

IDA

**CONFERENCE ROOM
LAKE PLEASANT, NY**

MAY 3, 2012

The meeting was called to order by Chairman Towers at 1:30 P.M. with the following members present:

Brian Towers, Chairman
William Farber, Vice Chairman
William Faro
Robin Morrison
Robert Peck
Tim Pine

Absent: Fred Fink

Also Present:

Ann Melious, Executive Director
Laura Abrams, Secretary
Pete Klein, Press

Motion to approve the minutes of March 22, 2012, April 2, 2012 & April 23, 2012 by Mr. Faro, seconded by Mr. Farber. Carried.

Payment of Bills:

Richard Dinolfo (Audit Services)	\$2,750.00
Indian Lake Theater (Microenterprise Info. Mtg.)	\$160.00
National Grid (Oak Mt. Ski Center)	\$135.16
Wm J. Kline (Microenterprise Ads)	\$650.00
Robin Morrison (Travel)	\$273.80

Motion to pay as audited by Mr. Morrison, seconded by Mr. Pine. Carried.

Financial Report:

Ms. Melious reported that everyone is up to date. There are two exceptions, the Indian Lake Market, which is beyond our control and Fresh Look Renovations. Tim Schofield is re-writing a payment contract with Mr. Cooper of Fresh Look Renovations. He did call her and sent a good faith check. They are looking at getting twice a month payments from him to get him caught up. The Chairman stated that as far as the Indian Lake Market, he has heard someone is leasing it. Ms. Melious explained that the building did not belong to the Indian Lake Market, they leased it.

Ms. Melious further reported that there is almost \$219,000 in the checking account. Mr. Farber asked that when we renegotiate this agreement with Fresh Look Renovations, we incorporate into that at least the costs of having Tim Schofield do the new agreement. Ms. Melious stated yes, we will.

Oak Mt. Installment Sale Agreement:

Ms. Melious handed out the most recent version of the Oak Mt. Installment Sale Agreement she has received from FitzGerald Morris Baker and Firth. Ms. Melious stated that Bob Morris, Matt Fuller and Kara Lais of FitzGerald will be calling today to answer questions. The Board reviewed the agreement.

Mr. Peck asked if the lots that the IDA is retaining have been subdivided. Ms. Melious stated no, it is in process. We need a resolution that allows us to do it. Right now we only have the survey map that depicts it. Mr. Farber stated that the bidders all knew that our intent was to retain those lots; we just haven't gone through the formal subdivision process.

Collie Smith entered at this time.

Ms. Melious pointed out that this agreement includes early occupancy at their own risk, so they can get on the premises before the 90 day clock. It is covered in Section 9 of the agreement.

Mr. Bob Morris, Mr. Matt Fuller and Ms. Kara Lais of FitzGerald Morris Baker Firth PC joined via the speakerphone.

Motion was made by Mr. Faro to enter Executive Session for the purpose of discussing strategy for negotiating the sale of Oak Mt. Seconded by Mr. Morrison. Carried.

Motion to open session by Mr. Farber, seconded by Mr. Peck. Carried.

Pete Klein, Collie Smith and Laura O'Brien entered at this time.

The Chairman reported that the Board met in closed session to discuss negotiations with their Attorneys. No official action was taken.

The Chairman stated that the next business that needs to be done is the State Environmental Quality Review (SEQR) requirement. The Chairman read the SEQR.

The Chairman explained that the Board has in front of them an Installment Sale Agreement that has been put together under the framework of the previous meetings with the O'Briens and in counsel with our Attorneys. We have discussed it again today in closed session. At this time the Chairman entertained a motion with regard to approving the Installment Sale Agreement with the O'Brien Family.

RESOLUTION NO. 1-12

RESOLUTION APPROVING OF THE INSTALLMENT SALE AGREEMENT WITH KEVIN O'BRIEN ET AL FOR TRANSFER OF THE REAL AND PERSONAL PROPERTY COMMONLY REFERRED TO AS OAK MOUNTAIN SKI AREA

DATED: MAY 3, 2012

BY MR. FARO:

WHEREAS, the Hamilton County Industrial Development Agency (the "Agency") is the owner of the real property and the improvements and equipment thereon commonly known as and referred to as Oak Mountain Ski Area (the "Ski Area") located on Elm Lake Road, in the Village of Speculator, Town of Lake Pleasant, County of Hamilton, and

WHEREAS, in an effort to continue operations at the Ski Area and in accordance with the provisions of the Public Authorities Accountability Act and the Agency's Policy on the Disposition of Property, the Agency released a Request for Proposals on or about December 19, 2011 seeking proposals for the purchase of the Ski Area, with said proposals being due on March 22, 2012, and

WHEREAS, the Agency received three (3) proposals, of which two (2) were not responsive to the Agency's request, and

