

RESOLUTION
(Berkshire Hospitality Project)

A meeting of Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, April 14, 2011 at noon.

The following resolution was duly offered and seconded, to wit:

Resolution No. 04/2011 - __

RESOLUTION AUTHORIZING THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER TO (i) UNDERTAKE A CERTAIN PROJECT (AS DESCRIBED BELOW) FOR THE BENEFIT OF BERKSHIRE HOSPITALITY LLC (THE "COMPANY"); (ii) NEGOTIATE, EXECUTE AND DELIVER A LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT AND RELATED DOCUMENTS; (iii) PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A PARTIAL REAL PROPERTY TAX ABATEMENT THROUGH A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AND (C) IF NECESSARY, A MORTGAGE RECORDING TAX EXEMPTION FOR ANY FINANCING OR REFINANCING RELATED TO THE PROJECT; AND (iv) EXECUTE RELATED DOCUMENTS.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (hereinafter called "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **BERKSHIRE HOSPITALITY LLC**, for itself or on behalf of an entity to be formed (the "Company"), has submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition by the Agency of a leasehold interest in a certain approximately 2.43-acre parcel of real property located on Commerce Drive, in the Town of Batavia, Genesee County, New York (the "Land"), (ii) the construction on the Land by the Company as agent of the Agency of an approximately 41,000 square foot four-story Holiday Inn hotel consisting of approximately 80 hotel rooms, a fitness room, an indoor pool, a lobby area and meeting space (collectively, the "Improvements"), and (iii) the acquisition of and installation in and around the Improvements by the Company of machinery, equipment, and other fixture-based items of tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution approving the Project and the financial assistance that the Agency will provide with respect to the Project; and

WHEREAS, it is contemplated that the Agency shall (i) designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project pursuant to an agent agreement (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement"), payment-in-lieu-of-tax agreement (the "PILOT Agreement") and related documents, with the Company, (iii) take title to or a leasehold interest in the Land, the Improvements, Equipment and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and PILOT Agreement have been negotiated), and (iv) provide financial assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project, (b) a partial real property tax abatement through the PILOT Agreement, and (c) if necessary, a mortgage recording tax exemption for the financing related to the Project; and

WHEREAS, pursuant to Section 859-a of the Act, on February 1, 2011, at 4:00 p.m. at Batavia Town Hall, 3833 West Main Street Road, Batavia, New York 14020, the Agency held a public hearing with respect to the Project and the proposed financial assistance being contemplated by the Agency (the "Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A copy of the Minutes of said Public Hearing along with the Notice of Public Hearing published and forwarded to the affected taxing jurisdictions are attached hereto as **Exhibit A**; and

WHEREAS, on April 5, 2011, the Town of Batavia Planning Board issued a negative declaration (the "Negative Declaration") under Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the NYS Department of Environmental Conservation of the State at 6 N.Y.C.R.R. Part 617 (collectively referred to as "SEQRA") with respect to the Project, a copy of the findings are attached hereto as **Exhibit B**.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AS FOLLOWS:

Section 1. The Company has presented an Application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's Application, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, constructing and equipping the Project; and

(C) The Agency has the authority to take the actions contemplated herein under the Act; and

(D) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Genesee County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(E) The Project will not result in the removal of a facility or plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's Application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other facility or plant to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(F) On April 5, 2011, the Town of Batavia Planning Board, acting as Lead Agency pursuant to SEQRA, declared the Project an "Unlisted Action" that did not present a potential significant adverse environmental impact. The Planning Board issued a Negative Declaration with respect to the Project determining that the Project did not require the preparation of an environmental impact statement.

