

AGENT AND FINANCIAL ASSISTANCE AND PROJECT AGREEMENT

THIS AGENT AND FINANCIAL ASSISTANCE AND PROJECT AGREEMENT (this "Agreement"), made as of August 1, 2020, by and between the **CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 2 State Street, Auburn, New York 13021 (the "Agency") and **INNS OF AURORA, LLC**, a Delaware limited liability company authorized to conduct business in the State of New York, having offices at 391 Main Street, Aurora, New York 13026 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 1030 of the Laws of 1969 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 previously submitted an application to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of the acquisition and installation of certain machinery, furnishings, equipment and other items of tangible personal property (the "Equipment") to be installed in and around a newly-constructed spa facility, which principally includes an approximately 22,000 square foot facility and related improvements (the "Improvements") located on approximately 265 acre parcel of land (the "Land", located at 700 Sherwood Road in the Town of Ledyard, New York, and collectively with the Improvements and Equipment, the "Facility"); and

WHEREAS, by Resolution dated April 21, 2020 (the "Resolution"), the Agency authorized the undertaking of the Project and appointed the Company to act as its agents for the purpose of acquiring, constructing and/or equipping the Facility, all subject to the Company entering into this Agreement; and

WHEREAS, by its Resolution, the Agency has conferred on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of an exemption benefit from all New York State and local sales and use tax exemption benefits 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 and/or equipping of the Facility (the "Financial Assistance"); and

WHEREAS, pursuant to and in accordance with Sections 859-a and 874 of the Act, the Agency requires, as a condition and as an inducement for it to provide any Financial Assistance, that the Company enter into this Agent Agreement for the purposes of, among other things, to govern administration of and provide assurances with respect to the provision and recapture of said Financial Assistance upon the terms herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

WHEREAS, no agent status in favor of the Company or any subagent(s) thereof, nor any amount of Financial Assistance shall be provided to the Company by the Agency prior to the effective date of 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. Purpose of Project; Scope of Agency. The purpose of the Agency's provision of Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project facility to advance job opportunities, health, general prosperity and economic welfare of the people of Cayuga County, and to specifically promote the investment commitment, employment commitment, and other commitments of the Company contained herein and within the Applicant's Application.

Pursuant to the Resolution, the Agency has appointed the Company as agents to undertake the Project, as defined herein and within the Resolution. The Company hereby agrees to limit its activities as agents for the Agency under the authority of the Resolution to acts reasonably related to the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation thereof in and around the Facility. Pursuant to the Resolution and this Agent Agreement, the Company has the power to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses including but not limited to the individuals and entities described on Schedule A attached hereto (collectively, the "Subagent"). The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency. The Company's right to appoint subagents is expressly conditioned upon updating of Schedule A, hereto, along with the timely filing of Form ST-60 (non-primary) for each subagent, with such updated Schedule A and a copy of and proof of filing of such ST-60 (non-primary) being immediately filed with the Agency. The right of the Company, and all duly appointed subagents, to act as agent of the Agency shall expire on **December 31, 2021**, unless extended as contemplated by the Resolution. The aggregate amount of work performed by the Company and all subagents as agent for the Agency shall not exceed the amounts identified in the Resolution and Section 2(h)(i) of this Agreement.

All contracts entered into by the Company, and all subagents thereof, as agent(s) for the Agency shall include the language contained within Schedule B, hereto. **Failure by the Company, or any subagent thereof to include such language shall disqualify the agent status and sales tax exemptions derived by virtue of this Agent Agreement. The Company, for itself and on behalf of all duly appointed subagents, hereby agrees that all contracts entered into by either the Company and any subagents thereof shall be available to the Agency for inspection and confirmation of the foregoing mandatory language.**

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 Project and appoint the Company as agent to undertake same:

(a) The Company is a limited liability company, duly organized, validly existing and in good standing under the law of the State of Delaware and authorized to conduct business in the State of New York. The Company (i) has the authority to enter into this Agreement and (ii) has 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 providing of the Facility by the Agency will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more commercial or manufacturing plants or facilities of the Company located within the State; and the Agency has found that, based on the 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.

