

**COUNTY OF CATTARAUGUS INDUSTRIAL
DEVELOPMENT AGENCY
INDUCEMENT RESOLUTION**

**WIN-SUM SKI CORP., AND/OR INDIVIDUAL(S) OR AFFILIATE(S),
SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS
BEHALF**

A regular meeting of the County of Cattaraugus Industrial Development Agency was convened on Thursday, May 4, 2023 at 10:00 a.m.

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

RESOLUTION OF THE COUNTY OF CATTARAUGUS INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF WIN-SUM SKI CORP., AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE "COMPANY") IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (iii) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT; AND (iv) AUTHORIZING THE NEGOTIATION AND EXECUTION OF AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

WHEREAS, County of Cattaraugus 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 536 of the 1971 Laws of New York, as amended, constituting Section 890-b 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, the Company has submitted an application to the Agency (the "Application") requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) renovations to the Inn @ Holiday Valley and John Harvard's Brew House (the "Improvements"); and (ii) the acquisition by the Company in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment"; and, together with the Project and the Improvements, the "Project Facility"). The Facility will be initially operated and/or managed by the Company; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on April 6, 2023, at 9:30 a.m., at the Agency's offices, 9 East Washington Street, Ellicottville, New York, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance (as hereinafter defined) being contemplated by the Agency (the "Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of undertaking the Project pursuant to an Agent and Financial Assistance Project Agreement (the "Agent Agreement"), (ii) provide Financial Assistance to the Company in the form of an exemption benefit from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction, reconstruction and/or renovation, rehabilitation or equipping of the Facility ("Financial Assistance"); and

WHEREAS, the Project involves a "Type II Action" as said term is defined under the State Environmental Quality Review Act and the regulations promulgated thereunder ("SEQRA") as an action involving the purchase of furnishings and equipment and therefore no other determinations or procedures under SEQR are required; and

WHEREAS, pursuant to Article 18-A of the Act, the Agency desires to adopt a resolution describing the Project and the Financial Assistance that the Agency is contemplating with respect to the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE COUNTY OF CATTARAUGUS INDUSTRIAL DEVELOPMENT AGENCY 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 and any other correspondence submitted by the Company to the Agency, public hearing comments, and Agency board member review, discussion, and consideration of same, 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, constructing and/or renovating 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 and/or retaining employment opportunities in Cattaraugus County, New York while promoting the general prosperity and economic welfare of the citizens of Cattaraugus County, New York, and the State of New York and improving their standard of living 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 civic, commercial, industrial, or manufacturing 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 plant or facility 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, to the extent occupants are relocating from one plant or facility to another in another area of the State, the Agency has complied with the Intermunicipal Movement procedures as required in the Countywide Industrial Development Agency Uniform Tax Exemption Policy; and

(F) The Agency has assessed all material information included in connection with the Application necessary to afford a reasonable basis for the decision by the Agency to provide Financial Assistance for the Project as described herein; and

(G) The Agency has prepared a written cost-benefit analysis identifying the extent to which the Project will create or retain permanent, private sector jobs, the estimated value of any tax exemption to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the Project in a timely fashion, and the extent to which the Project will provide additional sources of revenue for municipalities and school districts, and any other public benefits that might occur as a result of the Project; and

(H) The Project attracts a significant number of visitors from outside the Western New York economic development region, including approximately 55-60% of its visitors coming from outside of New York State, with approximately 20% of those visitors coming from Canada, and therefore meets the definition of a "tourism destination" project within the meaning of Section 862(2)(a) of the Act. Accordingly, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(a) of the Act.

(I) The Company has provided a written statement confirming that the Project as of the date of the Application is in substantial compliance with all provisions the Act.