WHEREAS, Kevin O'Brien, Matthew O'Brien, Laura O'Brien and Elizabeth O'Brien (hereinafter collectively referred to as the "O'Briens") submitted a proposal to the Agency for the purchase of the Ski Area and the continued operation of the same, and

WHEREAS, the Agency acknowledges that without the disposition of the Ski Area to a private purchaser, it is unlikely that the Ski Area will continue to operate and serve as a recreational facility to the residents of and visitors to Hamilton County, and

WHEREAS, in order to protect the interests of the Agency, but also enable the sale and continued operation of the Ski Area, the Agency and the O'Briens parties negotiated the various terms and conditions of the purchase of the Ski Area, and

WHEREAS, an installment sale agreement which includes provisions governing the purchase price and conditions of disposition, job retention and creation requirements, cash investments and capital improvements, and obligations to operate the facility as a ski area has been prepared, and

WHEREAS, the Agency is a state agency under Section 8-0105 of the Environmental Conservation Law of the State of New York and the transfer and sale of the real property owned by the Agency is an action under Article 8 of said law (Article 8 hereinafter being referred to as the "State Environmental Quality Review Act" or "SEQRA") and under 6 NYCRR Part 617.4(b)(4) as a Type I Action, and

WHEREAS, the Agency has determined that there are no other involved agencies and hereby declares itself to be lead agency, and

WHEREAS, the Agency has reviewed information needed to determine whether or not the transfer and sale of the Ski Area will have a significant impact on the environment, and

WHEREAS, in accordance with section 2897 of the Public Authorities Law, a Notice Letter was sent to the NYS Comptroller, NYS Director of the Authorities Budget Office, the NYS Director of the Division of Budget, the NYS Commissioner of the Office of General Services, NYS Senate Majority Leader and the NYS Assembly Speaker on April 26, 2012.

NOW, THEREFORE, BE IT RESOLVED THAT:

SECTION 1. After careful consideration of the terms and conditions of the Installment Sale Agreement, the Agency hereby determines that such a transfer is a permitted transfer under Article 18-A of the NYS General Municipal Law and that the transfer will advance the Agency's corporate purposes by leading to the retention and creation of job opportunities for the residents of the County of Hamilton. Said transfer will also promote the health, prosperity and economic

welfare of the residents of the County of Hamilton and will help to improve their standards of living. Therefore, the Agency hereby approves of the Installment Sale Agreement, a copy of which is attached hereto and incorporated herein by reference, subject to such changes as the Chairman of the Agency, upon the advice of counsel, may reasonably deem necessary.

SECTION 2. The Agency has thoroughly reviewed the long form assessment form in order to determine whether the project might have any potential significant adverse impacts upon the environment. After conducting this review, the Agency hereby makes the following findings:

- a. The transfer contemplated between the parties will not result in any significant change to the existing use of the real property and therefore no disturbance of the real property is planned.
- b. The transfer contemplated between the parties will not result in any significant changes to the existing landscape of the real property, nor does the project involve any construction or reconstruction of existing facilities on the real property that will have an adverse effect on the real property and its surroundings.
- c. The transfer and the continued operation of the facility is not inconsistent with community plans for development and growth within the Village of Speculator, Town of Lake Pleasant and County of Hamilton and further determines that the project is consistent with social, economic and other essential consideration and will not result in any significant adverse impacts on the environment and hereby issues a Negative Declaration and authorizes the publication of such findings in the Environmental News Bulletin and State Register, thereby satisfying the requirements of Part 617 of Title 6 of the NYCRR and therefore requiring no further SEQRA review.

SECTION 3. The Agency hereby authorizes the Chairman of the Agency to execute any and all documents necessary to effectuate this Resolution.

SECTION 4. This Resolution shall take effect immediately with the Installment Sale Agreement to be effective upon the expiration of 90 days from the date of the Notice Letter being mailed via US mail to various State agencies.

Seconded by Mr. Morrison.

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

Voting:	Ayes:	Nays:	Abstain:	Absent:
Brian Towers	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
William Farber	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
William Faro	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Frederick Fink	<u> </u>	<u> </u>	<u> </u>	<u> X </u>
Robin Morrison	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Robert Peck	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Timothy Pine	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Totals:	<u> 6 </u>	<u> 0 </u>	<u> 0 </u>	<u> 1 </u>

The foregoing resolution was thereupon declared duly adopted.

ATTACHMENT

INSTALLMENT SALE AGREEMENT

This Agreement is made and entered into this 3rd day of August 2012 (the “Effective Date”), by and between the Hamilton County Industrial Development Agency, a public benefit corporation organized under the laws of the State of New York, having an address of PO Box 57, Lake Pleasant, New York 12108 (hereinafter the “Agency”) and Kevin O’Brien, Matthew O’Brien, Elizabeth O’Brien and Laura O’Brien, jointly and severally, having an address of PO Box 373, Speculator, New York 12108 (hereinafter collectively referred to as the “Purchaser”).