(d) 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 (d). The Company shall operate the Facility in accordance with this Agreement and as a qualified "project" under the Act.

(e) 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.

(f) 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 (other than the Company), 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.

(g) The Company has provided to the Agency a certificate or certificates of insurance containing all of the insurance provision requirements included herein. If the insurance is canceled for any reason whatsoever, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to any mortgagee, loss payee or additional insured until at least thirty (30) days after receipt by such party of written notice by the insurer of such cancellation, lapse, expiration, reduction or change.

(h) Any personal property acquired by the Company in the name of the Agency shall be located in Cayuga County, New York, except for temporary periods during ordinary use.

(i) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolution, the Company covenants and agrees that it may be subject to a Recapture Event Determination resulting in the potential recapture of any and all New York State and local sales and use tax exemption benefits, as described below, if the Company receives, or its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project receives, any New York State and local sales and use tax exemption benefits from the Agency, and it is determined by the Agency that:

(1) 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 sales and use tax exemption benefits; or

(2) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; or

(3) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(4) the Company has made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, on its Application for Financial Assistance; or

(5) the Company fails to meet and maintain the thresholds and requirements representing certain material terms and conditions, said Material Term Commitment #1, and Material Term Commitment #2, as further defined below, being the purposes to be achieved by the Agency with respect to its determination to provide Financial Assistance to the Project and required by the Agency to be complied with and adhered to, as evidenced by submission, as so required by the Agency, of written confirmation certifying and confirming on an annual basis beginning in the first year in which Financial Assistance is so claimed, through the conclusion of three (3) years following the construction completion date (said date hereinafter referred to as the "Project Completion Date" and the time period so referenced being hereinafter defined as the "Material Terms and Conditions Monitoring Period") confirming:

(a) Material Term Commitment #1 – Total Project Expenditure of \$1,250,000.00; and

(b) Material Term Commitment #2 – Creation of 22.5 new FTE jobs in year 1 and total of 1.5 new FTE jobs in year 2 and 2 FTEs in year 3;

The Company will use its best efforts to take all actions and to do all things necessary, proper, or advisable to comply with Material Commitment #2. In order to certify and verify the foregoing, the Company shall provide annually, to the Agency, a certified statement and documentation: i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the financial assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the project location ("Material Term Commitment #2"), (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the Application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and (iii) such other information, as so requested from time to time, to enable the Agency to assess the progress of the Project toward achieving the investment, job retention, job creation, or other objectives of the Project indicated in the Application for Financial Assistance. Employees of the Company whose workplace is located at the Facility shall be included in the calculation of the number of New FTEs.

The Company shall annually complete and submit to the Agency the Annual Certification Report in the form attached hereto as Exhibit E. Failure by

the Company to complete and submit said form to the Agency by February 15 of each year during the Material Terms and Conditions Monitoring Period shall constitute an Event of Default hereunder, whereby the Agency, in its sole and absolute discretion, may terminate this Agreement and undertake a Recapture Event Determination.

The findings made by the Agency with respect to Section 2(i)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 2(i)(5) with respect to the thresholds and requirements as identified in Section 2(i)(5), above, and/or failure to meet the thresholds and requirements as identified in Section 2(i)(5) above, may potentially be determined by the Agency, in accordance with the Agency's "Project Recapture and Termination Policy", to constitute a failure to comply with Section 875(3) of the New York General Municipal Law, and/or a failure to comply with a material term or condition to use property or services or Agency Financial Assistance in the manner approved by the Agency in connection with the Project, and/or a failure to comply with the Agency's policies and Resolution (collectively, findings and determinations made as described herein with respect to Section 2(i)(1), (2), (3) and/or (4) and/or the failure under Section 2(i)(5) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 2(i)(5) are hereby defined as a "Recapture Event Determination"). The Agency shall, in good faith, prior to making any Recapture Event Determination in connection with the Company's failure to comply with Material Term Commitment #2, take into consideration the Company's ability to comply therewith in light of the COVID-19 pandemic. If the Agency makes a Recapture Event Determination, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner and/or local taxing authorities may assess and determine the Financial Assistance due from the Company, together with any relevant penalties and interest due on such amounts.

