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February 10, 2016

Via Email

Iskalo Development Corp.
David Chiazza, Executive Vice President
5166 Main Street
Williamsville, New York 14221

Dear Dave:

Re: “Tourism Destination” under Art. 18-A of the NY Gen. Mun. Law.

You have asked our firm for an opinion as to whether the Lord Amherst hotel and restaurant qualify as a “tourism destination” under Section 862 of Article 18-A of the New York General Municipal Law (the “IDA Funding Law”). As more fully explained below, it is our firm’s opinion that the Lord Amherst hotel and restaurant qualify as a tourism destination project as that term is used in the IDA Funding Law.

The New York legislature amended the IDA Funding Law in 2013 to prohibit industrial development agencies from granting funds to facilities whose primary purpose was retail sales, except in the case of “tourism destination projects.” It is significant, for purposes of our analysis, to note the fact that the legislature specifically chose the term tourism destination “project”, and not tourism destination “facility” or “property” – both of which nouns are used in preceding sentences of the same statute. The use of the word “project” is significant because the Lord Amherst facility consists of both a hotel and adjoining restaurant, and thus should be properly considered a “project” as that term is used in the IDA Funding Law.

Under the IDA Funding Law, “tourism destination [] mean[s] a location or facility which is likely to attract a significant number of visitors from outside the economic development region as established by section two hundred thirty of the economic development law, in which the project is located.”¹

The applicable economic development region in this instance is the “Western New York Region,” which consists of Erie, Niagara, Chautauqua, Cattaraugus, and Allegany counties.² Thus, the test for whether the Lord Amherst facility can be properly considered a “tourism destination” turns on whether the hotel and restaurant are likely to attract a *significant number* of visitors from outside the Western New York Region.

¹ N.Y. GEN. MUN. LAW § 862(2)(a).

² See <http://www.esd.ny.gov/RegionalOverviews.html>.

There are three main sources for support that the Lord Amherst facility is likely to attract a significant number of visitors from outside the Western New York Region. First, by its very nature a hotel with accompanying restaurant exists to provide lodging and associated meals for persons coming from outside the region. Common sense allows us to conclude that local residents are not significant users of our region's hotels nor are local residents the reason any of our region's hotels are able to stay in business.

Second, the demographic data with respect to the customers of your other hotel – the Hyatt Place – which hotel is located directly behind the Lord Amherst, shows that more than 75% of the guests at that hotel came from outside New York State and that almost half of those guests (approximately 43%) came from outside the United States.

It would be hard to find a closer comparable than the Hyatt Place hotel given its geographical proximity to the Lord Amherst and similarity in business operations. Thus, it is reasonable to assume that the same demographic data will hold true for the Lord Amherst complex, with perhaps even more visitors coming from outside the Western New York region considering the historical uniqueness of the Lord Amherst facility. Such large numbers of visitors from outside the Western New York Region should more than satisfy the “significant number” test within the IDA Funding Law.

Third, prior supportive economic studies submitted by your company to the Amherst IDA were based on tourism projections. As you know, back in early 2013 your company submitted a study conducted by Tourism Economics to the Amherst IDA in support of your application for inducement for the Hyatt Place hotel. While this study was submitted in support of the Hyatt Place hotel, the study also included direct, indirect, and induced economic impact analyses for the Lord Amherst facility. Thus, the projected economic impacts for the Lord Amherst facility and the Hyatt Place hotel (commonly referred to collectively as the Iskalo/Main Street Hospitality Campus) are both (i) conducted by a company that specializes in the economics of tourism and (ii) based on tourist visitor spending.

Since the Lord Amherst facility is likely to attract a significant number of visitors from outside the Western New York Region, it is our firm's opinion that the Lord Amherst hotel and restaurant qualify as a tourism destination project as that term is used in the IDA Funding Law.

Please let me know if you require any additional information or have any questions.

Very truly yours,



Terrence M. Gilbride

TMG/rfp

cc: Rafael F. Pignataro, Esq.