Woodcrest - Consent & Amendment 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 October 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
Amy Flores                   Treasurer
John Coumatos                 Asst. Treasurer
Chris Fusco                   Asst. Secretary

NOT PRESENT:

Timothy Williams             Secretary

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Harry Coghlan                 Chief Executive Officer / Executive Director
Danielle Oglesby             Chief Operating Officer / Deputy Executive Director
Colleen Pereira               Administrative Director
Thomas D. Glascock           Agency Counsel
Andrew Komaromi               Bond/Transaction Counsel

The attached resolution no. 2019-89 was offered by Richard Kessel seconded by Amy Flores:
Resolution No. 2019-89

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING CERTAIN MATTERS IN CONNECTION WITH ITS STRAIGHT-LEASE TRANSACTION WITH WOODCREST VILLAGE PARK ASSOCIATES

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, WOODCREST VILLAGE PARK ASSOCIATES, a general partnership organized and existing under the laws of the State of New York (the "Company"), 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 5.19 acre parcel of land located at 2930 Rockaway Avenue, Oceanside, Town of Hempstead, Nassau County, New York (Section: 38; Block: E; Lots: 42, 13, 5) (the "Land"), (2) the construction of an approximately 260,108 square foot building (collectively, the "Building") on the Land, together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Company as a residential rental facility consisting of approximately 230 residential rental units, at least ten percent (10%) of which units shall be affordable units; (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"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Agency appointed the Company 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 October 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, by letter dated September 27, 2019, the Company has requested that the Agency consent to the amendment of the Lease and the other Transaction Documents to allow the Company to (a) complete the acquisition, construction, installation and equipping of the Project Facility on or before April 4, 2022, (b) extension of the expiration date of the Sales Tax Agreement from November 4, 2020 to May 2, 2022 and (c) an extension of the PILOT Payment Schedule to provide that the 2023 General / 2022/2023 school taxes shall be based upon the assessed value of the land only, together with an extension of the Abatement Expiration Date (as defined in the PILOT Agreement) from the last day of the fifteenth (15th) fiscal tax year following the PILOT Commence Date (as defined in the PILOT Agreement) to the last day of the sixteenth (16th) year following, the PILOT Commencement Date; and

WHEREAS, no additional Financial Assistance is being requested by the Company with respect to such request and, therefore, no public hearing of the Agency is required pursuant to Section 859-a of the Act; and

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 $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
covention, 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 Aye
Anthony Simon  VOTING Aye
Timothy Williams  NOT PRESENT
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 October 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 October, 2019.

[Signature]
[Assistant] Secretary

[Signature]
[Vice] Chairman

(SEAL)