The Agency has reviewed the Full Environmental Assessment Form (the "EAF") and related documents prepared for the Project as delivered by the Company to the Agency, and has considered all other relevant representations made by the Company to the Agency in connection with the Project. The Agency agrees with the Town of Batavia Planning Board that the Project is an "Unlisted Action" as that term is defined by the SEQRA regulations, and based on its review of the EAF, taking into consideration any identified relevant areas of environmental concerns and the criteria identified in 6 N.Y.C.R.R. § 617.7(c), the Agency hereby: (i) determines that the proceedings undertaken by the Town of Batavia Planning Board with respect to the acquisition, construction and equipping of the Facility satisfy the requirements of SEQRA; (ii) ratifies and accepts the proceedings conducted by the Town of Batavia Planning Board which culminated in the issuance of the April 5, 2011 Negative Declaration (a copy of which is attached hereto as **Exhibit B**); (iii) determines that upon a thorough review and consideration of the potential relevant areas of environmental concern, the Project does not present a potential significant adverse impact to the environment and that the issuance of the Negative Declaration as that term is defined by SEQRA is warranted; and (iv) determines that all of the applicable provisions of SEQRA that are required to be complied with as a condition precedent to the approval of the Financial Assistance contemplated by the Agency with respect to the Project and the participation by the Agency in undertaking the Project have been satisfied.

Section 2. Subject to the Company executing the Agent Agreement attached hereto as **Exhibit C** and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents

and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Agent Agreement shall expire on **December 31, 2012** (*unless extended for good cause by the Chief Executive Officer of the Agency*) if the Lease Agreement, Leaseback Agreement and PILOT Agreement contemplated have not been executed and delivered.

Section 3. The Chairman, Vice Chairman, Executive Vice President and/or the Chief Executive Officer of the Agency are hereby authorized, on behalf of the Agency, to negotiate, execute and deliver: (A) the Lease Agreement whereby the Company leases the Project to the Agency, (B) the related Leaseback Agreement conveying the Project back to the Company, (C) the PILOT Agreement, and (D) related documents including, but not limited to, an impact fee or other similar agreement with the Byron-Bergen Central School District, pursuant to which such school district shall make certain impact fees to the Agency; *provided, that*, (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 4. The Chairman, Vice Chairman, Executive Vice President and/or President/Chief Executive Officer of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any Lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter, with the Lease Agreement, Leaseback Agreement and PILOT Agreement, collectively called the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Executive Vice President and/or President/Chief Executive Officer of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman, Executive Vice President and/or President/Chief Executive Officer of the Agency to constitute conclusive evidence of such approval; *provided, that*, in all events, recourse against the Agency is limited to the Agency's interest in the Project.

Section 5. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 6. These Resolutions shall take effect immediately upon adoption.

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

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
John F. Andrews	[]	[]	[x]	[]
James L. Vincent	[]	[]	[x]	[]
James W. Fulmer	[x]	[]	[]	[]
Hollis Upson	[x]	[]	[]	[]
Charlie Cook	[]	[]	[x]	[]
L. William Benton	[x]	[]	[]	[]
Wolcott T. Hinchey	[x]	[]	[]	[]

The Resolutions were thereupon duly adopted.

EXHIBIT A

[NOTICE DOCUMENTS]



January 20, 2011

NOTICE LETTER

To: Chief Executive Officers of
Affected Tax Jurisdictions

Re: **Genesee County Industrial Development Agency d/b/a Genesee County
Economic Development Center and Berkshire Hospitality LLC:
Public Hearing**

Ladies and Gentlemen:

On Tuesday, February 1, 2011, at 4:00 p.m. local time, at Batavia Town Hall, 3833 W. Main Street Road, Batavia, New York 14020, the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency") will conduct a public hearing regarding the above-referenced project. Attached is a copy of the Notice of Public Hearing describing the project and the financial assistance contemplated by the Agency. The Notice has been submitted to *The Daily News* for publication.

You are welcome to attend such hearing at which time you will have an opportunity to review the project application and present your views, both orally and in writing, with respect to the project. We are providing this notice to you, pursuant to General Municipal Law Section 859-(a), as the chief executive officer of an affected tax jurisdiction within which the project is located.

