

**RESOLUTION APPROVING ADDITIONAL FINANCIAL ASSISTANCE
SWAIN RESORT RECREATION CENTER, L.L.C. - 2023 PROJECT**

A regular meeting of Allegany County Industrial Development Agency (the "Agency") was convened in public session at the office of the Agency located at Crossroads Commerce & Conference Center located at 6087 State Route 19 North in the Village of Belmont, Allegany County, New York on January 11, 2024 at 10:00 o'clock a.m., local time.

The meeting was called to order by the (Vice) Chair of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Judy Hopkins	Chairperson
Randy Shayler	Vice Chairman
Richard Ewell	Secretary
Douglas Frank	Treasurer
John Ricci	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Craig R. Clark, P.E., Ph.D.	Executive Director
Daniel A. Spitzer, Esq.	Agency Counsel

The following resolution was offered by Randy Shayler seconded by John Ricci, to wit:

Resolution No. 0124-2

**RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION
WITH THE GRANTING OF ADDITIONAL FINANCIAL ASSISTANCE IN
CONNECTION WITH THE SWAIN RESORT RECREATION CENTER, L.L.C.
PROJECT**

WHEREAS, Allegany 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 99 of the 1973 Laws of New York, as amended, constituting Section 906-a 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, warehousing, research, commercial and industrial 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, on December 28, 2011 (the “2011 Closing”) the Agency granted certain financial assistance to Swain Recreation Center, L.L.C., a limited liability company duly organized and validly existing under the laws of the State of New York, in connection with a project (the “Project”) which consisted of the following: (A) (1) the acquisition of an interest in parcels of land having an address of 2275 Main Street, County Road 24, in the Hamlet of Swain, Town of Grove, Allegany County, New York, tax parcel identification numbers: 33.-1-43.11, 32.-1-17, and 32.-1-16.1 (the “Land”), together with existing buildings (the “Existing Facilities”) located thereon, (2) the renovation and reconstruction of the Existing Facilities; and (3) the acquisition and installation therein and thereon of certain machinery, equipment, and infrastructure (the “Equipment,” and together with the Land and the Existing Facilities, being collectively referred to as the “Project Facility”), all of the foregoing to be owned by the Company and operated as a ski resort; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease of the Project Facility to the Company pursuant to the terms of a lease agreement dated as of December 1, 2011 (the “Lease Agreement”) by and between the Agency and the Company; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of December 1, 2011 (the “Lease to Agency”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company leased to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”); (2) a certain license agreement dated as of December 1, 2011 (the “License to Agency”) by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company granted to the Agency (a) a license to enter upon the balance of the Land (the “Licensed Premises”) for the purpose of undertaking and completing the Project and (b), in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a bill of sale dated as of December 1, 2011 (the “Bill of Sale to Agency”), which conveyed to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency executed and delivered a payment in lieu of tax agreement dated as of December 1, 2011 (the “2011 Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility, (C) the Agency filed with the assessor and mailed to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency executed and delivered to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance, and (E) the Agency filed with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”) (the above enumerated documents being collectively referred to as the “Basic Documents”); and

WHEREAS, the Basic Documents were modified pursuant to the modification agreement dated as of May 1, 2022 and three other modification agreements dated as of October 1, 2023 (collectively, the “Modification Agreements”); and