W I T N E S S E T H:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 862 of the Laws of 1971 of the State of New York, as amended (the “Act”); and

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

WHEREAS, the Act further authorizes each such agency to lease or sell any or all of its facilities for the purpose of carrying out any of its corporate purposes and to mortgage and pledge any or all of its facilities, whether then owned or leased or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Act, by and is empowered under the Act to undertake the Project in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and the County of Hamilton, New York and improve their standard of living; and

WHEREAS, this Installment Sale Agreement sets forth the terms and conditions pursuant to which the Agency agrees to sell and the Purchaser agrees to purchase the real and personal property of the Agency (the “Property”, as hereinafter defined); and

WHEREAS, the execution and delivery of this Installment Sale Agreement have been duly approved and authorized by Resolution duly adopted by the Agency; and

WHEREAS, the sale of the Property, pursuant to the terms and provisions set forth herein, to the Purchaser is for a proper corporate and public purpose, to wit, to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State and the County of Hamilton, New York; and

WHEREAS, all things necessary to constitute this Installment Sale Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of the Installment Sale Agreement has in all respects been duly authorized.

NOW, THEREFORE, THIS INSTALLMENT SALE AGREEMENT FURTHER WITNESSETH:

SECTION 1. AGREEMENT TO CONVEY TO THE PURCHASER. Upon payments and performance of the terms and conditions herein contained by the Purchaser, the Agency shall convey or cause to be conveyed the real property known as the Oak Mountain Ski Area, which is located at Elm Lake Road, in the Village of Speculator, Town of Lake Pleasant and the County of Hamilton, which comprises approximately 230 acres. A copy of the existing deed to Oak Mountain Ski Area is attached hereto and incorporated herein by reference as Exhibit A, with Parcel 1 comprising the ski area and Parcel 2, the cell tower parcel consisting of approximately 10 acres, being specifically excepted from this Agreement. Also specifically excepted from this Agreement are the undeveloped building lots on either side of the access road, which consist of approximately 12 acres. The aforementioned lots are also described in the real property description of Parcel 1 in the deed in Exhibit A. Said conveyance shall also include an approximate 0.4 mile right of way conveyed to the Purchaser from Elm Lake Road to the Ski Area and shall also include a reservation to the Agency of a right of way to the cell tower parcel. The conveyance shall also include the Agency's interest in any and all improvements, fixtures, equipment furniture and supplies, thereon, a listing of said inventory is attached hereto and incorporated herein by reference as Exhibit B. The real property and the personal property described above shall be collectively referred to as the "Property" herein.

SECTION 2. USE OF THE PROPERTY. Subsequent to the execution of this Agreement and during any period in which this Agreement is in effect, the Purchaser shall be required to use the Property as an operating ski area. Notwithstanding the foregoing, in the event there is a winter season during the term of this Agreement that prohibits the making of snow, the Purchaser shall be relieved of the use requirement set forth herein. In addition, the Purchaser shall make all reasonable efforts to provide recreational opportunities at the ski area site for three-seasons throughout each calendar year. Notwithstanding the foregoing, the Purchaser shall not use the Property for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous or hazardous substance chemical, thing or device.

SECTION 3. INSTALLMENT PAYMENT TERMS. Subject to the performance requirements set forth herein, the Purchaser shall be required to make the following payments:

- a. Upon execution of this Agreement, Purchaser shall pay to the Agency One Dollar (\$1.00) for the Property for the term of August 3, 2012 to August 2, 2013.
- b. On August 3, 2013, Purchaser shall pay to the Agency One Dollar (\$1.00) for the Property for the term of August 3, 2013 to August 2, 2014.
- c. On August 3, 2014, Purchaser shall pay to the Agency Fifty Thousand Dollars (\$50,000) in cash or certified check for the Property, at which time if all of the terms and conditions of this Agreement have been satisfied and complied with the Agency shall convey the Property to the Purchaser.

SECTION 4. PERFORMANCE REQUIREMENTS. During the term of this Agreement, the Purchaser shall be required to comply with the following performance requirements relating to its operation of the ski area.

- a. The Purchaser shall remain in full compliance with Section 2, herein, for the full term of this Agreement.
- b. The Purchaser shall be required to make annual cash investments in the Property, as follows:

- i. In Year 1, from August 3, 2012 through August 2, 2013, Purchaser shall make a cash investment in an amount no less than One Hundred Fifty Thousand Dollars (\$150,000.00). Of said One Hundred Fifty Thousand Dollars (\$150,000.00), no less than Sixty Five Thousand Dollars (\$65,000.00) shall be attributable to capital improvements in or to the Property. In the event the Purchaser makes cash investments and/or capital improvements in excess of the amounts stated herein, said excess amounts may not be carried over and credited to the next year, specifically, August 3, 2013 through August 2, 2014.
- ii. In Year 2, from August 3, 2013 through August 2, 2014, Purchaser shall make a cash investment in an amount no less than Seventy Five Thousand Dollars (\$75,000.00). Of said Seventy Five Thousand Dollars (\$75,000.00), no less than Sixty Five Thousand Dollars (\$65,000.00) shall be attributable to capital improvements in or to the Property.

