

Mineola Properties Consent Resolution

A regular meeting of the Nassau County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 1550 Franklin Avenue, Mineola, County of Nassau, New York, on March 1, 2017, at 5:00 p.m., local time.

The meeting was called to order by 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

NOT PRESENT:

Michael Rodin

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. 2017-13 was offered by G. Weiss, seconded by C. Fusco:

Resolution No. 2017-13

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING THE EXECUTION AND DELIVERY BY THE AGENCY OF A GAP MORTGAGE, A MORTGAGE CONSOLIDATION AGREEMENT AND CERTAIN OTHER DOCUMENTS IN CONNECTION THEREWITH WITH RESPECT TO ITS "STRAIGHT LEASE" TRANSACTION WITH MINEOLA PROPERTIES LLC, AND OTHER MATTERS IN CONNECTION THEREWITH

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, MINEOLA PROPERTIES LLC, a limited liability company organized and existing under the laws of 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 an approximately 1.3 acre parcel of land located at 250 Old Country Road, Incorporated Village of Mineola, Town of North Hempstead, County of Nassau, New York (Section: 9; Block: 675; Lots: 2A & 2B) (collectively, the "Land"), (2) the demolition of the existing structures on the Land, (3) the construction of an approximately 350,000 square foot building on the Land, together with underground parking and other related improvements to the Land (collectively, the "Building"), and (4) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all of the foregoing for use by the Applicant as a residential rental facility consisting of approximately 315 units, at least ten percent (10%) of which units shall be affordable units (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 real property taxes, mortgage recording taxes and sales and use 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

WHEREAS, the members of the Agency authorized the Agency to enter into a “straight-lease” transaction with the Applicant pursuant to Resolution No. 2013-23 adopted by the members of the Agency at a meeting held on March 21, 2013 (the “Approving Resolution”); and

WHEREAS, in connection with the Project, the following documents were entered into, among others:

(a) Sublease Agreement dated as of July 1, 2013 (as amended, the “Lease Agreement”) by and between the Agency, as sublessor, and the Applicant, as sublessee; and

(b) Mortgage dated as of July 1, 2013 (as amended, the “PILOT Mortgage”) from the Agency and the Applicant in favor of the County of Nassau, as mortgagee (the “PILOT Mortgage”);

(which documents, together with all other documents, instruments and agreements executed and/or delivered in connection therewith, as all of such documents, instruments and agreements have been amended, modified or supplemented from time to time, are collectively referred to herein as the “Project Documents”); and

WHEREAS, by letter request dated February 8, 2017 (the “Amendment Request”), the Applicant has requested that the Agency (i) execute and deliver a mortgage and security agreement (gap mortgage) in the principal amount of approximately \$27,500,000 and a mortgage consolidation, modification and extension agreement in the approximate principal amount of \$100,000,000 in connection therewith (collectively, the “Gap Mortgage”) each from the Agency and the Applicant in favor of JPMorgan Chase Bank and The Bank of New York (collectively, the “Lender”), for the sole purpose of subjecting to the lien thereof the Agency’s interest in the Project Facility, (ii) acknowledge that the Mortgage shall constitute a “Permitted Encumbrance” (as such quoted term is defined in the Lease Agreement), and (iii) grant an exemption from mortgage recording tax with respect to the recording of the Gap Mortgage (the “Additional Financial Assistance”); and

WHEREAS, any approval of the refinancing transaction contemplated by the Amendment Request (the “Proposed Project”) and the granting of the Additional Financial Assistance is contingent upon, inter alia, a determination by the members of the Agency to proceed following a determination by the Agency that (i) the applicable public hearing and notice requirements and other procedural requirements contained in the Act relating to the Additional Financial Assistance have been satisfied, and (ii) the granting of the Additional 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 Facility (collectively, the “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 Propose Project and the granting of the Additional Financial Assistance contemplated by the Agency, to be mailed on February 10, 2017 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 February 10, 2017 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 February 27, 2017 at 11:30 a.m., local time, at Village Hall, 155 Washington Avenue, Incorporated Village of Mineola, Town of North Hempstead, Nassau County, New York, and (D) caused a report of the Public Hearing (the “Report”) to be prepared which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, the request for the Additional Financial Assistance is consistent with the Agency’s Uniform Tax Exemption Policy and, therefore, does not require the Agency to issue a notice of deviation pursuant to Section 874 of the Act; and

WHEREAS, as preconditions to the execution and delivery of the Gap Mortgage by the Agency and the granting of the Additional Financial Assistance, it is necessary to provide for reaffirmation of certain agreements, the certification of certain facts and the amendment of certain Project Documents; and

WHEREAS, the Agency is willing to accommodate the Applicant’s requests set forth above, subject to the terms and conditions set forth in this Resolution; and

WHEREAS, to accomplish the foregoing there has been presented at this meeting the forms of Gap Mortgage, amendments to and ratification, reaffirmations and amendments of certain Project Documents (collectively, the “Amendment Documents”) for authorization and approval;

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 Agreement.