Very truly yours,

**GENESEE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY d/b/a
GENESEE COUNTY ECONOMIC
DEVELOPMENT CENTER**

**Chief Executive Officers
Of
Affected Tax Jurisdictions**

**Genesee County Manager
Genesee County Courthouse
County Building I
7 Main Street
Batavia, New York 14020**

**Town of Batavia
Attn: Supervisor
3833 W. Main Street Road
Batavia, New York 14020**

**Genesee County Legislature
Attn: Chairman
Old Courthouse
7 Main Street
Batavia, New York 14020**

**Batavia City School District
Attn: Superintendent
39 Washington Avenue
Batavia, New York 14020**

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York General Municipal Law will be held by the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency") on Tuesday February 1, 2011, at 4:00 p.m. local time, at the Batavia Town Hall, 3833 West Main Street Road, Batavia, New York 14020, in connection with the following matter:

Berkshire Hospitality LLC, for itself or on behalf of an entity to be formed (the "Company"), has submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition by the Agency of a leasehold interest in a certain approximately 2.43-acre parcel of real property located on Commerce Drive, in the Town of Batavia, Genesee County, New York (the "Land"), (ii) the construction by the Company of an approximately 41,000 square foot four-story Holiday Inn hotel consisting of approximately 80 hotel rooms, a fitness room, an indoor pool, a lobby area and meeting space (the "Improvements"), and (iii) the acquisition of and installation in and around the Improvements by the Company of machinery, equipment, and other fixture-based items of tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility").

The Agency will acquire title to, or a leasehold interest in, the Facility and lease the Facility back to the Company. The Company will operate the Facility during the term of the lease. At the end of the lease term, the Company will purchase the Facility from the Agency, or if the Agency holds a leasehold interest, the leasehold interest will be terminated. The Agency contemplates that it will provide financial assistance (the "Financial Assistance") to the Company in the form of sales and use tax exemptions and a mortgage recording tax exemption, consistent with the policies of the Agency, and a partial real property tax abatement.

A representative of the Agency will be at the above-stated time and place to present a copy of the Company's project Application (including a cost-benefit analysis) and hear and accept written and oral comments from all persons with views in favor of or opposed to or otherwise relevant to the proposed Financial Assistance.

Dated: January 19, 2011

By: GENESEE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY D/B/A
GENESEE COUNTY ECONOMIC
DEVELOPMENT CENTER

BATAVIA NEWSPAPERS CORP
 PO BOX 870
 BATAVIA, NY 14021-0870
 (585) 343-8000

BILLING PERIOD		ADVERTISER/CLIENT NAME	
01/16/11 - 01/22/11		HARRIS BEACH & WILCOX LLP	
TOTAL AMOUNT DUE	INVOICE NUMBER	TERMS OF PAYMENT	
62.40	172899	DUE WITHIN 28 DAYS	

ADVERTISING INVOICE

PAGE #	BILLING DATE	BILLED ACCOUNT NUMBER
1	01/22/11	55790

BILLED ACCOUNT NAME AND ADDRESS

REMITTANCE ADDRESS

ALEX NEUBERT
 HARRIS BEACH & WILCOX LLP
 99 GARNSEY RD
 PITTSFORD NY 14534

BATAVIA NEWSPAPERS CORP
 PO BOX 870
 BATAVIA, NY 14021

PLEASE DETACH AND RETURN UPPER PORTION WITH YOUR REMITTANCE

DATE	NEWSPAPER REFERENCE	DESCRIPTION - OTHER COMMENTS / CHARGES	SAU SIZE BILLED UNITS	TIMES RUN RATE	GROSS AMOUNT	NET AMOUNT
01/22	PUBLICATION: AD CLASS: 1406515 01/22	BATAVIA NEWSPAPERS CORPORATION - FULL RU LEGALS 290 PH Genesee Co. Indust Development Agency Affidavit Fee Ad Class Totals: Publication Totals:	1x140L 140L	1 .41	140.000 line	57.40 5.00

STATEMENT OF ACCOUNT AGING OF PAST DUE AMOUNTS



CURRENT NET AMOUNT DUE	30 DAYS	60 DAYS	OVER 90 DAYS	*UNAPPLIED AMOUNT	TOTAL AMOUNT DUE
					62.40

BATAVIA NEWSPAPERS CORP (585) 343-8000

A FINANCE CHARGE OF 1.5% PER MONTH, WHICH IS AN ANNUAL
 RATE OF 18% (MINIMUM \$1.00) WILL BE ADDED TO ACCOUNTS OVER
 28 DAYS.
 *UNAPPLIED AMOUNTS ARE INCLUDED IN TOTAL AMOUNT DUE

