

PRELIMINARY RESOLUTION
(Arthur May Redevelopment, LLC 2020 Project)

A special meeting of the Dutchess County Industrial Development Agency, having offices at Three Neptune Road, Poughkeepsie, New York, was convened on June 4, 2020 at 8:00 a.m., local time. Because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1, as extended, suspending certain requirements of the Open Meetings Law, the meeting was held electronically via webinar with teleconference access made available to the public, instead of a public meeting open for the public to attend in person.

The meeting was called to order by the Chairman, with the following members being:

PRESENT: Timothy Dean, Chairman
Mark Doyle, Vice Chairman
Alfred D. Torreggiani
Donald R. Sagliano
Ronald J. Piccone, II

ABSENT: Kathleen M. Bauer, Secretary/ Treasurer
Stacey M. Langenthal

ALSO PRESENT: Sarah Lee, Executive Director
Marilyn Yerks, Chief Financial Officer
Donald Cappillino, Counsel
Elizabeth A. Cappillino, Counsel

On motion duly made by Mark Doyle and seconded by Ronald J. Piccone, II , the following resolution (the "**Resolution**") was placed before the members of the Dutchess County Industrial Development Agency:

Resolution (i) Taking official action toward the issuance of financial assistance to Arthur May Redevelopment, LLC (Arthur May Redevelopment, LLC 2020 Project) in the form of potential exemption from sales and use taxes, real estate transfer taxes and mortgage recording taxes and exemption from real estate property taxes; and (ii) authorizing the execution and delivery of an agreement by and between the Agency and Arthur May Redevelopment, LLC with respect to such financial assistance.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively the "**Act**"), the Dutchess County Industrial Development Agency (the "**Agency**") was created with the authority and power to provide financial assistance for the purpose of, among other things, acquiring, renovating and equipping certain facilities as authorized by the Act; and

WHEREAS, Arthur May Redevelopment, LLC, a New York limited liability company having offices at 32 Pine Tree Drive, Poughkeepsie, New York 12603 (the “**Company**”), which is currently the managing member of Arthur May Redevelopment Holdings LLC, a Delaware limited liability company created for the purpose of serving as the Holding Company that will hold title to the Project (hereinafter defined), having offices at 32 Pine Tree Drive, Poughkeepsie, New York, 12603 (the “**Holding Company**”), has submitted an application to the Agency requesting the Agency provide certain “financial assistance” (within the meaning of the Act) with respect to the Facility (hereinafter defined), including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the “**Financial Assistance**”) for the following project (the “**Project**”) in connection with the acquisition, construction, improvement, reconstruction, repair, renovation, installation, furnishing and/or equipping of a certain mixed-use commercial facility (the “**Facility**”) in approximately five (5) phases and consisting of the following:

- (A) the demolition of existing buildings on the Land;
- (B) the construction, improvement, reconstruction, repair, renovation, installation, furnishing and/or equipping of:
 - a approximately 18,279 square feet of mixed-use commercial space, including an approximately 4,000 square foot space to be used as a restaurant and retail space;
 - b an approximately 66,300 square foot, five-story, 110-room hotel;
 - c approximately 239,286 square feet of residential space, to include approximately 187 residential units and an approximately 6,400 square foot clubhouse with amenities;

all to be located on approximately 6.8 acres of land consisting of an approximately 6.39-acre parcel of land located at 25 Raymond Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-6161-12-755735 and an approximately 0.43-acre parcel of land located at 31 Raymond Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-6161-12-784726 (the “**Land**”); and

- (C) the acquisition and installation of new equipment, machinery and other personal property for use in the premises described above (collectively the “**Equipment**”) to be owned by the Agency and leased to the Company to be used as part of the Facility; and

WHEREAS, the Project includes the following, as they relate to the acquisition, construction, improvement, reconstruction, repair, renovation, installation, furnishing, equipping, and/or completion of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquisition, construction, improvement, reconstruction, repair, and renovation of the Facility; and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with acquisition, construction, improvement, reconstruction, repair and/or renovation of the Facility and installation of the Equipment; and

WHEREAS, the Agency has given due consideration to the application submitted by the Company, in which it is represented by the Company that the Financial Assistance for the Project will not result in the abandonment of a facility of the Company located elsewhere in the State of New York; and

WHEREAS, the Project will include facilities or property that are used in making “retail sales,” as defined within Section 862(2)(a) of the Act, and the Agency’s final approval of the provision of Financial Assistance for the Project is contingent upon the Agency’s finding that the Project complies with Section 862(2)(a) of the Act; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted by the Department of Environmental Conservation of the State of New York (the laws and regulations hereinafter collectively referred to as “**SEQRA**”), the Agency is required to determine whether the Project may have a significant effect on the environment and therefore require the preparation of an Environmental Impact Statement; and