(6) As a condition to receiving Financial Assistance, as defined herein, the Company shall use local labor for 100% of the Project. Local labor is defined as an individual that resides within the Cayuga County, an adjacent county, or New York State as stated in the percentages below:

- (i) 65% of all project employees of the general contractor, subcontractor, or subcontractor to the subcontractor (collectively, the "Workers") must reside within Cayuga County;
- (ii) An additional 20% of Workers must reside in Cayuga County or an adjacent county (Oswego, Onondaga, Ontario, Cortland, Tompkins, Seneca, or Wayne); and
- (iii) An additional 15% of Workers must reside within Cayuga County, an adjacent county, or New York State.

The Agency may determine on a case-by-case basis to waive all or a portion of the local labor policy for a project or a portion of a project where consideration of warranty issues, necessity of specialized skills, cost differentials of at least 10% between local and non-local services, documented lack of Workers meeting the local labor requirement, or other compelling circumstances exist. The Company agrees that any request for a waiver to this policy must be submitted in writing using the Local Labor Policy Waiver Request form (attached within Exhibit F) and approved by the Agency before the execution and delivery of this Agreement and any related exemption forms, and prior to hiring any Workers that do not satisfy the local labor requirements laid out above. The Company agrees that if the required forms are not submitted to the Agency, then the Agency shall have the right to immediately terminate this Agreement and the Company's status as agent of the Agency to undertake the Project.

The Company shall submit a Local Labor Utilization Report Form (also attached within Exhibit F) at the time of the Application to the Agency, every 90 days thereafter, and/or at the completion of the construction of the Project.

The following organizations should be solicited for the purpose of meeting the local labor requirements of this Agreement:

Cayuga Central Labor Council Bill Andre (315) 378-3713 66 Genesee Street Auburn, NY 13021	CNY Area Labor Federation Wendy Colucci (315) 422-3363 wendy@cnylabor.org 615 W. Genesee Street Syracuse, NY 13204	Cayuga Works Career Center Ann Kubarek, Director (315) 253-1592 akubarek@cayugacounty.us James Bepko, Business Services Rep. (315) 479-3263 james.bepko@labor.ny.gov 199 Franklin Street, Ste. 204 Auburn, NY 13021
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The Agency is also able to provide an extensive list of local labor unions upon request.

(j) In accordance with the Resolution, the Company further covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to **\$1,250,000.00**, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 2(g) of this Agent Agreement, cannot exceed **\$100,000.00**.

(k) The Company acknowledges and understands that a Recapture Event Determination made with respect to this Agreement will, in addition, immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future state and local sales and use tax exemptions, with respect to the Project, and may result, in the sole discretion of the Agency, of loss and forfeiture of same with respect to a Recapture Event Determination made regarding this Agreement.

(l) The Company further covenants and agrees to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (NYS Form ST-60), in the forms attached hereto as Exhibit A, for each agent, subagent, contractor,

subcontractor, if any, contractors or subcontractors of such agents and subagents, if any, and such other parties as the Company chooses who provide materials, equipment, supplies or services and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(m) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340, a copy of which is attached hereto as Exhibit D) regarding the value of sales and use tax exemptions the Company, their agents, subagents, consultants or subcontractors have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of same to the Agency; provided, however, in no event later than February 15th of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company's authority to act as agent for the Agency.

