

AGENT AGREEMENT

THIS AGREEMENT, made as of the 12th day of June, 2014, by and between the **ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 333 West Washington Street, Syracuse, New York 13202 (the "Agency"), and **DESTINY USA REAL ESTATE, LLC**, a New York limited liability company, having its offices at 4 Clinton Square, Syracuse, New York 13202 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 435 of the Laws of 1970 of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project") consisting of the following: the acquisition of a parcel of land located at 311-371 Hiawatha Boulevard, Syracuse, New York 13204 and the construction and equipping of an approximately 240,000 square foot, 255 room all suites hotel to be located thereon, together with the acquisition and installation of furniture, fixtures and equipment, to provide a full range of services to the business and leisure traveler visiting the City of Syracuse, County of Onondaga; and

WHEREAS, the Agency has determined to further investigate and evaluate the feasibility of the Project prior to taking any official action approving the Project; and

WHEREAS, by Resolution dated March 11, 2014, the (the "Resolution"), the Agency authorized (A) the appointment of Nixon Peabody LLP as special counsel to the Agency for the Project ("Special Counsel") consistent with the permitted exceptions to the Agency's Procurement Policy; (B) subject to the agreement of the Company to reimburse the Agency for the cost thereof, the Chairman, Vice Chairman, Executive Director and/or Secretary of the Agency to enter into a contract for the procurement of a feasibility study for the Project; (C) subject to the agreement of the Company to reimburse the Agency for the cost thereof, the Chairman, Vice Chairman, Executive Director and/or Secretary of the Agency to enter into a contract for an environmental consultant for SEQR review; and (D) the execution by the Chairman, Vice Chairman, Executive Director and/or Secretary of the Agency of this Agreement outlining the responsibilities of the Company and the Agency with respect to the Agency's review of the Project including, without limitation, the responsibility of the Company to reimburse the Agency for its costs and expenses, as set forth in this Agency Agreement, and covering the fees and expenses of the Agency's Special Counsel and the costs of the feasibility study and the SEQR review.

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:

1. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to further investigate and evaluate the feasibility of the Project:

(a) The Company is a limited liability company, duly formed and validly existing under the laws of the State of New York (the "State"), has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement.

(b) To the Company's knowledge, neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending, or, to the Company's knowledge, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agreement.

2. Escrow of Funds for Payment of Agency's Reasonable Expenses.

(a) Prior to this Agreement becoming effective, the Company shall be required to deposit ONE HUNDRED THOUSAND and NO/100 dollars (\$100,000) with the Agency, which monies will be used by the Agency to pay the costs of investigating and evaluating the Project, including but not limited to, those reasonable costs and expenses listed in Section 3 hereof (the "Escrow Account"). The Agency shall provide the Company with notice of each reasonable expenditure from the Escrow Account; provided however, that each expenditure from the Escrow Account shall be made by the Agency in its sole and absolute discretion.

(b) If at any time after the execution of this Agreement, the balance in the Escrow Account shall be determined by the Agency in its sole discretion to be less than TWENTY-FIVE THOUSAND and NO/100 dollars (\$25,000), the Agency shall provide written notice to the Company in accordance with Section 7. Upon receipt of the notice from the Agency in the previous sentence, the Company shall have ten (10) business days to deposit with the Agency an additional TWENTY-FIVE THOUSAND and NO/100 dollars (\$25,000) with the Agency to pay the costs of the investigating and evaluating the Project. If additional funds are not deposited with the Agency within such ten (10) business day period, the Agency may terminate this Agreement and any remaining funds

shall be distributed in accordance with Section 2(e).

(c) If the Agency decides not to move forward with the Project, the Agency shall as soon as practicable provide notice to the Company, Special Counsel and each consultant on the Project. The Agency shall request final invoices from Special Counsel and each consultant and provide the Company with a copy.

(d) If the Company decides not to move forward with the Project, the Company shall, as soon as practicable provide notice to the Agency. Upon receipt of notice from the Company as provided in this Section 2(d), the Agency shall provide notice to Special Counsel and each consultant on the Project and request final invoices from Special Counsel and each consultant. Upon receipt of final invoices, the Agency shall provide copies of such invoices to the Company.

(e) If either the Company or the Agency has provided notice as provided in Section 2(c) or 2(d) hereof, then the remaining funds held by the Agency shall be used as provided below:

(i) if, after receipt of the final invoices requested under Section 2(c) or Section 2(d), as applicable, there is insufficient monies in the account to pay all amounts due thereunder, the Company shall immediately pay an amount to the Agency to cover the shortfall (the "Shortfall"). The Shortfall shall be due immediately upon demand by the Agency, and if not paid within three (3) days of demand, shall bear interest at the lower of nine percent (9%) per annum or the maximum amount permitted under law.

(ii) if, after receipt of the final invoices requested under Section 2(c) or Section 2(d), as applicable, there are excess monies in the account after the payment of all amounts due to each consultant and Special Counsel the remainder shall be promptly paid to the Company.

3. Expenses of the Agency.

(a) By executing this Agreement, the Company covenants and agrees to pay all reasonable fees, costs and expenses incurred by the Agency for:

(1) reasonable legal services, including but not limited to those provided by the Agency's Special Counsel in connection with the Project;

(2) the SEQR consultant, engaged by the Agency or by Special Counsel on behalf of the Agency in connection with the Project;

(3) the feasibility consultant, engaged by the Agency or by Special Counsel on behalf of the Agency in connection with the Project; and

(4) any other consultants retained by the Agency in its reasonable

discretion in connection with the Project; provided, however, that the Agency agrees prior to retaining any consultants pursuant to this Section 3(a)(4):

- (i) to provide prior written notice to the Company of the Agency's intention to retain any additional consultants, and
- (ii) to obtain the prior written consent of the Company to the retention of any additional consultants.

(b) The Company hereby further agrees that this Section 3, to the extent inconsistent with Instruction number 7 and Section (V)(H) in the application to the Agency dated February 24, 2014 regarding the timing of such payments, shall control.

(c) The Company further covenants and agrees that the Company is liable for payment to the Agency of all reasonable charges referred to above, as well as all other actual reasonable costs and expenses incurred by the Agency in investigating and evaluating the Project notwithstanding the occurrence of any of (1) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (2) the inability of the Company to procure the services of one or more financial institutions to provide financing for the Project; or (3) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

(d) The Company acknowledges and agrees that any dispute in connection with the retention, appointment and/or payment of any consultant or Special Counsel may result in the Agency directing Special Counsel and the consultants to cease work in connection with the Project until such dispute is resolved.

4. Project Agreement. The Company and the Agency agree that in the event that the Agency approves in its sole and absolute discretion any action inducing and/or authorizing the Project, that this Agreement may be superseded by a project agreement or project agreements (collectively, the "Project Agreement"). In the event of the execution and delivery of such Project Agreement, the Escrow Account shall continue to be held by the Agency consistent with the terms of this Agreement, and applied towards the Agency's transaction fee. In the event the Agency does not authorize the Project or the transaction never closes, any balance held by the Agency shall be disbursed pursuant to Section 2(e) hereof.

5. Hold Harmless Provision.

(a) The Company shall forever defend, indemnify and hold the Agency, its members, officers, employees and agents, and anyone for whose acts or omissions the Agency or any of them may be liable, harmless from and against all costs, losses, expenses, claims, damages and liabilities of whatever kind or nature arising, directly or indirectly, out of or based on the investigation and the evaluation of the Project or arising out of any contract or other arrangement therefor (and including any

expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of this Agreement or otherwise.

(b) The Company shall forever defend, indemnify and hold harmless the Agency, its members, officers, employees and agents, and anyone for whose acts or omissions the Agency or any of them may be liable, from and against all claims, causes of action, liabilities and expenses howsoever arising for loss or damage to property or any injury to or death of any person (including, without limitation, death of or injury to any employee of the Company) that may occur subsequent to the date hereof by any cause whatsoever in relation to the Project including the failure to comply with the provisions of this Agreement, or arising, directly or indirectly, out of the ownership, construction, acquisition, operation or financing of the Project, and including, without limitation, any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing. The foregoing indemnities shall cover all damages, events and expenses, including attorneys' fees, whether incurred as a result of a third party claim or a claim to enforce this Agreement.

(c) The defense and indemnities provided for in this Section shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by law. Without limiting the generality of the foregoing, the foregoing indemnifications shall apply to or encompass any action (or alleged failure to act) of the Agency pursuant to the New York State Environmental Quality Review Act ("SEQR").

6. This 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.

7. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered, via reputable overnight carrier or mailed first class, postage prepaid, as follows:

TO THE AGENCY: Onondaga County Industrial Development Agency
333 West Washington Street
Syracuse, New York 13202
Attention: Julie Cerio, Executive Director

WITH A COPY TO: Nixon Peabody LLP
1300 Clinton Square
Rochester, New York 14604
Attention: William F. Weir, Esq.

TO THE COMPANY: Destiny USA Real Estate, LLC
4 Clinton Square
Syracuse, New York
Attention: David M. Aitken

WITH A COPY TO: Costello, Cooney & Fearon, PLLC
Bridgewater Place
500 Plum Street, Suite 300
Syracuse, New York 13204
Attention: Robert J. Smith, 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 mailed or personally delivered in the manner provided in this Section.

8. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreement 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 Onondaga County, New York.


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

**ONONDAGA COUNTY
INDUSTRIAL DEVELOPMENT
AGENCY**

By: 
Name: Julie Cerio
Title: Executive Director

**DESTINY USA REAL ESTATE,
LLC**

By: 
Name: David M. Aitken
Title: Vice President