

PRELIMINARY AGREEMENT

THIS AGREEMENT is between the **COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency"), a public benefit corporation of the State of New York having an address of 5 Warren Street, Glens Falls, New York 12801 and **18 HOSPITALITY, LLC** (the "Company"), a New York limited liability company having a current address of PO Box 503, Glens Falls, New York 12801. *SM*

Article 1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of the Agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "State"), as amended, and Chapter 862 of the Laws of 1971 of the State, as amended (collectively, the "Act"), to undertake industrial development projects (as defined in the Act) and to lease or sell the same upon such terms and conditions as the Agency may deem advisable.

1.02. The policy and purposes of the Act are (i) to promote the economic welfare, recreation opportunities and prosperity of the inhabitants of the State; (ii) to protect and promote the health of the inhabitants of the State by conservation, protection and improvement of the State's natural, cultural and historical resources, including the environment; and (iii) to protect and promote the health of the inhabitants of the State and to increase trade through promoting the development of facilities to provide recreation for the citizens of the State and to attract tourists from other states. The Act further provides that the purposes of an industrial development agency are to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes.

1.03. 87 Stays, Inc. applied to the Agency to undertake a development project (the "Project") consisting of: (i) the acquisition of an interest in a certain commercial parcel or parcels of land located Corinth Road, Town of Queensbury, County of Warren, State of New York and referred to as Tax Map Parcel Number 309.13-1-73 (the "Land"); (ii) the construction and equipping of a 53,200+/- square foot 90 room hotel (the "Facility"); (iii) the acquisition and installation therein of certain furnishings and fixtures (the "Equipment" together with the Land and the Facility, collectively the "Project Facility") to be used in connection with the contemplated uses; and (iv) the lease of the Project Facility to the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended.

1.04. On July 18, 2016, by Resolution No. 16-12, the Agency adopted a resolution agreeing to undertake the Project in order to assist 87 Stays, Inc. and to effectuate the purposes of the Act and, subject to the happening of all acts, conditions and things required precedent to undertake the Project. Subsequent to the adoption of said resolution, 87 Stays, Inc. pursued a business relationship with Chestnut 18, LLC for purposes of undertaking the Project and the two

entities formed a new entity, 18 Hospitality, LLC (the “Company”) for purposes of undertaking the Project, of which 87 Stays, Inc. has a Seventy Five Percent (75%) membership interest. An amended application has been submitted to the Agency and, with the exception of the applicant information, the Project remains the same.

1.05. On November 21, 2016, the Agency adopted amendments to Resolution No. 16-12 agreeing to undertake the Project in order to assist the Company and to effectuate the purposes of the Act and, subject to the happening of all acts, conditions and things required precedent to undertake the Project (the “Resolution”). In the Resolution, the Agency appointed the Company its agent for the purposes of acquiring, constructing and equipping the Project Facility, entering into contracts and doing all things requisite and proper for completing the Project Facility.

1.06. The completion of the Project will not result in the removal of a commercial, industrial or manufacturing plant of the Company from one area of the State of New York to another area of the State of New York, as the Company’s lease at its current location will not be renewed. Further, the completion of the Project will not result in any loss of jobs and all existing jobs will be retained nor will the completion of the Project result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Facility located within the State of New York.

1.07. The Agency has determined that the acquisition, construction and equipping of the Project Facility and the leasing or sale of the same to the Company will promote and further the purposes of the Act.

1.08. The Town of Queensbury Planning Board (the “Planning Board”) acted as “Lead Agency” for purposes of review of the Project pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, the “SEQRA Act”). The Planning Board adopted a Negative Declaration dated March 15, 2016, relating to the Project, in which the Planning Board stated that the Project will not have a significant effect on the environment. Based on this finding and additional information provided by the Developer and the Company, the Agency has determined that (i) the acquisition, construction and equipping of the Facility is an “Action” under the SEQRA Act; (ii) the Agency has thoroughly reviewed and analyzed all information presented to the Agency, including the Negative Declaration issued by the Planning Board, to determine if the Project might have any potential significant adverse impacts on the environment; (iii) after conducting this review, the Agency has determined that the acquisition, construction and equipping of the Project Facility are consistent with social, economic and other essential consideration and will not result in any adverse environmental impacts or the potential environmental impacts will not be significant; (iv) the Agency has ratified the Negative Declaration issued by the Planning Board; and (v) by making this determination, the Agency satisfies the requirements of Part 617 of Title 6 of the New York Code of Rules and Regulations.

