

SEVIROLI FOODS, INC. - Consent Resolution

A regular meeting of the Nassau County Industrial Development Agency (the "Agency") was convened in public session, electronically, pursuant to Executive Order No. 202.11, 202.28 and 202.48 - Continuing Temporary Suspension And Modification Of Laws Relating To The Disaster Emergency - by Governor Andrew M. Cuomo of the State of New York on September 17, 2020 at 6:45 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
Timothy Williams	Secretary
Amy Flores	Treasurer
John Coumatos	Asst. Treasurer
Chris Fusco	Asst. Secretary

NOT PRESENT:

Lewis M. Warren	Vice Chairman
Anthony Simon	2nd Vice Chairman

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Harry Coghlan	Chief Executive Officer / Executive Director
Danielle Oglesby	Chief Operating Officer/ Deputy Executive Director
Anne LaMorte	Chief Financial Officer
Catherine Fee	Director of Business Development/Chief Marketing Officer
Colleen Pereira	Administrative Director
Carlene Wynter	Compliance Assistant
Thomas D. Glascock, Esq.	General Counsel
Andrew D. Komaromi, Esq.	Bond/Transactional Counsel

The attached resolution no. 2020-45 was offered by Timothy Williams, seconded by Richard Kessel.

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT
AGENCY AUTHORIZING CERTAIN MATTERS IN CONNECTION WITH ITS
STRAIGHT-LEASE TRANSACTION WITH SEVIROLI FOODS, 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 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, SEVIROLI FOODS, INC., a corporation duly organized and existing under the laws of the State of New York (the "Applicant"), submitted an application for financial assistance (the "Application"), 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 those certain parcels of land located at 585 Brook Street, 10 Commercial Avenue, 600 Commercial Avenue, 620 Commercial Avenue, 601 Brook Street, and 557-563-579 Brook Street in the Village of Garden City, Town of Hempstead, Nassau County, New York (collectively, the "Land"), (2) the renovation of the existing buildings and other structures on the Land (collectively, the "Building") together with related improvements to the Land, and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (collectively, the "Equipment"), all of the foregoing for use as manufacturing, warehousing and office facilities of the Applicant (collectively, the "Project Facility"); (B) 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 real property taxes, sales and use taxes and mortgage recording taxes; and (C) the lease (with an obligation to purchase) or sale of the Project Facility to JS Commercial Realty Corp., 585 Brook Realty LLC, Brook Street Realty LLC and 557-563-579 Brook Realty LLC (collectively, the “Property Owners”) or such other entity(ies) as may be designated by the Property Owners (together with the Applicant, the “Companies”) and agreed upon by the Agency; and

WHEREAS, the Agency appointed the Companies as agent of the Agency to undertake the acquisition, renovation, installation and equipping of the Project Facility and the Agency has subleased the Project Facility to the Company, all pursuant to the terms and conditions set forth in the Sublease Agreement dated as of November 1, 2018 between the Company and the Agency (as amended to date, the “Lease”), and the other Transaction Documents (as defined in the Lease); and

WHEREAS, pursuant to a resolution approved by the Agency, dated July 9, 2020, the Agency consented to the amendment of the Lease and the other Transaction Documents to allow the Applicant to employ no less than two-hundred-twenty-three (223) full-time equivalent employees for the three (3) years after the Closing Date to correct a scrivener error in the Application and, consequently the Approval, that provided that the Company maintain two-hundred-thirty-five (235) full-time equivalent employees for the three (3) years after the Closing Date, without any modification of the requirement that the Company will provide thirty (30) new full-time employees, private sector jobs in the County of Nassau within three (3) years after the Closing Date; and

WHEREAS, the Company has requested that the Agency consent to the amendment of the PILOT Agreement to permit the Company, during the final three (3) years of the term of PILOT Agreement Agreement, to have the right to institute judicial or other review of the assessed value of the real property with respect to the Facility, whether pursuant to the provisions of Article 7 of the RPTL or other applicable law, as the same may be amended from time to time; provided, however, that no such judicial or other review or settlement thereof shall have any effect on the Company's obligations under the PILOT Agreement, including, without limitation, the Company's obligation to make the PILOT Payments when due. Such judicial or other review shall only be for purposes of setting the assessed value of the Facility as though the Facility was on the tax rolls of each Taxing Entity as taxable real property but shall have no effect on this Agreement or the tax-exempt status of the Facility during the term of the PILOT Agreement.

WHEREAS, the Agency is willing to consent to such request, 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 this request, 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, the Vice Chairman, Chief Executive Officer/Executive Director, Chief Operating Officer, 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 Amendment as outlined in the Consent Request, subject, however, to the delivery of evidence satisfactory to the Chairman, the Vice Chairman, Chief Executive Officer/Executive Director, Chief Operating Officer or Administrative 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 Amendment (collectively, the “Amendment Documents”), being substantially in the forms utilized by the Agency for prior transactions, are hereby authorized and approved. The Chairman, the Vice Chairman, Chief Executive Officer/Executive Director, Chief Operating Officer 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, the Vice Chairman, the Chief Executive Officer/Executive Director, Chief Operating Officer 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 \$750.00 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, the Vice Chairman, the Chief Executive Officer/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 Absent
Anthony Simon	VOTING Absent
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.:

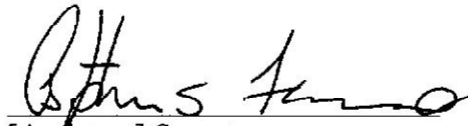
COUNTY OF NASSAU

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 July 9, 2020 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 5 of the Public Officers Law (the "Open Meetings Law") as modified pursuant to Executive Order No. 202.11, 202.28 and 202.48 - Continuing Temporary Suspension And Modification Of Laws Relating To The Disaster Emergency - by Governor Andrew M. Cuomo of the State of New York, 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 9th day of July, 2020.


[Assistant] Secretary

[Vice] Chairman

(SEAL)

STATE OF NEW YORK

) SS.:

COUNTY OF NASSAU

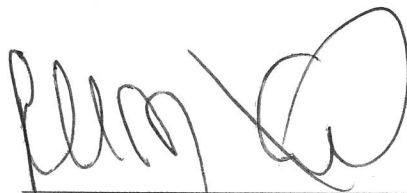
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[Assistant] Secretary



[Vice] Chairman

(SEAL)