “**Original Project**”), which Original Project was approved by resolution dated June 27, 2018 (the “**Original Authorizing Resolution**”); and

WHEREAS, the Land and the Original Improvements were leased by the Original Company to the Agency pursuant to the terms of the Company Lease Agreement, dated as of July 1, 2018 (the “**Original Company Lease Agreement**”), by and between the Original Company, as lessor, and the Agency, as lessee; and

WHEREAS, the Agency currently subleases the Original Facility to the Original Company pursuant to a certain Lease and Project Agreement, dated as of July 1, 2018 (the “**Original Lease Agreement**”), by and between the Agency, as sublessor, and the Original Company, as sublessee; and

WHEREAS, T-Rex/Shaner Hyde Park Hotel, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York (the “**Company**”), TR Sewage-Works Corp., a New York corporation (the “**Corporation**”) and the Original Company have submitted an application for financial assistance (the “**Application**”) to the Agency and requested the Agency's consent to a partial assignment by the Original Company of a portion of its rights, title, interest and obligations under the Original Company Lease Agreement, the Original Lease Agreement, and certain other agreements in connection with the Original Facility to, and the assumption by, the Company and the Corporation of a portion of such rights, title, interest and obligations of the Original Company and the amendment of the Original Company Lease Agreement and Original Lease Agreement to reflect the assignment (the “**Assignment and Assumption**”), all pursuant to certain Assignment, Assumption and Amendment Agreements, dated as of October 1, 2019 or such other date as may be determined by the Chairman, Executive Director and counsel to the Agency (the “**Assignment and Assumption Agreements**”), by and among the Agency, the Original Company and each of the Company and the Corporation, and amendments to the Original Company Lease Agreement and the Original Lease Agreement (collectively, the “**Amendments**”); and

WHEREAS, in connection with the Assignment and Assumption, the Company has requested the Agency's assistance in connection with a portion of the Original Project (the “**Hotel Project**”) consisting of: (a) the construction, improvement, installation, furnishing and equipping of an approximately 104,683 square foot five-story hotel containing approximately 133 rooms (the “**Hotel Improvements**”) located on an approximately 3.49-acre parcel located on the

east side of Route 9 near the intersection of Route 9 and West Dorsey Lane in the Town of Hyde Park, County of Dutchess, State of New York, bearing Tax Map Grid No. 133200-6163-01-010622-0000 (the "**Hotel Land**"), and (b) the acquisition and installation of new equipment, machinery and other personal property for use in the premises described above (the "**Hotel Equipment**"; and together with the Hotel Land and the Hotel Improvements, the "**Hotel Facility**"), which Hotel Facility will be leased by the Agency to the Company to be used as a hotel to provide services to the business and leisure traveler visiting Dutchess County; and

WHEREAS, the Hotel Facility will be initially owned, operated and/or managed by the Company; and

WHEREAS, because the project budget for the Hotel Facility has increased from the estimated project budget provided by the Original Company at the time of the approval of the Original Project, the Company requests a mortgage recording tax exemption for one or more mortgages securing an amount not to exceed \$2,700,000.00 in connection with the Hotel Project in addition to the mortgage recording tax exemption previously authorized by the Agency pursuant to the Original Authorizing Resolution; and

WHEREAS, in connection with the Assignment and Assumption, the Corporation has requested the Agency's assistance in connection with a portion of the Original Project (the "**Wastewater Project**") consisting of the construction, improvement, installation, furnishing and equipping approximately 900 square foot wastewater treatment facility (the "**Wastewater Improvements**") located on an approximately 0.58-acre parcel located on the east side of Route 9 near the intersection of Route 9 and West Dorsey Lane in the Town of Hyde Park, County of Dutchess, State of New York, bearing Tax Map Grid No. 133200-6163-01- 000897-0000 (the "**Wastewater Land**" and together with the Wastewater Improvements, the "**Wastewater Facility**"), which Wastewater Facility will be leased by the Agency to the Corporation to be used as a wastewater treatment plant; and

WHEREAS, the Wastewater Facility will be initially owned, operated and/or managed by the Corporation; and

WHEREAS, in connection with the Assignment and Assumption, the Agency will sublease and lease the Hotel Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of October 1, 2019 or such other date as may be determined by the Chairman, Executive Director and counsel to the Agency (the "**Hotel Lease and Project Agreement**") by and between the Agency, as lessor, and the Company, as lessee; and

WHEREAS, in connection with the Assignment and Assumption, the Agency will sublease and lease the Wastewater Facility to the Corporation pursuant to a certain Lease and Project Agreement, dated as of October 1, 2019 or such other date as may be determined by the Chairman, Executive Director and counsel to the Agency (the "**Wastewater Lease and Project Agreement**") by and between the Agency, as lessor, and the Company, as lessee; and

