

Sleepy's Consent 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
Christopher Fusco	Asst. Secretary
Gary Weiss	Secretary
Michael Rodin	

NOT PRESENT:

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

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

The attached resolution no. 2016-01 was offered by G. Weiss, seconded by C. Fusco:

Resolution No. 2016-01

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY AUTHORIZING CERTAIN
MATTERS IN CONNECTION WITH ITS STRAIGHT-LEASE
TRANSACTION WITH SLEEPY'S, 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, on or about May 15, 2006, Sleepy's, LLC, a limited liability company organized and existing under the laws of the State of Delaware (successor in interest to Sleepy's, Inc., a corporation organized and existing under the laws of the State of New York) (the "Applicant" or "Sublessee"), presented an application (as amended, the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting, *inter alia*, of the following: (A) (1) the acquisition of an interest in an approximately 18.88 acre parcel of land located at 1000 Oyster Bay Road including certain adjoining property, all located in Hicksville, Town of Oyster Bay, County of Nassau, New York (collectively, the "Land"), (2) the construction of a new approximately 450,000 square foot warehouse and office building on the Land (collectively, the "Building"), and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all for use by the Applicant as its corporate headquarters and regional distribution center (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 in the form of potential exemptions or partial exemptions from sales and use taxes, mortgage recording taxes and real property taxes (but not including special assessments and ad valorem levies) (collectively, the "Financial Assistance"); (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Applicant or such other entity(s) as may be designated by the Applicant and agreed upon by the Agency; and (D) the sublease of the Project Facility to the Applicant or such other entity(s) as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, the Applicant proposed that STEEL CIRCUIT, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware and qualified to do business in the State of New York as a foreign limited liability company ("Steel Circuit"), and SOUTH OYSTER BAY REALTY, LLC, a limited liability company duly organized and

existing under the laws of the State of New York (“Bay Realty” and together with Steel Circuit, collectively, the “Original Company”) be the lessee under the Lease (as defined below) and the Agency approved such proposal; and

WHEREAS, the Agency appointed the Original Company as agent of the Agency to undertake the acquisition, construction, installation and equipping of the Project Facility and the Agency leased the Project Facility to the Original Company, all pursuant to the terms and conditions set forth in the Lease Agreement dated as of November 1, 2007 between the Original Company and the Agency (as amended, the “Lease”), and the other Transaction Documents (as defined in the Lease); and

WHEREAS, the Original Company subleased the Project Facility to the Sublessee, all pursuant to the terms and conditions set forth in the Sublease Agreement dated as of November 1, 2007 between the Original Company and the Sublessee (as amended, the “Sublease Agreement”) and the other Transaction Documents; and

WHEREAS, David Acker, Harry Acker and Joseph J. Lostritto (collectively, the “Guarantor”) have guaranteed the timely and proper payment and performance of the Original Company’s and the Sublessee’s respective obligations under the Lease, the Sublease Agreement and the other Transaction Documents, all pursuant to a Guaranty dated as of November 1, 2007 (the “Guaranty”) from the Guarantor in favor of the Agency and an Environmental Compliance and Indemnification Agreement dated as of November 1, 2007 (the “Environmental Indemnification”) from the Original Company, the Sublessee and the Guarantor in favor of the Agency; and

WHEREAS, Steel Circuit and Bay Realty previously requested that the Agency consent to the conversion of their tenant-in-common interests in the Project Facility to membership interests in SS Oyster Bay Realty, LLC, a Delaware limited liability company (the “Company”), the sole owners of which would be Steel Circuit and Bay Realty; and

WHEREAS, the Agency approved the foregoing request pursuant to a resolution approved by the members of the Agency on August 27, 2014; and

WHEREAS, the Company and the Sublessee have requested that the Agency consent to (i) the purchase by Mattress Firm, Inc. of all of the outstanding equity interests of HMK Mattress Holdings, LLC, the indirect owner of the Sublessee, (ii) certain changes to the executive management team of the Sublessee in connection therewith, and (iii) an agreement between the Sublessee and Lullaby Café, Inc. (“Lullaby”), pursuant to which Lullaby operates a food service program within the Project Facility for use by the employees and guests of the Sublessee (collectively, the “Proposed Transaction”); and

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

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 determines that the Company's request with respect to a 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 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 consents to the Proposed Transaction as outlined in the request letter dated January 7, 2016 from the Sublessee's counsel to the Agency, subject, however, to the delivery of evidence satisfactory to the Executive Director that (i) the Company and the Sublessee are in compliance with their employment and employment reporting obligations under the Transaction Documents, and (ii) neither the Company nor the Sublessee is otherwise in default of any obligation under the Transaction Documents. The execution and delivery of amendment documents and agreements required to effectuate the Proposed Transaction (collectively, the "Amendment Documents"), being substantially in the forms 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, 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.

6. The Chairman, Executive Director and Administrative Director of the Agency are each hereby designated the 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, 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.

7. 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 fees and all reasonable attorneys' fees and disbursements incurred by the Agency, including without limitation, the fees and expenses of Special Counsel, Phillips Lytle LLP.

8. 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 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 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.

9. The Chairman and 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 the Consent Documents containing such modifications.

10. 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.

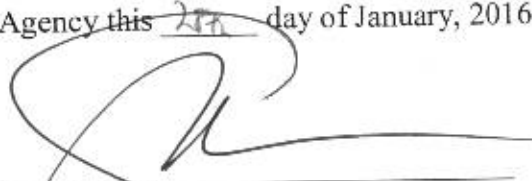
STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

We, the undersigned officers 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.

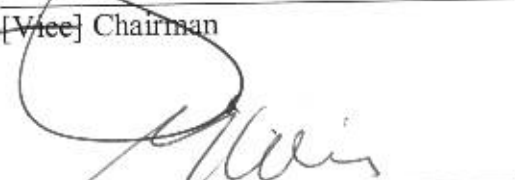
WE FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said 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, 2016.



[Vice] Chairman



[Assistant] Secretary

(SEAL)