WHEREAS, the Agency has yet to make a determination of environmental significance on this application but will do so prior to its grant of any financial assistance; and

WHEREAS, the proposed real property tax abatement requested by the Company deviates from the Standard **PILOT** Schedule in the Agency’s Uniform Tax Exemption and Criteria Policy (the “**UTEP**”) but has been consented to by the May 20, 2020 Resolution of the Town of Poughkeepsie Town Board in Resolution 5:20 - # 6 of 2020 and by the School Board of the Arlington Central School District on December 10, 2019; and

WHEREAS, the Agency has not yet held hearings pursuant to §859-a of the Act (the “**Hearing**”); and

WHEREAS, although the resolution authorizing the Financial Assistance has not yet been presented for approval by the Agency, a Preliminary Agreement relative to the proposed Financial Assistance has been presented for approval by the Agency.

NOW, THEREFORE, BE IT RESOLVED by the Dutchess County Industrial Development Agency, as follows:

1. Based upon the representations made by the Company to the Agency, the Agency hereby finds and determines that for the Project:
 - (a) the Project constitutes a “project” within the meaning of the Act;
 - (b) The Financial Assistance will not result in the abandonment of a facility of the Company located elsewhere in the State of New York;

- (c) The Financial Assistance deviates from the Standard PILOT Schedule under the Agency's UTEP but has been consented to by the Town of Poughkeepsie and the Arlington Central School District;
- (d) In accordance with the Retail and Housing Policy of the Agency, the approval of the project by the Town of Poughkeepsie has been obtained;
- (e) The Financial Assistance will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of Dutchess County, New York, and improve their standard of living, and thereby serve the public purposes of the Act;
- (f) It is desirable and in the public interest for the Agency to assist the Company by granting the Financial Assistance; and
- (g) All references to the Company shall include the Holding Company, and the Company may, at its election, assign or transfer its rights to the Holding Company

2. Subject to the conditions set forth in ¶3 of this Resolution, the Agency will:

- (a) acquire a leasehold interest in the Facility;
- (b) sublease the Facility to the Company pursuant to agreements by and between the Agency and the Company;

3. The provision of Financial Assistance herein, as contemplated by ¶2 of this Resolution, shall be subject to:

- (a) the execution and delivery by the Company of the Preliminary Agreement attached hereto as Exhibit "A" setting forth certain conditions for the provision of the Financial Assistance;
- (b) a finding by the Agency, after review of all relevant information, that the Project complies with Section 862(a) of the Act;
- (c) a finding by the Agency, after review of all relevant information, that the requirements set forth in the Agency's Uniform Tax Exemption Policy have been met or a determination by the Agency that a deviation from that Policy is warranted;
- (d) the agreement between the Agency and the Company on mutually acceptable terms regarding payments in lieu of taxes (the "PILOT

Payments") under a certain Lease and Project Agreement between the Agency and the Company (the "**Lease Agreement**");

- (e) the Agency's determination that there is satisfactory security for the Company's performance and PILOT Payments under the terms of the Lease Agreement;
- (f) compliance with SEQRA;
- (g) the holding of Hearing by the Agency; and
- (h) the adoption of an authorizing resolution approving the Financial Assistance.

4. The form and substance of a proposed Preliminary Agreement (in substantially the form presented to this meeting) by and between the Agency and the Company setting forth the undertakings of the Agency and the Company with respect to the provision of Financial Assistance is hereby approved. The Executive Director of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Preliminary Agreement and the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency hereto and to attest to this meeting, with such changes in terms and conditions as the Executive Director shall constitute conclusive evidence of such approval.

5. Pursuant to §875(3) of the Act and under the Agency policy concerning Maintaining Performance Based Incentives (the "**MPBI Policy**"), the Agency may recover, recapture or receive from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; and/or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project in the manner approved by the Agency in connection with the Project (collectively, items (i) through (iv) hereby defined as a "**Recapture Event**"). The MPBI Policy provides for the return of other incentives as set forth therein.

6. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any sales and use tax

exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

7. Counsel to the Agency is hereby authorized to work with counsel to the Company and others to prepare for submission to the Agency all documents necessary to effect the authorization and provision of Financial Assistance. The Company shall be responsible for the fees of Agency and Agency's Counsel in relation to this Project and the provision of Financial Assistance.

