

**AGENT RESOLUTION  
DUE DI MARE, INC. PROJECT**

A regular meeting of Rensselaer County Industrial Development Agency (the "Agency") was convened in public session in the Economic Development and Planning Office located on the fifth (5th) floor of the Rensselaer County Office Building located at 1600 Seventh Avenue in the City of Troy, Rensselaer County, New York on July 14, 2016 at 4:00 o'clock p.m., local time.

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

PRESENT:

John H. Clinton, Jr.	Chairman
Sandra Brown	Vice Chairman
Cynthia A. Henninger	Secretary/Treasurer
Ronald Bounds	Assistant Secretary/Treasurer
Douglas Baldrey	Member
James Church	Member
Michael Della Rocco	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Robin LaBrake	Assistant
Peter R. Kehoe, Esq.	Agency Counsel
Nadene Zeigler, Esq.	Special Counsel

The following resolution was offered by Douglas Baldrey, seconded by Sandra Brown, to wit:

Resolution No. 0716-06

RESOLUTION APPOINTING DUE DI MARE, INC. AS AGENT AND BBL CONSTRUCTION SERVICES, LLC AND BBL-CARLTON, L.L.C., AS SUBAGENTS OF RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY FOR THE PURPOSE OF UNDERTAKING AND COMPLETING THE DUE DI MARE, INC. PROJECT.

WHEREAS, Rensselaer County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 128 of the 1974 Laws of New York, as amended, constituting Section 903-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities,

health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, Due Di Mare, Inc., a New York business corporation (the “Company”), has submitted an application (the “Application”) to the Agency, a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 1.34 acre parcel of land located at 1 Fourth Street in the City of Troy, Rensselaer County, New York (tax map number 101.45-3-1) (the “Land”), together with an approximately 35,000 square foot building located thereon (the “Existing Facility”), (2) the renovation of the Existing Facility and the construction of an approximately 15,000 square foot addition to the Existing Facility (the “Addition”, and collectively with the Existing Facility sometimes to be referred to as the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property, including without limitation, tenant improvement and finish (the “Equipment”), all of the foregoing to constitute the upgrade of a hotel (the Land, the Facility and the Equipment being collectively referred to as the “Project Facility”); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on April 14, 2016 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on April 19, 2016 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located; (B) caused notice of the Public Hearing to be posted on April 19, 2015 on a public bulletin board located at the Rensselaer County Office Building located at 1600 7<sup>th</sup> Avenue, 1<sup>st</sup> Floor in the City of Troy, Rensselaer County, New York as well as on the Agency’s website; (C) caused notice of the Public Hearing to be published on April 21, 2016 in The Record, a newspaper of general circulation available to the residents of the City of Troy, Rensselaer County, New York; (D) conducted the Public Hearing on May 9, 2016 at 10:00 a.m., local time at the Rensselaer County Office Building, Economic Development and Planning Office located at 1600 7<sup>th</sup> Avenue, 5<sup>th</sup> Floor in City of Troy, Rensselaer County, New York; and (E) prepared a report of the Public Hearing (the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available 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 (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on

April 14, 2016 (the “Preliminary SEQR Resolution”), the (A) determined (1) that the Project involves more than one “involved agency”, and (2) to investigate the advisability of undertaking a coordinated review with respect to the Project and (B) authorized the Executive Director of the Agency to contact all other “involved agencies” for the purpose of ascertaining whether such “involved agencies” were interested in undertaking a coordinated review of the Project and, if so, designating a “lead agency” with respect to the Project (as such quoted terms are defined in SEQRA); and

WHEREAS, further pursuant to SEQRA, by resolution adopted by the members of the Agency on May 12, 2016 (the “Final SEQR Resolution”), the Agency (A) concurred in the determination that the City of Troy Planning Commission (the “Planning Board”) is the “lead agency” with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Planning Board issued on May 9, 2016 (the “Negative Declaration”), in which the Planning Board determined that the Project would not have a significant adverse environmental effect on the environment, and therefore, that an environmental statement need not be proposed with respect to the Project; and

WHEREAS, the Agency’s Uniform Tax Exemption Policy (the “Policy”) provides a standardized method for the determination of payments in lieu of taxes for a facility similar to the Project Facility. In connection with the Application, the Company made a request to the Agency (the “Pilot Request”) that the Agency deviate from the Policy with respect to Project Facility. Pursuant to the resolution adopted by the members of the Agency on April 14, 2016 (the “Pilot Deviation Notice Resolution”), the members of the Agency authorized the actions of the Executive Director of the Agency to send a notice to the chief executive officers of the “Affected Tax Jurisdictions” (as defined in the Act) pursuant to Section 874(4) of the Act, informing said individuals that the Agency had received the Pilot Request and that the members of the Agency would consider said request at a meeting of the members of the Agency scheduled to be held on June 9, 2016. The Executive Director of the Agency caused a letter dated May 9, 2016 (the “Pilot Deviation Notice Letter”) to be mailed to the chief executive officers of the Affected Tax Jurisdictions, informing said individuals that the Agency would, at its meeting on June 9, 2016, consider a proposed deviation from the Policy with respect to the payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility (the “Payment in Lieu of Tax Agreement”) and the reasons for said proposed deviation; and

WHEREAS, by resolution adopted by the members of the Agency on June 9, 2016 (the “Pilot Deviation Approval Resolution”), the members of the Agency determined to deviate from the Agency’s uniform tax exemption policy with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on June 9, 2016 (the “Approving Resolution”), as supplemented by a further resolution adopted by the members of the Agency on July 14, 2016 (the “Supplement to Approving Resolution”), the Agency determined to grant the Financial Assistance and to enter into a lease agreement (the “Lease Agreement”) between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the “Basic Documents”). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, pursuant to correspondences dated July 11, 2016 and July 12, 2016 (collectively, the “Request”) attached hereto as Exhibit A, the Agency has been requested by the Company to (A) temporarily appoint the Company as agent of the Agency and (B) temporarily appoint BBL Construction Services, LLC and BBL-Carlton, L.L.C. (collectively, the “Contractors”), as sub-agents of the Agency to undertake the Project;

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

Section 1. In order to preserve the sales tax exemption which forms a major part of the Financial Assistance, and in order to facilitate the commencement of the Project, pursuant to the Request the Company is hereby temporarily appointed the true and lawful agent of the Agency (A) to undertake the Project, as the stated agent for the Agency, (B) to make, execute, acknowledge and deliver all contracts, orders, receipts, writings and instruments necessary in connection therewith, and in general to do all things as may be requisite or proper for undertaking the Project with the same powers and the same validity as the Agency could do if acting in its own behalf and (C) to pay all fees, costs and expenses incurred in the undertaking of the Project from its own funds, said temporary appointment to terminate on September 15, 2016.

Section 2. In order to preserve the sales tax exemption which forms a major part of the Financial Assistance, and in order to facilitate the commencement of the Project, the Contractors are hereby temporarily appointed the true and lawful sub-agents of the Agency (A) to undertake the Project, as the stated sub-agent for the Agency, (B) to make, execute, acknowledge and deliver all contracts, orders, receipts, writings and instruments necessary in connection therewith, and in general to do all things as may be requisite or proper for undertaking the Project with the same powers and the same validity as the Agency could do if acting in its own behalf and (C) to pay all fees, costs and expenses incurred in the undertaking of the Project from its own funds, said temporary appointment to terminate on September 15, 2016.

Section 3. The Agency (A) hereby agrees to the temporary appointment of the Company as an agent to undertake the Project and (B) determines to enter into an interim agency and indemnification agreement (the "Interim Agency and Indemnification Agreement"), an interim Section 875 GML recapture agreement (the "Interim Section 875 GML Recapture Agreement"), a uniform project benefits agreement (the "Uniform Project Benefits Agreement") and any other documents or certificates required in connection with said appointment (collectively, the "Interim Agent Documents"), the form and substance of which the Chairman, Vice Chairman or the Executive Director of the Agency is authorized to negotiate and approve.

Section 4. The Agency (A) hereby agrees to the temporary appointment of the Contractors as sub-agents, to undertake the Project and (B) determines to enter into an interim contractor agency and indemnification agreement (the "Interim Contractor Agency and Indemnification Agreement"), an interim contractor Section 875 GML recapture agreement (the "Interim Contractor Section 875 GML Recapture Agreement"), a uniform project benefits agreement (the "Contractors Uniform Project Benefits Agreement") and any other documents or certificates required in connection with said appointment (collectively, the "Interim Contractor Documents"), the form and substance of which the Chairman, Vice Chairman or the Executive Director of the Agency is authorized to negotiate and approve.

Section 5. The Chairman (or Vice Chairman) or the Executive Director of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Interim Agent Documents and the Interim Contractor Documents, 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, all in the forms thereof as the Chairman (or Vice Chairman) or the Executive Director shall approve, the execution thereof by the Chairman (or Vice Chairman) or the Executive Director to constitute conclusive evidence of such approval.

Section 6. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Interim Agent Documents and the Interim Contractor Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Interim Agent Documents and the Interim Contractor Documents binding upon the Agency.

Section 7. 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:

John H. Clinton, Jr.	VOTING	YES
Sandra Brown	VOTING	YES
Cynthia A. Henninger	VOTING	YES
Ronald Bounds	VOTING	YES
Douglas Baldrey	VOTING	YES
James Church	VOTING	YES
Michael Della Rocco	VOTING	YES

The foregoing Resolution was thereupon declared duly adopted.





EXHIBIT A

REQUEST

- SEE ATTACHED -

**Zeigler, Nadene**

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**From:** Debra Lambek <dlambek@columbiadev.com>  
**Sent:** Tuesday, July 12, 2016 12:30 PM  
**To:** Zeigler, Nadene  
**Cc:** Michael Fusco  
**Subject:** RE: best western - ren county ida-agent appt.

Yes please

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**From:** Zeigler, Nadene [mailto:NZeigler@hodgsonruss.com]  
**Sent:** Tuesday, July 12, 2016 12:04 PM  
**To:** Debra Lambek <dlambek@columbiadev.com>  
**Cc:** Michael Fusco <mfusco@franklinplaza.com>  
**Subject:** RE: best western - ren county ida-agent appt.

Hi Debra:  
Would you like the temporary appointment to extend to the two contractors, as well?

**Nadene E. Zeigler**  
Partner  
Hodgson Russ LLP

Tel: 518.465.2333  
Fax: 866.505.9238



website | vCard | bio | email

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Tel: 518.465.2333 | [map](#)



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**From:** Debra Lambek [mailto:dlambek@columbiadev.com]  
**Sent:** Monday, July 11, 2016 10:38 AM  
**To:** Zeigler, Nadene <NZeigler@hodgsonruss.com>  
**Cc:** Michael Fusco <mfusco@franklinplaza.com>  
**Subject:** best western - ren county ida

Hi nadene, hope all is well. we are looking to close with our lender in about 45 days but would like to start construction sooner. Can we do a temporary sales tax letter for 60 days to get us started? thanks

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