For purposes of this Agreement, “cash investment” shall mean the actual dollars spent on the operations, including but not limited to, wages, insurance, taxes, and utilities, at the Property and any capital improvements, as defined herein.

For purposes of this Agreement, “capital improvements” shall mean any permanent structural improvement, the restoration of some aspect of the Property that will either enhance the Property’s overall value or increase its useful life, and/or the purchase of assets to enhance and improve the operations at the Property.

Said cash improvements shall be substantiated, at the request of the Agency, by the presentation of receipts and/or financial statements showing the date of the expenditure, the dollar amount of the expenditure and a detailed description of the services or goods purchased.

- c. For the duration of this Agreement, the Purchaser shall be required to retain or create approximately Forty Four (44) part time and/or seasonal employees in connection with the Property. Said jobs shall consist of, but not be limited to, ski instructors, ski lift operators, servers, cook, game attendants and ski rental attendants. The Agency, at its sole discretion, may accept a lesser number of part time and/or seasonal employees as sufficient upon consideration of any extenuating circumstances affecting the number of jobs retained or created.

SECTION 5. RESIDUAL SALVAGE VALUE.

- a. If at any time during the term of the Agreement and through August 3, 2017, the Purchaser determines in its sole discretion to discontinue ski operations at the Property, the Agency or the Purchaser, as may be applicable, may offer the Property for sale as a going concern and may accept any purchase price the Agency or the Purchaser, as may be applicable, it deems appropriate, but, in the case of the Agency, in the best interests of the County of Hamilton and in accordance with applicable laws. Upon such sale, the net proceeds shall be split between the Agency and the Purchaser as follows:
 - i. If the sale occurs between August 3, 2013 and August 2, 2014, the Agency shall receive Seventy Percent (70%) of the net proceeds of the sale and the Purchaser shall receive Thirty Percent (30%) of the net proceeds of the sale,

less Fifty Thousand Dollars (\$50,000.00), which shall be payable to the Agency.

- ii. If the sale occurs between August 3, 2014 and August 2, 2015, the Agency shall receive Forty Five Percent (45%) of the net proceeds of the sale and the Purchaser shall receive Fifty Five Percent (55%) of the net proceeds of the sale.
 - iii. If the sale occurs between August 3, 2015 and August 2, 2016, the Agency shall receive Twenty Five Percent (25%) of the net proceeds of the sale and the Purchaser shall receive Seventy Five Percent (75%) of the net proceeds of the sale.
 - iv. If the sale occurs between August 3, 2016 and August 2, 2017, the Agency shall receive Ten Percent (10%) of the net proceeds of the sale and the Purchaser shall receive Ninety Percent (90%) of the net proceeds of the sale.
- b. In the event the Purchaser is not in compliance with any provision of Section 4, herein, at the time of a sale as is contemplated by this Section that occurs during the period from August 3, 2013 through August 2, 2014, the Purchaser shall not be entitled to receive any percentage of the residual salvage value of the Property and the total net proceeds of such sale shall be payable to the Agency.
 - c. For purposes of this Agreement, "net proceeds" shall mean so much of the gross proceeds of the sale of the Property as remain after payment of all expenses, costs, taxes, and attorney's fees incurred in obtaining such gross proceeds.

SECTION 6. INSURANCE REQUIRED. At all times during this Agreement and through August 2, 2017, if the Agreement has not been otherwise terminated, the Purchaser shall maintain, or cause to be maintained, insurance with respect to the 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. Insurance protecting the interests of the Purchaser and the Agency against loss or damage to the Project by fire, lightning and other casualties normally insured against with a uniform standard extended coverage endorsement, such insurance at all times to be in an amount not less than the total cash replacement value of the Property, as determined by a recognized appraiser or insurer selected by the Purchaser; provided, however, that the Purchaser may, insure all or a portion of the Property under a blanket insurance policy or policies covering not only the Property or portions thereof but other property.
- b. Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Purchaser is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Purchaser who are located at or assigned to the Property and for all contractors and subcontracts.
- c. Insurance protecting the Purchaser and the Agency 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 a single combined limit of not less than \$2,000,000.00 per accident or occurrence on account of personal injury, including death resulting therefrom, and damage to the Property of others, excluding liability imposed upon the Purchaser by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than \$10,000,000 protecting the Purchaser and the Agency against any loss or liability or damage for personal injury, death or Property damage.

- d. THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE PURCHASER'S BUSINESS OR INTEREST.