8. The Agency hereby approves and authorizes the following actions by the Chairman of the Agency, prior to the granting of any Financial Assistance with respect to the Project, after consultation with counsel to the Agency: (i) to establish the time, date and place for a public hearing of the Agency to hear all persons interested in the Project and the proposed Financial Assistance being contemplated by the Agency with respect to the Project, said public hearing to be held in the Town of Poughkeepsie, Dutchess County, New York; (ii) to cause notice of such public hearing to be given to the public by publishing a notice in accordance with the applicable provisions of the Act, as well as, at the same time, provide notice of the hearing to the chief executive officer of each affected tax jurisdiction; (iii) to conduct such public hearing or cause such hearing to be conducted by his designee; and (iv) to cause a stenographic transcript of said public hearing to be promptly prepared and cause copies of said report to be made available to the members of the Agency.

9. The Executive Director of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution. The Agency hereby appoints each Member of the Agency and Agency Counsel to serve as an Assistant Secretary of the Agency for purposes of this project.

10. This Resolution shall take effect immediately.

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

Timothy Dean, Chairman	VOTING	"Aye"
Mark Doyle, Vice Chairman	VOTING	"Aye"
Kathleen M. Bauer, Secretary/Treasurer	being	ABSENT
Alfred D. Torreggiani	VOTING	"Aye"
Stacey M. Langenthal	being	ABSENT
Donald R. Sagliano	VOTING	"Aye"
Ronald J. Piccone, II	VOTING	"Aye"

The Resolution was thereupon declared duly adopted.

Adopted: June 4, 2020

CAPPILLINO,
ROTHSCHILD
& EGAN LLP
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PRELIMINARY AGREEMENT
(Arthur May Redevelopment, LLC 2020 Project)

THIS PRELIMINARY AGREEMENT (the “**Preliminary Agreement**”), made as of June 4, 2020 between the **DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation, organized and existing under the General Municipal Law of the State of New York, having offices at Three Neptune Road, Poughkeepsie, New York 12601 (the “**Agency**”), and **ARTHUR MAY REDEVELOPMENT LLC**, a New York limited liability company, with offices at 32 Pine Tree Drive, Poughkeepsie, New York 1260 (the “**Company**”).

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively the “**Act**”), the Agency was created with the authority and power to provide financial assistance for the purpose of, among other things, acquiring, constructing and equipping certain facilities as authorized by the Act; and

WHEREAS, the Company, which is currently the managing member of Arthur May Redevelopment Holdings LLC, a Delaware limited liability company created for the purpose of serving as the Holding Company that will hold title to the Project (hereinafter defined), having offices at 32 Pine Tree Drive, Poughkeepsie, New York, 12603 (the “**Holding Company**”), has submitted an application to the Agency requesting the Agency provide certain “financial assistance” (within the meaning of the Act) with respect to the Facility (hereinafter defined), including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the “**Financial Assistance**”) for the following project (the “**Project**”) in connection with the acquisition, construction, improvement, reconstruction, repair, renovation, installation, furnishing and/or equipping of a certain mixed-use commercial facility (the “**Facility**”) in approximately five (5) phases and consisting of the following:

- (A) the demolition of existing buildings on the Land;
- (B) the construction, improvement, reconstruction, repair, renovation, installation, furnishing and/or equipping of:
 - a. approximately 18,279 square feet of mixed-use commercial space, including an approximately 4,000 square foot space to be used as a restaurant and retail space;
 - b. an approximately 66,300 square foot, five-story, 110-room hotel;
 - c. approximately 239,286 square feet of residential space, to include approximately 187 residential units and an approximately 6,400 square foot clubhouse with amenities;

all to be located on approximately 6.8 acres of land consisting of an approximately 6.39-acre parcel of land located at 25 Raymond Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-6161-12-755735 and an approximately 0.43-acre parcel of land located at 31 Raymond Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-

6161-12-784726 (the “**Land**”); and

- (C) the acquisition and installation of new equipment, machinery and other personal property for use in the premises described above (collectively the “**Equipment**”) to be owned by the Agency and leased to the Company to be used as part of the Facility; and

WHEREAS, the Project includes the following, as they relate to the acquisition, construction, improvement, reconstruction, repair, renovation, installation, furnishing, equipping, and/or completion of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquisition, construction, improvement, reconstruction, repair, and renovation of the Facility; and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with acquisition, construction, improvement, reconstruction, repair and/or renovation of the Facility and installation of the Equipment; and

WHEREAS, the Project will include facilities or property that are used in making “retail sales,” as defined within Section 862(2)(a) of the Act, and the Agency’s final approval of the provision of Financial Assistance for the Project is contingent upon the Agency’s finding that the Project complies with Section 862(2)(a) of the Act.

