

## Midtown North Hills Approving Resolution

A regular meeting of the Nassau County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency at 1550 Franklin Avenue, Suite 235, Mineola, Nassau County, New York, on December 5, 2013 at 5:00 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:

Timothy Williams	Chairman
John Coumatos	Vice Chairman
Gary Weiss	Secretary
Christopher Fusco	Asst. Secretary

### ABSENT:

John T. Ahern

### THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Joseph J. Kearney	Executive Director
Joseph Foarile	Chief Financial Officer
Colleen Pereira	Administrative Director
Nicholas Terzulli	Director of Business Development
Mary Dolan Grippo	Chief Marketing Officer
Edward Ambrosino, Esq.	General Counsel
Paul O'Brien, Esq.	Bond/Transaction Counsel

The attached resolution no. 2013-71 was offered by G. Weiss, seconded by J. Coumatos:

Resolution No. 2013-71

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND APPROVING THE  
ACQUISITION AND STRAIGHT LEASING OF A CERTAIN PROJECT  
FOR RXR NORTH HILLS PHASE I OWNER 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 I 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, Midtown North Hills, LLC, an affiliate of RXR North Hills Phase I Owner LLC (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 two parcels of land, which in the aggregate comprise approximately 2.44 acres of land, located at 85-95 Long Island Expressway South Service Road, Incorporated Village of North Hills, Town of North Hempstead, County of Nassau, New York (currently Section: 08; Block: A; Lots: 0892U, 0893U, and parts of 0897B and 0897C) (collectively, the “Land”), (2) the construction of two (2) pairs of 4-story buildings on the Land above one level of parking, together with related improvements to the Land (collectively, the “Building”), and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the “Equipment”), all of the foregoing for use by the Applicant as a residential facility comprised of approximately 124 apartment units, of which not less than 60 apartment units shall initially be rental units (collectively, the “Project Facility”); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing; 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 (collectively, the “Project”); and

WHEREAS, in accordance with Section 859-a of the Act, any approval of the Project is contingent upon, inter alia, a 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 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, SEQRA (as hereinafter defined), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Project (collectively, "Applicable Laws"); and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant 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 November 21, 2013 to the chief executive officer of Nassau County, 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 November 23, 2013 in the Nassau edition of Newsday, a newspaper of general circulation available to residents of the Village of North Hills and the County of Nassau, New York; (C) conducted the Public Hearing on December 4, 2013 at 10:00 a.m., local time, at Village Hall, One Shelter Rock Road, Incorporated Village of North Hills, Town of North Hempstead, Nassau County, New York; and (D) prepared a report of the Public Hearing (the "Report") which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the appropriate personnel of the Agency reviewed the environmental assessment form and other materials submitted by the Applicant and made any necessary comments to members of the Agency, and by resolution of the members of the Agency adopted immediately prior to the adoption hereof, the Agency adopted the Findings Statement and Minutes of the Board of Trustees of the Incorporated Village of North Hills; 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 bargain and sale deed or company lease to the Agency, pursuant to which the Applicant will convey an interest in the Land and the Building to the Agency (the "Conveyance Instrument"), (B) 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, (C) the Applicant will execute and deliver a Sublease Agreement (the "Lease") between the Agency and the Applicant, pursuant to which the Agency will grant to the Applicant a leasehold interest in the

Project Facility, (D) 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, (E) the Applicant will execute and deliver or cause to be executed and delivered a certain Payment in Lieu of Taxes Agreement (the “PILOT Agreement”) to the Agency, and, to secure the obligations thereunder, a certain Mortgage and Assignment of Leases and Rents in favor of the County of Nassau, New York (the “PILOT Mortgage”), and (F) 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 Conveyance Instrument, the Bill of Sale to Agency, the Lease, the Environmental Indemnification, the PILOT Agreement and the PILOT Mortgage, collectively, the “Transaction Documents”); and

WHEREAS, due to the complex nature of the condominium development involved in the Project Facility, the Applicant has advised the Agency that the precise boundaries of the Land and the unit configuration of the condominium units thereon will change to a small extent; and

