

2200 Northern Steel Amendment Resolution

A regular meeting of the Nassau County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency at 1550 Franklin Avenue, Mineola, Nassau County, New York, on August 27, 2014, at 5:00 p.m. local time.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

PRESENT:

Timothy Williams	Chairman
John Coumatos	Vice Chairman
Christopher Fusco	Asst. Secretary
Gary Weiss	Secretary
Michael Rodin	

ABSENT:

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Joseph J. Kearney	Executive Director
Colleen Pereira	Administrative Director
Nicholas Terzulli	Director of Business Development
Edward Ambrosino, Esq.	General Counsel
Paul O'Brien, Esq.	Bond/Transaction Counsel

The attached resolution no. 2014-69 was offered by M. Rodin, seconded by J. Coumatos:

Resolution No. 2014-69

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING CERTAIN MATTERS IN CONNECTION WITH ITS STRAIGHT-LEASE TRANSACTION WITH 2200 NORTHERN STEEL, LLC

WHEREAS, the Nassau County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), and Chapter 674 of the 1975 Laws of New York, as amended, constituting Section 922 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, Steel K, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware and qualified to do business as a foreign limited liability company in the State of New York (the "Applicant"), presented an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in a parcel of land located at 2200 Northern Boulevard, Village of East Hills, Town of North Hempstead, County of Nassau, New York (Section: 7; Block: 273; Lots: 44 & 45) (collectively, the "Land"), (2) the renovation of an existing approximately 315,000 square foot building together with related improvements to the Land (collectively, the "Building"), and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all of the foregoing for use as a multi-tenant commercial office/industrial facility (collectively, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes, mortgage recording taxes and real property taxes; and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency and the sublease thereof to one or more subtenants designated by the Applicant and agreed upon by the Agency; and

WHEREAS, the Applicant designated 2200 Northern Steel, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware and qualified to do business as a foreign limited liability company in the State of New York and an affiliate of the Applicant (the "Company"), as the lessor of the Project Facility; and

WHEREAS, the members of the Agency authorized the Agency to enter into a “straight-lease” transaction with the Company pursuant to Resolution No. 2011-21 adopted by the members of the Agency at a meeting held on June 22, 2011 (the “Approving Resolution”); and

WHEREAS, the Agency appointed the Company as agent of the Agency to undertake the acquisition, construction, installation and equipping of the Project Facility and the Agency subleased the Project Facility to the Company, all pursuant to the terms and conditions set forth in the Sublease Agreement dated as of June 1, 2011 between the Company and the Agency (as amended, the “Lease”), and the other Transaction Documents (as defined in the Lease); and

WHEREAS, Joseph J. Lostritto, Jr. and Glenn Lostritto (collectively, the “Guarantors”) have guaranteed the timely and proper payment and performance of the Company’s obligations under the Lease and the other Transaction Documents, all pursuant to a Guaranty dated as of June 1, 2011 (the “Guaranty”) from the Guarantors in favor of the Agency and an Environmental Compliance and Indemnification Agreement dated as of June 1, 2011 (the “Environmental Indemnification”) from the Company and the Guarantors in favor of the Agency; and

WHEREAS, the Company has requested that the Agency consent to the amendment of the Lease and the other Transaction Documents to reinstate the Sales Tax Exemption Letter (as defined in the Lease) and to extend the expiration date thereof to allow the Company to undertake certain tenant improvements that were not completed at the time and in the manner contemplated by the Transaction Documents; and

WHEREAS, the Agency is willing to consent to such request, subject to the terms of this resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

1. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Lease.
2. The Agency determines that the Company’s request with respect to a previously approved and unchanged Project is a Type II Action pursuant to SEQRA involving “continuing agency administration” which does not involve “new programs or major reordering of priorities that may affect the environment” (6 NYCRR §617.5(c)(20)) and therefore no Findings or determination of significance are required under Article 8 of the New York Environmental Conservation Law.
3. The Agency hereby consents to the amendment of the Lease and the other Transaction Documents to reinstate the Sales Tax Exemption Letter and to extend the expiration date thereof. The execution and delivery of amendment documents and agreements required to effectuate the proposed amendment transaction (collectively, the “Amendment Documents”), being substantially in the forms presented to the Agency at this meeting, are hereby authorized and approved. The Chairman, Executive Director and Administrative Director of the Agency are each hereby authorized, acting individually or jointly, to execute, acknowledge and deliver

the Amendment Documents. The execution and delivery of the Amendment Documents by any one of said officers shall be conclusive evidence of due authorization and approval.

4. The Chairman, Executive Director and Administrative Director of the Agency are each hereby designated the Authorized Representative of the Agency and each of them is hereby authorized and directed, acting individually or jointly, to execute and deliver any and all consents, agreements, papers, instruments, opinions, certificates, affidavits and other documents required in connection with the Amendment Documents (collectively, the "Consent Documents"), and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, including, without limitation, taking any necessary action to obtain consent of any other person or party necessary with respect to execution, delivery and approval of the Consent Documents.

5. The authorizations set forth in this Resolution are subject to the condition that the Company shall reimburse the Agency for all costs and expenses incurred by the Agency in connection with the transactions contemplated herein, including, without limitation, the Agency's consent and amendment fees and all reasonable attorneys' fees and disbursements incurred by the Agency, including without limitation, the fees and expenses of Special Counsel, Phillips Lytle LLP.

6. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution, the Amendment Documents and the Consent Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time; provided, however, that no covenants, stipulations, obligations or agreements of the Agency contained in this Resolution, any Amendment Document or any Consent Document shall give rise to any pecuniary liability of the Agency or a charge against its general credit or shall obligate the Agency in any way except to the extent that the same can be paid or recovered from the Project Facility or the sale or liquidation of the Project Facility or revenues therefrom.

No covenant, stipulation, obligation or agreement herein contained or contained in any Amendment Document or any Consent Document shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity and neither the members of the Agency nor any officer executing any Amendment Document or any Consent Document shall be liable personally on the Amendment Documents or the Consent Documents or be subject to any personal liability or accountability by reason of the issuance thereof.

7. The Chairman and Executive Director of the Agency are each hereby authorized to approve modifications to the terms approved herein which are not inconsistent with the intent and substance of this Resolution, such approval to be evidenced by the execution by any one of such officers of the Amendment Documents and the Consent Documents containing such modifications.

8. The Agency recognizes that due to the complexities of the proposed transaction it may become necessary that certain of the terms approved hereby may require modifications from time to time which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman and Executive Director of the Agency, acting individually or jointly, to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution. The approval of such modifications shall be evidenced by the certificate of determination of an Agency officer or the execution and delivery by some or all such Agency officers of relevant documents containing such modified terms.

9. The members of the Agency acknowledge the terms and conditions of Section 875(3) of the Act and the duties and obligations of the Agency thereunder with respect to granting of State Sales and Use Taxes (as such term is defined in Section 875 of the Act) with respect to the Project. The members hereby direct the officers of the Agency to comply with such terms and conditions with respect to the Project and hereby direct Special Counsel to the Agency to include such terms and conditions in all relevant Transaction Documents.

10. This Resolution shall take effect immediately and shall be effective for ninety (90) days from the date of its adoption.

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

Timothy Williams	VOTING	Aye
John Coumatos	VOTING	Aye
Gary Weiss	RECUSE	
Christopher Fusco	VOTING	Aye
Michael Rodin	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.

