

LTG-Regal Approving Resolution (Amended Per Minutes)

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 September 8, 2015, 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
Christopher Fusco	Asst. Secretary
Michael Rodin	

NOT PRESENT:

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. 2015-50 was offered by G. Weiss, seconded by C. Fusco:

Resolution No. 2015-50

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND APPROVING THE
ACQUISITION AND STRAIGHT LEASING OF A CERTAIN PROJECT
FOR LYNBROOK THEATRE GROUP LLC AND REGAL CINEMAS, INC.

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, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, LYNBROOK THEATRE GROUP, LLC, a limited liability company organized and existing under the laws of the State of New York ("LTG"), and REGAL CINEMAS, INC., a corporation organized and existing under the laws of the State of Tennessee ("Regal" and together with LTG, the "Applicants"), submitted a joint application for financial assistance (collectively, the "Application") to the Agency requesting 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 321 Merrick Road, Incorporated Village of Lynbrook, Town of Hempstead, Nassau County, New York (Section: 37; Block: 316; Lot: 6, 7, 8, 18, 56 and 59) (the "Land"), (2) the demolition of the existing approximately 23,000 square foot building on the Land and the construction of an approximately 80,000 square foot new theatre building on the Land (the "Building"), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment"), all of the foregoing for use by Regal as a 13 screen, approximately 1,660 seat RPX Theater 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 in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the "Financial Assistance"); (C) the lease (with an obligation to purchase), license or sale of the Project Facility to LTG or such other entity as may be designated by LTG and agreed upon by the Agency; and

WHEREAS, in accordance with Section 859-a of the Act, any approval of the Project is contingent upon, inter alia, a determination by the members of the Agency to proceed with the Project following a determination by the Agency that (A) the public hearing and notice requirements and other procedural requirements contained in the Act relating to the Project have been satisfied, and (B) the undertaking of the Project by the Agency and the granting of the Financial Assistance are and will be in compliance with all other applicable requirements of the Act, SEQRA (as hereinafter defined), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Project (collectively, "Applicable Laws"); and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on July 23, 2015 to the chief executive officer of Nassau County, New York and of each other affected tax jurisdiction within which the Project Facility is or is to be located; (B) caused notice of the Public Hearing to be published on July 23, 2015 in the Nassau edition of *Newsday*, a newspaper of general circulation available to residents of the County of Nassau, New York; (C) conducted the Public Hearing on August 7, 2015 at 10:00 a.m., local time, at Village Hall, One Columbus Drive, Incorporated Village of Lynbrook, Town of Hempstead, Nassau County, New York; and (D) prepared a report of the Public Hearing (the "Report") which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, (A) the Executive Director of the Agency caused notice of a meeting of the Agency (the "IDA Meeting") with respect to the proposed deviation from the Agency's uniform tax exemption policy and guidelines to be mailed on August 25, 2015 to the chief executive officer of each affected tax jurisdiction; and (B) the members of the Agency conducted the IDA Meeting on September 8, 2015 and reviewed any written comments or correspondence received at or before the IDA Meeting regarding the proposed deviation from the Agency's uniform tax exemption policy and approved the proposed deviation; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the "Regulations", and collectively with the SEQR Act, "SEQRA"), the Board of Trustees of the Village of Lynbrook (the "Village Board"), as lead agency, undertook a coordinated review of the Project pursuant to SEQRA, and issued a "negative declaration" on March 30, 2015 (the "Negative Declaration") concluding that the Project will not have a significant adverse impact on the environment and that a Draft Environmental Impact Statement will not be prepared; and

WHEREAS, pursuant to SEQRA, the appropriate personnel of the Agency reviewed the environmental assessment form and other materials submitted by the Applicants and made any necessary comments to members of the Agency, and by resolution of the members of the Agency adopted immediately prior to the adoption hereof, the Agency acknowledged the coordinated review and the Negative Declaration issued by the Village Board; and