WHEREAS, due to such complexity and contemplated changes, the Applicant has requested that (i) the PILOT Agreement provide for payments in lieu of taxes equal to the otherwise applicable real estate taxes and assessments, and (ii) the Applicant be permitted to appear again before the Agency requesting financial assistance in the form of an amendment to the PILOT Agreement to phase-in the anticipated increase in real estate taxes and assessments applicable to up to sixty (60) of said rental condominium units, together with the appropriate revisions to the Transaction Documents; and

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

Section 1. The Agency has reviewed the Application and the Report and, based solely 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 the members of the Agency at this meeting, the Agency hereby 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, the employment reasonably expected 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 by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Applicant to undertake the Project in Nassau County, New York;

(c) the Applicant would not undertake the Project in Nassau County, New York, without the granting of the Financial Assistance by the Agency;

(d) the completion of the Project Facility, the lease thereof 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 or occupant 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 or occupant of the Project Facility located within the State (but outside of Nassau County);

(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 and improve their standard of living, and thereby serve the public purposes of the Act;

(h) there is a shortage of full-service, single-story homes with amenities targeted to the empty nester and retiree market in the County to satisfy the needs of the residents within the County; and the Project will help to alleviate such shortage of housing facilities; and

(i) in the absence of facilities such as the Project Facility, empty nester and retiree residents of the County may be forced to relocate out of the County to find the housing and amenities that would be provided by the Project Facility. Facilities such as the Project Facility will help prevent the migration of such persons from the County and thereby support the local economy.

Section 2. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the 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 3. 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 4. Having considered fully all comments received at or in connection with the Public Hearing, the Agency hereby further determines to proceed with the Project and the granting of the Financial Assistance.

Section 5. The Agency hereby approves the Applicant as the lessee/sublessee under the Lease with the Agency and as the recipient of the Financial Assistance. The Agency further authorizes the Applicant to sub-lease portions of the Project Facility in accordance with and subject to the terms of the Lease.

Section 6. The Agency is hereby authorized to (a) acquire an interest in the Project Facility pursuant to the Conveyance Instrument, the Bill of Sale to Agency and the other Transaction Documents, (b) grant a leasehold interest in the Project Facility pursuant to the Lease and the other Transaction Documents, (c) grant the aforementioned Financial Assistance, (d) execute the PILOT Mortgage for the sole purpose of encumbering its fee interest in the Project Facility to secure the performance by the Applicant of its obligations under the PILOT Agreement, (e) execute one (1) or more fee and leasehold mortgage, assignment of rents and leases, and security agreements in favor of such bank or financial institution as the Applicant may determine (such bank or financial institution, the "Bank"), encumbering the Project Facility, solely to subject to the lien thereof its fee interest in the Project Facility, all to secure a loan made by such Bank to the Applicant, and (f) 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 7. The form and substance of the Conveyance Instrument, the Bill of Sale to Agency, the Lease, the Environmental Indemnification, the PILOT Agreement, the PILOT Mortgage 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 Executive Director may hereafter deem necessary or appropriate, are hereby approved. The Chairman, the Vice Chairman, the Executive Director and the Administrative Director are hereby authorized, on behalf of the Agency, acting together or individually, to execute and deliver the Conveyance Instrument, the Lease, the PILOT Agreement, the PILOT Mortgage, 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 8. The Chairman, the Vice Chairman, the Executive Director 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 Lease) of the Agency.

Section 9. 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 10. 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, Vice Chairman or Executive Director of the Agency 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 11. 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 12. The Chairman, the Vice Chairman, the Executive Director 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 13. This Resolution shall take effect immediately and shall be effective for ninety (90) 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:

Timothy Williams	VOTING	Aye
John Coumatos	VOTING	Aye
Gary Weiss	VOTING	Aye
Christopher Fusco	VOTING	Aye
John T. Ahern	EXCUSED	

The foregoing Resolution was thereupon declared duly adopted.



