

Maesteg, LLC - Amended Final Resolution

A regular meeting of the County of Chautauqua Industrial Development Agency (the “Agency”) was convened in public session on September 27, 2022, at 10:00 A.M., local time, at (i) the offices of the Agency located at 201 West 3rd Street, Jamestown, County of Chautauqua, New York (the “IDA Office”), and (ii) the Fredonia Technology Incubator, 214 Central Avenue, Dunkirk, County of Chautauqua, New York (the “Incubator”), and was conducted by videoconferencing in compliance with Section 103-a of the New York State Public Officers Law.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

PRESENT:

Michael Metzger	Chairman	Incubator
Dennis J. Rak	Vice Chairman	Incubator
Steven Thorpe	Member	IDA Office
Brad Walters	Member	IDA Office
Jay Churchill	Member	IDA Office
Kevin Muldowney	Member	Incubator
Rhonda Johnson	Member	IDA Office

NOT PRESENT:

Gary Henry	Secretary
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THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Mark Geise	Administrative Director/CEO
Richard E. Dixon	Chief Financial Officer
Paul Wendel	County Executive
Milan K. Tyler, Esq.	Counsel
Greg Peterson	Counsel
Jeanette Lo Bello	IDA Staff
Rosie Strandburg	IDA Staff
Carol Rasmussen	IDA Staff
Monica Simpson	CCPEG Staff
Crystal Erhard	IDA Staff
Nate Aldrich	IDA Staff
Jason Toczdlowski	IDA Staff
Ashley Parslow	ABO Staff
Greg Bacon	Post Journal

The attached resolution no. 09-27-22-11 was offered by Brad Walters, seconded by Steven Thorpe:

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND RE-APPROVING THE
STRAIGHT LEASE DOCUMENTS FOR A CERTAIN PROJECT FOR
MAESTEG, LLC AND/OR ITS AFFILIATES

WHEREAS, the County of Chautauqua Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the Laws of 1969 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 71 of the 1972 Laws of New York, as amended, constituting Section 895-h 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 industrial, manufacturing, warehousing, commercial, research and recreation 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, MAESTEG, LLC, a limited liability company duly organized and existing under the laws of the State of New York (the “Applicant”), presented an application for financial assistance (the “Original Application”) to the Agency, which Application requested that the Agency consider undertaking a project (the “Original Project”) consisting of the following: (A)(1) the acquisition of an interest in a certain parcel of land located at 7495 Farrington Hollow Road, Town of Cherry Creek, Chautauqua County, New York (collectively, the “Land”), (2) the construction of an approximately 4,500 square foot building and an approximately 2,000 square foot pavilion on the Land (collectively, the “Improvements”), and (3) the acquisition and installation of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the “Equipment” and together with the Land and the Improvements, collectively, the “Project Facility”), all of the foregoing for use by the Applicant and/or its affiliates as a tourism destination event facility; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemption or partial exemptions from real property taxes and sales and use taxes (the “Financial Assistance”); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, in accordance with Section 859-a of the Act, any approval of the Original Project is contingent upon, inter alia, a determination by the members of the Agency to proceed with the Original Project following a determination by the Agency that (A) the public hearing

and notice requirements and other procedural requirements contained in the Act relating to the Original Project have been satisfied; and (B) the undertaking of the Original Project by the Agency and the granting of the Financial Assistance are and will be in compliance with all other applicable requirements of the Act, SEQRA (as hereinafter defined), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Original Project and/or the Project Facility (collectively, the “Applicable Laws”); and

