

Mineola 150 LLC - Consent 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 January 17, 2019 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
John Coumatos	Asst. Treasurer
Chris Fusco	Asst. Secretary

NOT PRESENT:

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Danielle Oglesby	Deputy Executive Director
Joseph Foarile	Chief Financial Officer
Colleen Pereira	Administrative Director
Thomas D. Glascock	Agency Counsel
Andrew Komaromi	Bond/Transaction Counsel

The attached resolution no. 2019-2 was offered by Anthony Simon, seconded by Richard Kessel:

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT
AGENCY AUTHORIZING CERTAIN MATTERS IN CONNECTION WITH ITS
STRAIGHT-LEASE TRANSACTION WITH MINEOLA 150 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 1 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, MCRT Northeast LLC, a Delaware limited liability company and an affiliate of MCRT Northeast LLC (the “Applicant”), submitted an application for financial assistance (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 140, 146, 150 and 160 Old Country Road and 33 Willis Avenue, Incorporated Village of Mineola, Town of North Hempstead, County of Nassau, New York (Section: 9; Block: 430; Lots: 10, 65, 212, 411, 415, 418 and 419) (the “Winston Parcel”), (2) the construction of a 5-story building on the Winston Parcel, together with underground parking and other related improvements to the Winston Parcel (the “Winston Building”), and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the “Winston Equipment”), all of the foregoing to constitute a 275-unit market-rate rental apartment facility (collectively, the “Winston Project Facility”); (B) (1) the acquisition of an interest in a parcel of land located on Front Street, Incorporated Village of Mineola, Town of North Hempstead, County of Nassau, New York (Section: 9; Block: 417; Lots: 53-55) (the “Churchill Parcel” and together with the Winston Parcel, collectively, the “Land”), (2) the construction of a 4-story building on the Churchill Parcel, together with at grade parking and other related improvements to the Churchill Parcel (the “Churchill Building” and together with the Winston Building, collectively, the “Building”), and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the “Churchill Equipment” and together with the Winston Equipment, collectively, the “Equipment”), all of the foregoing to constitute a 36-unit senior, affordable rental apartment facility (collectively, the “Churchill Project Facility” and together with the Winston Project Facility, collectively, the “Project Facility”); (C) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes, mortgage recording taxes and real property taxes (collectively, the “Financial Assistance”); and (D) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, the Applicant proposed that Mineola 150 LLC (the “Company”), its affiliate, be the sublessee under the Lease (as hereinafter defined) 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 subleased the Project Facility to the Company, all pursuant to the terms and conditions set forth in two (2) certain Sublease Agreements each dated as of May 1, 2013 between the Company and the Agency (as amended, collectively, the “Lease”), and the other Transaction Documents (as defined in the Lease); and

WHEREAS, in connection with the Project, MCRT East Assurance IX LLC (the “MCRT Guarantor”) (a) made certain representations, covenants and indemnifications in favor of the Agency with respect to the environmental condition of the Land and the Building pursuant to two (2) certain Environmental Compliance and Indemnification Agreements each dated as of May 1, 2013 (collectively, the “Environmental Indemnity”) made by the MCRT Guarantor and the Company in favor of the Agency, and (b) guaranteed the timely and proper payment and performance of the obligations of the Company to the Agency under the Lease and the other Transaction Documents pursuant to two (2) certain Guaranties each dated as of May 1, 2013 (collectively, the “Guaranty”) made by the MCRT Guarantor in favor of the Agency; and

WHEREAS, pursuant to a notification and consent request letter dated April 28, 2017 (the “Consent Request”), the Company has (a) notified the Agency that all of the membership interests in Mineola Residential Ventures LLC (“Ventures”), the sole member of the Company, held by MCRT Mineola LLC will be transferred to Mineola Residential Acquisition LLC, as permitted pursuant to the Lease, and (b) requested that the Agency consent to the substitution of Ventures as guarantor and indemnitor, respectively, under the Environmental Indemnity and the Guaranty in the place of the MCRT Guarantor (collectively, the “2017 Transaction”); and

WHEREAS, the Agency consented to such request, pursuant to and subject to the terms and conditions set forth in its resolution adopted May 17, 2017;

WHEREAS, on August 29, 2017, all of the membership interests in Mineola Residential Ventures LLC (“Ventures”), the sole member of the Company, held by MCRT Mineola LLC were transferred to Mineola Residential Acquisition LLC and Ventures was substituted as guarantor and indemnitor, respectively, under the Guaranty and Environmental Indemnity in the place of the MCRT Guarantor; and

WHEREAS, pursuant to a notification and consent request letter dated January 9, 2019 (the “Consent Request”), the Company and the Assignee (as such term is hereinafter defined) have requested that the Agency consent to (a) (i) the transfer of the Company’s interest in the Winston Project Facility by the Company to FK ALLURE LLC, a New York limited liability company, NP Allure LLP, a New York limited liability company, MLF ALLURE LLC, a New York limited liability company, FRG ARBOR LLC, a New York limited liability company, FRG ALLURE I LLC, a New York limited liability company and FRG ALLURE II LLC, a New York limited liability company as tenants in common (collectively, the “Winston Transferee”) and (ii) the transfer of the Company’s interest in the Churchill Project Facility by the Company

to FRG FRONT STREET LLC, a New York limited liability company, (the “Churchill Transferee” and together with the Winston Transferee, the “Assignee”), (b) the assignment of the Lease and the other Transaction Documents by the Company to the Assignee (including the assignment, amendment or restatement of finance mortgages) and (c) to the substitution of FRG Fountain Knolls, LLC, a California limited liability company authorized to do business in the State, and an affiliate of FK Allure LLC, as guarantor and indemnitor, respectively, under the Guaranty and Environmental Indemnity in the place of Ventures (collectively, the “Proposed Transaction”);

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:

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. No additional “financial assistance” is being requested by the Company with respect to the transactions contemplated by this Resolution and therefore no public hearing of the Agency is required pursuant to Section 859-a of the Act.
4. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Chairman, Executive Director, Deputy 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 and all other Applicable Laws that relate thereto.
5. The Agency hereby consents to the Proposed Transaction as outlined in the Consent Request, subject, however, to the delivery of evidence satisfactory to the Deputy 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 Transaction (collectively, the “Amendment Documents”), being substantially in the forms utilized by the Agency for prior transactions, are hereby authorized and approved. The Chairman, Executive Director, Deputy 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.

6. The Chairman, Executive Director, Deputy 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 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.

7. 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 fee in the amount of \$1,000 and all reasonable attorneys' fees and disbursements incurred by the Agency, including without limitation, the fees and expenses of Special Counsel, Harris Beach PLLC.

8. 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.

9. 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.

10. The Chairman, Executive Director and Deputy 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/or the Consent Documents containing such modifications.

11. 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:

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

) 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 January 17, 2019 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 17th day of January, 2019.



[Assistant] Secretary



[Vice] Chairman

(SEAL)