

## AGENT AGREEMENT

**THIS AGENT AGREEMENT** is made this \_\_\_ day of June, 2010 between **AUBURN INDUSTRIAL DEVELOPMENT AUTHORITY**, a New York public benefit corporation (the "**Authority**") and **AUBURN COMMUNITY REAL ESTATE COMPANY, INC.**, a New York corporation and **AUBURN COMMUNITY HOTEL, L.P.**, a New York limited partnership (jointly and severally, the "**Developer**").

### Article 1. Preliminary Statement.

Among the matters of mutual inducement which have resulted in the execution of this Agent Agreement are the following:

1.01. The Authority is authorized and empowered by the provisions of the Auburn Industrial Development Authority Act, constituting Title 15 of Article 8 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended (the "**Act**") with power to grant Financial Assistance to Projects (as those and other capitalized terms not otherwise defined herein are defined in the Act).

1.02. The purposes of the Authority pursuant to the Act are to promote industry and develop trade and thereby advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the City of Auburn and the State of New York by inducing manufacturing, industrial and commercial enterprises to locate or remain in the City of Auburn.

1.03. The Developer has presented an application dated February 25, 2010 (the "**Application**") to the Authority requesting that the Authority undertake the following Project (i) the acquisition of approximately 2.59 acres of land, and the structures thereon, near the intersections of State Street, Water Street and Arterial West in the City of Auburn, being more specifically identified as a closed section of Water Street and Tax Parcels 115.52-1-70, 71, 72.1, 82 and 84 (the "**Land**"); (ii) the construction thereon of a building of approximately 68,000 square feet for an 88-room Hilton Garden Inn with a mid-size conference center (the "**Building**"); (iii) the equipping of the Building for use as a hotel and conference center (the "**Equipment**", and collectively with the Land and the Building, the "**Facility**"); and (iv) the providing of certain financial assistance as described below with respect to the Facility (the "**Project**").

1.04. Pursuant to the Application, the Developer has demonstrated that the undertaking of the Project by the Authority will promote economic development within the City of Auburn, particularly along the Downtown corridor, in a manner consistent with the development sought to be encouraged by the City of Auburn in that area.

1.05. The Developer hereby represents to the Authority that:

(a) the completion of the Facility will not result in the removal of a commercial, industrial or manufacturing plant of the Developer or any other proposed occupant of the Facility from one area of the State of New York to another area of the State of New York or result in the abandonment of one or more plants or facilities of the Developer or any other proposed occupant of the Facility located in the State of New York;

(b) the site of the Facility is located wholly within the City of Auburn, New York;

(c) the Project will advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the City of Auburn, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act and encourage and assist the Developer in developing the Facility, and

(d) the Developer intends that the Facility will comply with all applicable federal, state and local laws, ordinances, rules and regulations and the Developer will obtain all necessary approvals and permits required thereunder.

Article 2. Undertakings on the Part of the Authority.

Based upon the statements, representations and undertakings of the Developer and subject to the conditions set forth herein, the Authority agrees as follows:

2.01. The Authority hereby approves and grants the Financial Assistance to the Developer in the form of exemption from sales tax, mortgage recording tax, and subject to the execution of an agreement for payments in lieu of taxes acceptable to the Authority, an abatement of real property taxes to become effective upon the Authority acquiring an interest in the Facility.

2.02. The obligations of the Authority pursuant to this Agent Agreement are subject to the conditions elsewhere contained in this Agent Agreement and to the additional condition that the Authority shall not acquire an interest in the Facility unless and until the Authority shall have complied with the provisions of the SEQR Act.

2.03. The Authority will 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 or to grant other "financial assistance" as defined in the Act, subject to the execution of appropriate documents between the Authority and the Developer.

Article 3. Undertakings on the Part of the Developer.

Based upon the statements, representations and undertakings of the Authority and subject to the conditions set forth herein, the Developer agrees as follows:

3.01. The Developer will 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.

3.02. The Developer agrees to pay the Authority an administrative fee equal to \$55,000 to offset the indirect expenses incurred by the Authority in administering the Project and for other corporate purposes of the Authority. The fee will be payable upon the Authority acquiring an interest in the Facility.

3.03. The Developer hereby agrees to indemnify, defend and hold the Authority (and its members, officers, agents and employees) harmless from any and all: (a) claims and liabilities for the 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 reasonable and necessary out-of-pocket expenses incurred by the Authority (and its members, officers, agents and employees) in defending any claims, suits or actions which may arise as a result of the foregoing; and (b) claims and liability arising from or out-of-pocket expenses incurred by the Authority's financing, acquisition, construction, equipping, owning and leasing of the Facility, including all causes of action and attorneys' fees and any other out-of-pocket expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing.

Article 4. Insurance Required.

4.01. Effective as of the date the Authority acquires an interest in the Facility and until the Authority consents in writing to a termination, the Developer shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) (i) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Project, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Developer or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Developer may insure the Project under a blanket insurance policy or policies covering not only the Project but other properties as well.

(b) Worker's compensation insurance, disability benefits insurance, and each other form of insurance which the Authority or the Developer is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Developer who are located at or assigned to the Project.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Developer by any applicable worker's compensation law; and a blanket excess liability policy in the amount not less than \$3,000,000, protecting the Developer against any loss or liability or damage for personal injury or property damage.

#### Article 5. Additional Provisions Respecting Insurance.

5.01. All insurance required by Section 4.01(a) hereof shall name the Authority as a named insured and all other insurance required by Article 4 shall name the Authority as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Developer and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Developer is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Developer and the Authority as their respective interest may appear, and (ii) at least thirty (30) days prior written notice of the cancellation thereof to the Developer and the Authority.