WHEREAS, pursuant to the Original Authorizing Resolution, the Agency approved financial assistance to the Original Company in the form of (i) exemptions from sales and use taxes in an amount not to exceed \$921,375.00 in connection with the purchase or lease of

equipment, building materials, services or other personal property with the respect to the Original Facility; (ii) exemptions from mortgage recording taxes for one or more mortgages securing an amount not to exceed \$23,000,000.00 in connection with the Original Project; and (iii) abatement of real property taxes; and;

WHEREAS, the Agency contemplates that it will provide financial assistance (the “**Financial Assistance**”) to the Company and the Corporation in the form of (i) exemptions from sales and use taxes in an amount not to exceed \$789,263.00 in connection with the purchase or lease of equipment, building materials, services or other personal property with the respect to the Hotel Facility, which shall be assigned from the sales and use tax exemptions previously granted to the Original Company; (ii) exemptions from mortgage recording taxes for one or more mortgages securing an amount not to exceed \$23,000,000.00 in connection with the Hotel Project, which shall be assigned from the mortgage recording tax exemption previously granted to the Original Company, and an additional exemption from mortgage recording taxes for one or more mortgages securing an amount not to exceed \$2,700,000.00 in connection with the Hotel Project; and (iii) continued abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof), consistent with the policies of the Agency; and; and

WHEREAS, the Agency and the Company will enter into such other documents upon advice of counsel, in both form and substance, as may be reasonably required to effectuate the Assignment and Assumption (collectively, with the Assignment and Assumption Agreements, the Amendments, the Hotel Lease and Project Agreement and the Wastewater Lease and Project Agreement, the “**Assignment Documents**”); and

WHEREAS, the Agency previously determined in its Original Authorizing Resolution that although Original Facility is used in making retail sales to customers who visit the Facility and would be considered a “retail facility”, based upon the representations and warranties of the Original Company and Original Company Counsel and the report from Camoin Associates, Inc. dated June 12, 2018, the Original Facility is located in a “highly distressed area” as described in §862(2)(b) of the Act and therefore the Original Facility is not subject to the prohibitions on providing financial assistance to retail facilities and therefore the Hotel Facility, as part of the Original Facility, is not subject to the prohibitions on providing financial assistance to retail facilities; and

WHEREAS, pursuant to Section 9.3 of the Original Lease Agreement, the Original Facility may be assigned, in whole or in part, with the prior written consent of the Agency; and

WHEREAS, the Agency will consent to the partial assignment by the Original Company and the assumption by the Company and the Corporation of a portion of the Original Company’s interests in the Original Facility and the amendment of the Original Company Lease Agreement and the Original Lease Agreement, and the Agency will thereafter lease the Hotel Facility to the Company and the Wastewater Facility to the Corporation; and

WHEREAS, the Agency previously determined in its Original Authorizing Resolution that the Original Project will not have a significant adverse impact or significant adverse effect on the environment as defined under SEQRA; and

WHEREAS, in compliance with §859-a of the Act, the Agency on October 7, 2019 held a public hearing on the grant of financial assistance as set forth herein following publication in the *Poughkeepsie Journal* on September 24, 2019 of a notice of the public hearing; and

WHEREAS, the Company and the Corporation have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Hotel Facility by the Agency to the Company and the leasing of the Wastewater Facility by the Agency to the Corporation.

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

Section 1. The Agency reaffirms and readopts the findings and determinations in its Original Authorizing Resolution with regard to the Original Facility.

Section 2. The Agency further 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 Hotel Facility and the Wastewater Facility each constitutes a “project”, as such term is defined in the Act; and

(c) The public hearing held by the Agency on October 7, 2019, concerning the grant of Financial Assistance as set forth herein and the nature and location of the Hotel Facility and the Wastewater Facility was duly held in accordance with the laws of the State of New York, including but not limited to the giving of public notice of the meeting a reasonable time before the meeting and affording a reasonable opportunity for persons with differing views to be heard on Agency’s providing the financial assistance contemplated herein and the location and nature of the Hotel Facility and the Wastewater Facility; and

(d) The leasing of the Hotel Facility to the Company and the Wastewater Facility to the Corporation will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Dutchess County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(e) The Assignment and Assumption and Financial Assistance is reasonably necessary to induce the Company and Corporation to maintain and expand their business operations in the State of New York and to discourage the Company and Corporation from removing their facilities to a location outside the state and to preserve the competitive position of the Company and Corporation in their respective industries; and

(f) The Assignment and Assumption and Financial Assistance will serve the Agency’s public purposes as set forth in the Act by preserving or increasing the number of permanent, private sector jobs in Dutchess County and the State of New York.