WHEREAS, the Administrative Director/CEO of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on June 24, 2022 to the chief executive officer of the County of Chautauqua (the “County”) and of each other affected tax jurisdiction within which the Project Facility is or is to be located, and posted a copy of the Application on the Agency’s website; (B) caused notice of the Public Hearing to be published on June 24, 2022 in *The Observer*, a newspaper of general circulation available to residents of the County; (C) caused the Public Hearing to be conducted on July 7, 2022, at 9:30 a.m., local time, at Town of Cherry Creek Town Hall, 618 Center Street, Town of Cherry Creek, County of Chautauqua, New York; (D) caused the Public Hearing to be streamed on the Agency’s website in real-time and a recording of the Public Hearing to be posted on the Agency’s website, all in accordance with Section 857 of the Act, as amended; and (E) caused a written report of the Public Hearing to be prepared which fairly summarizes the views presented at the Public Hearing and collected written comments from the public (collectively, the “Report”) and distributed the Report to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the “Regulations” and collectively with the SEQR Act, “SEQRA”), the appropriate personnel of the Agency reviewed the environmental assessment form and other materials submitted by the Applicant and made any necessary comments to the members of the Agency, and by resolution of the members of the Agency adopted on July 26, 2022, the Agency determined that a thorough analysis of the potential environmental impacts associated with the Project revealed that the Project will not have any potentially significant adverse environmental impacts; and

WHEREAS, the Agency issued a negative declaration pursuant to SEQRA for the Original Project; and

WHEREAS, pursuant to a resolution adopted by the members of the Agency on July 26, 2022 (the “Approving Resolution”), the Agency made its determination to proceed with the Original Project and to grant the Financial Assistance, subject to obtaining confirmation of the undertaking of the Original Project and the granting of the Financial Assistance from the County Executive of Chautauqua County, New York, in accordance with Section 862(c) of the Act (the “Executive Approval”), and otherwise subject to the terms of the Approving Resolution; and

WHEREAS, the County Executive of Chautauqua County executed and delivered the Executive Approval on or about July 26, 2022; and

WHEREAS, the Applicant amended the Original Application pursuant to a letter dated September 19, 2022 and an amended Application for Financial Assistance (collectively, the “Amended Application”), to request consent to add a separate tax lot located at 7495 Farrington Hollow Road, Town of Cherry Creek, Chautauqua County, New York to the Land, and the interior renovation of the existing building on such parcel for use as a bed and breakfast inn, such amendment to result in an increase in the value of the requested exemption from real property taxes by \$31,126, an increase in the value of the mortgage recording tax exemption by \$5,000 and an increase of the requested sales tax exemption by \$9,152 (the Original Project, as so amended, the “Project”); and

WHEREAS, the additional Financial Assistance requested in the Amended Application is less than \$100,000 and, therefore, no additional public hearing is required pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, the amendment involves interior renovation only and therefore no further SEQRA review is required; and

WHEREAS, the Agency now desires to make its determination to proceed with the Project and to grant the Financial Assistance as described in the Amended Application, subject to obtaining confirmation of the undertaking of the Project and the granting of such Financial Assistance from the County Executive of Chautauqua County, New York, in accordance with Section 862(c) of the Act (the “Amended Executive Approval”), and otherwise subject to the terms hereof; and

WHEREAS, the Applicant and/or one (1) or more of its affiliates will (A) execute and deliver a certain Company Lease Agreement (the “Company Lease”), pursuant to which the Applicant and/or such affiliate(s) will grant to the Agency a leasehold interest in the Project Facility; (B) execute and deliver a certain Agency Lease Agreement (Uniform Project Agreement) (the “Agency Lease”), pursuant to which the Agency will grant to the Applicant and/or such affiliate(s) a subleasehold interest in the Project Facility; (C) execute and deliver a certain Payment in Lieu of Taxes Agreement (the “PILOT Agreement”); and (D) execute and deliver certain other certificates, documents, instruments and agreements related to the Project (together with the Company Lease, the Agency Lease and the PILOT Agreement, collectively, the “Transaction Documents”);

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

Section 1. In accordance with Section 859-a of the Act, the Agency has prepared an updated written cost-benefit analysis with respect to the Project and the granting of the Financial Assistance described in the Amended Application (the “Analysis”). The Agency has reviewed the Amended Application, the Report and the Analysis, and, based upon the representations made by the Applicant to the Agency and information obtained by the Agency, the Agency has

reviewed and assessed all material information necessary to afford a reasonable basis for the Agency to make a determination to approve the Financial Assistance as described in the Amended Application. In addition, the Agency hereby makes the following findings and determinations with respect to the Project:

(a) based on the proposed use of the Project Facility as set forth in the Amended Application, the economic effects of the Project on the area in which it is situated, and the employment reasonably expected to be created and/or maintained by the Project, and an analysis of how the Project contributes to the realization of the public purposes of promoting employment opportunities in the County and the prevention of economic deterioration in the County, the Project will constitute a commercial facility with a significant impact on the area in which it is situated, and will advance the Agency's purposes by promoting employment opportunities and preventing economic deterioration in the County. Therefore, the Project constitutes a "project" within the meaning of the Act;

(b) the granting by the Agency of the Financial Assistance described in the Amended Application with respect to the Project will be an inducement to the Applicant to undertake the Project in the County;

(c) there is a likelihood that the Project would not be undertaken but for the granting by the Agency to the Applicant of the Financial Assistance described in the Amended Application;

(d) the completion of the Project Facility, the sublease thereof by the Agency to the Applicant and the operation thereof by the Applicant will not result in the removal of a facility or plant of the Applicant or any other occupant or user of the Project Facility from one area of the State of New York (the "State") to another area of the State or in the abandonment of one or more plants or facilities of the Applicant or any other occupant or user located within the State (but outside of the County). Therefore, the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting by the Agency to the Applicant of the Financial Assistance described in the Amended Application;

(e) the Project will serve the public purposes of the Act by preserving permanent, private sector jobs, and increasing the overall number of permanent, private sector jobs in the State;

(f) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State, nor shall any funds of the Agency be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media;

(g) although the Project Facility may constitute a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, (i) the Project Facility is likely to attract a significant number of visitors from outside the economic development region in which the Project Facility is located and, therefore, is a “tourism destination” project as that term is used in the Act, (ii) the predominant purpose of the Project would be to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the town within which the Project Facility would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services, and (iii) the Project will serve the public purposes of the Act by preserving permanent, private sector jobs and increasing the overall number of permanent, private sector jobs in the State. For purposes of this finding, retail sales shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section 1101 of the New York Tax Law; or (ii) sales of a service to such customers;

(h) the granting of the Financial Assistance by the Agency with respect to the Project as described in the Amended Application will encourage and assist the Applicant in undertaking the Project in the County, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the County and the State and improve their standard of living, and thereby serve the public purposes of the Act; and

(i) the Project will not result in the removal or abandonment of a plant or facility of the Applicant or any other occupant or user of the Project Facility, currently located within the County.

Section 2. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Administrative Director/CEO, Chief Financial Officer and the staff of the Agency with respect to the Application, the Amended Application, the Analysis and the Public Hearing, including, without limitation, (a) those actions required to ensure full compliance with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Project, and (b) the appointment of the law firm of Phillips Lytle LLP as Counsel to the Agency with respect to all matters in connection with the Project.

Section 3. The Agency hereby determines that the Agency has fully complied with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Project, subject to obtaining the Amended Executive Approval.

Section 4. Having considered fully all comments received at or in connection with the Public Hearing, including correspondence received subsequent to the Public Hearing, the Agency hereby further determines to proceed with the Project and the granting of the Financial Assistance described in the Amended Application, subject to obtaining the Amended Executive Approval and subject to the terms hereof. The Agency hereby approves the granting of (a) an exemption from real property taxes having an estimated value of \$210,239, (b) an exemption

from mortgage recording tax in the maximum amount of \$5,000, and (c) an exemption from sales and use taxes in the maximum amount of \$39,780.

Section 5. The Agency hereby authorizes the Chairman, the Vice Chairman, the Administrative Director/CEO and the Chief Financial Officer, acting together or individually, to request the Amended Executive Approval from the County Executive of Chautauqua County, New York.