All insurance required by this Section shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Purchaser and authorized to write such insurance in the State. Such insurance may be written with deductible amounts acceptable to the Purchaser. All policies evidencing hazard insurance shall provide for (1) payment of the losses to the Purchaser, the holder of a mortgage encumbering the Property, if any, and the Agency, as their respective interests may appear and in accordance with the terms of such mortgage, if any, and (2) at least thirty (30) days written notice of the proposed cancellation or lapse thereof (or any reduction in policy limits or coverage thereof) to the Purchaser and the Agency.

A certificate or certificates evidencing that all insurance required under this Section is in force and effect shall be deposited with the Agency on or before the date of this Agreement, and copies of all of the insurance policies relating thereto shall be delivered to the Agency within thirty (30) days after the date of this Agreement. The Purchaser shall deliver to the Agency on or before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding November 1 reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by this Section, or if such insurance shall expire within such succeeding calendar year, reciting that adequate provision has been obtained for the renewal of such insurance for the calendar year succeeding the expiration date of such insurance. Prior to the expiration of any such policy, the Purchaser shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement. Copies of all renewal or replacement policies will be forwarded to the Agency prior to the cancellation or termination of any policy.

Until such time that the Agency delivers a deed for the Property to the Purchaser, the Net Proceeds of the insurance carried pursuant to the provisions of this Section shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid as the Company may determine.

SECTION 7. HOLD HARMLESS PROVISIONS.

- a. The Purchaser hereby releases the Agency and its members, officers, agents (other than the Purchaser) and employees from, agrees that the Agency and its members, officers, agents (other than the Purchaser) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Purchaser) and employees 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 Property or arising

- by reason of or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Property and (ii) all causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the intentional or willful wrongdoing of the Agency or any of its members, agents (other than the Purchaser) or employees.
- b. In the event of any claim against the Agency or its officers, members, employees, servants or agents by any employee of the Purchaser or any contractor of the Purchaser or anyone directly or indirectly employed by any of them or any one for whose acts any of them may be liable, the obligations of the Purchaser hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Purchaser or such contractor under Worker's Compensation acts, disability benefits or other employee benefit acts.
 - c. To effectuate the provisions of this Section 7, the Purchaser agrees to provide for and insure, in the liability policies required in Sections 6 hereof, its liabilities assumed pursuant to this Section to the extent such insurance is obtainable.
 - d. Any other provisions of this Agreement to the contrary notwithstanding, the obligations of the Purchaser pursuant to this Section 8 shall remain in full force and effect after the termination of this Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency, or its officers, members, employees, servants or agents, relating thereto.

SECTION 8. PAYMENT IN LIEU OF TAXES. This Agreement shall be contingent upon the parties entering into a mutually agreeable Payment in Lieu of Taxes ("PILOT") Agreement for the period of time from August 3, 2012 through August 3, 2014, which is the date upon which the title to the real property discussed in Section 1, herein, is anticipated to be conveyed to the Purchaser. It is anticipated that said PILOT will require full payment of the taxes assessed by the taxing jurisdictions. Nothing herein shall prohibit or impair the Purchaser from applying to the Agency for a tax abatement from the full real property taxes, in accordance with the Agency's policies and procedures. Any such Payment in Lieu of Taxes Agreement shall be in accordance with the provisions of Article 18A of the General Municipal Law, the applicable provisions of the Real Property Tax Law and the Agency's Uniform Tax Exemption Policy.

SECTION 9. EARLY OCCUPANCY. The Purchaser may have access to the Property prior to the Effective Date hereof for the purposes of making improvements to the Property and for operating the ski area, as a recreational facility, to the extent such operation is possible. Such early occupancy, improvements and operation shall be at the sole and exclusive risk of the Purchaser. Such early occupancy shall only be allowed if the Purchaser provides the Agency with the required insurances, as set forth in Section 6. In addition, any and all provisions of this Agreement, including Sections 7 and 31, shall be in full force and effect for any period of the Purchaser's early occupancy.

SECTION 10. ASSIGNMENT TO ENTITY. The Purchaser may assign this Agreement to an entity of its choice, upon consent of the Agency and upon execution of personal guaranties of

any or all of the individually named Purchasers herein. No other assignment shall be permitted. Any attempt of the Purchaser or the entity of its choice, as discussed herein, to transfer, sell or assign this Agreement shall be considered a default of this Agreement and shall result in the Purchaser waiving any and all rights it may have to a percentage of the residual salvage value as discussed in Section 5, hereof.

SECTION 11. CONDITION OF PROPERTY. The Purchaser acknowledges that it has inspected the Property and is acquainted with the condition of same and hereby agrees to accept the Property in "as is" condition as of the Effective Date of this Agreement.

SECTION 12. TAXES, ASSESSMENTS AND UTILITY CHARGES.

- a. The Purchaser agrees to pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Property and any machinery, equipment or other property installed or bought by the Purchaser therein or thereon, including any payments due under the PILOT Agreement, if any (ii) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Property and (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental authority for public improvements or services.
- b. The Purchaser may in good faith contest any such taxes, assessments and other charges provided that the Purchaser (i) first shall have notified the Agency of such contest, (ii) is not in default under this Agreement, and (3) shall have set aside adequate reserves for any such taxes, assessments and other charges or otherwise satisfied the Agency as to the availability of funds to pay such taxes. In the event of any such contest, the Purchaser may permit the taxes, assessments and other charges so contested to remain unpaid unless the Property, or the value of the Property or any part thereof will be subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid promptly or secured by posting a bond in form and substance satisfactory to the Agency. To the extent it may be required, the Agency hereby assigns it authority to contest any such taxes, assessments and other charges to the Purchaser.

SECTION 13. MAINTENANCE AND MODIFICATIONS OF PROPERTY BY PURCHASER.

At all times during this Agreement and through August 2, 2017, if the Agreement has not been otherwise terminated, the Purchaser shall (a) keep the Property in good and safe operating order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs and replacements to the Property (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); and (c) operate the Property in a sound and economic manner. In addition, the Purchaser shall not, without the written consent of the Agency, remove, disassemble, demolish or otherwise dispose of any buildings, equipment, ski lifts or other improvements or fixtures located on the real property. Except as may be consented to by the Agency, the Purchaser shall not sell, assign, transfer, encumber or pledge as security the Property or any part thereof and shall maintain the Property free and clear from all liens or encumbrances.

SECTION 14. TERM AND POSSESSION. The Agency shall deliver to the Purchaser possession of the Property as of the Effective Date of this Agreement and said Agreement shall remain in effect until August 2, 2017 or sooner in the event of a sale pursuant to Section 5, herein. The Purchaser shall have the exclusive right to operate and manage the Property so long

as the Purchaser remains in compliance with the terms and conditions of this Agreement. Further, so long as the Purchaser remains in compliance with the terms and conditions of this Agreement, the Agency shall take no action to prevent the Purchaser from having quiet and peaceable possession and enjoyment of the Property during the term of this Agreement.

SECTION 15. RIGHT OF ACCESS TO THE PROPERTY. The Purchaser agrees that the Agency and its duly authorized agents have the right at all reasonable times, and upon reasonable prior notice, to enter upon and to examine and inspect the Property.

SECTION 16. COMPLIANCE WITH ORDERS, ORDINANCES, ETC. The Purchaser agrees that it will promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Property or any part thereof, or to any use, manner of use or condition of the Property or any part thereof.

SECTION 17. RISK OF LOSS. The risk of loss by fire or other casualty shall be borne by the Purchaser upon its taking possession.

SECTION 18. PERFORMANCE BY AGENCY OF PURCHASER'S OBLIGATIONS. Should the Purchaser fail to make any payment or to do any act as herein provided, the Agency may, but need not, upon five (5) business days notice to or demand on the Purchaser and without releasing the Purchaser from any obligation herein, make or so the same, including without limitation, appearing in and defending any action purporting to affect the rights or powers of the Purchaser or the Agency, and paying all expenses, including, without limitation, reasonable attorneys' fees, and the Purchaser will pay immediately upon demand all sums so expended by the Agency under the authority hereof, together with interest thereon.

SECTION 19. EVENTS OF DEFAULT.

- a. If the Purchaser fails to comply with any of the covenants, conditions or agreements made, or to be observed by it in this Agreement and said failure to comply occurs from the Effective Date of this Agreement through August 2, 2014, then the Agency, in its sole discretion, may declare this Agreement terminated by written notice to the Purchaser and may re-enter and take possession of the Property. Upon termination by the Agency, the Agency may retain as liquidated damages all payments which have been made to it under this Agreement and any and all cash investments that have been made to the Property. The Purchaser shall have no right to recoup from the Agency any cash investments made through the date of the termination and shall have no further rights to or interest in the Property. In the alternative, the Agency may, at its sole discretion, take any action at law or in equity which may appear necessary or desirable to protect its interest in the Property, as it may exist at the time of the Purchaser's failure to comply, and to enforce the obligations, agreements or covenants of the Purchaser under this Agreement.
- b. If the Purchaser fails to comply with any of the covenants, conditions or agreements made, or to be observed by it in this Agreement and said failure to comply occurs from August 3, 2014 through August 2, 2017, the Agency may take any action at law or in equity which may appear necessary or desirable to protect its interest in the

Property, as it may exist at the time of the Purchaser's failure to comply, and to enforce the obligations, agreements or covenants of the Purchaser under this Agreement.

SECTION 20. REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.

SECTION 21. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event the Purchaser should default under any of the provisions of this Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Purchaser herein contained, the Purchaser shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

SECTION 22. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 23. CONVEYANCE ON PURCHASE OF PROPERTY.