(n) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123), a copy of which is attached hereto as Exhibit B, and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill or invoice should state, "I, [NAME OF AGENT/SUBAGENT], certify that I am a duly appointed agent of the [NAME OF IDA] and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under the agent agreement with the Cayuga County Industrial Development Agency." The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project (i.e., The Inns of Aurora, LLC – Inns of Aurora Spa Project) on each bill and invoice: "the name of the Project, the street address of the Project site, and IDA project number which is 0502-20-01A."

(o) The Company acknowledges and agrees that, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

(p) The Company covenants and agrees that at all times during the Material Terms and Conditions Monitoring Period, it will (i) maintain its existence and not dissolve, (ii) continue to be a Delaware limited liability company subject to service of process in the State and either organized under the laws of the State, or organized under

the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its property, business or assets. This Agreement may not be assigned in whole or part without the prior written consent of the Agency

(q) The Company confirms and acknowledges under the penalty of perjury that as of the date hereof, the Company, as owner, occupant, or operator of the Project receiving Financial Assistance from the Agency in connection with the Project, is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations. The Company agrees that it will, throughout the term of this Agent Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. Notwithstanding the foregoing, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to this Section 2(p). In such event, the Company, with the prior written consent of the Agency (which shall not be unreasonably conditioned, delayed or withheld) may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency shall notify the Company that it must comply with such requirement or requirements.

3. Hold Harmless Provision. The Company hereby releases the Agency from, and agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, members, officers, 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 executive director, directors, members, 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.

Such insurance shall be provided, in whole or in part, either through insurance carriers meeting the requirements of this Agreement or through a funded self-insurance program, and shall include, but not necessarily be 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) Workers' 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 \$5,000,000, 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 other than Workers' Compensation Coverage. The Company shall cause all contractors and agents of the Company undertaking the Project to carry and provide evidence of insurance as required within Section 4(c) hereof, with the Agency named as an additional insured. All 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. Counterpart Signatures. 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. Notices. 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, or by a nationally-recognized overnight courier, addressed as follows:

To the Agency: Cayuga County Industrial Development Agency
2 State Street
Auburn, New York 13021
Attn: Executive Director

And to: Harris Beach PLLC
677 Broadway, Suite 101
Albany, New York 12207
Attn: Justin S. Miller, Esq.

To the Company: Inns of Aurora, LLC
391 Main Street
Aurora, New York 13026
Attn: Susan E. Edinger, Chief Operating Officer

With a Copy to: Hancock Estabrook
1800 AXA Tower I
100 Madison Street
Syracuse, New York 13202
Attn: Wendy Marsh, Esq.

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 Cayuga County, New York.

9. The obligations of Company under this Agreement shall be several, absolute and unconditional and shall remain in full force and effect during the term of this Agreement.

10. All warranties, representations, and covenants made by Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the Agency. This Agreement shall survive any termination or expiration of this Agreement, as described below.

11. By executing this 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, (2) other consultants retained by the Agency, if any, in connection with the Project; in accordance with the terms of the Administrative Fee Agreement between the Company and the Agency, and (3) with respect to enforcing this Agreement (including reasonable attorneys' fees). The Agency counsel fees are based upon the Company's representations made in its application for Agency assistance and as established in accordance with the Agency counsel fee schedule. The Company further covenants and agrees to make a non-refundable payment upon execution of this Agreement in accordance with the terms of the Agency Counsel Fee Agreement. 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.

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[Signature Page to Agent and Financial Assistance and Project Agreement]

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

CAYUGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Name: Tracy Verrier
Title: Executive Director

INNS OF AURORA, LLC

By: _____
Name: Susan E. Edinger
Title: Chief Operating Officer

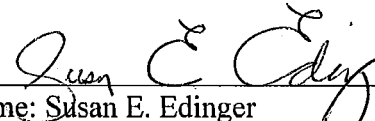
[Signature Page to Agent and Financial Assistance and Project Agreement]

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

CAYUGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Name: Tracy Verrier
Title: Executive Director

INNS OF AURORA, LLC

By:  _____
Name: Susan E. Edinger
Title: Chief Operating Officer

SCHEDULE A

LIST OF APPOINTED AGENTS¹

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

¹ FOR EACH AGENT APPOINTED BY THE COMPANY, A NYS FORM ST-60 MUST BE COMPLETED AND FILED BY THE COMPANY WITH THE NYS DEPARTMENT OF TAXATION AND FINANCE IDA UNIT INDICATING THE APPOINTMENT OF SUCH AGENT OF THE COMPANY.