ADVERTISER INFORMATION			
INVOICE NUMBER	BILLING PERIOD	BILLED ACCOUNT NUMBER	ADVERTISER/CLIENT NAME
172899	01/16/11 - 01/22/11	55790	HARRIS BEACH & WILCO

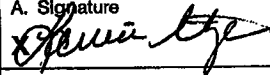
**Evidence of Mailing Berkshire Hospitality LLC (Holiday Inn)
Notice Letter**

U.S. Postal Service <small>(TM)</small> CERTIFIED MAIL <small>(TM)</small> RECEIPT <i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ 0.44
Certified Fee	\$2.80
Return Receipt Fee <small>(Endorsement Required)</small>	\$2.30
Restricted Delivery Fee <small>(Endorsement Required)</small>	\$0.00
Total Postage & Fees	\$ 5.54

0692
08
Postmark
JAN 20 2011
01/20/2011

7010 0780 0001 6494 3842

Sent To	
Genesee County Legislature (Attn: Chairman)	
<small>Street, Apt. No., or PO Box No.</small> Genesee Co Courthouse, 7 Main Street	
<small>City, State, ZIP+4</small>	Berkshire Notice
Batavia, NY 14020	
<small>PS Form 3800, August 2006 See Reverse for Instructions</small>	

<p>SENDER: COMPLETE THIS SECTION</p> <ul style="list-style-type: none"> Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. <p>1. Article Addressed to: Genesee County Legislature Attn: Chairman Old Courthouse 7 Main Street Batavia, New York 14020</p>	<p>COMPLETE THIS SECTION ON DELIVERY</p> <p>A. Signature  <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) LAURIE JENSEN</p> <p>C. Date of Delivery 1-21-11</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>2. Article Number <small>(Transfer from service label)</small></p> <p align="center">7010 0780 0001 6494 3842</p>	
<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p><small>PS Form 3811, February 2004 Domestic Return Receipt</small> Berkshire Notice <small>102595-02-M-1547</small></p>	

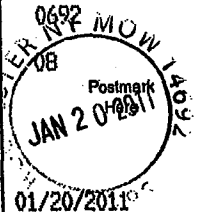
**Evidence of Mailing Berkshire Hospitality LLC (Holiday Inn)
Notice Letter**

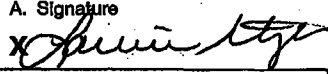
U.S. Postal Service TM		CERTIFIED MAIL TM RECEIPT	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>			
For delivery information visit our website at www.usps.com			
OFFICIAL USE			
Postage	\$ 0.44		Postmark Here
Certified Fee	\$2.80		
Return Receipt Fee (Endorsement Required)	\$2.30		
Restricted Delivery Fee (Endorsement Required)	\$0.00		
Total Postage & Fees	\$ 5.54		
Sent To Town of Batavia (Attn: Supervisor) Street, Apt. No., or PO Box No. 3833 W. Main Street Road City, State, ZIP+4 Batavia, NY 14020			
PS Form 3800, August 2006		Berkshire Notice See Reverse for Instructions	

7010 1870 0003 2524 8600

<p>SENDER: COMPLETE THIS SECTION</p> <ul style="list-style-type: none"> Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. <p>1. Article Addressed to: Town of Batavia Attn: Supervisor 3833 W. Main Street Road Batavia, New York 14020</p>	<p>COMPLETE THIS SECTION ON DELIVERY</p> <p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) T. Morgasco</p> <p>C. Date of Delivery 1-20-11</p> <p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No</p> <p>3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
2. Article Number (Transfer from service label) 7010 1870 0003 2524 8600	
PS Form 3811, February 2004 Domestic Return Receipt <i>Berkshire Notice</i> 102595-02-M-1540	