5.02. All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Authority on the date hereof. Prior to expiration of any such policy, the Developer shall furnish the Authority evidence that the policy has been renewed or replaced or is no longer required by this Agreement.

#### Article 6. General Provisions.

6.01. All commitments of the Authority under Article 2 hereof and of the Developer under Article 3 hereof (excepting the obligations of the Developer set forth in Sections 3.02 and 3.03 hereof, which shall survive the termination of this Agent Agreement) are subject to the conditions that the following events shall have occurred not later than two (2) years from the date hereof (or such other date as shall be mutually satisfactory to the Authority and the Developer):

- (a) all necessary governmental approvals shall be obtained; and
- (b) all other conditions expressed in this Agent Agreement shall have been satisfied.

6.02. Subject to the terms and conditions of Section 6.03 hereof, the Developer shall have the right to unilaterally cancel this Agent Agreement at any time prior to the time that the Authority acquires an interest in the Facility, provided that the Developer pays all reasonably necessary out-of-pocket fees and expenses incurred by the Authority. The Authority shall have the right to cancel this Agent Agreement upon the Developer's failure to perform any of its obligations under this Agent Agreement by giving the Developer notice of its election to terminate stating the grounds therefor. In the event the

Developer does not cure such failure to perform within thirty (30) days after the Authority delivers such notice, this Agent Agreement shall automatically terminate without further notice unless reinstated by the Authority.

6.03. If the events set forth in Section 6.01 hereof do not take place within the time set forth in said Section 6.01, or any extension thereof, or if the Developer exercises its right of cancellation as set forth in Section 6.02 hereof, the Developer agrees that: (a) it will promptly reimburse the Authority (and its officers, members, agents or employees) for all reasonable and necessary direct out-of-pocket expenses which the Authority (or its officers, members, agents or employees) may incur with respect to the execution of this Agent Agreement and the performance of its obligations hereunder, including attorneys fees and expenses of the Authority, and (b) the obligations of the Developer set forth in Sections 3.02 and 3.03 hereof shall survive the termination of this Agent Agreement and shall remain in full, force and effect 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 described therein may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all reasonable out-of-pocket expenses incurred by the Authority (and its officers, members, agents or employees) relating to the enforcement of the provisions therein stated Authority shall have received from the Developer security or indemnity satisfactory to the Authority for protection against all such liability and for the reimbursement of all such fees, expenses and other costs.

6.04. All notices and other communications hereunder shall be in writing and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

(a) If to the Authority:

Auburn Industrial Development Authority  
Memorial City Hall  
24 South Street  
Auburn, New York 13021  
Attention: James Dacey, Chairman

with a copy to:

Hancock & Estabrook, LLP  
1500 AXA Tower I  
100 Madison Street  
Syracuse, New York 13202  
Attention: Richard W. Cook, Esq.

(b) If to the Developer:

Auburn Community Real Estate Company, Inc./Auburn Community Hotel, L.P.  
250 South Clinton Street, Suite 200  
Syracuse, New York 13202  
Attention: Michael J. Falcone, President

with a copy to:

Bond, Schoeneck & King, PLLC  
One Lincoln Center  
Syracuse, New York 13202  
Attention: Edwin J. Kelley, Jr., Esq.

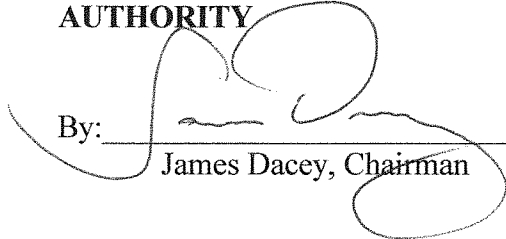
6.05. All covenants and agreements herein contained by or on behalf of the Authority and the Developer shall bind and inure to the benefit of the respective successors and assigns of the Authority and the Developer whether so expressed or not.

6.06. The obligations and agreements of the Authority contained herein shall be deemed the obligations and agreements of the Authority, and not of any member, officer, agent (other than the Developer) or employee of the Authority in his individual capacity, and the members, officers, agents (other than the Developer) and employees of the Authority shall not be liable personally hereon or be subject to any personal liability or accountability based upon or in respect hereof or of any transaction contemplated hereby. The obligations and agreements of the Authority contained herein shall not constitute or give rise to an obligation of the State of New York or of the City of Auburn, New York, and neither the State of New York nor the City of Auburn, New York shall be liable thereon, and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Authority, but rather shall constitute limited obligations of the Authority payable solely from the revenues of the Authority derived and to be derived from the lease, sale or other disposition of the Facility.

6.07. Notwithstanding any provision of this Agent Agreement to the contrary, the Authority shall not be obligated to take any action pursuant to any provision hereof unless (a) the Authority shall have been requested to do so in writing by the Developer and (b) if compliance with such request is reasonably expected to result in the incurrence by the Authority (or (or any member, officer, agent (other than the Developer) or employee of the Authority) in any liability, fees, expense or other costs, the Developer shall have provided sufficient indemnity therefore.

IN WITNESS WHEREOF, the parties hereto have entered into this Agent Agreement on the date first set forth above.

**AUBURN INDUSTRIAL DEVELOPMENT  
AUTHORITY**

By:  \_\_\_\_\_  
James Dacey, Chairman

**AUBURN COMMUNITY REAL ESTATE  
COMPANY, INC.**

By: \_\_\_\_\_  
Michael J. Falcone, President

**AUBURN COMMUNITY HOTEL, L.P.  
By: Community Hotel, LLC, its General Partner**

By: \_\_\_\_\_  
Michael J. Falcone, Managing Member