WHEREAS, due to increasing costs and increased regulation on the ski industry, the Agency received an application from the Company (the “2023 Application”) with respect to the Project, pursuant to which the Company requested that the Agency consider granting additional financial assistance (the “Additional Financial Assistance”) in connection with the Project; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on October 12, 2023 (the “Public Hearing Resolution”), the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on October 18, 2023 to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located; (B) caused notice of the Public Hearing to be posted on a bulletin board located in Allegany County, New York; (C) caused notice of the Public Hearing to be published in The Spectator, a newspaper of general circulation available to the residents of the Town of Grove, Allegany County, New York; (D) conducted the Public Hearing on November 6, 2023 at 7:00 p.m. at the Town of Grove Town Hall located at 2275 County Road 24 in the Hamlet of Swain, Town of Grove, Allegany County, New York; (E) prepared a report of the Public Hearing (the “Report”) which fairly summarized the views presented at said public hearing and distributed same to the members of the Agency; and (F) caused a copy of the certified Public Hearing Resolution to be sent via certified mail return receipt requested on October 18, 2023 to the chief executive officers of the County and of each city, town, village and school district in which the Project Facility is to be located to comply with the requirements of Section 859-a of the Act; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations”, and collectively with the SEQR Act, “SEQRA”), the granting of Additional Financial Assistance is a “Type II Action” under SEQRA and therefore is not subject to further SEQRA review by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on January 11, 2024 (the “Pilot Deviation Approval Resolution”), the members of the Agency determined to deviate from the Agency’s uniform tax exemption policy with respect to the Additional Financial Assistance; and

WHEREAS, the Agency has given due consideration to the 2023 Application, and to representations by the Company that (A) the granting by the Agency of the Additional Financial Assistance with respect to the Project will be an inducement to the Company to continue to undertake the Project in Allegany County, New York and (B) the granting of the Additional Financial Assistance will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of Allegany County, New York by undertaking the Project in Allegany County, New York; and

WHEREAS, in order to consummate the granting of the Additional Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the “Agency Documents”): (A) an omnibus agreement (the “Omnibus Agreement”) by and between the Company and the Agency pursuant to which the term of the Lease Agreement will be extended to December 31, 2039; (B) a payment in lieu of tax agreement (the “Payment

in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility; (C) a uniform agency project agreement (the “Uniform Agency Project Agreement”) by and between the Agency and the Company regarding the granting of the Additional Financial Assistance and the potential recapture of such assistance; and (D) certain other documents related thereto and to the Project; (collectively, the “Closing Documents”);

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

Section 1. All action taken by the Executive Director of the Agency with respect to the Public Hearing with respect to the Project is hereby ratified and confirmed.

Section 2. The law firm of Hodgson Russ LLP is hereby appointed Agency Counsel to the Agency with respect to all matters in connection with the granting of Additional Financial Assistance in connection with the Project. Agency Counsel for the Agency is hereby authorized, at the expense of the Company, to work with the Company, counsel to the Company and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution. Agency Counsel has prepared and submitted an initial draft of the Agency Documents to staff of the Agency.

Section 3. 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;

(B) The Project constitutes a “project,” as such term is defined in the Act;

(C) The Project site is located entirely within the boundaries of Allegany County, New York;

(D) The granting of the Additional Financial Assistance in connection with the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York;

(E) The Project attracts a significant number of visitors from outside the Southern Tier economic development region, and therefore meets the definition of a “tourism destination” project within the meaning of Section 862(2)(a) of the Act. Accordingly, although facilities or projects that are primarily used in making retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect to the Project pursuant to Section 862(2)(a) of the Act;

(F) The granting of the Additional Financial Assistance by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Allegany County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;

(G) The Agency has reviewed the Public Hearing Report and has fully considered all comments contained therein;

(H) The Project should receive the Additional Financial Assistance in the form of exemptions from real property tax based on the description of expected public benefits to occur as a result of the granting of the Additional Financial Assistance in connection with the Project, as described on Exhibit A attached hereto; and

(I) It is desirable and in the public interest for the Agency to enter into the Agency Documents.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (A) accept the Omnibus Agreement; (B) to lease the Project Facility to the Company pursuant to the Omnibus Agreement; (C) enter into the Payment in Lieu of Tax Agreement; (D) enter into the Uniform Agency Project Agreement; and (E) grant the Additional Financial Assistance with respect to the Project.

Section 5. The Agency is hereby authorized (A) to continue its leasehold interest in the Leased Premises pursuant to the Omnibus Agreement and (B) to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisitions are hereby approved, ratified and confirmed.

