

Mattress Firm, Inc. and SS Oyster Bay Realty, LLC Preliminary Inducement Resolution

A regular meeting of the Nassau County Industrial Development Agency (the "Agency") was convened in public session at the Theodore Roosevelt Executive & Legislative Building, Ceremonial Chambers, 1550 Franklin Avenue, Mineola, Nassau County, New York on November 8, 2018 at 6:30 p.m., local time.

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

PRESENT:

Richard Kessel	Chairman
Lewis M. Warren	Vice Chairman
Anthony Simon	2nd Vice Chairman
Timothy Williams	Secretary
Amy Flores	Treasurer
Chris Fusco	Asst. Secretary
John Coumatos	Asst. Treasurer

NOT PRESENT:

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Joseph J. Kearney	Executive Director
Joseph Foarile	Chief Financial Officer
Colleen Pereira	Administrative Director
Andrew Komaromi	Bond/Transaction Counsel

The attached resolution no. 2018-64 was offered by Timothy Williams, seconded by Chris Fusco:

RESOLUTION TAKING PRELIMINARY ACTION TOWARD THE
GRANTING OF CERTAIN FINANCIAL ASSISTANCE OF A CERTAIN PROJECT FOR
MATTRESS FIRM, INC. AND SS OYSTER BAY REALTY, LLC (COLLECTIVELY THE
“APPLICANT”) AND AUTHORIZING THE EXECUTION AND
DELIVERY OF A PRELIMINARY AGREEMENT WITH THE APPLICANT WITH
RESPECT TO SUCH TRANSACTION

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, on or about May 15, 2006, Sleepy’s, LLC, a limited liability company duly 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 (as successor in interest to Sleepy’s Inc., a corporation duly organized and existing under the laws of the State of New York) (the “2006 Applicant” or “2006 Sublessee”) presented an application (as amended, the “the 2006 Application”) to the Agency, which 2006 Application requested that the Agency consider undertaking a project (the “2006 Project”) consisting, *inter alia*, of the following: (A)(1) the acquisition of an interest in an approximately 18.88 acre parcel of land located at 1000 South Oyster Bay Road, including certain adjoining property, all located in Hicksville, Town of Oyster Bay, County of Nassau, New York (collectively the “Existing Land”), (2) the construction of a new approximately 450,000 square foot warehouse and office building on the Land (collectively, the “Original Building”) and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the “2006 Equipment”), all for use by the Applicant as its corporate headquarters and regional distribution center (collectively the Existing Land, Original Building and 2006 Equipment, the “2006 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 2006 Project Facility to the 2006 Applicant or such other entity as may be designated by the 2006 Applicant and agreed upon by the Agency; and (D) the sublease of the 2006

Project Facility to the 2006 Applicant or such other entity(s) as may be designated by the 2006 Applicant and agreed upon by the Agency; and

WHEREAS, thereafter the 2006 Applicant proposed that Steel Circuit, LLC, a limited liability company duly organized and existing under the laws of Delaware and qualified to do business in the State of New York as a foreign limited liability company ("Steel Circuit") and South Oyster Bay Realty, LLC, a limited liability company duly organized and existing under the laws of the State of New York ("Bay Realty" and together with Steel Circuit, collectively the "Company") be the lessee under the Lease (as defined below) and the Agency approved such proposal; 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 Lease Agreement, dated as of November 1, 2007 between the Company and the Agency (as amended, the "Lease"), and the other Transaction Documents (as defined in the Lease); and

WHEREAS, the Company subleased the 2006 Project Facility to the 2006 Sublessee, all pursuant to the terms and conditions set forth in the Sublease Agreement, dated as of November 1, 2007 between the Company and the Sublessee (as amended, the "Sublease Agreement") and the other Transaction Documents; and

WHEREAS, in 2014, Steel Circuit and Bay Realty requested that the Agency consent to the conversion of their tenant-in-common interests in the 2006 Project Facility to membership interests in SS Oyster Bay Realty, LLC, a limited liability company duly 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 ("SS"), the sole owners of which are Steel Circuit and Bay Realty; and

WHEREAS, the Agency approved the foregoing request pursuant to a resolution approved by the members of the Agency on August 27, 2014; and

WHEREAS, Mattress Firm, Inc., a corporation organized and existing the laws of the State of Delaware and qualified to do business in the State of New York, a successor in interest to the 2006 Applicant, as a foreign corporation, and SS, or any parent entity, affiliate, or entity formed or to be formed on its behalf (the "Applicant"), has presented an application for financial assistance (the "Application") to the Agency, which Application requests that the Agency consider undertaking a new project (the "Proposed Project") consisting of the (1) the retention Existing Land, (2) renovation of an approximately 350,000 square foot portion of the Original Building located on the Existing Land (the "2018 Building") and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment located (the "2018 Equipment") (collectively, the Existing Land, 2018 Building and 2018 Equipment the "2018 Project Facility") all for use by the Applicant as its corporate headquarters and regional distribution center; (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 and sales and use taxes (collectively, the "2018 Financial Assistance"); 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 Agency has given due consideration to the Application and to the representations made by the Applicant therein, in certain supplemental documents and at this meeting, including, without limitation, representations of the Applicant that: (A) the granting by the Agency of the 2018 Financial Assistance with respect to the 2018 Project Facility will be an inducement to the Applicant to undertake the Proposed Project in Nassau County, New York; (B) the completion of the Proposed Project and the leasing and operation of the 2018 Project Facility will not result in the removal of a facility or plant of the Applicant or any tenant, user or occupant of the 2018 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 tenant, user or occupant of the Project Facility located in the State but outside Nassau County, New York or, if it does, is reasonably necessary to preserve the competitive position of the Applicant in its industry and/or the Project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state; (C) the Proposed Project will serve the public purposes of the Act by preserving and retaining permanent, private sector jobs and increasing the overall number of permanent, private sector jobs in the State; and (D) the granting of the 2018 Financial Assistance by the Agency 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 prevent unemployment and economic deterioration, and thereby serve the public purposes of the Act; and

WHEREAS, a portion of the 2018 Financial Assistance consisting of an exemption from real property taxes, if granted, may represent a deviation from the Agency's uniform tax exemption policy with respect to the making of payments in lieu of real property taxes; and

WHEREAS, any approval of the Proposed Project is contingent upon, among other things, a final determination by the members of the Agency to proceed with the Proposed Project following determinations by the Agency that: (A) the public hearing and notice requirements and other procedural requirements contained in the Act relating to the Proposed Project and the 2018 Financial Assistance have been satisfied; and (B) the undertaking of the Proposed Project by the Agency and the granting of the 2018 Financial Assistance are and will be in compliance with all other applicable 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 statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Project or the Project Facility (collectively, the "Applicable Laws"); and

WHEREAS, the Agency desires to encourage the Applicant to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of Nassau County, New York, and to prevent unemployment and economic deterioration, by undertaking the Project in Nassau County, New York; and

WHEREAS, a preliminary agreement (the "Preliminary Agreement") relative to the proposed undertaking of the Proposed Project by the Agency has been or will be delivered to the Applicant for execution;

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

Section 1. The Agency hereby authorizes the Executive Director of the Agency (and hereby ratifies any actions taken to date by the Executive Director): (A) to establish a time, date and place for a public hearing (the "Public Hearing") of the Agency to hear all persons interested in the location and nature of the Proposed Project and the proposed 2018 Financial Assistance being contemplated by the Agency with respect to the Proposed Project, said Public Hearing to be held in the city, town or village within which the 2018 Project Facility is or will be located; (B) to cause notice of said Public Hearing to be given to the public by publishing a notice of said Public Hearing in a newspaper of general circulation available to residents of the governmental units where the 2018 Project Facility is or is to be located, such notice to comply with the requirements of and to be published in accordance with the requirements of the Act; (C) to cause notice of said Public Hearing, pursuant to the Act, to be given to the chief executive officer of the County of Nassau, New York, and of each city, town, village, school district and other affected tax jurisdiction in which the 2018 Project Facility is or is to be located; (D) to establish a time, date and place for a meeting of the Agency (the "IDA Meeting") to consider whether to approve a proposed deviation from the Agency's uniform tax exemption policy in accordance with the Act if the Executive Director determines that the portion of the 2018 Financial Assistance consisting of an exemption from real property taxes constitutes a deviation from such policy; (E) to cause notice of any such proposed deviation from the Agency's uniform tax exemption policy and of the IDA Meeting to be given to the chief executive officer of each affected tax jurisdiction in accordance with the Act; (F) to conduct the Public Hearing or to authorize a hearing officer to conduct the Public Hearing; (G) to cause a report of the Public Hearing fairly summarizing the views presented at said Public Hearing to be promptly prepared and cause copies of said report to be made available to the members of the Agency; (H) to hold the IDA Meeting and to review and respond to any correspondence received from the affected tax jurisdictions regarding the proposed deviation from the Agency's uniform tax exemption policy, if applicable; and (I) to otherwise comply with all other procedural and other requirements imposed on the Agency pursuant to Applicable Laws with respect to the Proposed Project and/or the 2018 Financial Assistance.

Section 2. The Applicant is hereby authorized to conduct such environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary or convenient to enable the Agency to make its determination whether to proceed with the Proposed Project and to grant the 2018 Financial Assistance; provided, however, that such authorization shall not entitle or permit the Applicant to commence the acquisition, construction, installation or equipping of the 2018 Project Facility on behalf of the Agency unless and until the Agency shall determine that all requirements of Applicable Laws have been fulfilled. The officers, agents and employees of the Agency are hereby directed to proceed to do such things or perform such acts as may allow the Agency to proceed to its final consideration of the Proposed Project. This Resolution constitutes an authorization to conduct concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning with respect to the Proposed Project within the meaning of Section 617.3(c)(2) of the Regulations and a determination of compliance with technical requirements within the meaning of Section 617.3(c)(2) of the Regulations and does not constitute, and shall not be deemed to constitute, either an approval by the Agency of the Proposed Project for the purposes of the Act or SEQRA or a commitment by the Agency to approve the Proposed Project or to grant the 2018 Financial Assistance.

Section 3. Any expenses incurred by the Agency with respect to the Proposed Project and/or the financing thereof shall be paid by the Applicant as set forth in the Preliminary Agreement.

Section 4. The findings of the Agency set forth herein are expressly conditioned upon full compliance of the Applicant, the Proposed Project and the 2018 Project Facility with all Applicable Laws, and the Applicant shall be required to provide evidence of same satisfactory to the Agency prior to the granting of any 2018 Financial Assistance.

Section 5. If, following full compliance with all Applicable Laws, the Agency adopts a future resolution (the "Future Resolution") determining to proceed with the Proposed Project and to grant the 2018 Financial Assistance, or any portion thereof, with respect to the Proposed Project and the Applicant complies with all conditions set forth in the Preliminary Agreement and the Future Resolution, then the Agency will (A) acquire an interest in the 2018 Project Facility pursuant to a deed, lease agreement, assignment of lease, license, bill of sale and/or other documentation to be negotiated between the Agency and the Applicant (the "Acquisition Agreement"); (B) construct, install and equip the 2018 Building and acquire and install the 2018 Equipment; (C) lease (with the obligation to purchase), license or sell the 2018 Project Facility to the Applicant pursuant to a lease agreement or an installment sale agreement (the "Project Agreement") to be negotiated between the Agency and the Applicant; and (D) provide the 2018 Financial Assistance with respect to the Proposed Project, all as contemplated by the Preliminary Agreement and the Future Resolution;

Section 6. The form, terms and substance of the Preliminary Agreement (in substantially the form presented at this meeting and attached hereto) are in all respects approved, and the Chairman, Vice Chairman, Executive Director or Administrative Director of the Agency are each hereby authorized, empowered and directed, acting individually or jointly, to execute and deliver said Preliminary Agreement in the name and on behalf of the Agency, with such changes therein as shall be approved by the officer executing same on behalf of the Agency, the execution thereof by such officer to constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form now before this meeting.

Section 7. From and after the execution and delivery of the Preliminary Agreement, the officers, agents and employees of the Agency are hereby authorized, empowered and directed, acting individually or jointly, to proceed with the undertakings provided for therein on the part of the Agency, and are further authorized to do all such acts and things and to execute all such documents as may be necessary or convenient to carry out and comply with the terms and provisions of the Preliminary Agreement as and when executed.

Section 8. The law firm of Harris Beach PLLC, Uniondale, New York, is hereby appointed Special Counsel to the Agency with respect to all matters in connection with the Proposed Project. Special Counsel for the Agency is hereby authorized, at the expense of the Applicant, to work with counsel to the Agency, the Applicant, counsel to the Applicant, and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution.

Section 9. The Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency are each hereby authorized and directed to distribute copies of this Resolution to the Applicant and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

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

Richard Kessel	VOTING Aye
Lewis M. Warren	VOTING Aye
Anthony Simon	VOTING Aye
Timothy Williams	VOTING Aye
Chris Fusco	VOTING Aye
Amy Flores	VOTING Aye
John Coumatos	VOTING Aye

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK

COUNTY OF NASSAU

) SS.:

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 November 8, 2018 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 8th day of November, 2018.



[Assistant] Secretary



[Vice] Chairman

(SEAL)