WHEREAS, the Agency now desires to make its determination to proceed with the Project and to grant the Financial Assistance, subject to obtaining confirmation of the undertaking of the Project and the granting of the Financial Assistance from the County Executive of Nassau County, New York, in accordance with Section 862(c) of the Act (the "Executive Approval"), and otherwise subject to the terms hereof; and

WHEREAS, (A) one (1) or more Applicants will execute and deliver a certain bargain and sale deed, assignment of lease or company lease to the Agency, pursuant to which such Applicant(s) will convey an interest in the Land and the Building to the Agency (the "Conveyance Instrument"), (B) the Applicants will execute and deliver certain Bills of Sale (collectively, the "Bill of Sale to Agency") to the Agency, pursuant to which the Applicants will convey to the Agency their respective interests in the Equipment, (C) one (1) or more Applicants will execute and deliver a Lease Agreement or Sublease Agreement (the "Lease") between the Agency and such Applicant(s), pursuant to which the Agency will grant to such Applicant(s) a subleasehold interest in the Project Facility, (D) the Applicants will cause to be executed and delivered a certain Environmental Compliance and Indemnification Agreement (the "Environmental Indemnification") pursuant to which the Agency will be indemnified from and against certain losses, costs, damages and liabilities, (E) the Applicants will execute and deliver or cause to be executed and delivered a certain Payment in Lieu of Taxes Agreement (the "PILOT Agreement") to the Agency, and, to secure the obligations thereunder, a certain Mortgage and Assignment of Leases and Rents in favor of the County of Nassau, New York (the "PILOT Mortgage"), and (F) the Applicants will execute and deliver and/or cause to be executed and delivered certain other certificates, documents, instruments and agreements related to the Project (together with the Conveyance Instrument, the Bill of Sale to Agency, the Lease, the Environmental Indemnification, the PILOT Agreement and the PILOT Mortgage, collectively, the "Transaction Documents");

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

Section 1. The Agency has reviewed the Application and the Report and, based solely upon the representations made by the Applicants to the Agency and the facts and information obtained by the Staff of the Agency and reported to the members of the Agency at this meeting, the Agency hereby makes the following findings and determinations with respect to the Project:

(a) based on the proposed use of the Project Facility as set forth in the Application, the economic effects of the Project on the area in which it is situated, the employment reasonably expected to be created and/or maintained by the Project, the Project will constitute a commercial facility and, therefore, the Project constitutes a "project" within the meaning of the Act;

(b) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Applicants to undertake the Project in Nassau County, New York;

(c) the Applicants would not undertake the Project in Nassau County, New York, without the granting of the Financial Assistance by the Agency;

(d) the completion of the Project Facility, the lease thereof by the Agency to the Applicants and the operation thereof by the Applicants will not result in the removal of a facility or plant of any Applicant or any other proposed user or occupant of the Project Facility from one area of the State of New York (the "State") to another area of the State or in the abandonment of one or more plants or facilities of any Applicant or any other proposed user or occupant of the Project Facility located within the State (but outside of Nassau County);

(e) the undertaking of the Project will serve the public purposes of the Act by preserving permanent, private sector jobs and increasing the overall number of permanent, private sector jobs in the State;

(f) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State, nor shall any funds of the Agency be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media;

(g) the granting of the Financial Assistance by the Agency with respect to the Project will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Nassau County, New York and the State and improve their standard of living, and thereby serve the public purposes of the Act; and

(h) although the Project Facility may constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project Facility, the predominant purpose of the Project is to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the city, town or village within which the Project Facility would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services. For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of Section 1101 of the New York Tax Law; or (ii) sales of a service to such customers.

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 Application, the IDA Meeting and the Public Hearing, including, without limitation, (a) those actions required to ensure full compliance with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Project, and (b) the appointment of the law firm of Phillips Lytle LLP, Garden

City, New York, as Special Counsel to the Agency with respect to all matters in connection with the Project.