Section 6. The Chairperson, Vice Chairman or Executive Director of the Agency, with the assistance of Agency Counsel, is authorized to negotiate and approve the form and substance of the Agency Documents.

Section 7. (A) The Chairperson, Vice Chairman or Executive Director of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, and, where appropriate, the Secretary of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in the forms thereof as the Chairperson, Vice Chairman or Executive Director shall approve, the execution thereof by the Chairperson, Vice Chairman or Executive Director to constitute conclusive evidence of such approval.

(B) The Chairperson, Vice Chairman or Executive Director of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Omnibus Agreement).

Section 8. 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, 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 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 9. 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:

Judy Hopkins
Randy Shayler
Richard Ewell
Douglas Frank
John Ricci

VOTING
VOTING
VOTING
VOTING
VOTING

Aye
Aye
Aye
Aye
Aye

The foregoing Resolution was thereupon declared duly adopted.

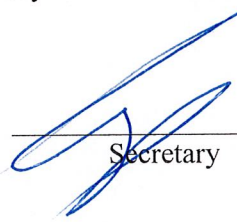
STATE OF NEW YORK)
) SS.:
COUNTY OF ALLEGANY)

I, the undersigned Secretary of Allegany County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on January 11, 2024 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I 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.

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 rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 11 day of January, 2024.



Secretary

(SEAL)

EXHIBIT A

DESCRIPTION OF THE EXPECTED PUBLIC BENEFITS

In the discussions had between the Project Beneficiary and the Agency with respect to the Granting Project Beneficiary's request for Additional Financial Assistance from the Agency with respect to the Project, the Project Beneficiary has represented to the Agency that the granting of the Additional Financial Assistance is expected to provide the following benefits to the Agency and/or to the residents of Allegany County, New York (the "Public Benefits"):

Description of Benefit		Applicable to Project (indicate Yes or NO)		Expected Benefit
1.	Retention of existing jobs	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The granting of the Additional Financial Assistance is expected to assist in the retention of approximately 26 full time equivalent jobs, 13 part time jobs, 250 seasonal jobs, 25 temporary jobs and 6 substitute jobs.
2.	Creation of new permanent jobs	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Approximately 20 full time equivalent jobs and 50 part time jobs will be created at the Project Facility over the next three years.
3.	Estimated value of tax exemptions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Approximately \$400,904.21 of real property tax exemptions.
4.	Private sector investment	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	The granting of the Additional Financial Assistance is not anticipated to generate more private section investment.
5.	Likelihood of project being accomplished in a timely fashion	<input type="checkbox"/> Yes	<input type="checkbox"/> No	The Project is complete.
6.	Extent of new revenue provided to local taxing jurisdictions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	It is anticipated that the granting of the Additional Financial Assistance will help retain the sales tax revenue for local taxing jurisdictions and special district payments.
7.	Any additional public benefits	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The granting of the Additional Financial Assistance with respect to the Project is expected to preserve jobs and continue to draw visitors to the area, creating sales tax revenue.
8.	Local labor construction jobs	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	N/A.
9.	Regional wealth creation (% of sales/customers outside of the County)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	N/A.

10.	Located in a highly distressed census tract	<input type="checkbox"/> Yes	<input type="checkbox"/> No	N/A.
11.	Alignment with local planning and development efforts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The granting of the Additional Financial Assistance with respect to the Project is consistent with local planning and development efforts.
12.	Promotes walkable community areas	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	N/A.
13.	Elimination or reduction of blight	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	The Project Facility is completed and currently in operation.
14.	Proximity/support of regional tourism attractions/facilities	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The Project Facility attracts visitors to the area.
15.	Local or County official support	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The granting of the Additional Financial Assistance with respect to the Project has local and County support.
16.	Building or site has historic designation	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	There is no historic designation.
17.	Provides brownfield remediation	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	No brownfields present.