1.09. In the Resolution, the Agency determined that for this Project the private investment

to the Counties of Warren and Washington and the creation of jobs shall be considered Material Terms for the purposes of monitoring in accordance the policies and procedure of the Agency and of the applicable laws.

a. The Company has indicated that the Project will result in a Eleven Million Four Hundred Thirty Three Thousand Seven Hundred Eleven Dollars (\$11,433,711.00) private sector investment in the Counties of Warren and Washington. The Company agrees that it will verify, in writing, the private sector investment in accordance with the Agency's Recapture Policy.

b. The Company indicated that the Project will lead to the creation of at least nine (9) full time and twelve (12) part time job opportunities within the next three (3) years for the inhabitants of the Counties of Warren and Washington, New York and the State of New York. The Company agrees that it will verify, in writing, the job creation numbers in accordance with the Agency's Recapture Policy and as may otherwise be required by law.

Article 2. Undertakings on the Part of the Agency. Based upon the statements, representations and undertakings of the Company and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. The Agency will undertake the Project, pursuant to the terms of the Act, as then in force.

2.02. The Agency will adopt such proceedings and authorize the execution of such documents as may be necessary or advisable for (i) the acquisition, by deed or by lease, construction and equipping of the Project Facility, and (ii) the leasing of the Project Facility to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

2.03. The Agency will enter into an agreement to lease the Project Facility to the Company (the "Lease Agreement"). The Lease Agreement shall obligate the Company to undertake the Project on behalf of the Agency. The Lease Agreement shall contain all provisions required by law and such other provisions as shall be mutually acceptable to the Agency and the Company.

2.04. The Company is hereby appointed the true and lawful agent of the Agency (i) to acquire, construct and equip the Project Facility, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the agent of the Agency, (iii) to enter into agreements with third-parties to act as agents and to undertake the Project on the Company's and the Agency's behalf for the purpose of constructing and completing the project, and in general to do all things which may be requisite or proper for completing the Project Facility, all with the same powers and the same validity as the Agency could do if acting in its own behalf. This provision is subject to the Company entering into an Agent Agreement with the Agency. In addition, the Company is hereby authorized to proceed with the acquisition, construction and

equipping of the Project Facility subject to receiving appropriate municipal approvals needed prior to commencement of construction, and to advance such funds as may be necessary to accomplish such purposes and, to the extent permitted by law.

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

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

3.01. The Company accepts the appointment as agent of the Agency, with all of the rights, powers, duties and obligations inherent therein.

3.02. The Company will, to the extent deemed by it to be necessary or desirable, enter into a contract or contracts for the acquisition, construction and equipping of the Project Facility.

3.03. The Company will enter into the Lease Agreement with the Agency containing the terms and conditions described in Section 2.03 hereof. The Company, as Agent of the Agency, agrees to pay for all costs associated with undertaking the Project and shall not be entitled to any reimbursement for any costs from the Agency.

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, THAT THE PROJECT FACILITY WILL BE SUITABLE FOR THE PURPOSES OR NEEDS OF THE COMPANY.

3.04. The Company will enter into a Payment in Lieu of Tax (PILOT) Agreement which is in compliance with the provisions of the Agency's Uniform Tax Abatement Policy, or as may otherwise be agreed to by the Agency and the Company, and Recapture Policy.

3.05. (a) The Company shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment ordered or used in connection with the acquisition, construction and equipping of the Project Facility, and including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing, whether such claims or liabilities arise as a result of the Company acting as agent for the Agency pursuant to this Agreement or otherwise.