SCHEDULE B

MANDATORY AGENT AND SUBAGENT CONTRACT LANGUAGE

“This contract is being entered into by **INNS OF AURORA, LLC (the “Applicant”)** (OR, NAME OF SUBAGENT: _____) (the “Agent”), as agent for and on behalf of the **CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the “Agency”), in connection with a certain project consisting of the acquisition and installation of certain machinery, furnishings, equipment and other items of tangible personal property (the “Equipment”) to be installed in and around a newly-constructed spa facility, which principally includes an approximately 22,000 square foot facility and related improvements (the “Improvements”) located on approximately 265 acre parcel of land (the “Land”, located at 700 Sherwood Road in the Town of Ledyard, New York, and collectively with the Improvements and Equipment, the “Facility”). The acquisition of the machinery, equipment and building materials to be incorporated and installed in the Facility and all services and rentals of equipment related to the acquisition, construction and equipping of the Project shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption information letter of the Agency; and the Agent hereby represents that this contract is in compliance with the terms of the Agent and Financial Assistance by and between Inns of Aurora, LLC, and the Agency, dated as of August 1, 2020. 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.”

EXHIBIT A

**NYS FORM ST-60 TO BE COMPLETED BY THE COMPANY
AND FILED WITH NYS IDA UNIT FOR EACH OF ITS SUBAGENTS**

[Attached Next Page]



Department of Taxation and Finance

IDA Appointment of Project Operator or Agent For Sales Tax Purposes

ST-60

(1/18)

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

For IDA use only

IDA Information

Name of IDA Cayuga County Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 0502-20-01A
Street address 2 State Street			Telephone number (315) 252-3500
City Auburn	State NY	ZIP code 13021	Email address (optional) N/A

Project operator or agent information

Name of IDA project operator or agent MCK Building Associates Inc.		Mark an X in the box if directly appointed by the IDA: N/A <input type="checkbox"/>	Employer identification or Social Security number 16-1226031
Street address 221 West Division Street		Telephone number (315) 475-7499	Primary operator or agent? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
City Syracuse	State NY	ZIP code 13204	Email address (optional) N/A

Project information

Name of project Inns of Aurora, LLC - Inns of Aurora Spa Project			
Street address of project site 700 Sherwood Road			
City Aurora	State NY	ZIP code 13026	Email address (optional) N/A
Purpose of project Acquisition and installation of certain machinery, furnishings, equipment and other items of tangible personal property to be installed around an approximately 22,000 square foot newly-constructed spa facility.			

Description of goods and services intended to be exempted from New York State and local sales and use taxes			
Date project operator or agent appointed (mmddyy) 080120	Date project operator or agent status ends (mmddyy) 123121	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>	
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 1,250,000.00		Estimated value of New York State and local sales and use tax exemption provided: 100,000.00	

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA Tracy Verrier		Print title Executive Director	
Signature 		Date 08-01-2020	Telephone number (315) 252-3500



Department of Taxation and Finance

IDA Appointment of Project Operator or Agent For Sales Tax Purposes

ST-60
(1/18)

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

For IDA use only

IDA information

Name of IDA Cayuga County Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 0502-20-01A
Street address 2 State Street			Telephone number (315) 252-3500
City Auburn	State NY	ZIP code 13021	Email address (optional) N/A

Project operator or agent information

Name of IDA project operator or agent Hart Howerton Planning, Architecture		Mark an X in the box if directly appointed by the IDA: N/A <input type="checkbox"/>	Employer identification or Social Security number 06-1758920
Street address 10 East 40th Street, 39th Floor		Telephone number (212) 683-5631	Primary operator or agent? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
City New York	State NY	ZIP code 10016	Email address (optional) N/A

Project information

Name of project The Pleasant T. Rowland, LLC - Inns of Aurora Spa Project			
Street address of project site 700 Sherwood Road			
City Aurora	State NY	ZIP code 13026	Email address (optional) N/A
Purpose of project Acquisition and installation of certain machinery, furnishings, equipment and other items of tangible personal property to be installed around an approximately 22,000 square foot newly-constructed spa facility.			