WHEREAS, the Agency has determined that the financing of the Project will promote and further the purposes of the Act; and

WHEREAS, on June 4, 2020, the Agency adopted a Preliminary Resolution (the “**Preliminary Resolution**”) accepting the Project and authorizing the execution of this Preliminary Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Agency and the Company agree as follows:

1. Undertakings of the Agency. Based upon the statements, representations, and undertakings of the Company and subject to the conditions set forth herein and in the Preliminary Resolution, the Agency agrees as follows:

(a) The Agency shall adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be necessary or advisable for (i) construction, installation, furnishing and equipping of the Facility and the financing of such costs; and (ii) the subleasing of the Facility to the Company and leasing the equipment to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

(b) The Agency shall acquire a leasehold interest in the Facility and enter into an agreement to sublease the Facility to the Company (the “**Lease Agreement**”). The Lease Agreement shall contain all provisions required by law and such other provisions as shall be mutually acceptable to the Agency and the Company.

(c) Reserved.

(d) The Agency shall take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

2. Representations of the Company. The Company hereby represents to the Agency that:

(a) The Project is located in the Town of Poughkeepsie, Dutchess County, New York;

(b) The proposed Financial Assistance will contribute to increased employment opportunities in Dutchess County, New York;

(c) The Company intends that the Project will comply with all applicable federal, state, and local laws, ordinance, rules, and regulations and the Company shall have obtained all necessary approvals and permits required thereunder.

3. Undertakings of the Company. Based upon the statements, representations, and undertakings of the Agency and subject to the conditions set forth herein and in the Preliminary Resolution, the Company agrees as follows:

(a) The Company shall use all reasonable efforts necessary or desirable to enter into a contract or contracts for the acquisition of the Facility (to the extent not heretofore acquired) and on the terms and conditions set forth in the Lease Agreement, transfer to the Agency, or cause to be transferred to the Agency, title to or a leasehold interest in, the Facility.

(b) (i) To the extent the Agency is not defended and indemnified under a policy of insurance maintained by the Company, and subject to any subrogation waivers contained in the Lease Agreement, the Company shall defend and indemnify the Agency and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on: (1) labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of the Facility and installation of equipment in the Facility (including any expense incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing) except that the Company shall not be required to indemnify the Agency for the willful or grossly negligent conduct of the Agency, its employees, agents, or representatives; or (2) any untrue statement or alleged untrue statement of a material fact necessary in order to make the statements herein, in the light of the circumstances under which they were made, not misleading.

(ii) The Company shall not permit to stand, and shall at its own expense take all steps reasonably necessary to remove, any mechanic's or other liens against the Facility for labor for the renovation, installation, furnishing and equipping of the Facility.

(iii) To the extent the Agency is not defended and indemnified under a policy of insurance maintained by the Company, and subject to any subrogation waivers contained in the Lease Agreement, the Company shall indemnify and hold the Agency harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing, except that the Company shall not be required to indemnify the Agency for the willful or grossly negligent conduct of the Agency, its employees, agents, or representatives.

(c) Reserved.

(d) The Company shall take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

4. General Provisions.

(a) This Preliminary Agreement shall take effect on the date of execution hereof until the Lease Agreement becomes effective. It is the intent of the Agency and the Company that this Preliminary Agreement be superseded in its entirety by the Lease Agreement.

(b) It is understood and agreed by the Agency and the Company that the execution of the Lease Agreement and related documents are subject to: (i) obtaining all necessary governmental approvals, (ii) approval of the members of the Agency; (iii) a finding by the Agency, after review of all relevant information, that the Project complies with Section 862(2)(a) of the Act and (iv) agreement by the Agency and the Company upon mutually acceptable terms regarding payments in lieu of taxes (the “**PILOT Payments**”) under the Lease Agreement.

(c) The Company agrees that it will reimburse the Agency for all reasonable and necessary direct out-of-pocket expenses which the Agency may incur as a consequence of executing this Preliminary Agreement or performing its obligations hereunder, including but not limited to, the cost of causing a notice of any public hearing held with respect to the Facility to be published, the cost of making and transcribing records of said hearings and the reasonable fees and expenses charged and incurred by Agency’s Counsel in connection with their representation of the Agency in this matter and their preparation of any documents pertaining to the provisions of Financial Assistance.

(d) All commitments of the Agency under ¶1 hereof and of the Company under ¶¶2 and 3 hereof (excepting the obligations of the Company set forth in subparagraphs 3(b) and 4(c) hereof, which shall survive the termination of this Preliminary Agreement) are subject to the condition that the Lease Agreement shall have been executed no later than fifteen (15) months from the date hereof (or such other date as shall be mutually satisfactory to the Agency and the Company).

(e) All references to the Company shall include the Holding Company, and the Company may, at its election, assign or transfer its rights to the Holding Company

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have entered into this Preliminary Agreement as of the 4th day of June, 2020.

DUTCHESS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Sarah Lee, Executive Director

ARTHUR MAY REDEVELOPMENT, LLC

By: _____
Jacob Reckess, Managing Member