(b) The Company shall not permit to stand, and will, at its own expense, take all steps necessary to remove, any mechanics' or other liens against the Project Facility for labor or material furnished in connection with the acquisition, construction and equipping of the Project Facility.

(c) The Company shall indemnify and hold the Agency harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

3.06. The Company agrees that, as agent for the Agency, it will comply with the requirements of Section 13 of the Lien Law, as amended.

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

3.08. The Company will pay all costs incurred by the Agency, including but not limited to attorney's fees, which arise out of Company's application for Financial Assistance, whether or not such assistance is ultimately issued. Agency's attorney's fees will be calculated at a time rate of \$275.00 per hour for attorney's time and \$105.00 per hour for senior legal assistant's time, plus disbursements. Upon closing of the Project documents, the Company will pay to the Agency an administrative fee of \$85,753.00 based upon an estimated Project cost of \$11,433,711.00 pursuant to the schedule set forth below and contained within the Company's Application for Financial Assistance:

First \$10 Million of Project Costs:	¾ of 1%
Next \$10 Million of Project Costs:	½ of 1%
Next \$10 Million of Project Costs:	¼ of 1 %
Above \$30 Million of Project Costs:	1/8 of 1%.

Following the completion of the Project Facility, the Company shall confirm, in writing, the actual Project cost. In the event that the total Project cost exceeds the estimate provided herein, the Agency may require the payment of the difference that would otherwise be due pursuant to the above-schedule.

3.09. To ensure that the Agency's costs are reimbursed if the project does not proceed, the Company shall pay to the Agency the sum of \$25,000.00 as a security deposit.

Article 4. General Provisions.

4.01. This Agreement shall take effect as of the date of the later of the following to occur: (1) execution of this Agreement by the Company or (2) the date of receipt of the security deposit pursuant to Section 3.09 above. The terms of this Preliminary Agreement shall survive the closing date of this Project and shall remain in effect until the termination of the Lease Agreement as such termination date is defined therein.

4.02. It is understood and agreed by the Agency and the Company that the provision of financial assistance to the Company and the execution of the Lease Agreement and related documents are subject to (i) acquisition of the Land; (ii) obtaining all necessary governmental approvals, (iii) approval of the members of the Agency, (iv) to the extent still outstanding, compliance with the State Environmental Quality Review Act.

4.03. The Company agrees that it will (i) reimburse the Agency for all necessary expenses, including but not limited to legal fees and administrative costs, and (ii) indemnify and hold the Agency harmless from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder.

4.04. The Company at its option may cause a subsidiary or other designee of the Company acceptable to the Agency to enter into the Lease Agreement and to perform its other duties hereunder.

4.05. (a) The obligations and agreements of the Agency contained in this Preliminary Agreement and in the other documents executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based on or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State or of the Counties of Warren or Washington, New York, and neither the State nor the Counties of Warren or Washington, 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, relative to the Project Facility. The Agency does not have the power or authority to levy taxes.

(b) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or under any of the documents executed herewith or therewith shall be sought or enforced against the Agency unless (1) 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 (2) 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 (3) 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 Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

4.06. (a) The Company will, to the extent deemed by it to be necessary or desirable, enter into a contract or contracts for the construction and installation of the Project Facility.

(b) The Company shall include the following or substantially similar exculpatory language in each contract entered into in connection with the Project Facility:

“THIS AGREEMENT IS EXECUTED BY **18 HOSPITALITY, LLC** (THE “COMPANY”), THE DULY APPOINTED AGENT OF THE COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”), A PUBLIC BENEFIT CORPORATION OF THE STATE OF NEW YORK HAVING ITS PRINCIPAL PLACE OF BUSINESS AT 5 WARREN STREET, GLENS FALLS, NEW YORK. IN THE EVENT OF A DEFAULT BY THE COMPANY IN THE PAYMENT OF ANY MONIES DUE FOR WORK, LABOR, GOODS, SERVICES, MATERIALS OR EQUIPMENT FURNISHED IN ACCORDANCE WITH THIS AGREEMENT, SHOULD THE CONTRACTOR (OR VENDOR) SEEK PAYMENT FROM THE AGENCY, IT SHALL BE LIMITED TO A CLAIM AGAINST THOSE FUNDS REMAINING IN PROJECT ACCOUNTS THAT HAVE BEEN ESTABLISHED BY OR ON BEHALF OF THE AGENCY TO FINANCE THE PROJECT FACILITY. THE CONTRACTOR (OR VENDOR) AGREES THAT IT SHALL HAVE NO RIGHTS IN OR CLAIM TO ANY PROPERTY OR ANY FUNDS IN ANY ACCOUNT OF THE AGENCY OTHER THAN THOSE FUNDS OR ACCOUNTS SPECIFICALLY ESTABLISHED BY OR ON BEHALF OF THE AGENCY FOR THE PROJECT FACILITY. THE CONTRACTOR (OR VENDOR) FURTHER AGREES THAT IT MAY NOT MAKE A CLAIM OR OBTAIN A JUDGMENT AGAINST THE AGENCY, ITS MEMBERS, OFFICERS OR EMPLOYEES FOR ANY MONIES OTHER THAN THOSE MONIES REMAINING IN ACCOUNTS ESTABLISHED BY OR ON BEHALF OF THE AGENCY FOR THE PROJECT FACILITY.”

(c) Each contract the Company shall assign to the Agency in connection with the Project Facility shall contain an exculpatory provision substantially similar to or identical to the model provision set forth in paragraph (b) of this Section 4.06.

(d) The Company shall file with the Agency copies of all contracts (and all modifications and amendments thereto) entered into for the construction and installation of the Project Facility.

4.07. All notices, or other communications shall be in writing and shall be sufficiently given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, returned receipt requested, addressed as follows:

To the Agency:

Counties of Warren and Washington
Industrial Development Agency
5 Warren Street
Glens Falls, New York 12801
Attention: Chairman

With Copy to:

FitzGerald Morris Baker Firth P.C.
P.O. Box 2017
16 Pearl Street
Glens Falls, NY 12801-2017
Attention: Robert C. Morris, Esq.
Kara I. Lais, Esq.

To the Company:

18 Hospitality, LLC
PO Box 503
Glens Falls, New York 12801
Attention: Gerard P. Nudi

With Copy to:

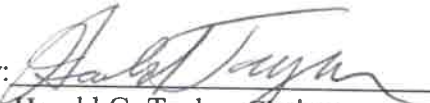
Bartlett Pontiff Stewart & Rhodes, PC
One Washington Street
PO Box 2168
Glens Falls, New York 12801
Attention: Jon Lapper, Esq.

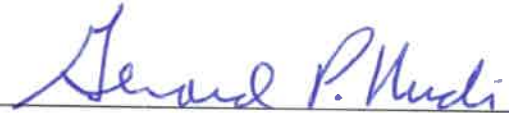
4.08. In the event the Agency is required to take title to the Land, the Agency will convey the Land by Bargain and Sale deed only. In no event will the Agency warrant title to the Land, either through deed, mortgage or otherwise.

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

COUNTIES OF WARREN AND
WASHINGTON INDUSTRIAL
DEVELOPMENT AGENCY

18 HOSPITALITY, LLC.

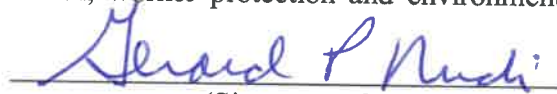
By: 
Harold G. Taylor, Chairman

By: 
Gerard P. Nudi, Member


STATE OF NEW YORK)
COUNTY OF WARREN) ss.:

Gerard P. Nudi, being first duly sworn, deposes and says:

1. That I am the Authorized Member (Corporate Office) of 18 Hospitality, LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.


(Signature of Officer)

Subscribed and affirmed to me under penalties of perjury
this 22nd day of November, 2016.


(Notary Public)

KARA I. LAISS
Notary Public, State of New York
Saratoga Co. #02LA6105701
Commission Expires Feb. 17, 2020