

Hempstead Properties LLC - Approving 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 September 21, 2021 at 7:30 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 - EXCUSED
Anthony Simon	2nd Vice Chairman
Amy Flores	Treasurer
John Coumatos	Asst. Treasurer
Chris Fusco	Asst. Secretary
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
Anne LaMorte	Chief Financial Officer
Catherine Fee	Director of Business Development/Chief Marketing Officer
Carlene Wynter	Compliance Assistant
Nicole Gil	Administrative Assistant
Thomas D. Glascock	Agency Counsel
Andrew Komaromi	Bond/Transaction Counsel

The attached resolution no. 2021-69 was offered by Timothy Williams, seconded by Anthony Simon.

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND APPROVING
THE ACQUISITION AND STRAIGHT LEASING OF A CERTAIN PROJECT
FOR HEMPSTEAD PROPERTIES 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, 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, HEMPSTEAD PROPERTIES LLC, a limited liability company organized and existing under and by virtue of the laws of the State of New York (the "Company" or the "Applicant"), previously presented an application for financial assistance (the "2004 Application") requesting that the Agency undertake a project (the "2004 Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 2.36 acre parcel of land located at 80 Clinton Street, Village of Hempstead, Town of Hempstead, County of Nassau, New York (the "Land"), (2) the renovation and expansion of an existing approximately 110,000 square foot hotel building and the conversion thereof from hotel and ballroom space to residential and retail space, together with related improvements located on the Land, and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all of the foregoing to constitute a residential housing facility for persons aged 55 and older, comprised of approximately 105 affordable housing units, together with associated retail space and parking areas (collectively, the "Project"); (B) the financing of all or a portion of the costs of the foregoing by the issuance of tax-exempt and/or taxable revenue bonds of the Agency in one or more series; (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, real property taxes, real property transfer taxes and recording fees and charges (together with the bonds, collectively, the "Financial Assistance"); and (D) the lease (with an obligation to purchase) or sale of the 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, in order to provide funds for a portion of the cost of the Project, issued and sold its Adjustable Rate Demand Revenue Bonds (Clinton Plaza Senior Housing Project), Series 2004, in the aggregate principal amount of \$13,500,000 (the "Series 2004 Bonds") pursuant to the Act, a resolution of the Agency adopted on August 31, 2004, and an Indenture of Trust dated as of September 1, 2004 by and between the Agency and The Bank of New York, as trustee (in such capacity, the "Trustee"), securing said Bonds; and

WHEREAS, the Series 2004 Bonds were initially secured by an irrevocable direct pay letter of credit (the "Existing Letter of Credit") issued by The Bank of New York (in such capacity, the "Bank") in favor of the Trustee; and

WHEREAS, Fannie Mae agreed, subject to the satisfaction of certain conditions, to facilitate the financing of the acquisition, rehabilitation, renovation and equipping of the Facility by providing replacement credit enhancement and liquidity support for the Series 2004 Bonds pursuant to the Credit Facility (as defined in the Indenture); and

WHEREAS, the Applicant and Fannie Mae entered into a Reimbursement Agreement dated as of December 1, 2006 (as the same may be amended, modified, supplemented or restated from time to time, the "Reimbursement Agreement") pursuant to which a replacement Credit Facility has been issued by Fannie Mae, in favor of the Trustee for the benefit of the Holders of the Series 2004 Bonds to secure the payment of the principal or Redemption Price of (other than redemption premium), Purchase Price, and interest on the Series 2004 Bonds; and

WHEREAS, in order to secure the reimbursement obligations of the Applicant to Fannie Mae under the Reimbursement Agreement, the Agency and the Applicant granted a mortgage lien on and security interest in the Facility to Fannie Mae; and

WHEREAS, the Agency appointed the Applicant as agent of the Agency to undertake the acquisition, construction, installation and equipping of the Facility and to lease the Facility to the Applicant, and the Applicant is acting as agent of the Agency to undertake the acquisition, construction, installation and equipping of the Facility and to lease the Facility from the Agency, all pursuant to the terms and conditions set forth in the Lease Agreement, dated as of September 1, 2004, between the Applicant and Agency, and in the other Security Documents; and

WHEREAS, the Agency and the Applicant entered into an Amended and Restated Lease Agreement, dated December 1, 2006 (as amended, collectively, the "Lease"), and the other Transaction Documents (as defined in the Lease); and

WHEREAS, pursuant to a notification and consent request letter from the Applicant, dated September 3, 2021 (the "Consent Request"), the Applicant has requested that the Agency consent to (a) the transfer of the ownership interest of U.S.A. Institutional Tax Credit Fund XXXVII, L.P. (a limited partner tax credit investor) in the Applicant to the co-managing member of the Applicant, Hempstead Holdings LLC; and (b) the assignment of the Lease and other Transaction Documents by the Applicant to the Applicant's co-managing Members, Hempstead Holdings LLC and BFJ Properties LLC (collectively, the "Assignees") (including the assignment, amendment or restatement of finance mortgages) (collectively, the "Proposed Transaction"); and

WHEREAS, no additional Financial Assistance is being requested by the Applicant with respect to such requests 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:

Section 1. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Lease.

Section 2. The Agency hereby ratifies, confirms and approves 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 3. The Agency determines that the Applicant's request with respect to 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 4. No additional Financial Assistance is being requested by the Applicant with respect to this request, and, therefore, no public hearing of the Agency is required pursuant to Section 859-a of the Act.

Section 5. The Agency has considered the request made by the Applicant and hereby finds and determines that the requested consent 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 thereby serve the public purposes of the Act.

Section 6. 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 7. The execution and delivery of the documents, instruments and agreements required to effectuate the Proposed Transaction (collectively, the “Amendment Documents”), being substantially in the forms used for prior similar transactions, are hereby authorized and approved. The Chairman, Vice Chairman, Chief Executive Officer/Executive Director, Chief Operating Officer/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.

Section 8. The Chairman, Vice Chairman, Chief Executive Officer/Executive Director, Chief Operating Officer/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, amendments, 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, 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 conditions that (i) background checks have been conducted with respect to the Assignees and the New Indemnitor, and (ii) the Assignees 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 fees and all reasonable attorneys' fees and disbursements incurred by the Agency, including without limitation, the fees and expenses of Special Counsel, Harris Beach PLC.

Section 10. 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.

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.

Section 11. The Chairman and 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.

Section 12. The Assignees shall file all necessary documentation with the New York State Department of State to become qualified to do business in the State of New York as a

foreign limited liability company before the Chairman, Vice Chairman, Chief Executive Officer/Executive Director, Chief Operating Officer/Deputy Executive Director and/or Administrative Director of the Agency execute any Amendment Document or Consent Document.

Section 13. Notwithstanding any provision in the Transaction Documents to the contrary, the Agency's consent does not and shall not be construed to mean that there are no defaults or events of default under the Lease or any other Transaction Document or that any such defaults or events of default have been or shall be waived by the Agency.

Section 14. 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:

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	EXCUSED
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.:

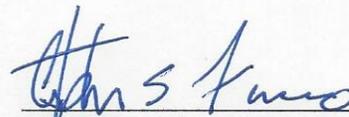
COUNTY OF NASSAU

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 September 21, 2021 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 21st day of September 2021.



[Assistant] Secretary

[Vice] Chairman

(SEAL)

STATE OF NEW YORK

) SS.:

COUNTY OF NASSAU

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[Assistant] Secretary



[Vice] Chairman

(SEAL)