

Southern Wines Consent Resolution

A meeting of the Nassau County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 1550 Franklin Avenue, Suite 235, Mineola, County of Nassau, New York, on March 9, 2011, at 8:30 a.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:

Jeffrey L. Seltzer	Chairman
Louis G. Savinetti	Vice Chairman
Gary Weiss	Secretary
Christopher Fusco	Asst. Secretary

ABSENT:

Bruce Ungar	Treasurer
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THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

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

The attached resolution no. 2011-03 was offered by C. Fusco, seconded by L. Savinetti:

Resolution No. 2011-03

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") RATIFYING AND CONSENTING TO AN INCREASE IN THE AMOUNT OF SALES TAX EXEMPTION WITH RESPECT TO ITS "STRAIGHT LEASE" TRANSACTION WITH SYOSSET PROPERTY PARTNERS, LLC, AND OTHER MATTERS IN CONNECTION THEREWITH

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 civic, 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 April 13, 2006, Syosset Property Partners, LLC, a limited liability company organized and existing under the laws of the State of Florida and duly qualified to do business as a foreign limited liability company in the State of New York (the "Company"), and Southern Wine & Spirits of New York, Inc., a corporation incorporated and existing under the laws of the State of Florida and duly qualified to do business as a foreign corporation in the State of New York ("SoWi-NY" and together with the Company, the "Applicants"), presented an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 20.2 acre parcel of land located at 313, 323, 325 and 345 Underhill Boulevard, Syosset, Town of Oyster Bay, Nassau County, New York (the "Land"), (2) the renovation of, and construction of an approximately 148,000 square foot addition to, the building located on the Land, together with related improvements to 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 wholesale distribution facility for use by the Applicants in the wine and spirits industry (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 sales and use taxes, mortgage recording taxes and real property taxes (but not including special assessments and ad valorem levies) (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, on September 27, 2006, the Company entered into a “straight lease” transaction with the Agency under the Act, pursuant to which the Agency undertook the Project; and

WHEREAS, in connection with the Project, the Agency and the Company entered into, inter alia, a Lease Agreement dated as of September 1, 2006 (as amended, the “Lease Agreement”) by and between the Agency, as lessor, and the Company, as lessee, and the Agency issued its Sales Tax Exemption Letter dated September 27, 2006 (as amended, the “Sales Tax Letter”) in favor of the Applicants (which documents, together with all other documents, instruments and agreements executed and/or delivered in connection therewith, as all of such documents, instruments and agreements have been amended, modified or supplemented from time to time, are collectively referred to herein as the "Project Documents"); and

WHEREAS, the Applicants are and have at all times been in compliance with the Minimum Employment Requirement (as such term is defined in the Lease Agreement) and have represented to the Agency that they are and have at all times been in compliance with all of their other obligations under the Lease Agreement and the other Project Documents; and

WHEREAS, the Applicants discovered that they exceeded the Maximum Sales Tax Benefit (as such term is defined in the Lease Agreement) with respect to their use of the Sales Tax Letter by \$[420,000] (the “Excess Exemption Amount”) in completing the Project (as defined in the Lease Agreement) due to cost overruns; and

WHEREAS, the Applicants have provided to the staff of the Agency evidence of the amount of the Excess Exemption Amount and the purposes for which the Excess Exemption Amount was used and the Staff has reviewed and is satisfied with such evidence of the amount and use of the Excess Exemption Amount;

WHEREAS, inasmuch as the Excess Exemption Amount was incurred to complete the original Project and is within the amount of Project Costs (as defined in the Lease Agreement) approved by the Agency, no new Financial Assistance is being requested by the Applicants 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; and

WHEREAS, the Applicants have requested that the Agency ratify the Applicants’ prior use of the Sales Tax Letter in an additional amount equal to the Excess Exemption Amount and report same to the New York State Department of Taxation and Finance and the Agency is willing to accommodate such requests, subject to the terms and conditions set forth in this Resolution; and

WHEREAS, to accomplish the foregoing there has been presented to this meeting the forms of amendments of certain Project Documents (collectively, the “Amendment Documents”) for authorization and approval.

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 has considered the requests made by the Applicants and hereby finds and determines that the requested consents by the Agency 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 3. No new Financial Assistance is being requested by the Applicants 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.

Section 4. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Executive Director and the Staff 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 5. The Agency hereby determines that the Applicants' request for consents 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 SEQRA.

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 requested consents.

Section 7. The Agency hereby consents to the amendments and other actions contemplated by this Resolution and consents to the execution and delivery of the Amendment Documents by the parties thereto; provided, however, that nothing in this Resolution shall be deemed to be a consent to any other or further amendment of any Project Document.

Section 8. The execution and delivery of the Amendment Documents, being substantially in the forms presented to the Agency at this meeting, are hereby authorized and approved.

Section 9. The Chairman, Vice 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 and directed, acting individually or jointly, to execute and deliver any and all other consents, papers, instruments, opinions, certificates, tax certificates, tax filings, affidavits and other 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.

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 condition that the Applicants shall reimburse the Agency for all costs and expenses incurred by or payable to 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. The Agency agrees to accept the sum of \$1,000 as its consent and amendment fee with respect to the transactions contemplated by this Resolution.

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 any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred, and duties and liabilities imposed, upon the Agency or the members thereof by the provisions of this Resolution, the Amendment Documents and the Consent Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

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

Section 12. The Agency hereby authorizes the Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency, acting individually or jointly, to approve modifications to the terms approved hereby which are not inconsistent with the intent and substance of this Resolution, such approval to be evidenced by the execution by any one of said officers of the Amendment Documents or Consent Documents, as the case may be, containing such modifications.

Section 13. The Chairman, Vice Chairman, 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 Applicants and such other parties as any such officer may determine.

Section 14. 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:

Jeffrey L. Seltzer	VOTING	Aye
Louis G. Savinetti	VOTING	Aye
Bruce Ungar	ABSENT	
Gary Weiss	VOTING	Aye
Christopher Fusco	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.


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

I, the undersigned [~~Asst.~~] Secretary of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on March 9, 2011 with the original thereof on file in my 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.

I 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.

I 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, I have hereunto set my hand and affixed the seal of the Agency this 9th day of March, 2011.



[~~Asst.~~] Secretary

(SEAL)