Section 2. The Agency has reviewed the Amendment Request and the Report and, based 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 and reviewed by the members of the Agency at this meeting, the Agency has reviewed and assessed all material information necessary to afford a reasonable basis for the Agency to make a determination to approve the granting of the Additional Financial Assistance. In addition, the Agency hereby makes the following findings and determinations with respect to the Proposed Project and the granting of the Additional Financial

Assistance:

(a) the granting by the Agency of the Additional Financial Assistance is reasonably necessary to cause the Applicant to undertake the Proposed Project;

(b) there is a likelihood that the Proposed Project would not be undertaken but for the granting of the Additional Financial Assistance by the Agency;

(b) the undertaking of the Proposed Project will not result in the removal of a facility or plant of the Applicant or any other occupant or user 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 the Applicant or any other occupant or user of the Project Facility located within the State. Therefore the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Additional Financial Assistance by the Agency to the Applicant;

(c) the Proposed 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;

(d) the granting of the Additional Financial Assistance by the Agency with respect to the Proposed 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 prevent unemployment and economic deterioration, and thereby serve the public purposes of the Act;

(e) no funds of the Agency shall be used in connection with the Proposed 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 Proposed 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 Project Facility does not and will not 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 Expansion Project. For purposes of this finding, 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; and

(h) the Proposed Project will not result in the removal or abandonment of a plant or facility of the Applicant, or of a proposed user, occupant or tenant of the Project Facility, currently located within Nassau County.

Section 3. 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 4. The Agency hereby determines that the Applicant's request for consents 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 SEQRA.

Section 5. 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 6. Having considered fully all comments received at or in connection with the Public Hearing, the Agency hereby further determines to grant the Additional Financial Assistance. The Agency hereby consents to the execution and delivery of the Gap Mortgage and the other Amendment Document by the Applicant and acknowledges and agrees that the Gap Mortgage, upon its execution and delivery by the Agency and the Lender, shall be deemed a Permitted Encumbrance under the Lease Agreement.

Section 7. The execution and delivery of the Gap Mortgage and the other Amendment Documents, being substantially in the forms presented to the Agency at this meeting, are hereby authorized and approved. The Chairman, Vice Chairman, Executive Director and Administrative Director, acting individually or jointly, are hereby authorized to execute, acknowledge and deliver the Gap Mortgage and the other Amendment Documents, and the Secretary, Assistant Secretary, Executive Director and Administrative Director of the Agency are each hereby authorized to affix the seal of the Agency thereon, if required, and attest the same. The execution and delivery of the Gap Mortgage or any other Amendment Document by any one of said officers shall be conclusive evidence of due authorization and approval.

Section 8. The Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency are each hereby designated an 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 other consents, papers, instruments, opinions, certificates, tax certificates, tax filings, affidavits and other 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 action required to obtain the consent of the PILOT Mortgagee. The execution and delivery of the Consent Documents by any one of said officers shall be conclusive evidence of due authorization and approval.

Section 9. The authorizations set forth in this Resolution are subject to the condition that the Applicant shall reimburse the Agency for all costs and expenses incurred by or payable to 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 10. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution, the Gap Mortgage, the other 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 any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred, and duties and liabilities imposed, upon the Agency or the members thereof by the provisions of this Resolution, the Gap Mortgage, the other Amendment Documents and the Consent Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the Gap Mortgage, any other 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 the Gap Mortgage, any other Amendment Document or any Consent Document shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 11. The Agency hereby authorizes the Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency, acting individually or jointly, to approve modifications to the terms approved hereby which are not inconsistent with the intent and substance of this Resolution, such approval to be evidenced by the execution by any one of said officers of the Gap Mortgage, the other Amendment Documents and the Consent Documents containing such modifications.

Section 12. The Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency, acting individually or jointly, are hereby authorized and directed to distribute copies of this Resolution to the Applicant and such other parties as any such officer may determine.

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	VOTING	Aye
Michael Rodin	EXCUSED	

The foregoing Resolution was thereupon declared duly adopted.

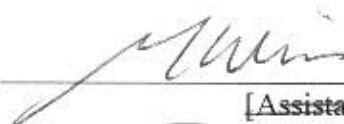
STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

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 March 1, 2017 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 1st day of March, 2017.



[~~Assistant~~] Secretary



[~~Vice~~] Chairman

(SEAL)