**Evidence of Mailing Berkshire Hospitality LLC (Holiday Inn)
Notice Letter**

U.S. Postal Service TM		CERTIFIED MAILTM RECEIPT	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>			
For delivery information visit our website at www.usps.com			
ADDITIONAL USE			
Postage	\$	\$0.44	
Certified Fee		\$2.80	
Return Receipt Fee (Endorsement Required)		\$2.30	
Restricted Delivery Fee (Endorsement Required)		\$0.00	
Total Postage & Fees	\$	\$5.54	
Sent To Genesee County Manager Street, Apt. No. or PO Box No. Genesee Co. Courthouse, 7 Main Street City, State, ZIP+4 Batavia, NY 14020 PS Form 3800, August 2006 Berkshire Notice See Reverse for Instructions			

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also, complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee 	
1. Article Addressed to: Genesee County Manager Genesee County Courthouse County Building I 7 Main Street Batavia, New York 14020		B. Received by (Printed Name) LAURIE F. J. E. D. C. Date of Delivery 1-21-11	
2. Article Number (Transfer from service label)		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004		Domestic Return Receipt <i>Berkshire Notice</i> 102595-02-M-1540	

**Evidence of Mailing Berkshire Hospitality LLC (Holiday Inn)
Notice Letter**

U.S. Postal Service TM		CERTIFIED MAILTM RECEIPT	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>			
For delivery information visit our website at www.usps.com .			
PROHIBITED FOR FINANCIAL USE			
Postage	\$ 00.44	0692	
Certified Fee	\$ 2.80		
Return Receipt Fee (Endorsement Required)	\$ 2.30		
Restricted Delivery Fee (Endorsement Required)	\$ 0.00		
Total Postage & Fees	\$ 5.54		
Sent To Batavia City School District (Attn: Superintendent) Street, Apt. No. or PO Box No. 39 Washington Avenue City, State, ZIP+4 Batavia, NY 14020			
PS Form 3800, August 2006		Berkshire Notice See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature X <i>David Russo</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Batavia City School District Attn: Superintendent 39 Washington Avenue Batavia, New York 14020		B. Received by (Printed Name) <i>David Russo</i>	
		C. Date of Delivery <i>1-21-11</i>	
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number <i>(Transfer from service label)</i>		7010 1870 0003 2524 8617	
PS Form 3811, February 2004		Domestic Return Receipt <i>Berkshire Notice</i> 102595-02-M-1540	

EXHIBIT B

[SHORT EAF]

TOWN OF BATAVIA PLANNING BOARD
REGULAR MEETING APRIL 5, 2011

PRESENT: Chairman Kathleen Jasinski, Members Don Partridge, Lou Paganello, Paul McCullough, Paul Marchese, Gordon Offhaus and Jeremy Liles

ALSO ATTENDING: ZEO Bruce Gerould, Secretary Sharon White Town Engineer Steve Mountain, Mark Tidemann, Roger Muehlig, County Legislator Ed DeJaneiro, Tim Call, Dave Tufts, Tom Warth, Brittany Baker and Roger Saile

ABSENT: Member Robert Rumble

Alternate Member will be voting at tonight's meeting due to the absence of one (1) member.

MINUTES OF MARCH 15, 2011 REGULAR MEETING

Paul McCullough made a motion to approve the minutes as submitted. Seconded by Jeremy Liles. Vote unanimous for approval.

MINUTES OF PUBLIC HEARING MARCH 15, 2011—LARRY ABAIRE—3282 W MAIN ST RD

Paul McCullough made a motion to approve the minutes as submitted. Seconded by Paul Marchese. Vote unanimous for approval.

CALL FARMS—MONROE TRACTOR—7941 OAK ORCHARD RD—
SPECIAL USE PERMIT

Dave Tufts and Tim Call appeared before the Board to obtain approval for a special use permit to operate a motor vehicle sales, service and repair shop. Per the ZEO it meets all criteria. Genesee

County Planning Dept. recommended approval with modifications—applicant provides an updated parking plan that shows the location, size and number of all customer and employee parking spaces on the site given that the proposed addition eliminates current parking areas and the storage and disposal of all new and used waste oils, lubricants, fuels, coolants and other hazardous materials shall be conducted in a manner consistent with all applicable state and federal laws. With these modifications, the proposed addition should not pose significant impacts. Per Mr. Tufts and Mr. Call these items have all been addressed. Lou Paganello made a motion to approve the application. Seconded by Paul Marchese. Vote unanimous for approval.

