

AMENDMENT NO. 1 TO PILOT AGREEMENT

THIS AMENDMENT NO. 1 TO PILOT AGREEMENT (this "Amendment") dated as of December 1, 2020 (the "Effective Date"), by and between the NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at One West Street, Mineola, NY 11501 (the "Agency"), and to JS Commercial Realty Corp., 585 Brook Realty LLC, Brook Street Realty LLC and 557-563-579 Brook Realty LLC, each having an office at 385 Brook Street, Garden City, NY 11530 (collectively, the "Companies").

W I T N E S S E T H:

WHEREAS, SEVIROLI FOODS, INC., a corporation duly organized and existing under the laws of the State of New York, having an office at 385 Brook Street, Garden City, NY 11530 (the "Applicant") submitted an application for financial assistance (the "Application") to the Agency requesting that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in those certain parcels of land located at 585 Brook Street, 10 Commercial Avenue, 600 Commercial Avenue, 620 Commercial Avenue, 601 Brook Street and 557-563-579 Brook Street in the Village of Garden City, Town of Hempstead, Nassau County, New York (collectively, the "Land"), (2) the renovation of the existing buildings and other structures on the Land (collectively, the "Building") together with related improvements to the Land, and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (collectively, the "Equipment"), all of the foregoing for use as manufacturing, warehousing and office facilities of the Applicant (collectively, the "Project Facility"); (B) 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 real property taxes, sales and use taxes and mortgage recording taxes; and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Companies or such other entity(ies) as may be designated by the Companies and agreed upon by the Agency; and

WHEREAS, the Agency appointed the Companies 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 Companies, all pursuant to the terms and conditions set forth in the Sublease Agreement dated as of November 1, 2018 between the Companies and the Agency (as amended to date, the "Lease"), and the other Transaction Documents (as defined in the Lease); and

WHEREAS, the Applicant has requested that the Agency consent to the amendment of the Lease and the other Transaction Documents to allow the Applicant to employ no less than two-hundred-twenty-three (223) full-time equivalent employees for the three (3) years after the Closing Date; and

Whereas, on July 9, 2020, the Agency approved the request to allow the Companies to employ no less than two-hundred-twenty-three (223) full-time equivalent employees for the three (3) years after the Closing Date to correct a scrivener's error regarding the number of jobs maintained by the Companies prior to receiving Agency benefits, said error not reducing the number of the new jobs to be created by the Companies; and

WHEREAS, the Company has requested that the Agency consent to the amendment of the PILOT Agreement to permit the Company, during the final three (3) years of the term of PILOT Agreement, to have the right to institute judicial or other review of the assessed value of the real property with respect to the Facility, whether pursuant to the provisions of Article 7 of the RPTL or other applicable law, as the same may be amended from time to time; provided, however, that no such judicial or other review or settlement thereof shall have any effect on the Company's obligations under the PILOT Agreement, including, without limitation, the Company's obligation to make the PILOT Payments when due. Such judicial or other review shall only be for purposes of setting the assessed value of the Facility as though the Facility was on the tax rolls of each Taxing Entity as taxable real property but shall have no effect on this Agreement or the tax-exempt status of the Facility during the term of the PILOT Agreement; and

Whereas, on November 19, 2020, the Agency approved the request to Amend the PILOT Agreement to permit the Company, during the final three (3) years of the term of PILOT Agreement, to have the right to institute judicial or other review of the assessed value of the real property with respect to the Facility, whether pursuant to the provisions of Article 7 of the RPTL or other applicable law, as the same may be amended from time to time; provided, however, that no such judicial or other review or settlement thereof shall have any effect on the Company's obligations under the PILOT Agreement, including, without limitation, the Company's obligation to make the PILOT Payments when due, provided that such judicial or other review shall only be for purposes of setting the assessed value of the Facility as though the Facility was on the tax rolls of each Taxing Entity as taxable real property but shall have no effect on this Agreement or the tax-exempt status of the Facility during the term of the PILOT Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Companies and the Agency mutually covenant, warrant and agree as follows:

SECTION 1. DEFINITIONS.

SECTION 1.1 Interpretation. For purposes of this Amendment, unless otherwise defined herein, all capitalized terms used herein including, but not limited to, those capitalized terms used and/or defined in the recitals hereto, shall have the respective meanings assigned to such terms in the Transaction Documents.

