

**RESOLUTION AUTHORIZING ADDITIONAL FINANCING  
DUE DI MARE, INC. PROJECT**

A regular meeting of Rensselaer County Industrial Development Agency (the "Agency") was convened in public session in the 3rd Floor Conference Room at the Quackenbush Building located at 333 Broadway in the City of Troy, Rensselaer County, New York on November 9, 2017 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:

<del>John H. Clinton, Jr.</del>	<del>Chairman</del>
Michael Della Rocco	Vice Chairman
Cynthia A. Henninger	Secretary/Treasurer
Ronald Bounds	Assistant Secretary/Treasurer
Douglas Baldrey	Member
<del>James Church</del>	<del>Member</del>
Renee Powell	Member

ABSENT:

J. CLINTON  
J. CHURCH

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Robert L. Pasinella, Jr.	Executive Director
Robin LaBrake	Assistant
Peter R. Kehoe, Esq.	Agency Counsel
George W. Cregg, Jr., Esq.	Special Counsel

The following resolution was offered by C. HENNINGER, seconded by R. BOUNDS, to wit:

Resolution No. 1117-08

RESOLUTION AUTHORIZING THE EXECUTION BY RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN CONSENT AND SUBORDINATION AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH 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, on or about November 22, 2016 (the "Closing"), the Agency granted certain "financial assistance" within the meaning of the Act (the "Financial Assistance") in connection with a project (the "Project") being undertaken by the Agency for the benefit of Due Di Mare, Inc (the "Company") 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 of the Project Facility to the Company pursuant to a lease agreement dated as of November 1, 2016 (the "Lease Agreement") by and between the Agency and the Company; and

WHEREAS, in connection with the Closing, the Agency and the Company entered into (A) a certain lease to agency dated as of November 1, 2016 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant and (B) the Lease Agreement; and

WHEREAS, in order to finance a portion of the costs of the Project, the Company obtained a loan in the principal sum of up to \$3,203,846.34 (the "Loan") from Pioneer Savings Bank (the "Lender"), which Loan was secured by a mortgage and security agreement dated as of November 1, 2016 (the "Mortgage") from the Agency and the Company to the Lender; and

WHEREAS, by correspondence dated November 1, 2017 (the "Request"), which Request is attached hereto as Exhibit A, the Agency was informed that the Company will be obtaining additional financing in an amount of \$300,000 (the "Additional Loan") from the Lender, which Additional Loan will in part be secured by (A) a mortgage (the "Additional Loan Mortgage") pursuant to which the Company will grant to the Lender a mortgage lien on and security interest in the Project Facility and (B) an assignment of leases and rents from the Company in favor of the Lender (as amended from time to time, the "Additional Loan Assignment") pursuant to which the Company will assign to the Lender all of its right, title and interest in to and under any leases and subleases of the Project Facility together with the rent due thereunder; and

WHEREAS, the Mortgage and the Additional Loan Mortgage are to be consolidated with certain other indebtedness secured by an existing mortgage on the Project Facility resulting in a consolidated indebtedness in the amount of \$5,800,000.00 pursuant to the terms of a mortgage consolidation and

modification agreement by and between the Company and the Lender (the "Mortgage Consolidation Agreement");

WHEREAS, pursuant to the Request, as the Agency has a leasehold and license interest in the Land, the Agency is being asked to enter into a consent and subordination agreement dated as of November 9, 2017 (the "Consent and Subordination Agreement") by and between the Company and the Agency in which the Agency (A) will consent to the Company entering into the Additional Loan Mortgage, the Additional Loan Assignment and the Mortgage Consolidation Agreement (collectively, the "Additional Loan Documents") and (B) will subordinate the Lease Agreement and the Lease to Agency to the lien of the Additional Loan Documents; and

WHEREAS, in connection with the execution and delivery of the Consent and Subordination Agreement, the Agency will not be providing any benefits to the Company via exemption from the mortgage recording tax; 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, being 6 NYCRR Part 617, as amended (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the Request; and

WHEREAS, pursuant to SEQRA, the Agency has examined the Request in order to make a determination as to whether the Request is subject to SEQRA, and it appears that the Request constitutes a Type II action under SEQRA;

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

Section 1. Based upon an examination of the Request, the Agency hereby makes the following determinations:

(A) The Request constitutes a "Type II action" pursuant to 6 NYCRR 617.5(c)(23), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Request.

(B) The Agency will not be granting any mortgage recording tax exemption relating to the Request.

(C) That since compliance by the Agency with the Request will not result in the Agency providing more than \$100,000 of "financial assistance" (as such quoted term is defined in the Act) to the Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Request.

Section 2. Subject to (A) approval of the form of the Consent and Subordination Agreement, by Agency counsel and Special Agency counsel and (B) receipt by the Executive Director of (1) the Agency's administrative fee relating to the Request, if any, and (2) counsel's fees relating to the Request, the Agency hereby authorizes the execution by the Agency of the Consent and Subordination Agreement.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chairman (or Vice Chairman) of the Agency is hereby authorized to execute and deliver the Consent and Subordination Agreement to the Company, 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 substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

Section 4. 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 Consent and Subordination Agreement, 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 Consent and Subordination Agreement binding upon the Agency.

Section 5. 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	<u>Absent</u>
Michael Della Rocco	VOTING	<u>YES</u>
Cynthia A. Henninger	VOTING	<u>YES</u>
Ronald Bounds	VOTING	<u>YES</u>
Douglas Baldrey	VOTING	<u>YES</u>
James Church	VOTING	<u>Absent</u>
Renee Powell	VOTING	<u>YES</u>

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned (~~Assistant~~) Secretary of Rensselaer County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on November 9, 2017 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 9<sup>th</sup> day of November, 2017.

Cynthia A. Henninger  
(~~Assistant~~) Secretary

(SEAL)

EXHIBIT A

REQUEST

- SEE ATTACHED -

## Young / Sommer LLC

JEFFREY S. BAKER  
DAVID C. BRENNAN  
JOSEPH F. CASTIGLIONE  
JAMES A. MUSCATO II  
J. MICHAEL NAUGHTON  
ROBERT A. PANASCI  
ALLYSON M. PHILLIPS  
DEAN S. SOMMER  
KEVIN M. YOUNG

LAURA K. BOMYEA  
E. HYDE CLARKE  
JESSICA ANSERT KLAMI  
KRISTINA M. MAGNE  
KRISTIN LAVIOLETTE PRATT

### COUNSELORS AT LAW

EXECUTIVE WOODS, FIVE PALISADES DRIVE, ALBANY, NY 12205

Phone: 518-438-9907 • Fax: 518-438-9914

[www.youngsommer.com](http://www.youngsommer.com)

SENIOR COUNSEL  
MICHAEL J. MOORE  
KENNETH S. RITZENBERG  
DOUGLAS H. WARD

OF COUNSEL  
SUE H.R. ADLER  
LAUREN L. HUNT  
ELIZABETH M. MORSS  
SCOTT P. OLSON  
STEPHEN C. PRUDENTE  
KRISTIN CARTER ROWE

PARALEGALS  
ALLYSSA T. MOODY  
AMY S. YOUNG

Writer's Telephone Extension: 224  
[dbrennan@youngsommer.com](mailto:dbrennan@youngsommer.com)

November 1, 2017

**Via E-mail and First Class Mail**

Robert Pasinella, Jr., Director  
Bureau of Economic Development and Planning  
Rensselaer County IDA  
1600 7th Avenue  
Troy, NY 12180

Re: Pioneer Savings Bank \$5,800,00.00 Loan to Due Di Mare, Inc.  
Property: One Fourth Street, Troy, New York, SBL: 101.45-3-1

Dear Director Pasinella:

I am writing on behalf of Due Di Mare, Inc. and its principals, Michael Cocca and Michael Fusco, with respect to them borrowing an additional \$300,000.00 from Pioneer Savings Bank. As you are aware, the Rensselaer County IDA has a leasehold interest in the property and, as a result, the IDA's consent is required for this transaction.

At this juncture, we are not requesting any additional benefits from the IDA such as an exemption to the mortgage recording tax.

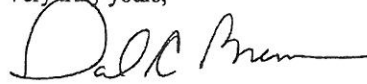
The purpose for the additional funds is primarily as a result of a change in the project scope, which included the rehabilitation of the exterior of the existing portion of the hotel to include renovation or updating to the EIFS, siding, brick veneer, installation of replacement windows and gutters and items of that nature. In addition, the primary project (the addition to the hotel) incurred a number of change orders typical of a project of this scope and magnitude.

Robert Pasinella, Jr., Director  
Bureau of Economic Development and Planning  
Rensselaer County IDA  
November 1, 2017  
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I have discussed this matter briefly with counsel to the IDA, Nadene Zeigler of Hodgson Russ, and I am requesting that this matter be added to the agenda of the November 9, 2017 IDA meeting for consideration and action.

I am working to schedule a closing date soon after the date of your meeting. I am available, as is Michael Fusco, to attend the IDA meeting if you require. I appreciate your time and consideration for this matter. Should you require any additional information to consider this request, please contact me and I will provide it promptly.

Very truly yours,

A handwritten signature in black ink, appearing to read "D.C. Brennan", written in a cursive style.

David C. Brennan

cc: Nadene E. Zeigler, Esq. (via email and first class mail)  
Michael A. Fusco (via email only)