- a. In accordance with Section 3, herein, and so long as the Purchaser has satisfied all of the terms and conditions set forth in this Agreement on or about August 3, 2014 the Agency shall deliver to the Purchaser all necessary documents, including a Bargain and Sale Deed, with respect to the real property, to convey to the Purchaser all the Agency's right, title and interest in and to the Property being purchased, as such Property then exists, subject only to the following, as may be applicable: (i) any liens or title defects to which title to such Property was subject on the Effective Date of this Agreement and which are set forth in Section 1, including but not limited to all access easements and reservations of easements for adjacent lots owned by the Agency and any other access to adjoining property; (ii) any liens created at the request of the Purchaser or to the creation of which the Purchaser or Agency consented; (iii) any permitted encumbrances, which shall include mechanics', materialmens', warehousemens', carriers' and other similar liens and liens for taxes, assessments and utility charges; and (iv) any liens resulting from the failure of the Purchaser to perform or observe any of the agreements on its part contained in this Agreement or arising out of an event of default, as set forth herein.
- b. Said conveyance described in subsection (a) above shall also include an exception and reservation for a right of way for use by snowmobiles across the real property described herein at a location(s) to be agreed upon by the parties. Notwithstanding the foregoing, such rights of way for snowmobile use shall not interrupt the operation

of the ski area or encumber the undeveloped, buildable lots, the latter are not transferred as part of this Agreement.

- c. The Purchaser shall be responsible for any and all recording costs, fees and taxes that may be charged to record the deed, TP 584 and RP 5217 and any other documents that may be required to effectuate the above-described conveyance.

SECTION 24. SEQRA COMPLIANCE. Except as may otherwise be disclosed in the Environmental Review Assessment Form, the conveyance, acquisition and cash investments of and to the Property will not have a significant effect on the environment within the terms of Article 8 of the Environmental Conservation Law of the State of New York and the statewide and local regulations thereof.

SECTION 25. NOTICES. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (a) delivered to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery or (b) delivery is refused by the Agency or Purchaser, as the case may be, as evidenced by the affidavit of the person who attempted to effect such delivery. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

TO THE AGENCY:

Hamilton Industrial Development Agency
PO Box 57
Lake Pleasant, New York 12108
Attention: Executive Director

WITH A COPY TO:

FitzGerald Morris Baker Firth, P.C.
16 Pearl Street
Glens Falls, New York 12801

TO THE PURCHASER:

Kevin O'Brien
PO Box 373
Speculator, New York 12108

The Agency and the Purchase may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 26. BINDING EFFECT. This Agreement shall inure to the benefit of and shall be binding upon the Agency, the Purchase and, as permitted by this Agreement, their respective successors and assigns.

SECTION 27. SEVERABILITY. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 28. AMENDMENTS, CHANGES AND MODIFICATIONS. This Agreement may not be amended, changed, modified or altered except by an instrument in writing executed by the parties hereto.

SECTION 29. EXECUTION OF COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The parties agree that the executed Agreement shall be recorded in its entirety in the Hamilton County Clerk's Office.

SECTION 30. APPLICABLE LAW. This Agreement shall be governed exclusively by, and construed in accordance with, the laws of the State of New York.

SECTION 31. NO RECOURSE; SPECIAL OBLIGATION. Notwithstanding any statement or representation to the contrary contained herein or in any of the other documents executed by the Agency, the obligations and agreements of the Agency contained herein and in said documents and in any other instrument or document executed by the Agency in connection therewith and any instrument or document executed by the Agency supplemental thereto shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Purchaser) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Purchaser) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State, or the County of Hamilton, New York and neither the State, nor the County of Hamilton, New York shall be liable hereon or thereon, and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Property. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (a) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and (ten) 10 days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than (ten) 10 days shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, and (b) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (c) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Purchaser) or employees shall be subject to potential liability the party seeking such order or decree shall (i) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Purchaser) and employees against any liability incurred as a result of its compliance with such demand and (ii) if requested by the Agency shall furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Purchaser) and employees against all liability expected to be incurred as a result of compliance with such request.

IN WITNESS WHEREOF, the Agency and the Purchaser have caused this Agreement to be executed in their respective names by their authorized representatives as of the Effective Date set forth above.

HAMILTON COUNTY
INDUSTRIAL DEVELOPMENT AGENCY

BY: _____
Brian Towers, Chairman

Kevin O'Brien

Matthew O'Brien

Laura O'Brien

Elizabeth O'Brien

Mr. Fuller stated that he will make the changes requested by the IDA and get it to the O'Briens. Mr. Fuller pointed out that the resolution gave the Chairman the ability to make slight modifications after advisement with counsel.

Ms. Melious asked that once the Chairman executes the SEQR who gets the original. Mr. Fuller explained that they will take a copy and Ms. Melious is to keep the original for her file.

Mr. Bob Morris, Mr. Matt Fuller and Ms. Kara Lais of FitzGerald Morris Baker Firth PC ended the conference call at this time.