SECTION 2. AMENDMENTS.

SECTION 2.1 Waiver of Tax Exemption. The second paragraph in Section 7 of the PILOT Agreement is hereby amended, in full, as follows:

The Obligor, in recognition of the benefits provided under this Agreement and the Lease Agreement, hereby expressly waives the right to institute judicial or other review of an assessment of the real property with respect to the Facility, whether pursuant to the provisions of Article 7 of the RPTL or other applicable law, as the same may be amended from time to time, with respect to any fiscal tax year from and after the PILOT Commencement Date. Notwithstanding the foregoing, during the final three (3) years of the term of this Agreement, said final year being 2039, the Obligor shall have the right to institute judicial or other review of the assessed value of the real property with respect to the Facility, whether pursuant to the provisions of Article 7 of the RPTL or other applicable law, as the same may be amended from time to time; provided, however, that no such judicial or other review or settlement thereof shall have any effect on the Obligor's obligations under this Agreement, including, without limitation, the Obligor's obligation to make the PILOT Payments when due. Such judicial or other review shall only be for purposes of setting the assessed value of the Facility as though the Facility was on the tax rolls of each Taxing Entity as taxable real property but shall have no effect on this Agreement or the tax-exempt status of the Facility during the term of this Agreement. Commencing in 2037, the Obligor shall have the right to include in their tax certiorari proceedings challenges to tax assessments prior to 2039 without violating the terms of this Agreement. In case, however, shall the Obligor be entitled to any reduction in payments made pursuant to this Agreement, there shall be no retroactive credit to the Obligor and no modification of any remaining PILOT payments required hereunder.

SECTION 3. CONDITIONS.

SECTION 3.1 Conditions Precedent. This Amendment shall only become effective upon the fulfillment, prior to or contemporaneously with the delivery hereof, of the following conditions precedent:

(A) the execution and delivery by the Companies and the Agency of an original or counterparts of this Amendment;

(B) the Companies shall deliver such other documents, instruments and agreements as the Agency may reasonably require in connection with the transactions contemplated by this Amendment;

(C) all other documents and legal matters in connection with this Amendment and the transactions contemplated by the PILOT Agreement as amended by this Amendment shall be satisfactory in form and substance to the Agency; and

(D) the Companies shall pay the Agency's consent and amendment fee in the amount of \$1,000 and shall pay all reasonable fees and expenses (including reasonable attorneys' fees and expenses) incurred by the Agency in connection with the preparation, execution and delivery of this Amendment and the closing of the transactions contemplated hereby.

SECTION 4. MISCELLANEOUS.

SECTION 4.1 Representations and Warranties.

(A) All terms, conditions, covenants, representations and warranties of the Companies contained in the Transaction Documents, except as expressly modified hereby, are ratified, confirmed and reaffirmed by the Companies as of the date hereof, remain in full force and effect as of the date hereof, and are subject to the terms of this Amendment.

(B) The Companies represent and warrant to the Agency that it has the necessary power and has taken all necessary action to make this Amendment the valid and enforceable obligation it purports to be, and that this Amendment constitutes the legal, valid and binding obligation of the Companies, enforceable against the Companies in accordance with its terms.

(C) The Companies represents and warrants to the Agency that no Event of Default specified in any of the Transaction Documents has occurred that remains uncured and, to the Companies' knowledge, no event which with notice or lapse of time or both would become such an Event of Default has occurred and is continuing.

(D) Neither the Companies nor any Affiliate of the Companies has employed or retained any appointed or elected government official to solicit or secure the Agency's agreement to enter into this Amendment upon an agreement or understanding for a commission or percentage, brokerage or contingent fee.

SECTION 4.2 Additional Matters. All other documents and legal matters in connection with this Amendment and the transactions contemplated by the PILOT Agreement as amended by this Amendment shall be satisfactory in form and substance to the Agency.

SECTION 4.3 Survival of Representations and Warranties. All representations and warranties made in this Amendment or any other document furnished in connection with this Amendment shall survive the execution and delivery of this Amendment and no investigation by the Agency or any closing shall affect the representations and warranties or the right of the Agency to rely upon them.

SECTION 4.4 Reference to PILOT Agreement. The PILOT Agreement, the Transaction Documents and any and all other agreements, documents, or instruments heretofore, now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the PILOT Agreement, as amended hereby, are hereby amended so that any reference in the PILOT Agreement, the Transaction Documents or such other agreements, documents or instruments executed in connection with the PILOT Agreement shall mean a reference to the PILOT Agreement, as amended hereby.

SECTION 4.5 Governing Law. This Amendment, the transactions described herein and the obligations of the parties hereto shall be construed under, and governed by, the laws of the

State of New York, as in effect from time to time, without regard to principles of conflicts of laws.

SECTION 4.6 Successors and Assigns. The Companies and the Agency, as such terms are used herein, shall include the legal representatives, successors and assigns of those parties.

SECTION 4.7 Counterparts; Electronic Transmission. This Amendment may be executed in any number of counterparts and by the Companies and the Agency on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same Amendment. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or email shall be effective as delivery of a manually executed counterpart of this Amendment. This Amendment may be modified only by a written agreement signed by Authorized Representatives of the Companies and the Agency.

SECTION 4.8 Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

SECTION 4.9 Conflicting Provisions. In the event of any conflict in the terms and provisions of this Amendment and the terms and provisions of the PILOT Agreement, the terms and provisions of this Amendment shall govern.

SECTION 4.10 No Waiver. Except as expressly provided herein, this Amendment shall not be construed to be a waiver or modification, express or implied, of any of the terms or provisions of the Lease, the PILOT Agreement, the PILOT Mortgage, any other Transaction Document or any other agreement, document or instrument executed and/or delivered in connection with any of the foregoing, or of any of the Agency's rights thereunder, all of which are and shall remain in full force and effect, nor to result in a loss of priority of the lien of the PILOT Mortgage over the rights of any junior lienor. This Amendment shall not be construed to constitute a consent to other or further action by the Companies or to entitle the Companies to any other consent.

SECTION 4.11 Entire Agreement. This Amendment constitutes the entire agreement and understanding between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior negotiations, understandings, and agreements between such parties with respect to such transaction.

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IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto as of the day and year first above written.

Companies:

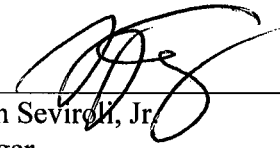
JS COMMERCIAL REALTY CORP.

By: _____


Joseph Seviroli, Jr.
President

585 BROOK REALTY LLC

By: _____


Joseph Seviroli, Jr.
Manager

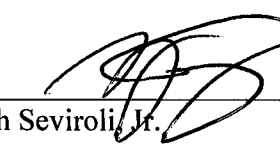
BROOK STREET REALTY LLC

By: _____


Joseph Seviroli, Jr.
Authorized Signatory

557-563-579 BROOK REALTY LLC

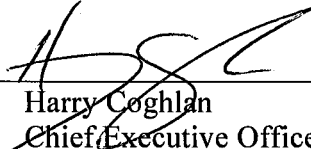
By: _____


Joseph Seviroli, Jr.
Manager

Agency:

NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____


Harry Coghlan
Chief Executive Officer/Executive Director

[NCIDA/ Seviroli - Signature Page to Amendment No. 1 to PILOT Agreement]

STATE OF)
)SS.:
COUNTY OF)

On the 30 day of November, 2020, before me, the undersigned, personally appeared Joseph Seviroli, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Catherine Gallo

Notary Public

CATHERINE GALLO
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN NASSAU COUNTY
LIC. # 01GA4951930
COMM. EXP. 6-5-2023

STATE OF NEW YORK)
)SS.:
COUNTY OF NASSAU)

On the 30 day of November, 2020, before me, the undersigned, personally appeared Harry Coghlan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Catherine Gallo

Notary Public

CATHERINE GALLO
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN NASSAU COUNTY
LIC. # 01GA4951930
COMM. EXP. 6-5-2023

[NCIDA/ Seviroli Acknowledgement Page to Amendment No. 1 to PILOT Agreement]

STATE OF)
)SS.:
COUNTY OF)

On the ____ day of December, 2020, before me, the undersigned, personally appeared **Joseph Seviroli, Jr.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
)SS.:
COUNTY OF NASSAU)

On the 10th day of December, 2020, before me, the undersigned, personally appeared **Harry Coghlan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

JOHN J ANZALONE
NOTARY PUBLIC STATE OF NEW YORK
SUFFOLK COUNTY
LIC# 02AN6258008
COMM. EXP. MARCH 12, 2024

 Notary Public