

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (the "**Project Agreement**"), is made as of November 1, 2023, by and between the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation existing under the laws of the State of New York, with offices at the Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York 12553 (the "**Agency**") and **OC HOSPITALITY, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 343 Greeves Road, New Hampton, New York 10958 (the "**Company**").

WITNESSETH:

WHEREAS, Title I of Article 18-A of the General Municipal Law of the State of New York (the "**Enabling Act**") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 390 of the Laws of 1972 of the State, as amended (collectively, with the Enabling Act, the "**Act**") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "**State**") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Company submitted an application (the "**Application**") to the Agency requesting the Agency's assistance with respect to a certain project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 4.6 acres of vacant land located at 21 Med Parc Road, Wallkill, New York (Tax Map No. 78-1-98.41) in Orange County (the "**County**") (the "**Land**") (ii) the construction of a four (4) story, 58,000 square foot, approximately 101 room hotel with a pool and related amenities as well as landscaping and associated surface parking lot (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with

the acquisition, construction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a leaseback agreement; and

WHEREAS, by resolutions of its members adopted on August 16, 2023 (the "**Resolution**"), the Agency authorized certain financial assistance for the benefit of the Project consisting of: (a) an exemption from New York State and local sales and use taxes for purchases and rentals related to the Project with respect to qualifying personal property included in or incorporated into the Project Facility or used in the acquisition, construction or equipping of the Project Facility in the amount listed below; and (b) an exemption from mortgage recording tax in the approximate amount listed below (collectively referred to as the "**Financial Assistance**"); and

WHEREAS, it has been estimated and confirmed by the Company within its Application for Financial Assistance that: (i) the purchase of goods and services relating to the Project, and subject to New York State and local sales and use taxes, are estimated to cost an amount up to **\$7,700,000**; and therefore, the value of the State and local sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$625,625**; and (ii) the mortgage recording tax exemption amount shall be approximately **\$82,500** (in accordance with Section 874 of the General Municipal Law). There are no real property tax abatement benefits to be provided to the Company; and

WHEREAS, the Company proposes to lease the Land and Facility to the Agency, and the Agency desires to lease the Land and Facility from the Company pursuant to the terms of a certain Lease Agreement dated as of November 1, 2023 (the "**Lease Agreement**"), by and between the Company and the Agency; and

WHEREAS, the Agency proposes to acquire an interest in the Equipment pursuant to a bill of sale dated as of November 1, 2023 from the Company (the "**Bill of Sale**"); and

WHEREAS, the Agency proposes to sublease the Project Facility to the Company, and the Company desires to sublease the Project Facility from the Agency, upon the terms and conditions set forth in a certain Leaseback Agreement dated as of November 1, 2023 (the "**Leaseback Agreement**"); and

WHEREAS, contemporaneously with the execution of this Project Agreement, the Company shall execute and deliver an environmental compliance and indemnification agreement dated as of November 1, 2023 in favor of the Agency (the "**Environmental Compliance and Indemnification Agreement**"); and

WHEREAS, by its Resolutions, the Agency authorized the Company to act as its agent for the purposes of undertaking and completing the Project and the Agency delegated to the Company the authority to appoint sub-agents subject to the execution of this Project Agreement and compliance with the terms set forth herein, in the Resolutions and in the Leaseback Agreement; and

WHEREAS, the Agency requires, in accordance with Section 859-a and 874 of the Act, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolutions, and as more particularly described in this Project Agreement, and to confer the approved Financial Assistance, that the Company provide assurances with respect to the terms and conditions herein set forth; and

WHEREAS, this Project Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company. No Financial Assistance shall be provided to the Company prior to the effective date of this Project 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:

ARTICLE I PROJECT AND TERM

Section 1.01 Recitals. The foregoing recitals are incorporated by referenced as if fully set forth herein.

Section 1.02 Defined terms. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Table of Definitions attached to the Leaseback Agreement as Exhibit "C."

Section 1.03 Purpose of Project. It is understood and agreed by the parties that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and the entering by the Agency into the Lease Agreement, Leaseback Agreement and this Project Agreement is in order to, promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping, furnishing and completing of the Project Facility, to advance job opportunities, health, general prosperity and economic welfare of the people of Orange County and to otherwise accomplish the public purpose of the Act.

Section 1.04 Term. The term of this Project Agreement shall be the longer of: (i) the term of the Leaseback Agreement; or (ii) five years following the Project's Completion Date as evidenced by a certificate of occupancy (the "**Term**"). The Project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the Term of this Project Agreement and the Company's reporting obligations hereunder shall continue during the Term hereof. In addition, during the Term hereof, the Company and the Project shall be subject to Article V hereof.

ARTICLE II REAL PROPERTY TAX EXEMPTION

Section 2.01. PILOT Agreement. The Company is not receiving an exemption from real property taxes from the Agency; and notwithstanding the Agency's interest in the Project Facility, the Company shall pay real property taxes and other special assessments as if the Agency had no interest in the Project Facility and it was privately owned.

**ARTICLE III
SALES AND USE TAX EXEMPTION AND MORTGAGE RECORDING TAX
EXEMPTION**

Section 3.01. Scope of Agency. The Company agrees to limit its activities as agent for the Agency under the authority of the Resolutions and this Project Agreement solely to acquisition, reconstruction, installation and completion of the Project Facility. The right of the Company to act as agent of the Agency shall expire on **August 1, 2025**, unless extended by a resolution adopted by the members of the Agency, or unless terminated early in accordance with the terms of the Leaseback Agreement. The value of the sales and use tax exemption benefits shall not exceed the amounts described in the Application and as set forth in Section 3.04(b) unless approved by a resolution adopted by the members of the Agency. All contracts entered into by the Company as agent for the Agency shall include the following language:

“This contract is being entered into by _____ (the “*Agent*”), as agent for and on behalf of the Orange County Industrial Development Agency (the “*Agency*”), in connection with a certain project of the Agency for the benefit of the Agent consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for use in construction and/or incorporation and installation in certain premises located at 21 Med Parc Road, Wallkill, New York (the “*Premises*”). The machinery, equipment and building materials (collectively, the “*Equipment*”) to be used in the construction and/or incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the use and/or acquisition of the Equipment is effected in accordance with the terms and conditions set forth in the Project Agreement dated as of November 1, 2023 by and between the Agency and the Company (the “*Project Agreement*”); and the Agent represents that this contract is in compliance with the terms of the Project Agreement. 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 acknowledges and agrees to the terms and conditions set forth in this paragraph.”

Failure by the Company and/or any Sub-Agent (as hereinafter defined) thereof to include such language may disqualify the agent status and Sales Tax Exemption derived by virtue of this Project Agreement. The Company, for itself and on behalf of all duly appointed Sub-Agents, hereby agrees that all contracts entered into by the Company and any Sub-Agents thereof shall be available to the Agency for inspection and confirmation of the foregoing mandatory language.

Section 3.02. Appointment of Sub-Agents.

(a) Subject to the terms and conditions of this Project Agreement and pursuant to the Resolutions, the Agency hereby delegates to the Company the authority to appoint sub-agents of the Agency in connection with the Project, which may be agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and other parties as the Company chooses (each, a “*Sub-Agent*”). The appointment of each such Sub-Agent will be

effective only upon: (1) the execution by the Sub-Agent and the Company of the Sub-Agent Appointment Agreement attached as Exhibit D to the Leaseback Agreement (the "**Sub-Agent Agreement**"), the terms and provisions of which are incorporated herein; (2) the receipt by the Agency of a completed Form ST-60 in accordance with Section 3.04(c) below; and (3) receipt of any required insurance as set forth in the Sub-Agent Agreement.

(b) The Company shall ensure that each Subagent shall observe and comply with the terms and conditions of this Project Agreement.

Section 3.03. Mortgage Recording Tax Exemption. Section 874 of the Act exempts the Agency from paying certain mortgage recording taxes except for the portion of the mortgage recording tax allocated to transportation districts referenced in Section 253(2)(a) of the New York State Real Property Tax Law. The Agency hereby grants to the Company exemption from mortgage recording taxes for one or more mortgages in the approximate amount of **\$82,500** based on the Company's Application in connection with the financing of the Project and any future financing, refinancing or permanent financing of the costs of the Project (the "**Mortgage Recording Tax Exemption**"). The Company represents and warrants (1) that the Land encumbered by the Mortgage is located within the transportation district referenced in Section 253(2)(a) of the New York State Real Property Tax Law, and (2) that upon recording the Mortgage, the Company shall pay the mortgage recording tax allocated to transportation districts referenced in Section 253(a)(2) of the New York State Real Property Tax Law.

Section 3.04. Representations and Covenants of the Company.

(a) The Company hereby incorporates acknowledges and restates its representations, covenants and warranties made in the Leaseback Agreement, including but not limited to Section 8.12.

(b) The Company further covenants and agrees that the purchase of goods and services relating to the Project and subject to State and local sales and use taxes are estimated in the amount up to **\$7,700,000**, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency shall not exceed **\$625,625**.

(c) The Company further covenants and agrees to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (Form ST-60) for itself and each Sub-Agent and to provide said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(d) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance an "Annual Report of Sales and Use Tax Exemptions" (Form ST-340), a copy of which is attached hereto at **Exhibit "C"**, regarding the value of sales and use tax exemptions the Company and its Sub-Agents have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with Section 874(8) of the Act. The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of their filed ST-340 to the Agency, but in no event later than March 29 of each year. The Company understands and agrees that the failure to file such annual statement will

result in the removal of: (1) the Company's authority to act as agents for the Agency; and (2) the authority of any Sub-Agent of the Agency appointed by the Company pursuant to Section 3.02 hereof to act as agent for the Agency. **Please note, the Company is to report only the Sales Tax Exemption derived as a result of the Agency's participation in the Project and not those received as a result of other available State exemptions. For the avoidance of doubt, other State exemptions, which the Company should not report on its NYS Form ST-340, include, but are not limited to, exemptions available to certain manufacturers or those exemptions that apply to capital improvements.**

(e) The Company further acknowledges and agrees that all purchases made in furtherance of the Project by the Company and any Sub-Agent shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (Form ST-123), a copy of which is attached hereto at **Exhibit "D"**, and it shall be the responsibility of the Company and the Sub-Agent, as the case may be, (and not the Agency) to complete 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 of invoice should state, "I, [NAME OF AGENT], certify that I am a duly appointed agent of the Orange County Industrial Development Agency 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 Project Agreement with the Orange County Industrial Development Agency." The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project on each bill and invoice: OC HOSPITALITY, LLC PROJECT, 21 MED PARC ROAD, WALLKILL, NY; IDA PROJECT NUMBER: IDA-1094.

(f) By execution by the Company of this Project Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of the Sales Tax Exemption by the Company or by any Agent is strictly for the purposes stated herein.

(g) The Company acknowledges and agrees that the Agency shall not be liable, either directly or indirectly or contingently, upon any 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.

(h) The Company acknowledges that the Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company is in default under this Project Agreement (or other Company Document) until such default is cured to the satisfaction of the Agency.

(i) The Company acknowledges that upon the Completion Date, the Company and each Agent shall cease being agents of the Agency, and the Company shall immediately notify each Agent in writing of such termination.

(j) **The Company hereby acknowledges and agrees that the Financial Assistance being provided by the Agency under the Company Documents constitutes "public funds" unless otherwise excluded under Section 224-a(3) of the New York Labor Law, and**

by executing this Agreement, (i) confirms that it has received notice from the Agency pursuant to Section 224-a(8)(d) of the New York Labor Law and (ii) acknowledges its obligations pursuant to Section 224-a(8)(a) of the New York Labor Law. Other than the Agency Financial Assistance estimates provided herein and disclosed to the Company, the Agency makes no representations or covenants with respect to the total sources of "public funds" received by the Company in connection with the Project.

Section 3.05. Hold Harmless Provisions.

(a) The Company releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to: (1) liability for loss or damage to property or bodily injury to or death of any and all persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Project Facility; (2) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Project Agreement or the enforcement of or defense of validity of any provision of this Project Agreement; (3) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Sections 3.01 and 3.02 hereof; and (4) all causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions that may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the gross negligence or intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents (other than the Company) or employees by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(c) To effectuate the provisions of this Section 3.05, the Company agrees to provide for and insure, in the liability policies required by Section 3.06 of this Project Agreement, its liabilities assumed pursuant to this Section 3.05.

(d) Notwithstanding any other provisions of this Project Agreement, the obligations of the Company pursuant to this Section 3.05 shall remain in full force and effect after the term and termination of this Project Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency, or its officers, members, agents (other than the Company) or employees, relating thereto.

(e) The obligations and agreements of the Agency contained herein shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent (other than the Company), employee or servant of the Agency in his individual capacity, and the members, officers, agents (other than the Company), employees and servants of the Agency shall not be liable personally hereon or be subject to any personal liability of accountability based upon or in respect hereof or of any transaction contemplated hereby.

Section 3.06. Insurance Required.

(a) The Company agrees that it shall maintain all insurance required under the Leaseback Agreement.

(b) The Company agrees that it shall cause its general contractor for the Project to maintain, effective as of the date of the Sub-Agent Agreement until the expiration or termination of the general contractor's employment by the Company, or its designee, with respect to the Project Facility, all of the same insurance with respect to the Project Facility, as set forth in Article 6 of the Leaseback Agreement as if the general contractor were the Company thereunder. The Company further agrees that it shall cause its general contractor for the Project to comply and abide, effective as of the date of the Sub-Agent Agreement and until the expiration or termination of the general contractor's employment by the Company, or its designee, with respect to the Project Facility, with all of the terms and conditions set forth in Article 6 of the Leaseback Agreement with respect to the type, nature and proof of insurance required thereunder.

ARTICLE IV

COMMITMENTS AND REPORTING

Section 4.01. Compliance Commitments. The Company agrees and covenants that it shall meet and maintain the commitments set forth in (a) below, and report on same as provided for herein, beginning in the first year following the Completion Date of the Project and continuing for the Term (as defined herein) hereof. The Company further agrees and covenants that it shall meet and maintain the commitments set forth in (b) below with respect to retained jobs set forth in the Application, if any, starting in the first year in which Financial Assistance is claimed and/or provided; and with respect to new jobs to be created in years one (1) through three (3) following the Completion Date of the Project as set forth in the Company's Application:

(a) The total investment actually made with respect to the Project at the Project's Completion Date shall equal or exceed \$14,730,000, being the total project cost as stated in the Company's Application for Financial Assistance (the "*Investment Commitment*").

(b) There were no full time equivalent ("*FTE*") employees retained by the Project Facility as of the date of the Application for Financial Assistance. The Company's Application estimated the creation of eight (8) new FTEs and twelve (12) part time equivalents (collectively, the "*New FTEs*") at the Project Facility within the first three (3) years following the Completion Date of the Project Facility. The Company covenants and agrees to create the New FTEs set forth in the first three (3) years following completion of the Project Facility as of and in the years set forth in the Application. The Company shall be required to meet and maintain all of the foregoing employment commitments during the Term (as defined in Section 1.04 above) hereof (the "*Employment Commitment*").

(c) The Company shall annually provide to the Agency certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project as set forth herein for the Term hereof (the "*Reporting Commitment*").

Section 4.02. Reporting Requirement. As part of the commitments set forth in Section 4.01, the Company shall provide annually, to the Agency, a certified statement and supporting 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, by zip code, including full time equivalent independent contractors or employees of independent contractors that work at the Project location; (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) information regarding Financial Assistance. **Exhibit "A"** contains a form of annual certification that the Company must complete and submit to the Agency on an annual basis. The Agency reserves the right to modify such form to require additional information that the Agency must have in order to comply with its reporting requirements under the Act and/or its policies and to request such information more frequently than annually.

In addition to the foregoing, the Company shall submit a copy of quarterly NYS-45 reports, a copy of which is attached hereto at **Exhibit "E"**, and any other reports required by the Agency to evidence the employment commitment.

ARTICLE V

SUSPENSION, DISCONTINUATION, RECAPTURE AND/OR TERMINATION OF FINANCIAL ASSISTANCE

Section 5.01. Suspension, Discontinuation, Recapture and/or Termination of Financial Assistance. It is understood and agreed by the Parties that the Agency is entering into the Lease Agreement, the Leaseback Agreement and this Project Agreement in order to ensure the

completion of the Project and provide Financial Assistance to the Company for the Project Facility and to accomplish the public purposes of the Act.

(a) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, this Project Agreement, the Leaseback Agreement and the Resolutions, the Company covenants and agrees that it is subject to recapture of all State sales and use tax exemption benefits if:

(1) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Project are not entitled to the State sales and use tax exemption benefits; or

(2) the State sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or

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

(4) the Project has failed to comply with a material term or condition to use the property or services in the manner required by any project document between the Company and the Agency.

Each of the foregoing four events are hereinafter referred to as a “*State-Mandated Recapture Event*”. The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a State-Mandated Recapture Event has occurred.

(b) In addition to Section 5.01(a), in accordance with the policies of the Agency and the Resolutions, the Company covenants and agrees that the Agency shall have the right to suspend, discontinue or terminate all or any portion of any Financial Assistance and recapture all or a portion of the Recapture Amount to the extent any of the following occur (each a “*Deficit*”):

(1) for projects that utilized local sales and use tax exemptions, the Project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property or services not authorized by the Agency (each, a “*Local Sales Tax Benefit Violation*”);

(2) the Company, upon completion of the Project, fails to reach and maintain its employment requirements for job creation and/or retention in accordance with the Agency’s policies (“*Job Deficit*”);

(3) the total investment actually made with respect to the Project at the Project’s completion date is less represented as its total investment amount in its Application (“*Investment Deficit*”);

(4) the Company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project ("**Reporting Failure**");

(5) the Company closes the Project Facility or has a significant change in the nature/type of business conducted thereat; or

(6) there otherwise occurs any event of default under any Company Document (each, an "**Event of Default**") or a material violation of the terms and conditions of any Company Document (a "**Material Violation**").

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency's attention, whether a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure Event of Default or Material Violation (each a "**Noncompliance Event**") has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any Project Document in accordance with the terms of the Project Document.

At the time of any Noncompliance Event, the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance in accordance with the terms hereof, the Leaseback Agreement, as well as its Recapture Policy; and shall consider the following various factors, including but not limited to, the following in determining whether to proceed to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance:

- (i) Whether the Company has proceeded in good faith.
- (ii) Whether the Project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the Company.
- (iii) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create a more adverse situation for the Company, such as the Company going out of business or declaring bankruptcy, which would not occur if the Agency's rights were not exercised.
- (iv) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create an adverse situation for the residents of Orange County.
- (v) The assessment prepared in accordance with the Agency's Annual Assessment Policy.
- (vi) Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend,

discontinue, recapture or terminate all or any portion of the Financial Assistance.

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance (the "**Determination**"). The Determination shall provide terms, if any, by which the Company may remedy any Noncompliance Event upon which the Determination was based. The Company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume Financial Assistance to the Company (which will be at the Agency's sole discretion).

(c) If a State-Mandated Recapture Event occurs or the Agency makes a 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 jurisdictions, unless agreed to otherwise by any local taxing jurisdiction. 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 may assess and determine the State sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

(d) In the event any payment owing by the Company under this Section shall not be paid upon demand of the Agency, such payment shall bear interest from the date of such demand at the rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(e) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including, without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section from amounts received by the Agency pursuant to this Section.

ARTICLE VI DEFAULTS AND REMEDIES

Section 6.01. Event of Default.

(a) A default in the performance or the observance of any covenants, conditions, or agreements on the part of the Company in this Project Agreement or any other Company Document, including but not limited to, the Company's ongoing reporting obligations hereunder;

(b) The Company has made a materially 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

(c) Failure of the Company to file a copy of the Form ST-340, the quarterly NYS-45 or any other reporting requirements with the Agency in compliance with Articles III or IV hereof; or

(d) The occurrence and continuation of a Recapture Event.

Section 6.02 Remedies. Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

(a) Cease performing under this Project Agreement;

(b) Terminate this Project Agreement or any of the other Company Documents; and/or

(c) Take any other action at law or in equity, which may appear necessary or desirable to collect any amounts then due, or thereafter to become due, hereunder or under any of the other Company Documents, including but not limited to recapture.

No action taken pursuant to this Section 6.02 (including termination of the Project Agreement) shall relieve the Company from its obligation to make all payments required by the Leaseback Agreement or Recapture Benefits.

Section 6.03 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Project Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right and power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article VI it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Project Agreement.

Section 6.04 Agreement to Pay Attorneys' Fees and Expenses. By executing this Project Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency (a) for legal services including, but not limited to, those provided by the Agency's general counsel and bond/transaction counsel; (b) for other consultants retained by the Agency, if any, in connection with the Project; and (c) with respect to the Agency's enforcement of any event of default or failure to comply with the terms of this Project Agreement (including reasonable attorneys fees). 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 (i) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Company to procure the services of one or more financial institutions to provide financing

for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

**ARTICLE VII
MISCELLANEOUS PROVISIONS**

Section 7.01. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Project Agreement to the Agency regardless of any investigation made by the Agency. The obligations of the Company to repay, defend and/or provide the indemnity required by Section 3.05 hereof shall survive the termination of the Agency's interest in the Project Facility until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency or its officers, members, agents (other than the Company) or employees relating thereto; and all such payments after such termination shall be made upon demand of the party to whom such payment is due. The obligations of the Company pursuant to Article IV hereunder shall survive the Agency's interest in the Project Facility, and for the avoidance of doubt, the Agency's rights under Article V shall survive the termination of the Agency's interest in the Project Facility.

Section 7.02. Notices. All notices, certificates and other communications under this Project Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by overnight delivery service, addressed as follows:

If to the Agency: Orange County Industrial Development Agency
Orange County Business Accelerator
4 Crotty Lane, Suite 100
New Windsor, New York 12553
Attn: William Fioravanti, Chief Executive Officer

With a copy to: Bousquet Holstein PLLC
One Lincoln Center
110 West Fayette Street, Suite 1000
Syracuse, New York 13202
Attn: Susan R. Katzoff, Esq.

If to the Company: OC Hospitality, LLC
343 Greeves Road
New Hampton, New York 10958
Attn: Chetan Patel

With a copy to: Blustein, Shapiro, Frank & Barone, LLP
10 Matthews Street
Goshen, New York 10924
Attn: Michael S. Blustein, 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 received or delivery of same is refused by the recipient or personally delivered in the manner provided in this Section.

Section 7.03. Amendments. No amendment, change, modification, alteration or termination of this Project Agreement shall be made except in writing upon the written consent of the Company and the Agency.

Section 7.04. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Project Agreement or the Application thereof shall not affect the validity or enforceability of the remaining portions of this Project Agreement or any part thereof.

Section 7.05. Counterparts. This Project 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.

Section 7.06. Governing Law. This Project Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State 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 Orange County, New York.


Section 7.07. Fees and Costs. By executing this Project Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency (a) for legal services including, but not limited to, those provided by the Agency's general counsel and bond/transaction counsel; (b) for other consultants retained by the Agency, if any, in connection with the Project; and (c) with respect to the Agency's enforcement of any event of default or failure to comply with the terms of this Project Agreement (including reasonable attorneys fees). 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 (i) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Company to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

Section 7.08. Section Headings. The headings of the several Sections in this Project Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Project Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**ORANGE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
William Fioravanti, Chief Executive Officer

OC HOSPITALITY, LLC

By: _____
Chetan Patel, Manager

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.:

Chetan Patel, being first duly sworn, deposes and says:

1. That I am a Manager of OC Hospitality, LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Project Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

(Signature of Officer)

Subscribed and affirmed to me
under penalties of perjury
this ___ day of November, 2023.


(Notary Public)

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

**ORANGE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
William Fioravanti, Chief Executive Officer

OC HOSPITALITY, LLC

By:  _____
Chetan Patel, Manager

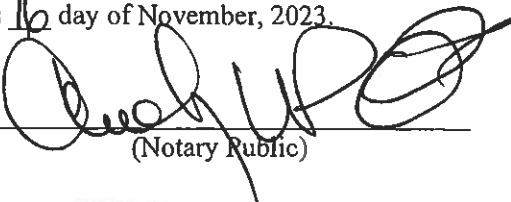
STATE OF NEW YORK)
COUNTY OF ORANGE) ss.:

Chetan Patel, being first duly sworn, deposes and says:

1. That I am a Manager of OC Hospitality, LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Project Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

 _____
(Signature of Officer)

Subscribed and affirmed to me
under penalties of perjury
this 16 day of November, 2023.



(Notary Public)

CINDY L. PRINCE O'SHEA
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01PR4950352
Qualified in Orange County
Commission Expires April 24, 2027