Approval for Subdivision of Ski Area:

The Chairman explained that next on the agenda is the approval for a subdivision of the ski area from 12 acres of developable lands on both sides of the access road to Oak Mountain.

Ms. Melious stated that she has been in touch with the Village Planning Board and the Codes Officer. She has two different survey maps, one that surveys the right of way and specifies that it is 50' wide, which would be needed if in the future that road were to be improved and turned over to the Village. She also has the map that separates out the 12 acres from the rest of the ski area. We need to provide the Village with a Mylar which will be done in Real Property and a description of the property, which is being worked on. She doesn't think the subdivision will have any problems. We should easily have it accomplished within the 90 days. We need to go through the formal approval process to finalize the subdivision. Mr. Farber added that all of the proposers understood that they were bidding on property exempting the 12 acres. The Board discussed the potential for this property.

Mr. Farber made a motion that the Executive Director move forward with completing all of the necessary work to get the 12 acres subdivided off of the parcel so that it doesn't hold up the sale transaction. Seconded by Mr. Pine. Mr. Farber stated that because of the level of involvement that the Village has had and how supportive they have been in keeping Oak Mt. open, perhaps we should talk to them about what we are doing and see if they have any views for the 12 acres or how they would like to see it utilized going forward and make that part of our thinking as

early on as possible. Motion Carried. Mr. Peck abstained as his wife is the Chairwoman of the Planning Board.

Cell Tower Lease with WCSS:

The Board reviewed the lease with WCSS (Joe Isabel) which was prepared by Tim Schofield.

Mr. Morrison made a motion to allow the Executive Director to move forward with the lease as long as there are no major changes to the lease in front of the IDA today. Seconded by Mr. Faro. The Chairman stated that one thing that needs clarification is the language that states “exceeds \$120,000 in annual billing”. The Chairman stated that he knows that Mr. Isabel has a number of radio stations already, is that \$120,000 specific to this location? Ms. Melious stated that is her understanding. The lease states that if annual billing does not exceed \$120,000 then the rent shall be \$700 per month commencing in year 7 of the lease and shall be \$750 in the final year of the lease. Ms. Melious pointed out that like all of these leases they can be terminated with 30 days notice. The Chairman stated that he feels that the radio station as a whole is not only a benefit to our remaining asset but also it can be a huge benefit to the continuation and operation of Oak Mt. Ski Center. Mr. Peck added that it could also generate a job or a part-time job. Mr. Farber added that he thinks it could be a huge plus to have a radio station broadcasting from the base of the mountain. Motion carries.

Sale of Cell Tower:

The Chairman stated we need to authorize the Executive Director to advertise for sealed bids for the sale of the cell tower asset. Ms. Melious stated that she has been told by Mr. Morris that if this is a sale to the highest bidder there is no 90 day clock. Ms. Melious stated that she has 12 interested parties from our previous experience and we will advertise. Ms. Melious further stated that we need to execute the lease with Mr. Isabel as soon as possible so that we can list that as a signed lease. Mr. Farber suggested that it will take two weeks to get everything wrapped up with Mr. Isabel, two weeks of advertising and open sealed bids in a month from now. Ms. Melious stated that we will need a special meeting in June to review microenterprise applications. The Board decided to meet on June 19th at 1 PM in Indian Lake to review microenterprise loans and open the cell tower bids.

Mr. Farber made a motion to authorize the Executive Director to advertise the sale of the cell tower for sealed bids with the ad to go out two weeks from now, giving Mr. Isabel time to get his lease in place for the FM radio station and we will open the bids on June 19th at 1 PM in Indian Lake. Seconded by Mr. Pine. Carried.

IDA Loan Interest Rates:

Ms. Melious stated that she added discussion of IDA interest rates to the agenda with the thought that she has been seeing all these people interested in grants. Given the amount of money we have we are still going to have a pool of people that have expressed need, do we want to consider lowering rates or offering loans at no interest? She says this in the wake of a really disastrous winter season. Mr. Farber stated that no one wants to see any business that is struggling because of the horrible economy and what happened over the last winter fail, so based on that he would entertain zero percent interest loans at least for a period of the loan. He would be willing to look at some creative structures in terms of financing as long as they were secured loans. Mr. Farber further stated that he would be willing to look at the size of loans. The Chairman suggested that we wait and see what comes of the meeting on the 19th.

Miscellaneous:

Mr. Faro stated that 16 people showed up to see Ms. Melious about the microenterprise loans. Ms. Melious added that she saw 16 in Indian Lake and 9 in Long Lake. Mr. Peck asked if having to take the classes a deterrent. Ms. Melious stated that once we know who the successful applicants are we will have a conference call with Jim Murphy at AEDC and see if we can come up with a few dates where we can condense the program.

As there was no further business, motion to adjourn by Mr. Farber, seconded by Mr. Peck. Carried.