MICHAEL MORASCO—STATE ST RD—LAND SEPARATION

Mr. Morasco appeared before the Board to obtain approval to separate a small lot off of the eleven (11) acres. Don Partridge made a motion to approve the land separation. Seconded by Lou Paganello. Vote unanimous for approval.

MARK TIEDMANN—MWT ARCHITECTURE—HOLIDAY INN EXPRESS

The SEQR was presented and reviewed. A traffic study has been completed for the developer—left turn lane is suggested on Rt. #98. It was suggested that the developer submit the traffic study to DOT. A letter from the developer was submitted regarding withdrawal of the application for a height variance. The ZBA needs to act on the Withdrawal.

Don Partridge made a motion to declare the SEQR as a negative declaration. Seconded by Paul McCullough. Vote unanimous for approval.

EMPIRE TRACTOR—5072 E MAIN ST RD—SPECIAL USE PERMIT

An application was submitted to obtain approval to operate an equipment sales, service and repair shop at the above location. The property has been purchased by Call Farms and they want to move their operation from the Town of Stafford into the old Ognibene car dealership building. There will be no changes to the building or site. The only thing that needs attention is the storm water

detention. A public hearing is needed. Paul Marchese made a motion to set April 19, 2011 at 7:25pm as the date and time for the public hearing. Seconded by Lou Paganello. Vote unanimous for approval.

ZEO REPORT

PEGGY KORCZAK—PEARL ST RD—LAND SEPARATION

An application was presented to obtain approval to split in half 45 acres. Don Partridge made a motion to approve the land separation. Seconded by Gordon Offhaus. Vote unanimous for approval.

APPLEBEES—LEWISTON RD—REPLACEMENT OF SIGN

An application was presented to obtain approval to replace a sign. Per the ZEO it meets code. Paul McCullough made a motion to approve the application. Seconded by Jeremy Liles. Vote unanimous for approval.

CHAIRMAN REPORT

The chairman passed out info from NYS DOT on Gardner Estates for reference for the April 19, 2011 meeting.

At this time, the chairman asked Roger Saile of Oak Orchard Rd., who was in the audience, if he wished to address the Board. He stated that he questioned if the drainage ditch between Monroe Tractor and Godwin Pumps could be cleaned out. His farmland gets flooded. He also wondered if the new addition to Monroe Tractor would cause more flooding. Town Engineer Steve Mountain will check into it further and advise Mr. Saile.

Gordon Offhaus made a motion to adjourn the meeting at 8:25pm. Seconded by Jeremy Liles, Vote unanimous for adjournment.

Respectfully submitted,
Kathleen Jasinski
Chairman

Sharon White
Secretary

EXHIBIT C

[FORM OF AGENT AGREEMENT]

FORM OF AGENT AGREEMENT

THIS AGREEMENT, made as of the ___ day of _____, is by and between the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER**, a public benefit corporation of the State of New York, having its offices at 99 MedTech Drive, Suite 106 Batavia, New York, 14020-3141 (the "Agency") and **BERKSHIRE HOSPITALITY LLC**, a limited liability company with offices at _____ (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 565 of the Laws of 1970 of the State of New York pursuant to Title I 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: (i) the acquisition by the Agency of a leasehold interest in a certain approximately 2.43-acre parcel of real property located on Commerce Drive, in the Town of Batavia, Genesee County, New York (the "Land"), (ii) the construction on the Land by the Company as agent of the Agency of an approximately 41,000 square foot four-story Holiday Inn hotel consisting of approximately 80 hotel rooms, a fitness room, an indoor pool, a lobby area and meeting space (collectively, the "Improvements"), and (iii) the acquisition of and installation in and around the Improvements by the Company of machinery, equipment, and other fixture-based items of tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, by Resolution dated April 14, 2011 (the "Resolution"), the Agency authorized the Company to act as its agent for the purposes of acquiring, constructing and equipping the Facility subject to the Company entering into this Agent 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:

1. Scope of Agency. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition, construction and equipping of the Facility. The right of the Company to act as agent of the Agency shall expire on **December 31, 2011**, unless extended as contemplated by the Resolution. The aggregate amount of work performed as Agent for the Agency shall not exceed the amounts described in the Application of the Company in this matter. All contracts entered into as agent for the Agency shall include the following language:

"This contract is being entered into by Berkshire Hospitality LLC. (the "Agent"), as agent for and on behalf of the Genesee County Industrial Development Agency

d/b/a Genesee County Economic Development Center (the "Agency"), in connection with a certain project consisting of the acquisition and installation of certain machinery, equipment and building materials at on Commerce Drive, in the Town of Batavia, Genesee County, New York (the "Premises"). The machinery, equipment and building materials to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption letter of the Agency; and the Agent hereby represents that this contract is in compliance with the terms of the sales tax exemption letter. 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 hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

2. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Project:

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

(b) 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) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (c).

(d) 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 knowledge of the Company, 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.

(e) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances

will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its President/CEO, directors, members, officers, employees, agents, representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

(f) Any personal property acquired by the Company in the name of the Agency shall be located in Genesee County, except for temporary periods during ordinary use.

3. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its President/CEO, directors, officers, members, employees, agents (except the Company), representatives, successors and assigns harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company of this Agent Agreement or (ii) liability arising from or expense incurred by the Agency's financing, rehabilitating, constructing, renovation, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

4. Insurance Required. Effective as of the date hereof and until the Agency consents in writing to a termination, the Company 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 Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well.

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

(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 Company by any applicable worker's compensation law; and a blanket excess liability policy in the amount not less than **\$3,000,000**, protecting the Company against any loss or liability or damage for personal injury or property damage.

5. Additional Provisions Respecting Insurance. (a) All insurance required by Section 4(a) hereof shall name the Agency as a named insured and all other insurance required by Section 4 shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company 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 Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days prior written notice of the cancellation thereof to the Company and the Agency.

(b) 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 Agency on the date hereof. Prior to expiration of any such policy, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agent Agreement.

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 or mailed first class, postage prepaid, as follows:

To the Agency: Genesee County Industrial Development Agency
d/b/a Genesee County Economic Development Center
99 MedTech Drive, Suite 106
Batavia, New York 14020
Attn.: Steven G. Hyde, President & CEO

With a Copy to: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn.: Russell E. Gaenzle, Esq.

To the Company: Berkshire Hospitality LLC

With a Copy to: _____

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 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 Genesee County, New York.

9. The parties are contemplating that, after any applicable public hearings, the Agency will negotiate and enter into a lease agreement ("Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and payment-in-lieu-of-tax agreement ("PILOT Agreement") with the Company. The Company agrees not to take title to any real property as agent for the Agency until the Lease Agreement, Leaseback Agreement and PILOT Agreement have been executed and delivered. At any time prior to the execution of the Lease Agreement, Leaseback Agreement and PILOT Agreement, the Agency can transfer title to the Company to all assets acquired by the Company as agent for the Agency. Additionally, at any time prior to execution of the Lease Agreement, Leaseback Agreement and PILOT Agreement, the Company can demand that the Agency transfer title to the Company with respect to all assets acquired by the Company as agent for the Agency, provided all amounts owed the Agency have been paid current.

10. By executing this Agent Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (1) legal services, including but not limited to those provided by the Agency's general counsel or transaction counsel, and (2) other

consultants retained by the Agency in connection with the Project; with all such charges to be paid by the Company at the closing or, if the closing does not occur, within ten (10) business days of receipt of the Agency's invoices therefore. The Company is entitled to receive a written estimate of fees and costs of the Agency's transaction counsel.

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 (1) the applicant's withdrawal, abandonment, cancellation or failure to pursue the Project; (2) the inability of the Agency or 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.

[Signature Page Follows - Remainder of Page Intentionally Left Blank]

[Signature Page to Agent Agreement]

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

GENESEE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY d/b/a
GENESEE COUNTY ECONOMIC
DEVELOPMENT CENTER

By: _____
Name: Steven G. Hyde
Title: President & CEO

BERKSHIRE HOSPITALITY LLC

By: _____
Name:
Title: