

Tonsa Automotive, Inc. - 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 May 26, 2022 at 6:48 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
John Coumatos	Asst. Treasurer
Chris Fusco	Asst. Secretary
Reginald A. Spinello	Member
William H. Rockensies	Member

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Anne LaMorte	Chief Financial Officer
Carlene Wynter	Compliance Assistant
Nicole Gil	Administrative Assistant
Andrew Komaromi	Bond/Transaction Counsel

EXCUSED:

Timothy Williams	Member
Catherine Fee	Director of Business Development/Chief Marketing Officer

The attached resolution no. 2022-45 was offered by Richard Kessel, seconded by Chris Fusco.

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING CERTAIN MATTERS IN CONNECTION WITH ITS STRAIGHT-LEASE TRANSACTION WITH TONSA AUTOMOTIVE, 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, 83 HARBOR LLC, a limited liability company organized and existing under the laws of the State of New York (the “Company”) on behalf of itself and entities formed or to be formed on its behalf, including without limitation, Tonsa Automotive, Inc., a corporation organized and existing under the laws of the State of New York (the “Sublessee” and together with the Company, the “Applicant”), has presented an application for financial assistance (the “Application”) to the Agency, which Application requests that the Agency consider undertaking a project (the “Project”) consisting of the following: : (A)(1) the acquisition of an approximately 5.16 acre parcel of land located at 83 Harbor Drive, Port Washington, Village of Port Washington North, Town of North Hempstead, Nassau County, New York (Section: 04; Block: J; Lot: 730) (the “Land”), (2) the acquisition of and improvement to an existing, approximately, 82,037 square foot warehouse and office facility on the Land (collectively, the “Building”), 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 Applicant as a warehouse, distribution center and corporate office facility for Applicant’s automotive parts supply business; (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 Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, the Agency approved such request, pursuant to and subject to the terms and conditions set forth in its resolution 2019-33 (“Approving Resolution”), adopted April 18, 2019, and entered into a Straight Lease and approved the Financial Assistance; and

WHEREAS, the Company’s ST-340 filings indicate that the Company utilized sales tax exemption in excess of its sales tax approval; and

WHEREAS, pursuant to correspondence from the Company, dated April 6, 2022, the Company presented a request for the Agency to waive the 12% per annum interest penalty contained in the Uniform Project Agreement entered into between the Company and Agency associated with the Company's overuse of the Sales Tax Exemption granted by the Approving Resolution due to its misunderstanding of the limitations of such exemption and the increased costs and delays associated with the construction of the Project and disruptions of the operation of the Company that were not anticipated when the Project was approved by the Agency (the "Proposed Consent"); and

WHEREAS, the Agency is willing to consent to the Proposed Consent and ratify the Approving Resolution, 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 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.

Section 3. The Agency hereby approves the Proposed Consent and 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.

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 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 Proposed Consent (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.

Section 6. Resolution 2019-33 remains in full force and effect, except as amended and modified hereby.

Section 7. The authorizations set forth in this Resolution are subject to the conditions that the Applicant 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 8. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution 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 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.

Section 9. No covenant, stipulation, obligation or agreement herein contained or contained in 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 Consent Document shall be liable personally on the Consent Documents or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 10. 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 Consent Documents containing such modifications.

Section 11. 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 Project Agreement or any other Transaction Document or that any such defaults or events of default have been or shall be waived by the Agency.

Section 12. 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
Chris Fusco	VOTING	AYE
John Coumatos	VOTING	AYE
Timothy Williams	VOTING	ABSENT
Reginald A. Spinello	VOTING	ABSTAIN
William H. Rockensies	VOTING	AYE

The foregoing Resolution was thereupon declared duly adopted. .

STATE OF NEW YORK

) SS.:

COUNTY OF NASSAU

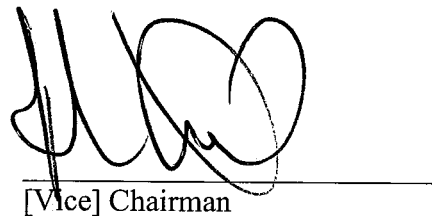
We, the undersigned [Vice] Chairman and [Assistant] Secretary of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on May 26, 2022 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 26th day of May 2022.


[Assistant] Secretary


[Vice] Chairman

(SEAL)