

**RESOLUTION**

*(Darien Lake Hospitality, LLC - Indoor Pool Project)*

A special meeting of Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, August 5, 2010 at 4:00 p.m.

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

Resolution No. 08/2010 - 04

RESOLUTION AUTHORIZING THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER TO (i) UNDERTAKE A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW) FOR THE BENEFIT OF DARIEN LAKE HOSPITALITY, LLC (THE "COMPANY"); (ii) NEGOTIATE, EXECUTE AND DELIVER A LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT AND RELATED DOCUMENTS; (iii) PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, RECONSTRUCTION, EXPANSION AND EQUIPPING OF THE PROJECT, (B) A PARTIAL REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A PAYMENT-IN-LIEU-OF-TAX AGREEMENT; AND (C) A MORTGAGE RECORDING TAX EXEMPTION FOR FINANCING RELATED TO THE PROJECT; AND (iv) EXECUTE A MORTGAGE AND 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 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (hereinafter called "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **DARIEN LAKE HOSPITALITY, LLC** (the "Company") has submitted an application (the "Application"), a copy of which is on file with the Agency, requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (i) the acquisition or retention by the Agency of fee title to or a leasehold interest in a portion of certain property located at 8250 Park Road, Batavia, Genesee County, New York (the "Land"), and certain of the existing improvements located thereon consisting of the Company's Holiday Inn hotel (the "Existing Improvements"); (ii) the construction within the Existing Improvements of an indoor pool waterpark and related improvements (the "Improvements"); and (iii) the acquisition by the Company in and around the Improvements of certain items of equipment, machinery and other tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the financial assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project pursuant to an agent agreement (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (or amendment to an existing lease agreement) (the "Lease Agreement"), leaseback agreement (or amendment to an existing leaseback agreement) (the "Leaseback Agreement"), payment-in-lieu-of-tax agreement (or amendment to an existing payment-in-lieu-of-tax agreement) (the "PILOT Agreement") and related documents, with the Company, (iii) take or retain title to or a leasehold interest in the land, improvements, equipment and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and PILOT Agreement have been negotiated), and (iv) provide financial assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, reconstruction, expansion and equipping of the Project, (b) a partial real property tax abatement through the PILOT Agreement and (c) a mortgage recording tax exemption for the financing related to the Project; and

WHEREAS, the Lease Agreement, Leaseback Agreement and PILOT Agreement, and related documents have been negotiated and are presented to this meeting for approval and execution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AS FOLLOWS:

Section 1. The Company has presented an Application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's Application, the Agency hereby finds and determines that:

(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) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, reconstructing, expanding and equipping the Project; and

(C) The Agency has the authority to take the actions contemplated herein under the Act; and

(D) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Genesee County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(E) The Project will not result in the removal of a facility or plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's Application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other facility or plant to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(F) The Project involves a Type II action as said term is defined in SEQR, and therefore no further action is required under SEQR.

Section 2. Subject to the Company executing the Agent Agreement attached hereto as Exhibit A and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, reconstruction, expansion and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, reconstruct, expand and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Agent Agreement shall expire on **December 31, 2010** (*unless extended for good cause by the Chief Executive Officer of the Agency*) if the Lease Agreement, Leaseback Agreement and PILOT Agreement contemplated have not been executed and delivered.

Section 3. The Financial Assistance provided to the Company by the Agency shall not exceed \$100,000 and, therefore, a public hearing is not required to be held pursuant to the Act.

Section 4. The Chairman, Vice Chairman, Executive Vice President and/or the Chief Executive Officer of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (A) the Agent Agreement, (B) the Lease Agreement, pursuant to which the Company leases the Project to the Agency, (C) the related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, and (C) the PILOT Agreement; *provided, that*, (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 5. The Chairman, Vice Chairman, and/or the President/CEO of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender identified by the Company (the "Lender") up to a maximum principal amount of needed to undertake the Project and/or finance equipment and other personal property and related transactional costs (hereinafter, with the Lease Agreement, Leaseback Agreement and PILOT Agreement, collectively called the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, and/or the President/CEO of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman, and/or the President/CEO of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

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 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 7. These Resolutions shall take effect immediately upon adoption.

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

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
John F. Andrews	[ <input checked="" type="checkbox"/> ]	[       ]	[       ]	[       ]
James L. Vincent	[ <input checked="" type="checkbox"/> ]	[       ]	[       ]	[       ]
James W. Fulmer	[ <input checked="" type="checkbox"/> ]	[       ]	[       ]	[       ]
Hollis Upson	[ <input checked="" type="checkbox"/> ]	[       ]	[       ]	[       ]
Charles Cook	[ <input checked="" type="checkbox"/> ]	[       ]	[       ]	[       ]
L. William Benton	[ <input checked="" type="checkbox"/> ]	[       ]	[       ]	[       ]
Wolcott T. Hinchey	[ <input checked="" type="checkbox"/> ]	[       ]	[       ]	[       ]

The Resolutions were thereupon duly adopted.

**CERTIFICATION**

STATE OF NEW YORK            )  
COUNTY OF GENESEE        )     SS.:

The undersigned DOES HEREBY CERTIFY THAT:

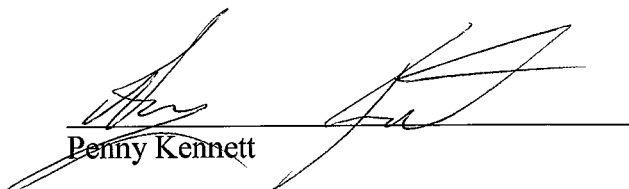
I have compared the foregoing extract of the minutes of the meeting of Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Issuer") including the resolution contained therein, held on the 5<sup>th</sup> day of August, 2011, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Issuer and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject in matters therein referred to.