(g) Based upon representations of the Company and Corporation and their counsel, the Hotel Facility and Wastewater Facility each conforms with the local zoning laws and planning regulations of Dutchess County and all regional and local land use plans for the area in which the Hotel Facility and the Wastewater Facility are located; and

(h) It is desirable and in the public interest for the Agency to approve the requested Assignment and Assumption and Financial Assistance; and

(i) The Assignment Documents to which the Agency is a party will be effective instruments whereby the Agency, the Company, the Corporation and the Original Company will effectuate the assignment and assumption of a portion of the Original Facility; and

(j) The Amendments to which the Agency is a party will be effective instruments whereby the Agency and the Original Company will amend the Original Company Lease and the Original Lease Agreement in order to reflect the assignment and assumption of a portion of the Original Facility; and

(k) The Hotel Lease and Project Agreement will be an effective instrument whereby: (1) the Agency leases and subleases the Hotel Facility to the Company; (2) the Agency and the Company set forth the terms and conditions of their agreement regarding the Company's payments-in-lieu of real property taxes; (3) the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Hotel Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws; and (4) the Agency and the Company set forth the circumstances in which the Agency may recapture some or all of the benefits granted to the Company in the event any enumerated Recapture Event (as defined therein) occurs; and

(l) The Wastewater Lease and Project Agreement will be an effective instrument whereby: (1) the Agency leases and subleases the Wastewater Facility to the Corporation; (2) the Agency and the Corporation set forth the terms and conditions of their agreement regarding the Corporation's payments-in-lieu of real property taxes; (3) the Corporation agrees to comply with all Environmental Laws (as defined therein) applicable to the Wastewater Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws; and (4) the Agency and the Corporation set forth the circumstances in which the Agency may recapture some or all of the benefits granted to the Corporation in the event any enumerated Recapture Event (as defined therein) occurs; and

Section 3. In consequence of the foregoing, the Agency hereby determines to: (i) consent to the Assignment and Assumption of the Original Facility pursuant to the Assignment and Assumption Agreements, (ii) execute, deliver and perform the Assignment and Assumption Agreements and the Amendments, (iii) lease the Hotel Facility to the Company pursuant to the Hotel Lease and Project Agreement, (iv) execute, deliver and perform the Hotel Lease and Project Agreement, (v) lease the Wastewater Facility to the Corporation pursuant to the Wastewater Lease and Project Agreement, (vi) execute, deliver and perform the Wastewater Lease and Project Agreement, (vii) execute and deliver the other Assignment Documents, and (ix) execute, deliver and perform such other related documents or certificates as may be necessary or appropriate to effect the Assignment and Assumption.

Section 4. The Agency is hereby authorized to consent to the Assignment and Assumption and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such Assignment and Assumption are hereby approved, ratified and confirmed.

Section 5. The Agency is hereby authorized to acquire a leasehold interest in the real property and personal property described in Exhibit A and Exhibit B, respectively, to the Hotel Lease and Project Agreement and Wastewater Lease and Project 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 6. The form and substance of the Hotel Lease and Project Agreement and Wastewater Lease and Project Agreement and other Assignment Documents (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 7. Recapture Provisions. The Agency has retained certain recapture rights under the terms and conditions of the Hotel Lease and Project Agreement and Wastewater Lease and Project Agreement, of which Section 5.4 relating to recapture rights is attached hereto and made a part hereof as Exhibit B, upon the occurrence of a Recapture Event as defined therein.

Section 8. Based upon the representation and warranties made by the Company, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Hotel Facility and that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately \$9,714,006 which result in New York State and local sales and use tax exemption benefits (“**sales and use tax exemption benefits**”) not to exceed \$789,263. The Agency agrees to consider any requests by the Company for increases to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

Section 9.

(a) The Chairman, Vice Chairman, any member of the Agency or the Executive Director are hereby authorized, on behalf of the Agency, to execute and deliver the Assignment Documents any other documents reasonably approved as to form and substance by the Executive Director and counsel to the Agency), all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, any member of the Agency or the Executive Director shall approve, and such other related documents as may be, in the judgment of the Executive Director and Agency Counsel and Transaction Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, Vice Chairman, any member of the Agency or the Executive Director of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, any member of the Agency and the Executive Director 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 Hotel Lease and Project Agreement and Wastewater Lease and Project Agreement). The Agency hereby appoints each Member of the Agency, Agency Counsel and Transaction Counsel to serve as an Assistant Secretary of the Agency for purposes of this transaction.

Section 10. 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 Agency 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 Agency Documents binding upon the Agency.

Section 11. This resolution shall take effect immediately.