Section 6. The Agency recognizes that due to the complexities of the proposed transaction it may become necessary that certain of the terms approved hereby may require modifications from time to time which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman, Administrative Director/CEO and Chief Financial Officer of the Agency, acting individually or jointly, to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution, but may include adjustments to the Financial Assistance as described in the Amended Application and granted hereunder. The approval of such modifications shall be evidenced by the certificate of determination of an Agency officer or the execution and delivery by some or all such Agency officers of relevant documents containing such modified terms.

Section 7. Subject to obtaining the Amended Executive Approval, the Agency is hereby authorized to (a) acquire an interest in the Project Facility pursuant to the Company Lease and the other Transaction Documents, (b) grant a subleasehold interest in the Project Facility pursuant to the Agency Lease and the other Transaction Documents, (c) grant the Financial Assistance as described in the Amended Application, and (d) do all things necessary, convenient or appropriate for the accomplishment thereof. All acts heretofore taken by the Agency with respect to the foregoing are hereby approved, ratified and confirmed.

Section 8. The form and substance of the Transaction Documents, in the forms presented to the members of the Agency, together with such changes as the Chairman, the Vice Chairman, the Administrative Director/CEO or the Chief Financial Officer may hereafter deem necessary or appropriate, are hereby approved. The Chairman, the Vice Chairman, the Administrative Director/CEO and the Chief Financial Officer are hereby authorized, on behalf of the Agency, acting together or individually, to execute and deliver the Transaction Documents to which the Agency is a party and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The execution and delivery of each such agreement, approval and consent by such person(s) shall be conclusive evidence of such approval.

Section 9. The Chairman, the Vice Chairman, the Administrative Director/CEO and the Chief Financial Officer of the Agency are hereby further authorized, on behalf of the Agency, acting together or individually, to designate any additional Authorized Representatives (as defined in the Agency Lease) of the Agency.

Section 10. The officers, employees and agents of the Agency are hereby authorized and directed, acting individually or jointly, for and in the name and on behalf of the Agency to do all

acts and things required or provided for by the provisions of the Transaction Documents, to execute and deliver all such additional certificates, instruments, agreements 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, convenient or appropriate to effect the purposes of this Resolution and to cause compliance with all of the terms, covenants and provisions of the Transaction Documents to which the Agency is a party or which are binding on the Agency.

Section 11. The members of the Agency acknowledge the terms and conditions of Section 875(3) of the Act and the duties and obligations of the Agency thereunder with respect to granting of State Sales and Use Taxes (as such term is defined in Section 875 of the Act) with respect to the Project. The members hereby direct the officers of the Agency to comply with such terms and conditions with respect to the Project and hereby direct Counsel to the Agency to include such terms and conditions in all relevant Transaction Documents.

Section 12. The Chairman, the Vice Chairman, the Administrative Director/CEO and the Chief Financial Officer of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Applicant and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 13. This Resolution shall take effect immediately.

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

Michael Metzger	AYE
Dennis J. Rak	AYE
Gary Henry	ABSENT
Steven Thorpe	AYE
Brad Walters	AYE
Jay Churchill	AYE
Kevin Muldowney	AYE
Rhonda Johnson	AYE

The foregoing Resolution was thereupon declared duly adopted.

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

WE, the undersigned officers of the County of Chautauqua Industrial Development Agency (the “Agency”), DO HEREBY CERTIFY that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on September 27, 2022 with the original thereof on file in our offices, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

WE FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public at both locations at which members of the Agency were present, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; (D) the meeting was duly held by videoconferencing in compliance with the requirements of Section 103-a of the Open Meetings Law, including, but not limited to, the notice provisions of such Section; (E) there was a quorum of the members of the Agency present throughout said meeting and the minimum number of members required for a quorum was physically present at one of the locations specified in the notice of the meeting, (F) the meeting was recorded and the recording has been or will be posted on the public website of the Agency pursuant to the Open Meetings Law; (G) members of the public were permitted to view such meeting via video and to participate in the proceedings via videoconference in real time to the same extent that that public participation was permitted to members of the public present in person.

WE FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, we have hereunto set our hand this 27th day of September, 2022.

[Assistant] Secretary

[Vice] Chairman

