

EGB HOSPITALITY, LLC - SEQRA & 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 February 23, 2023, at 6:45 p.m., local time.

The meeting was called to order by the Chair, upon roll being called, the following members of the Agency were:

PRESENT:

Richard Kessel	Chair
Timothy Williams	Secretary
John Coumatos	Asst. Treasurer
Reginald A. Spinello	Member
William H. Rockensies	Member
Raymond Pinto	Member

NOT PRESENT:

Victor LaGreca	Member
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THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Sheldon L. Shrenkel	Chief Executive Officer/Executive Director
Anne LaMorte	Chief Financial Officer
Colleen Pereira	Administrative Director
Carlene Wynter	Compliance Assistant
Nicole Gil	Administrative Assistant
Ben Ciorra	Director of Operations
Judge Anthony Marano	Agency Counsel
Milan Tyler	Bond/Transaction Counsel
Paul O'Brien	Bond/Transaction Counsel

The attached resolution no. 2023-05 was offered by T. Williams seconded by J. Coumatos.

Resolution No. 2023-05

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND APPROVING
THE ACQUISITION AND STRAIGHT LEASING OF A CERTAIN PROJECT
FOR EGB HOSPITALITY, 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, EGB HOSPITALITY, LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of EGB Hospitality, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, 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 renovation of an existing approximately 35,000 square foot building (the “Building”) located on a parcel of land having an address of 1899 Hempstead Turnpike, East Meadow, Town of Hempstead, Nassau County, New York (the “Land”), and (2) 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 catering, restaurant and event facility constituting a tourism destination project; (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 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(ies) as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, any approval of the Project is contingent upon, among other things, a final determination by the members of the Agency to proceed with the Project following a determination by the Agency that: (A) the public hearing and notice requirements and other procedural requirements contained in the Act relating to the Project and the Financial Assistance have been satisfied; and (B) the undertaking of the Project by the Agency and the granting of the Financial Assistance are and will be in compliance with all other applicable 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 statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Project or the Project Facility (collectively, the “Applicable Laws”); and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on February 8, 2023 to the chief executive officer of the County of Nassau, New York, and of each other affected tax jurisdiction within which the Project Facility is or is to be located; (B) caused notice of the Public Hearing to be published on February 8, 2023 in the Nassau edition of *Newsday*, a newspaper of general circulation available to residents of the County of Nassau, New York; (C) caused the Public Hearing to be conducted on February 21, 2023, at 2:00 p.m., local time, at the Nassau County Executive and Legislative Building, Legislative Chambers (in lieu of the Ceremonial Chambers), 1550 Franklin Avenue, Mineola, Town of Hempstead, Nassau County, New York; (D) caused the Public Hearing to be streamed on the Agency’s website in real-time and caused a recording of the Public Hearing to be posted on the Agency’s website, all in accordance with Section 857 of the Act; and (E) caused a report of the Public Hearing (the “Report”) to be prepared which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, pursuant to SEQRA, the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to undertake the Project; and

WHEREAS, pursuant to SEQRA, to aid the Agency in determining whether the Project may have a significant adverse impact upon the environment, the Agency has completed, received and/or reviewed: (1) the Application; and (2) a Short Environmental Assessment Form (“EAF” and together with the Application, collectively, the “Environmental Information”); and

WHEREAS, prior to making a recommendation about the potential environmental significance of the Project, the Agency has reviewed the Environmental Information, consulted various information sources, and considered the list of activities that are Type I Actions outlined in Section 617.4 of the Regulations, the list of activities that are Type II Actions outlined in Section 617.5 of the Regulations and the criteria for determining significance outlined in Section 617.7 of the Regulations; and

WHEREAS, 6 NYCRR 617.2(ak) of the Regulations states that a Type II action is an action or class of actions identified under 6 NYCRR 617.5; and

WHEREAS, 6 NYCRR 617.5(a) states that actions identified as Type II actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under the SEQRA Act; and

WHEREAS, 6 NYCRR 617.5(c) states that Type II actions not subject to further review under SEQRA include “maintenance or repair involving no substantial changes in an existing structure or facility,” “replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, unless such action meets or exceeds any of the thresholds in section 617.4 of this Part,” the “purchase or sale of furnishings, equipment or supplies, including surplus government property” and “reuse of a residential or commercial structure, or of a structure containing mixed residential and commercial uses, where the residential or commercial use is a permitted use under the applicable zoning law or ordinance” in connection with a project; and

WHEREAS, the Project consists of renovation of the existing Building within its existing footprint and improvements to the interior of the Building to accommodate the installation of the Equipment and the reuse of the Project Facility; and

WHEREAS, the Agency now desires to make its determination to proceed with the Project and to grant the Financial Assistance, subject to the terms hereof; and