Description of goods and services intended to be exempted from New York State and local sales and use taxes			
Date project operator or agent appointed (mmdyy) 080120	Date project operator or agent status ends (mmdyy) 123121	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>	
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 1,250,000.00		Estimated value of New York State and local sales and use tax exemption provided: 100,000.00	

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA Tracy Verrier		Print title Executive Director	
Signature 		Date 08-01-2020	Telephone number (315) 252-3500

EXHIBIT B

**NYS FORM ST-123 TO BE COMPLETED BY THE COMPANY
AND FILED WITH NYS IDA UNIT FOR EACH OF ITS SUBAGENTS**

[Attached Next Page]



IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, IDA Agent or Project Operator Exempt Purchase Certificate for Fuel.

Table with seller and agent information including Name of seller, Street address, City, town, or village, State, ZIP code, Name of agent or project operator, and Agent or project operator sales tax ID number.

Mark an X in one: [X] Single-purchase certificate [] Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Table with project details including Name of IDA (Cayuga County Industrial Development Agency), Name of project (Inns of Aurora, LLC - Inns of Aurora Spa Project), Street address (700 Sherwood Road), City (Aurora), State (NY), ZIP code (13026), and dates of agent appointment and status end.

Exempt purchases

(Mark an X in boxes that apply)

- Options A, B, and C for exempt purchases: A. Tangible personal property or services... B. Certain utility services... C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle.

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence.

Signature and Date fields for purchaser or purchaser's representative.

Instructions

To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

Agent or project operator sales tax ID number — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.

Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features



Sales Tax Information Center:

(518) 485-2889

To order forms and publications:

(518) 457-5431



Text Telephone (TTY) Hotline

(for persons with hearing and speech disabilities using a TTY):

(518) 485-5082



New York State Department of Taxation and Finance

New York State Sales and Use Tax

IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

ST-123

(7/14)

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller			Name of agent or project operator		
Street address			Street address		
City, town, or village			City, town, or village		
State		ZIP code	State		ZIP code
			Agent or project operator sales tax ID number (see instructions)		

Mark an **X** in one: Single-purchase certificate Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA		
Cayuga County Industrial Development Agency		
Name of project		IDA project number (use OSC number)
Inns of Aurora, LLC - Inns of Aurora Spa Project		0502-20-01A
Street address of project site		
700 Sherwood Road		
City, town, or village		State ZIP code
Aurora		NY 13026
Enter the date that you were appointed agent or project operator (mm/dd/yy) 08 / 01 / 20		Enter the date that agent or project operator status ends (mm/dd/yy) 12 / 31 / 21

Exempt purchases

(Mark an **X** in boxes that apply)

- A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

Instructions

To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

Agent or project operator sales tax ID number — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.

Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- A. Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- B. Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- C. Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features



Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082

EXHIBIT C

FORM OF BILL OF SALE

CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for transaction of business located at 2 State Street, Auburn, New York 13021 (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from **INNS OF AURORA, LLC**, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to conduct business under the laws of the State of New York, having offices at 391 Main Street, Aurora, New York 13026 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee and its successors and assigns, all those materials, machinery, equipment, fixtures or furnishings which were acquired by the Grantee as agent for the Grantor pursuant to the Agreement dated August 1, 2020, all as more fully described on Schedule 1 attached hereto (the "Equipment"), whether now owned or hereafter acquired, which Equipment is located or intended to be located at the Grantee's facility located at 700 Sherwood Road, Town of Ledyard, New York.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT "AS IS," WITHOUT RECOURSE OF ANY NATURE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OF DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

This Bill of Sale shall become effective as to each item of the equipment as and when the same are delivered to the site of the Facility or installed in the Facility.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by the officer described below on the date indicated beneath the signature of such officer and dated as of the ____ day of _____, 20__.

**CAYUGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Tracy Verrier, Executive Director

EXHIBIT D

NYS FORM ST-340

[Attached Next Page]



Department of Taxation and Finance

Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

ST-340

(1/18)

For period ending December 31, _____ (enter year)

Project information

Name of IDA agent/project operator		Employer identification number (EIN)	
Street address		Telephone number ()	
City		State	ZIP code
Name of IDA Cayuga County Industrial Development Agency	Name of project Inns of Aurora, LLC - Inns of Aurora Spa Project	IDA project number 0502-20-01A	
Street address of project site 700 Sherwood Road			
City Aurora		State NY	ZIP code 13026
Date project began		Completion date of project Actual <input type="checkbox"/> Expected <input type="checkbox"/>	
Total sales and use tax exemptions (actual tax savings; not total purchases)			\$

Representative information (not required)

Authorized representative, if any	Title
Street address	Telephone number ()
City	State ZIP code

Certification

I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer, employee, or authorized representative	Title of person signing
Signature	Date

If you do not annually file a complete report, we may remove your authority to act as an IDA agent/project operator.

Mail completed report to:

**NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866**

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Instructions

General information

Who must file

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as the *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person **directly** appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operators directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operators should **not** themselves file Form ST-340. However, the agent/project operators must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

What you must report

The report must show the **total value** of all state and local **sales and use taxes exempted** during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions the agent/project operator (you) obtained; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

Include only the **total combined** exemptions obtained by the above people. A breakdown of the total is not required. However, since the report must include the value of the exemptions they obtained, you must keep records of the amounts others report to you.

You must make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available, so that you can comply with the annual reporting requirements.

Do not include on this report the amount of any sales and use tax exemptions from other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

When the report is due

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

Name of IDA agent/project operator: Enter your name, address, employer identification number (EIN), and telephone number.

Name of IDA and IDA project number: Enter the name and address of the IDA. If more than one IDA is involved in a particular project, you must file a separate report for the tax exemptions attributable to each IDA. Also enter the ID project number.

Name of project: Enter the name of the project and the address of the project site. If you are involved in more than one project, you

must file a separate report for each project, even if authorized by the same IDA.

Date project began: Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

Completion date of project: Enter the date installation, lease, or rental of property (for example, machinery or computers) on the project ended, or the date the project is expected to be completed. Mark an **X** in the appropriate box to indicate if the date entered is actual or expected.

Total sales and use tax exemptions: Enter the total amount of New York State and local sales and use taxes exempted during the reporting period as a result of the project's receipt of IDA financial assistance (*if none, enter 0*). This includes exemptions obtained at the time of purchase, as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do **not** enter total purchases.

Representative information

If applicable, enter the name, address, title (for example, attorney or accountant), and telephone number of the individual you authorize to submit this report. This section is not required.

Certification

Enter the name and title of the person signing on your behalf (for example, the IDA agent/project operator's officer, employee, or other authorized representative). Your officer, employee, or authorized representative must sign and date the report.

Mail completed report to:

**NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866**

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Need help?



Visit our website at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

EXHIBIT E

FORM OF ANNUAL EMPLOYMENT AND
FINANCIAL ASSISTANCE CERTIFICATION LETTER

Company name and address:

Project Name:

Job Information

Current number of full time equivalent employees ("FTE") retained at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

Category	FTE	Average Salary and Fringe Benefits or Ranges
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____
Other	_____	_____

Current number of full time equivalent employees ("FTE") created at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

Category	FTE	Average Salary and Fringe Benefits or Ranges
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____
Other	_____	_____

A copy of the NYS-45 form for the project location is required to be submitted with this report. If the NYS-45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created, an internal payroll report verifying the total jobs by employment category as outlined above at the location is required with this submission.