(J) The Project qualifies for Agency Financial Assistance as it meets the Agency's general uniform criteria for project evaluation, said criteria established by New York State and the Agency as required under General Municipal Law Section 859-a(5) as evidenced by the following:

- (i) Extent to which the Project will create or retain jobs: The Project will retain 149 FTE employee positions and 535 PTE employee positions.
- (ii) The estimated total value of Financial Assistance is approximately \$568,000.
- (iii) The estimated amount of private sector investment to be made by the Company is \$8,050,000.
- (iv) Likelihood of the Project being accomplished in a timely fashion: There is a high likelihood that the Project will be completed in a timely manner, by May 15, 2024.
- (v) Extent of new revenue provided to local taxing jurisdictions: By maintaining modern efficient ski facilities, and creating new amenities for new skiers, it is expected that the Project will continue to attract visitors to the Facility and to the Town of Ellicottville resulting in maintenance of and new and increased sales tax revenues and bed tax revenue.
- (vi) Any additional public benefits: The Project attracts visitors from outside the region who support the local tourism industry and related retail businesses.
- (vii) The extent to which the Project will create local construction jobs. The Company will utilize local construction contractors to the extent, if at all, required.

Section 2. The Agency hereby authorizes the undertaking of the Project and the provision of the Financial Assistance to the Company as described herein.

Section 3. Subject to the Company executing an Agent Agreement and the delivery to the Agency of a binder, certificate or other evidence of insurance for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and/or renovate 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 appointment of the Company as agent of the Agency, if utilized, shall expire one year from the date of this resolution (unless extended for good cause by the Chair, the Vice Chair, and/or the Executive Director).

A. Financial Assistance. With respect to the foregoing, and based upon the representations and warranties made by the Company in its application for Financial Assistance, the Agency hereby:

(i) authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount estimated up to \$7,100,000, and, therefore, the value of the sales and use tax exemption benefits ("sales and use tax exemption benefits") authorized and approved by the Agency cannot exceed \$568,000, however, the Agency may 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.

B. Terms and Conditions of Financial Assistance. Pursuant to Section 875(3) of the New York General Municipal Law, and per the policies of the Agency, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any New York State and local sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the New York State and local sales and use tax exemption benefits; (ii) the New York State and local sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the New York State and local sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; (iv) the Company has made a material false statement on its application for Financial Assistance; and/or (v) the New York State and local sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with the Investment Commitment, the Employment Commitment, and/or the Construction Jobs and Local Labor Commitment, said commitments, as described below, being a material term or condition to use property or services in the manner approved by the Agency in connection with the Project.

As a condition precedent of receiving Financial Assistance, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must cooperate with the Agency in its efforts to recover or recapture any Financial Assistance, and promptly pay over any such amounts to the Agency that the Agency demands.

(C) Commitments. As an additional condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Agency in connection with

the Project, the Company covenants and agrees and understands that it must, subject to potential modification, termination and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, submit, on an annual basis or as otherwise indicated below through the conclusion of the later of two (2) years following either (x) the construction completion date, or (y) the termination of the Agent Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment - the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$8,050,000, being the total project cost as stated in the Company's application for Financial Assistance.
- (ii) Employment Commitment – that there are at least 149 existing full time equivalent ("FTE") employees, and 535 part time equivalent ("PTE") employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance; and
 - the number of current FTE and PTE employees in the then current year at the Facility; and
- (iii) Tourism Destination Commitment – that the Company document to the satisfaction of the Agency that the Project resulted in the attraction of at least 35% of the number customers (or 35% of the amount of sales from customers) from outside the Economic Development Region.

Section 4. Subject to the terms of this Inducement Resolution, the Chair, the Vice Chair, and/or the Executive Director, are hereby authorized, on behalf of the Agency, to negotiate, execute and deliver, on behalf of the Agency, the Agent Agreement, a sales tax exemption letter (the "Sales Tax Exemption Letter"), a bill of sale (the "Bill of Sale") whereby the Agency at the completion of the installation period transfers to the Company title to the Equipment acquired during the installation period by the Company as agent of the Agency, and related documents.

Section 5. 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 negotiate, 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 6. The provision by the Agency of Financial Assistance with respect to the Project as described herein is subject to the Agency's policies.

Section 7. This resolution shall take effect immediately, and shall expire one (1) year from the date hereof unless extended for good cause by the Chair, the Vice Chair, and/or the Executive Director.

Dated: May 4, 2023

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

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

That I have compared the annexed extract of minutes of the meeting of the County of Cattaraugus Industrial Development Agency (the "Agency"), including the resolution contained therein, held on May 4, 2023, 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 relates to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of the Agency 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 Article 7.

I FURTHER CERTIFY, that 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 modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 4th day of May, 2023.



Corey R. Wiktor
Secretary

[SEAL]