I FURTHER CERTIFY that all members of said Issuer had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY that there was a quorum of the members of the Issuer present throughout said meeting.

I FURTHER CERTIFY that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

28 IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Issuer this day of February, 2011.

  
Penny Kennett

[SEAL]

**EXHIBIT A**

Form of Agent Agreement

[Attached hereto]

## AGENT AGREEMENT

THIS AGREEMENT, made as of the \_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the \_\_\_\_\_ INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its offices at \_\_\_\_\_ (the "Agency") and COMPANY, a \_\_\_\_\_ having offices at \_\_\_\_\_ of New York, with offices at \_\_\_\_\_ (the "Company").

### WITNESSETH:

WHEREAS, the Agency was created by Chapter \_\_\_\_\_ of the Laws of \_\_\_\_\_ of the State of New York 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, the Company has requested the Agency's assistance with a certain project (the "Project") consisting of **[PROJECT DESCRIPTION]**; and

WHEREAS, by Resolution dated \_\_\_\_\_, (the "Resolution"), the Agency authorized the Company to act as its agent for the purposes of acquiring, constructing and equipping the Facility subject to the Company entering into this Agent Agreement.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Scope of Agency. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition, construction and equipping of the Facility. The right of the Company to act as agent of the Agency shall expire on \_\_\_\_\_, unless extended as contemplated by the Resolution. The aggregate amount of work performed as Agent for the Agency shall not exceed the amounts described in the Application of the Company in this matter. All contracts entered into as agent for the Agency shall include the following language:

"This contract is being entered into by [Company Name] (the "Agent"), as agent for and on behalf of the \_\_\_\_\_ Industrial Development Agency (the "Agency"), in connection with a certain project of the Agency for the Agent consisting in part of the acquisition of \_\_\_\_\_ and the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at \_\_\_\_\_, New York (the "Premises"). The machinery, equipment and building materials to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption letter of the Agency; and the Agent hereby represents that this contract is in compliance with the terms of the sales tax

exemption letter. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

2. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Facility:

(a) The Company is a \_\_\_\_\_ duly formed and validly existing under the laws of the State of New York (the "State"), has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (c).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agreement.

(e) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from



liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents, representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

(f) Any personal property acquired by the Company in the name of the Agency shall be located in the **[host jurisdiction - indicate county or city or town]**, except for temporary periods during ordinary use.

3. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, officers, members employees, agents (except the Company), representatives, successors and assigns harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company of this Agreement or (ii) liability arising from or expense incurred by the Agency's financing, rehabilitating, renovation, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

4. Insurance Required. Effective as of the date hereof and until the Agency consents in writing to a termination, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) (i) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well.

(b) Worker's compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable worker's compensation law; and a blanket excess liability policy in the amount not less than \$3,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

5. Additional Provisions Respecting Insurance. (a) All insurance required by Section 4(a) hereof shall name the Agency as a named insured and all other insurance required by Section 4 shall name the Agency as an additional insured. [IF APPLICABLE INSERT: At the Company's election, exercised from time to time, the Company may self-insure with respect to the insurance required by Sections 4(a), 4(b) and 4(c). Except to the extent the Company elects from time to time to self-insure, as provided in the preceding sentence, a/A]ll insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days prior written notice of the cancellation thereof to the Company and the Agency.

(b) All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Agency on the date hereof. Prior to expiration of any such policy, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement.

6. This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

7. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: \_\_\_\_\_ Industrial Development Agency

\_\_\_\_\_  
Attn: \_\_\_\_\_

With a copy to: Harris Beach PLLC -and-  
99 Garnsey Road  
Pittsford, New York 14534  
Attn: Shawn M. Griffin, Esq.

[Local Counsel]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the Company: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the Federal or state courts located in \_\_\_\_\_ County, New York.

9. The parties are contemplating that, after any applicable public hearings, the Agency will negotiate and enter into a lease agreement ("Lease Agreement"), [leaseback agreement (the "Leaseback Agreement")] and payment-in-lieu-of-tax agreement ("PILOT Agreement") with the Company. The Company agrees not to take title to any real property as agent for the Agency until the Lease Agreement, [Leaseback Agreement] and PILOT Agreement have been executed and delivered. At any time prior to the execution of the Lease Agreement, [Leaseback Agreement] and PILOT Agreement, the Agency can transfer title to the Company of all assets acquired by the Company as agent for the Agency. Additionally, at any time prior to execution of the Lease Agreement, [Leaseback Agreement] and PILOT Agreement, the Company can demand that the Agency transfer title to the Company with respect to all assets acquired by the Company as agent for the Agency, provided all amounts owed the Agency have been paid current.

10. By executing this Agent Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (1) legal services, including but not limited to those provided by the Agency's general counsel or bond/transaction counsel, and (2) other consultants retained by the Agency in connection with the Project; with all such charges to be paid by the Company at the closing or, if the closing does not occur, within ten (10) business

days of receipt of the Agency's invoices therefore. The Company is entitled to receive a written estimate of fees and costs of the Agency's bond/transaction counsel.

The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (1) the applicant's withdrawal, abandonment, cancellation or failure to pursue the Project; (2) the inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (3) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

\_\_\_\_\_  
INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Name:  
Title:

[COMPANY NAME]

By: \_\_\_\_\_  
Name:  
Title: