

Hempstead Properties LLC - 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 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. 2023-10 was offered by R. Spinello, seconded by R. Kessel.

Resolution No. 2023 - 10

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND APPROVING
CERTAIN MATTERS IN CONNECTION WITH 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 “Facility”); (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 2004 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 (the "2004 Indenture") by and between the Agency and The Bank of New York, as trustee (in such capacity, the "Trustee"), securing the Series 2004 Bonds; and

WHEREAS, the Series 2004 Bonds were initially secured by an irrevocable direct pay letter of credit (the "Original 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 credit enhancement and liquidity support for the Series 2004 Bonds to replace the Original Letter of Credit; and

WHEREAS, the Agency and the Trustee entered into a Supplemental Indenture of Trust dated as of December 1, 2006 (the "Supplemental Indenture"), pursuant to which (i) all of the terms of the 2004 Indenture were amended, modified, superseded, subsumed into and restated pursuant to the terms of an Amended and Restated Indenture of Trust dated as of December 1, 2006 (the "2006 Indenture"), by and between the Agency and the Trustee, and (ii) the Agency executed and the Trustee authenticated substitute bonds in place of the Series 2004 Bonds, incorporating the amendments contemplated by the Supplemental Indenture (the "Substitute Series 2004 Bonds"); and

WHEREAS, the Company 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 (as defined in the 2006 Indenture) has been issued by Fannie Mae, in favor of the Trustee for the benefit of the Holders of the Substitute Series 2004 Bonds to secure the payment of the principal or Redemption Price of (other than redemption premium), Purchase Price, and interest on the Substitute Series 2004 Bonds; and

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

WHEREAS, the Agency appointed the Company as agent of the Agency to undertake the acquisition, construction, installation and equipping of the Facility and to lease the Facility to the Company, and the Company acted 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 Company and Agency, and in the other Security Documents (as defined in the 2004 Indenture); and

WHEREAS, the Agency and the Company entered into an Amended and Restated Lease Agreement, dated as of December 1, 2006, in connection with the execution and delivery of the 2006 Indenture, and an Amendment No. 1 to Amended and Restated Lease Agreement dated as of November 16, 2021, each between the Agency and the Company (collectively, the “Lease Agreement”), in connection with the execution and delivery of the 2006 Indenture; and

WHEREAS, pursuant to a notification and consent request letter from the Company dated January 13, 2023 (the “Consent Request”), the Company has requested that the Agency consent to the purchase by B.F.J. Properties LLC (“BFJ”), a current member of the Company, of all of the membership interests in the Company currently held by Hempstead Holdings LLC (“Holdings”) and the amendment of the Lease Agreement and the other Security Documents required to effectuate such transfer (collectively, the “Transfer Transaction”); and

WHEREAS, no additional Financial Assistance is being requested by the Company 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 Agreement.

Section 2. The Agency hereby ratifies, confirms and approves actions heretofore taken by the Chief Executive Officer/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 Company’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 Company with respect to the Transfer Transaction, 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 Company 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 Transfer Transaction.

Section 7. The Agency hereby determines to proceed with the Transfer Transaction as set forth in the Consent Request, subject to the provisions of this Resolution.

Section 8. The execution and delivery of the documents, instruments and agreements required to effectuate the Transfer 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 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 9. The Chairman, Vice Chairman, Chief Executive Officer/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 10. The authorizations set forth in this Resolution are subject to the conditions that the Company shall pay the Agency's consent and amendment fee in the amount of \$6,000 and shall reimburse the Agency for all actual costs and expenses incurred by the Agency in connection with the transactions contemplated herein, including, without limitation, all reasonable attorneys' fees and disbursements incurred by the Agency, including without limitation, the fees and expenses of Special Counsel, Phillips Lytle LLP.

Section 11. 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 Facility or the sale or liquidation of the 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 12. 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 13. Notwithstanding any provision in the Lease Agreement or any other Security Document 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 Agreement or any other Security Document or that any such defaults or events of default have been or shall be waived by the Agency.

Section 14. The Chairman, Vice Chairman, Chief Executive Officer/Executive Director and Administrative Director of the Agency, acting individually or jointly, are hereby authorized and directed to distribute copies of this Resolution to the Applicant and such other parties as any such officer may determine.

Section 15. 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
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.

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 23rd day of February 2023.



[Assistant] Secretary

[Vice] Chairman

(SEAL)