The following resolution was duly moved by Donald R. Sagliano, seconded by Mark Doyle, discussed and adopted with the following members voting:

Timothy Dean, Chairman	VOTING	“Aye”
Mark Doyle, Vice Chairman	VOTING	“Aye”
Stacey M. Langenthal, Secretary/Treasurer	VOTING	“Aye”
Alfred D. Torreggiani	VOTING	“Aye”
Donald R. Sagliano	VOTING	“Aye”
Kathleen M. Bauer	VOTING	“Aye”
Ronald J. Piccone, II	VOTING	“Aye”P

Adopted: October 9, 2019

STATE OF NEW YORK)
) ss.:
COUNTY OF DUTCHESS)

I, the undersigned Secretary of the Dutchess County Industrial Development Agency, **DO HEREBY CERTIFY**:

That I have compared the annexed extract of the minutes of the meeting of the Dutchess County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on the 9th day of October, 2019, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters herein referred to.

That the Assignment Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 9th day of October, 2019.



Stacey M. Langenthal, Secretary

[SEAL]

CAPPILLINO,
ROTHSCHILD
& EGAN LLP
Attorneys at Law
Seven Broad Street
P.O. Box 390
Pawling, New York
12564-0390
(845) 855-5444

EXHIBIT A

PILOT SCHEDULE

The amount of payments-in-lieu-of-taxes payable annually by the Company will be allocated among the Town of Hyde Park, the Hyde Park Central School District and Dutchess County, pro-rata, based on their tax rates for the particular year.

The Company shall make payments-in-lieu-of-taxes equal to the full amount of taxes that would have been levied upon the Facility if the Facility were owned by the Company and the Agency had no ownership interest but reduced by the following exemption percentage:

PILOT Year	Exemption Percentage
1	50%
2	50%
3	50%
4	40%
5	30%
6	20%
7	10%
8	10%
9	10%
10	5%
thereafter	0%

EXHIBIT B

EXCERPT FROM LEASE AGREEMENT

Section 5.4 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into this Lease Agreement in order to provide financial assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

- (i) If there shall occur a Recapture Event prior to the Completion Date or within the first (1st) or second (2nd) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);
- (ii) If there shall occur a Recapture Event during the third (3rd) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, ninety percent (90%) of the Recaptured Benefits;
- (iii) If there shall occur a Recapture Event during the fourth (4th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, eighty percent (80%) of the Recaptured Benefits;
- (iv) If there shall occur a Recapture Event during the fifth (5th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, seventy percent (70%) of the Recaptured Benefits; and
- (v) If there shall occur a Recapture Event during the sixth (6th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, sixty percent (60%) of the Recaptured Benefits; and
- (vi) If there shall occur a Recapture Event during the seventh (7th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, fifty percent (50%) of the Recaptured Benefits;

- (viii) If there shall occur a Recapture Event during the eighth (8th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, forty percent (40%) of the Recaptured Benefits; and
- (ix) If there shall occur a Recapture Event during the ninth (9th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, thirty percent (30%) of the Recaptured Benefits; and
- (x) If there shall occur a Recapture Event during the tenth (10th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, twenty percent (20%) of the Recaptured Benefits; and
- (xi) If there shall occur a Recapture Event during the eleventh (11th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, ten percent (10%) of the Recaptured Benefits; and
- (xii) If there shall occur a Recapture Event during the twelfth (12th) year after the Completion Date, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits; and

(b) The term “**Recaptured Benefits**” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency’s participation in the transaction contemplated by the Lease Agreement including, but not limited to, the amount equal to 100% of:

- (i) the Mortgage Recording Tax Exemption; and
- (ii) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent pursuant to the Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility (the “**Company Sales Tax Savings**”); and
- (iii) real property tax abatements granted pursuant to Section 5.1 hereof (the “**Real Property Tax Abatements**”);

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency within thirty (30) days after such notice.

- (c) The term “**Recapture Event**” shall mean any of the following events:
- (1) The occurrence and continuation of an Event of Default under this Lease Agreement (other than as described in clause (4) below or in subsection (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or
 - (2) The Facility shall cease to be a “project” within the meaning of the Act, as in effect on the Closing Date, through the act or omission of the Company; or
 - (3) The sale of the Facility or closure of the Facility and/or departure of the Company from Dutchess County, except as due to casualty, condemnation or force majeure as provided in subsection (e) below or as provided in Section 9.3 hereof; or
 - (4) Failure of the Company to create or cause to be maintained at least ninety percent (90%) of the number of FTE jobs at the Facility as provided in Section 8.11 of the Lease Agreement, which failure is not reflective of the business conditions of the Company or the subtenants of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions; or
 - (5) Any significant deviations from the Project Application Information which would constitute a significant diminution of the Company’s activities in, or commitment to Dutchess County, New York; or
 - (6) The Company fails to diligently pursue and obtain all necessary permits for and to have commenced construction of the luxury hotel and spa (as such terms are generally defined in the hotel industry and as such project was described in the materials submitted to the Agency with the Project Application Information) planned for the property adjacent to (or in the near vicinity of) the Improvements within five (5) years after the Completion Date; or
 - (7) The Company receives Sales Tax Savings in connection with the Project Work in excess of the Maximum Company Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recapture Benefits.