

**PILOT DEVIATION NOTICE RESOLUTION
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 the Crossroads Commerce & Conference Center located at 6087 State Route 19 North in the Village of Belmont, Allegany County, New York on October 12, 2023 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:

Douglas Frank Treasurer

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Craig R. Clark, P.E., Ph.D. Executive Director

The following resolution was offered by *Rich Ewell*, seconded by *John Ricci*, to wit:

Resolution No. 1023- *2*

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO SEND A LETTER TO THE CHIEF EXECUTIVE OFFICERS OF THE AFFECTED TAXING ENTITIES INFORMING THEM OF A PROPOSED DEVIATION FROM THE AGENCY’S UNIFORM TAX EXEMPTION POLICY IN CONNECTION WITH THE SWAIN RESORT RECREATION CENTER, L.L.C. – 2011 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 “Closing”) the Agency agreed to grant 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 “2011 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 “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, the Agency has received an application from the Company (the “2023 Application”), pursuant to which the Company has requested that the Agency considering granting additional financial assistance (the “Additional Financial Assistance”) in connection with the 2011 Project; and

WHEREAS, in connection with the granting of the proposed Additional Financial Assistance, the Company has made a request to the Agency (the “PILOT Request”) to deviate from its uniform tax exemption policy (the “Policy”) with respect to the payments to be made under a payment in lieu of tax agreement by and between the Agency and the Company (the “Proposed PILOT Agreement”); and

WHEREAS, pursuant to the PILOT request, the Proposed PILOT Agreement would be for a term of fifteen (15) years with a fixed payment each year during the term thereof, as more particularly described in Exhibit A attached hereto; and

WHEREAS, the Policy provides that, for a facility similar to the Project Facility, payments in lieu of taxes will normally be determined as follows: the Company would have the benefit of a 100% abatement in real property taxes on the Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law (collectively with the Facility, the “Improvements”) in years one through five of the payment in lieu of tax agreement with a 25% increase per every five (5) years over the remainder of the term of the fifteen year payment in lieu of tax agreement; and

WHEREAS, pursuant to Section 874(4) of the Act and the Policy, prior to taking final action on such PILOT Request for a deviation from the Policy, the Agency must give the chief executive officers of the County and each city, town, village and school district in which the Project is located (collectively, the “Affected Tax Jurisdictions”) prior written notice of the proposed deviation from the Policy and the reasons therefore; and

WHEREAS, pursuant to Section 865(15) of the Act, unless otherwise agreed by the Affected Tax Jurisdictions, payments in lieu of taxes must be allocated among the Affected Tax Jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each Affected Tax Jurisdiction had the Project Facility not been tax exempt due to the status of the Agency;

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

Section 1. Having considered both the 2023 Application and the PILOT Request, the Agency hereby authorizes the Executive Director of the Agency to send a written notice to the chief executive officers of each of the Affected Tax Jurisdictions informing them that the Agency is considering a proposed deviation from the Policy with respect to the Project and the reasons therefore and soliciting any comments that such Affected Tax Jurisdictions may have with respect to said proposed deviation.

Section 2. 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 Ewell	VOTING	<u>Yes</u>
Judy Hopkins	VOTING	<u>Yes</u>
Randy Shayler	VOTING	<u>Yes</u>
Douglas Frank	VOTING	<u>Absent</u>
John Ricci	VOTING	<u>Yes</u>

The foregoing Resolution was thereupon declared duly adopted.

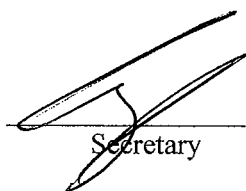
STATE OF NEW YORK)
)SS.:
COUNTY OF ALLEGANY)

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 October 12, 2023 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 12 day of October, 2023.



Secretary

(SEAL)

(SEAL)

EXHIBIT A
PILOT REQUEST



Swain Resort
PO Box 44, 2275 Main St.
Swain, NY 14884
(607) 545-6511 www.swain.com

09/08/2023

Craig Clark, PE, Ph.D Executive Director
Allegany County Industrial Development Agency
6087 State Route 19N, Suite 100
Belmont, NY 14813

Dear Craig,

Swain Recreation Center, LLC hereby requests that the assessed value of the property be decreased to \$750,000 to \$1 million, from \$2 million assessed value. Because of constantly increasing costs as well as increased regulation on the ski industry, we are and have been unable to meet our PILOT obligation to the county. This unfortunate situation is despite making every effort for many years to become and stay current with our PILOT payments.

Without a major change in this regard, the ski facility as a whole will be forced to close as soon as the coming spring. With this, the following jobs will be lost:

- 18 full time/year round jobs (Swain Resort)
- 10 part time/year round jobs (Swain Resort)
- 250 (average) full and part time seasonal jobs (Swain Resort)
- 25 temporary (event) positions (Swain Resort)

- 8 full time/year round jobs (Ski-Daddle Daycare)
- 3 part time/year round jobs (Ski-Daddle Daycare)
- 6 substitutes, part time (Ski-Daddle Daycare)

In addition, Allegany County would lose a licensed daycare provider that the area desperately needs.

Along with the jobs and daycare loss if we were to close, Swain Resort has collected and paid well over \$220,000 in sales tax and over \$16,000 in occupancy tax in the last two years. More importantly, most of the visitors to the resort are not just spending their money here which is also generating sales and occupancy tax for the county.. They're buying, staying, getting gas, and visiting other attractions locally as well.

We propose the following: Assessed value of the property be reduced to \$1 million which should be about \$40,000 in PILOT payments each year. Many of the large businesses in

Allegany County are not assessed at even \$1 million even though their annual revenue is far greater. We estimate that our budget would work with this amount in payments, however, we do have a large balance of approximately \$238,000 to catch up on. (This is our understanding of what would be left in real taxes and 2023 totals.) It would be impossible for us to stay up to date with a new PILOT agreement and catch up on past payments at the same time. Therefore we would like to request a grace period of six years during which we would make payments totaling \$40,000 per year until paid, after which time the new PILOT billing would take effect.

Please know that this situation is not one that we take lightly. We have done everything in our power to get out of the hole that we were in, including almost all "excess" cash in the past several years to apply towards the balances due. However, with more costs rising and the difficulty of doing business becoming greater as time goes on, it has become clear to us that we desperately need a clean slate and a fresh start.

Thank you for your consideration.
Shawn and Celeste Schoonover, Owners
Swain Resort
607-545-6511