

Mineola Properties Amendment 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, Mineola, Nassau County, New York, on January 28, 2016, at 5:45 p.m. local time.

The meeting was called to order by the Chairman and, 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
Michael Rodin	

NOT PRESENT:

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
Edward Ambrosino, Esq.	General Counsel
Paul O'Brien, Esq.	Bond/Transaction Counsel

Rodin: The attached resolution no. 2016-02 was offered by C. Fusco, seconded by M.

Resolution No. 2016-02

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING CERTAIN AMENDMENTS IN CONNECTION WITH ITS STRAIGHT-LEASE TRANSACTION WITH MINEOLA 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 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, Mineola Properties LLC, a limited liability company duly organized and existing under the laws of the State of New York (the "Company"), presented an application (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 an approximately 1.3 acre parcel of land located at 250 Old Country Road, Incorporated Village of Mineola, Town of North Hempstead, County of Nassau, New York (Section: 9; Block: 675; Lots: 2A & 2B) (collectively, the "Land"), (2) the demolition of the existing structures on the Land, (3) the construction of an approximately 350,000 square foot building on the Land, together with underground parking and other related improvements to the Land (collectively, the "Building"), and (4) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all of the foregoing for use by the Company as a residential rental facility consisting of approximately 315 units, at least ten percent (10%) of which units shall be affordable 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, including potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes; and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Company executed and delivered or cause to be executed and delivered to the Agency (A) a certain company lease agreement dated as of July 1, 2013 (as amended to date, the "Company Lease") between the Company and the Agency, which conveyed to the Agency a leasehold interest in and to the Premises (as defined in the hereinafter defined Lease), (B) a certain bill of sale dated July 26, 2013 (the "Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of the Company in and to the Equipment and

(C) a certain sublease agreement dated as of July 1, 2013 (as amended to date, the "Lease") between the Company and the Agency, which conveyed to the Company a subleasehold interest in and to the Premises; and

WHEREAS, the Company and the Agency entered into a Regulatory Agreement dated as of July 1, 2013, between the Company and the Agency (as amended to date, the "Regulatory Agreement"), pursuant to which the Company agreed to develop and maintain not less than thirty-two (32) residential rental units in the Project Facility as "Affordable Units" (as such term is used in the Regulatory Agreement); and

WHEREAS, the Company has requested that the Agency consent to the amendment of certain terms of the Lease to: (i) permit the Company to sub-sublease an approximately 3,700 square foot portion of the ground floor of the Project Facility to Citibank N.A. ("Citibank") for use by Citibank as a bank branch, (ii) permit the Company to sub-sublease an approximately 1,700 square foot portion of the ground floor of the Project Facility to a tenant to be determined for use by such tenant as a coffee shop or similar establishment, and (iii) authorize the Executive Director to consent to further sub-subleasing of the foregoing portions of the ground floor of the Project Facility (the "Retail Space") from time to time, subject to applicable laws and the policies of the Agency; and

WHEREAS, the Agency is willing to consent to such requests, subject to the terms of this resolution; and

WHEREAS, the Company has represented to the Agency that the foregoing sub-subleases will result in the elimination of four (4) residential units in the Project Facility but that the Project Facility will continue to have thirty-two (32) residential rental units constructed and operated as Affordable Units as set forth in the Regulatory Agreement; and

WHEREAS, the Company has further represented to the Agency that the foregoing sub-subleases will result in a de minimis change in the net operating income of the property and, therefore, is requesting that no change be made to the schedule of payments under the PILOT Agreement (as defined in the Lease); and

WHEREAS, the Company has further represented to the Agency that the foregoing sub-subleases do not and will not cause the Project Facility to 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; and

WHEREAS, the Board of Trustees of the Incorporated Village of Mineola (the "Board"), as lead agency, determined that the Project is a Type I action 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"), undertook a coordinated review of the Project, and on August 8, 2012, resolved that the Project would not have a significant impact on the environment and issued a

detailed Amended Negative Declaration based upon information developed by the Applicant; and

WHEREAS, the Agency, as an involved agency, upon its independent review of the record, adopted and agreed to be bound by the Amended Negative Declaration issued by the Board pursuant to a resolution adopted by the members of the Agency on March 21, 2013;

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

1. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Lease.
2. The Agency acknowledges that the Board has not made any change to its previously adopted Amended Negative Declaration in connection with the above-referenced requests and hereby determines that the Company's requests with respect to a previously approved and materially 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.
3. No additional "financial assistance" is being requested by the Company with respect to the transactions contemplated by this Resolution and therefore no public hearing of the Agency is required pursuant to Section 859-a of the Act.
4. 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 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.
5. The Agency hereby determines that the requested sub-subleases do not and will not cause the Project Facility to 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.
6. The Agency hereby consents to the requests of the Company described above, subject, however, to the delivery of evidence satisfactory to the Executive Director that (i) the Company is in compliance with its employment and employment reporting obligations under the Transaction Documents, and (ii) the Company is not in default of any payment or other obligation under the Transaction Documents. The execution and delivery of the First Amendment to Sublease Agreement (the "Sublease Amendment"), being substantially in the form presented to the Agency at this meeting, are hereby authorized and approved. The Chairman, Executive Director and Administrative Director of the Agency are each hereby

authorized to execute, acknowledge and deliver the Sublease Amendment. The execution and delivery of the Sublease Amendment by any one of said officers shall be conclusive evidence of due authorization and approval.

7. The Chairman, 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 to execute and deliver any and all consents, agreements, papers, instruments, opinions, certificates, affidavits and other documents required in connection with the Sublease Amendment (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.

8. The authorizations set forth in this Resolution are subject to the condition that the Company 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 fee and all reasonable attorneys' fees and disbursements incurred by the Agency, including without limitation, the fees and expenses of Special Counsel, Phillips Lytle LLP.

9. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution, the Sublease Amendment 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, the Sublease Amendment 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 Project Facility or the sale or liquidation of the Project Facility or revenues therefrom.

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

10. The Chairman, Executive Director and Administrative 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 Sublease Amendment and the Consent Documents containing such modifications. Furthermore, the Executive Director is authorized to consent to further sub-subleasing of the Retail Space from time to time.

11. 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:

Timothy Williams	VOTING	Aye
John Coumatos	VOTING	Aye
Gary Weiss	VOTING	Aye
Christopher Fusco	VOTING	Aye
Michael Rodin	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 January 28, 2016 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 28th day of January 28, 2016.



[~~Assistant~~] Secretary



[~~Vice~~] Chairman

(SEAL)