WHEREAS, (A) the Applicant will execute and deliver a certain Bill of Sale (the “Bill of Sale to Agency”) to the Agency, pursuant to which the Applicant will convey to the Agency its interest in the Equipment; (B) the Applicant will execute and deliver a Lease Agreement, Sublease Agreement or Project Agreement (the “Project Agreement”) between the Agency and the Applicant, pursuant to which the Agency will grant to the Applicant an interest in the Project Facility and pursuant to which the Agency will appoint to the Applicant as its agent; (C) the Applicant will cause to be executed and delivered a certain Environmental Compliance and Indemnification Agreement (the “Environmental Indemnification”) pursuant to which the Agency will be indemnified from and against certain losses, costs, damages and liabilities; and (D) the Applicant will execute and deliver and/or cause to be executed and delivered certain other certificates, documents, instruments and agreements related to the Project (together with the Bill of Sale to Agency, the Project Agreement and the Environmental Indemnification, collectively, the “Transaction Documents”);

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Based upon the Agency’s review of the Environmental Information, the Agency has made the following findings:

(a) The Project is a Type II action under SEQRA, precluded from further environmental review, because it consists of the “replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes,” the “purchase or sale of furnishings, equipment or supplies, including surplus government property” and “reuse of a residential or commercial structure, or of a structure containing mixed residential and commercial uses,

where the residential or commercial use is a permitted use under the applicable zoning law or ordinance” in connection with a project and does not meet or exceed any threshold for a Type I action.

(b) More specifically, the Project involves the replacement, rehabilitation or reconstruction of a structure or facility, in kind, because it involves interior renovation and rehabilitation of an existing structure with use and occupancy by a type of use permitted within the zoning district occupied by the Land. The Project will not expand the footprint of the Project Facility nor increase or substantially alter environmental impacts associated with the Land. Finally, the Project includes the acquisition of the Equipment in connection with the above.

Section 2. In accordance with Section 859-a of the Act, the Agency has caused to be prepared a written cost-benefit analysis with respect to the Project and the granting of the Financial Assistance (the “Analysis”). The Agency has reviewed the Application, the Analysis and the Report and, based upon the representations made by the Applicant to the Agency and the facts and information obtained by the Staff of the Agency and reported to and reviewed by the members of the Agency at this meeting (including, without limitation, the facts and information set forth in the Staff Review of the Application), the Agency has reviewed and assessed all material information necessary to afford a reasonable basis for the Agency to make a determination to approve the Financial Assistance. In addition, the Agency makes the following findings and determinations with respect to the Project:

(a) based on the proposed use of the Project Facility as set forth in the Application, the economic effects of the Project on the area in which it is situated including the prevention of economic deterioration, the job opportunities to be created and/or maintained by the Project, the Project will constitute a commercial facility and, therefore, the Project constitutes a “project” within the meaning of the Act;

(b) the granting of the Financial Assistance by the Agency to the Applicant is necessary to induce the Applicant to proceed with the Project;

(c) there is a likelihood that the Project would not be undertaken but for the granting of the Financial Assistance by the Agency to the Applicant;

(d) the completion of the Project Facility by the Applicant as agent of the Agency, the granting of an interest therein by the Agency to the Applicant and the operation thereof by the Applicant will not result in the removal of a facility or plant of the Applicant or any other proposed user, occupant or tenant of the Project Facility from one area of the State of New York (the “State”) to another area of the State or in the abandonment of one or more plants or facilities of the Applicant or any other proposed user, occupant or tenant of the Project Facility located within the State (but outside of Nassau County). Therefore, the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Financial Assistance by the Agency to the Applicant;

(e) the Project will serve the public purposes of the Act by preserving permanent, private sector jobs and increasing the overall number of permanent, private sector jobs in the State;

(f) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State, nor shall any funds of the Agency be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media;

(g) the granting of the Financial Assistance by the Agency with respect to the Project will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Nassau County, New York and the State, will improve their standard of living, and will prevent unemployment and economic deterioration, and thereby serves the public purposes of the Act; and

(h) although the Project Facility may constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, the Project Facility is likely to attract a significant number of visitors from outside the economic development region in which the Project Facility is located and, therefore, is a "tourism destination" project as that term is used in the Act. For purposes of this representation, "retail sales" shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section 1101 of the New York Tax Law; or (ii) sales of a service to such customers..

Section 3. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Chief Executive Officer/Executive Director and the staff of the Agency with respect to the Application and the Public Hearing, including, without limitation, (a) those actions required to ensure full compliance with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Project, and (b) the appointment of the law firm of Phillips Lytle LLP, Garden City, New York, as Special Counsel to the Agency with respect to all matters in connection with the Project.

Section 4. 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 Project.

Section 5. Having considered fully all comments received at the Public Hearing or otherwise in connection with the Project, the Agency hereby further determines to proceed with the Project and the granting of the Financial Assistance.

Section 6. The Agency hereby approves the Applicant as the lessee/sublessee under the Project Agreement and hereby approves the Applicant as the recipient of the Financial Assistance.

Section 7. Based upon the representation and warranties made by the Applicant in the Application, and subject to the provisions of this Resolution, the Agency hereby authorizes and approves the Company, as its agent, to make leases and purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in an aggregate amount of up to \$4,000,000, which result in New York State and local sales and use tax exemption benefits not to exceed \$345,000.

Section 8. The Agency is hereby authorized to (a) acquire an interest in the Project Facility pursuant to the Bill of Sale to Agency and the other Transaction Documents, (b) grant an interest in the Project Facility pursuant to the Project Agreement and the other Transaction Documents, (c) grant the aforementioned Financial Assistance, and (d) do all things necessary, convenient or appropriate for the accomplishment thereof. All acts heretofore taken by the Agency with respect to the foregoing are hereby approved, ratified and confirmed.

Section 9. The form and substance of the Project Agreement, the Bill of Sale to Agency, the Environmental Indemnification and the other Transaction Documents, in the forms used by the Agency with respect to prior projects, together with such changes as the Chairman, the Vice Chairman or the Chief Executive Officer/Executive Director may hereafter deem necessary or appropriate, are hereby approved. The Chairman, the Vice Chairman, the Chief Executive Officer/Executive Director, the Chief Operating Officer and the Administrative Director are hereby authorized, on behalf of the Agency, acting together or individually, to execute and deliver the Project Agreement and the other Transaction Documents, and any document with or in favor of the Bank to which the Agency is a party, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The execution and delivery of each such agreement, approval and consent by such person(s) shall be conclusive evidence of such approval.

Section 10. The Chairman, the Vice Chairman, the Chief Executive Officer/Executive Director, the Chief Operating Officer and the Administrative Director of the Agency are hereby further authorized, on behalf of the Agency, acting together or individually, to designate any additional Authorized Representatives (as defined in the Project Agreement) of the Agency.

Section 11. The officers, employees and agents of the Agency are hereby authorized and directed, acting individually or jointly, for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Transaction Documents, to execute and deliver all such additional certificates, instruments, agreements and documents, to pay all such fees, charges and expenses, and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, convenient or appropriate to effect the purposes of this Resolution and to cause compliance with all of the terms, covenants and provisions of the Transaction Documents to which the Agency is a party or which are binding on the Agency.

Section 12. The Agency recognizes that due to the complexities of the proposed transaction it may become necessary that certain of the terms approved hereby may require modifications from time to time which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, the Vice Chairman and Chief Executive Officer/Executive Director of the Agency, acting individually or jointly, to approve modifications to the terms approved hereby which do not affect the intent and

substance of this Resolution. The approval of such modifications shall be evidenced by the certificate of determination of an Agency officer or the execution and delivery by some or all such Agency officers of relevant documents containing such modified terms.

Section 13. The members of the Agency acknowledge the terms and conditions of Section 875(3) of the Act and the duties and obligations of the Agency thereunder with respect to granting of State Sales and Use Taxes (as such term is defined in Section 875 of the Act) with respect to the Project. The members hereby direct the officers of the Agency to comply with such terms and conditions with respect to the Project and hereby direct Special Counsel to the Agency to include such terms and conditions in all relevant Transaction Documents.

Section 14. The Chairman, the Vice Chairman, the Chief Executive Officer/Executive Director, the Chief Operating Officer and the Administrative Director of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Applicant and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 15. This Resolution shall take effect immediately and shall be effective for one hundred eighty (180) days from the date of its adoption.

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
John Coumatos	VOTING	Aye
Timothy Williams	VOTING	Aye
Reginald A. Spinello	VOTING	Aye
William H. Rockensies	VOTING	Aye
Raymond Pinto	VOTING	Aye
Victor LaGreca	EXCUSED	

The foregoing Resolution was thereupon declared duly adopted.

Doc #1620517.1

STATE OF NEW YORK

) SS.:

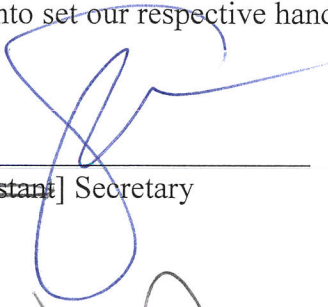
COUNTY OF NASSAU

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 February 23, 2023 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 24th day of February 2023.



~~[Assistant]~~ Secretary



~~[Vice]~~ Chairman

(SEAL)