Section 3. 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 Project, subject to obtaining the Executive Approval.

Section 4. Having considered fully all comments received at or in connection with the Public Hearing, the Agency hereby further determines to proceed with the Project and the granting of the Financial Assistance, subject to obtaining the Executive Approval.

Section 5. The Agency hereby approves the Applicants as the lessee/sublessee under the Lease with the Agency and hereby approves the Applicants as the recipients of the Financial Assistance.

Section 6. The Agency hereby authorizes the Chairman and the Executive Director, acting together or individually, to request the Executive Approval from the County Executive of Nassau County, New York.

Section 7. Subject to obtaining the Executive Approval, the Agency is hereby authorized (a) to acquire an interest in the Project Facility pursuant to the Conveyance Instrument, the Bill of Sale to Agency and the other Transaction Documents, (b) grant a subleasehold interest in the Project Facility pursuant to the Lease and the other Transaction Documents, (c) grant the aforementioned Financial Assistance, (d) execute the PILOT Mortgage for the sole purpose of encumbering its fee interest in the Project Facility to secure the performance by the Applicants of their obligations under the PILOT Agreement, (e) to execute one (1) or more fee and leasehold mortgage, assignment of rents and leases, and security agreements in favor of such bank or financial institution as the Applicants may determine (such bank or financial institution, the "Bank"), encumbering the Project Facility, solely to subject to the lien thereof its fee interest in the Project Facility, all to secure a loan made by such Bank to one (1) or more Applicants, and (f) to do all things necessary, convenient or appropriate for the accomplishment thereof. All acts heretofore taken by the Agency with respect to the foregoing are hereby approved, ratified and confirmed. Staff is hereby directed to include in the Transaction Documents a requirement that the Applicants shall contact the owners of the Malverne Theatre to discuss their concerns.

Section 8. The form and substance of the Conveyance Instrument, the Bill of Sale to Agency, the Lease, the Environmental Indemnification, the PILOT Agreement, the PILOT Mortgage and the other Transaction Documents, in the forms used by the Agency with respect to prior projects, together with such changes as the Chairman, the Vice Chairman or the Executive Director may hereafter deem necessary or appropriate, are hereby approved. The Chairman, the Vice Chairman, the Executive Director and the Administrative Director are hereby authorized, on behalf of the Agency, acting together or individually, to execute and deliver the Conveyance Instrument, the Lease, the PILOT Agreement, the PILOT Mortgage, the other Transaction Documents and any document with or in favor of the Bank to which the Agency is a party and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The execution and delivery of each

such agreement, approval and consent by such person(s) shall be conclusive evidence of such approval.

Section 9. The Chairman, the Vice Chairman, the Executive Director and the Administrative Director of the Agency are hereby further authorized, on behalf of the Agency, acting together or individually, to designate any additional Authorized Representatives (as defined in the Lease) of the Agency.

Section 10. The officers, employees and agents of the Agency are hereby authorized and directed, acting individually or jointly, for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Transaction Documents, to execute and deliver all such additional certificates, instruments, agreements and documents, to pay all such fees, charges and expenses, and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, convenient or appropriate to effect the purposes of this Resolution and to cause compliance with all of the terms, covenants and provisions of the Transaction Documents to which the Agency is a party or which are binding on the Agency.

Section 11. 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 or Executive Director of the Agency 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.

Section 12. 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.

Section 13. The Chairman, the Vice Chairman, the Executive Director and the Administrative Director of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Applicants and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 14. 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	VOTING	Aye
Christopher Fusco	VOTING	Aye
Michael Rodin	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.

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

We, the undersigned [~~Vice~~] Chairman and [~~Assistant~~] Secretary of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on September 8, 2015 with the original thereof on file in our 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.

WE 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.

WE 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, we have hereunto set our respective hands and affixed the seal of the Agency this 7th day of September, 2015.



[~~Assistant~~] Secretary



[~~Vice~~] Chairman

(SEAL)