

AVR Carle Place Consent & 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 October 15, 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
Gary Weiss	Secretary
Michael Rodin	

ABSENT:

Christopher Fusco	Asst. Secretary
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THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Joseph J. Kearney	Executive Director
Joseph Foarile	Chief Financial Officer
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. 2014-71 was offered by M. Rodin, seconded by G. Weiss:

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY AUTHORIZING CERTAIN
MATTERS IN CONNECTION WITH ITS STRAIGHT-LEASE
TRANSACTION WITH AVR-CARLE PLACE ASSOCIATES,
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, AVR-Carle Place Associates, LLC, a limited liability company organized and existing under the laws of the State of Delaware and qualified to do business in the State of New York as a foreign limited liability company (the "Company"), presented an application (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 an approximately 3 acre parcel of land located at 234 Westbury Avenue, Carle Place, Town of North Hempstead, County of Nassau, New York (Section: 9; Block: 663; Lot: 44) (collectively, the "Land"), (2) the construction of a four-story, 150 unit hotel building on the Land, 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 by the Company as an extended stay hotel 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 Company or such other entity as may be designated by the Company and agreed upon by the Agency; 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 leased the Project Facility to the Company, all pursuant to the terms and conditions set forth in the Sublease Agreement dated as of October 1, 2011 between the Company and the Agency (as amended, the "Lease"), and the other Transaction Documents (as defined in the Lease); and

WHEREAS, Allan V. Rose (the "Guarantor") has guaranteed the timely and proper payment and performance of the obligations under the Lease and the other Transaction Documents, all pursuant to a Guaranty dated as of October 1, 2011 (the "Guaranty") from the Guarantor in favor of the Agency and an Environmental Compliance and Indemnification Agreement dated as of October 1, 2011 (the "Environmental Indemnification") from the Company and the Guarantor in favor of the Agency; and

WHEREAS, the Company has requested that the Agency (i) consent to the assignment of the Company's right, title and interest in and to and the assumption of the Company's obligations under the Lease and the other Transaction Documents by a newly-formed Delaware limited liability company that shall be an affiliate of the Company and the Guarantor (such company, the "Successor Company"), (ii) execute and deliver a mortgage and security agreement (gap mortgage) and a mortgage consolidation, modification and extension agreement in connection therewith (collectively, the "Mortgage") each from the Agency and the Successor Company in favor of German American Capital Corporation (the "Lender"), for the sole purpose of subjecting to the lien thereof the Agency's interest in the Project Facility, (iii) acknowledge that the Mortgage shall constitute a "Permitted Encumbrance" (as such quoted term is defined in the Lease), and (iii) grant an exemption from mortgage recording tax with respect to the recording of the Mortgage, the maximum amount of which exemption shall be less than \$100,000 (the "Additional Financial Assistance"); and

WHEREAS, the amount of Additional Financial Assistance being requested by the Company with respect to the recording of the Mortgage is less than \$100,000 and, therefore, no public hearing of the Agency is required pursuant to Section 859-a of the Act; and

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

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

Section 1. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Lease.

Section 2. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Executive Director and the staff of the Agency with respect to the matters contemplated by this Resolution, including, without limitation, those actions required to ensure full compliance with the requirements of the Act, Article 8 of the Environmental Conservation Law (the "SEQR Act") and the regulations adopted pursuant thereto (the "Regulations" and together with the SEQR Act, collectively, "SEQRA"), and all other Applicable Laws that relate thereto.

Section 3. 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.

Section 4. The amount of additional Financial Assistance being requested by the Company with respect to the recording of the Mortgage is less than \$100,000 and, therefore, no public hearing of the Agency is required pursuant to Section 859-a of the Act.

Section 5. The Agency has considered the requests made by the Company and hereby finds and determines that the requested consents will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Nassau County, New York, and improve their standard of living, and thereby serve the public purposes of the Act.

Section 6. The Agency hereby determines that the Agency has fully complied with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the requested consents.

Section 7. The Agency hereby consents to the assignment by the Company of its right, title and interest in and to the Lease and the other Transaction Documents to and the assumption of the Company's obligations under the Lease and the other Transaction Documents by the Successor Company as outlined in the request letter dated September 19, 2014 from the Company to the Agency, subject, however, to the delivery of evidence satisfactory to the Executive Director that (i) the Company is in compliance with its employment and employment reporting obligations under the Transaction Documents, and (ii) the Company is not otherwise in default of any obligation under the Transaction Documents. The execution and delivery of amendment documents and agreements required to effectuate the proposed assignment and assumption transaction, including, without limitation, the Mortgage and all documents, instruments and agreements required to be executed and delivered in connection therewith (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.

Section 8. The Agency hereby consents to the execution and delivery of the Mortgage by the Successor Company and acknowledges and agrees that the Mortgage, upon its execution and delivery by the Agency and the Lender, shall be deemed a Permitted Encumbrance under the Lease.

Section 9. 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.

Section 10. The authorizations set forth in this Resolution are subject to the condition that the Company and/or the Successor 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.

Section 11. 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.

Section 12. 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.

Section 13. This Resolution shall take effect immediately.

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	VOTING	Aye
Christopher Fusco	ABSENT	
Michael Rodin	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

I, the undersigned ~~[Asst.]~~ Secretary of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on October 15, 2014 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 15th day of October, 2014.



[Asst.] Secretary

(SEAL)