Financing Information

Has the Agency provided project financing assistance (generally through issuance of a bond or note)

Yes No

If financing assistance was provided, please provide:

- Original principal balance of bond or note issued _____
- Outstanding principal balance of such bond or note as of December 31 _____
- Outstanding principal balance of such bond or note as of December 31 _____

Final maturity date of the bond or note _____

Sales Tax Abatement Information

Did your Company or any appointed subagents receive Sales Tax Abatement for your Project during the prior year?

Yes No

If so, please provide the amount of sales tax savings received by the Company and all appointed subagents _____

(Attach copies of all ST-340 sales tax reports that were submitted to New York State by the Company and all subagents for the reporting period. Please also attached all ST-60's filed for subagents for the reporting period)

Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project during the prior year?

Yes No

(note this would only be applicable to the year that a mortgage was placed upon the Project, so if the Agency did not close a mortgage with you during the reporting period, the answer should be no)

The amount of the mortgage recording tax that was exempted during the reporting period: _____

I certify that to the best of my knowledge and belief all of the information on this form is correct. I further certify that the salary and fringe benefit averages or ranges for the categories of jobs retained and the jobs created that was provided in the Application for Financial Assistance is still accurate and if not, I hereby attach a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. I also understand that failure to report completely and accurately may result in enforcement of provisions of my agreement, including but not limited to voidance of the agreement and potential claw back of benefits.

Signed: _____
Name: _____
Title: _____
(authorized company representative)

Date: _____

EXHIBIT F
Local Labor Utilization Report and Waiver Form

Applicant: _____

Project Address: _____

COMPLETE FOR ALL CONSTRUCTION CONTRACTORS, SUBCONTRACTORS, AND SUBCONTRACTORS OF SUBCONTRACTORS WHO ARE WORKING OR WHO HAVE WORKED ON THIS SITE IN THE LAST 90 DAYS.

Vendor Name: _____

Vendor Address: _____

City: _____ State: _____ Zip Code: _____

Email: _____

List the number of employees residing in each of the following:

Location	# of employees
City of Auburn	
Cayuga County outside of Auburn City limits	
Oswego County	
Onondaga County	
Ontario County	
Cortland County	
Tompkins County	
Seneca County	
Wayne County	
New York State outside of the above listed Counties	
Outside of NYS	

Is construction complete?

Is this your final report?

I certify that the above is an accurate accounting of the employees that are employed by my company who are working at the above listed project address and their residency.

Authorized Company Representative:

Signature: _____

Date: _____

Local Labor Policy Waiver Request

Applicant: _____

Project Address: _____

Describe the portion(s) of the project for which you would like the Local Labor requirements waived:

Reason for waiver request:

- Warranty requirements- Attach supporting documentation
- Necessity of specialized skills- Attach description of need and documentation of unavailability of Workers with needed skills
- Cost differential of at least 10%- Attach supporting quotes, including at least two using local labor
- Unavailability of Workers meeting local labor requirement- Attach supporting documentation
- Other compelling circumstances- Attach description of circumstances

If for a reason other than warranty requirements, which of the following organizations have you contacted in an attempt to identify Workers meeting the Local Labor Policy Requirements:

- Cayuga Central Labor Council
- Cayuga Works Career Center
- CNY Area Labor Federation
- Individual local labor unions

I _____ (Authorized Representative) hereby request a waiver from the Agency's Local Labor Policy for the above mentioned portions of _____ (the project). I understand that the submission of this form does not guarantee a waiver from the Agency and that hiring Workers that do not meet the Local Labor requirements prior to receiving written approval of this Waiver from the Agency could disqualify the project from receiving financial assistance from the Agency and/or could cause the Agency to terminate existing financial assistance.

Authorized Company Representative: _____

Signature: _____

Date: