

## **EBS Westbury 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 located at 1550 Franklin Avenue, Suite 235, Mineola, County of Nassau, New York, on January 31, 2013, at 5:30 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
Christopher Fusco	Asst. Secretary
John T. Ahern	

### **ABSENT:**

Gary Weiss	Secretary
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### **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
Milan K. Tyler, Esq.	Bond/Transaction Counsel

The attached resolution no. 2013-03 was offered by C. Fusco, seconded by J. Coumatos:

Resolution No. 2013-03

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND CONSENTING  
TO THE ASSIGNMENT TO AND ASSUMPTION OF A CERTAIN  
“STRAIGHT LEASE” PROJECT FOR HSRE-EB WESTBURY, 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 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, HSRE-EB WESTBURY, LLC, a limited liability company 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 (the “Applicant”), submitted 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 2.3 acre parcel of real property located at 117 Post Avenue, Incorporated Village of Westbury, Town of North Hempstead, County of Nassau, New York (Section: 10; Block: 125; Lot: 1, 2-17, 38) (collectively, the “Land”), and (2) the renovation of an existing approximately 110,000 square foot five-story building (plus cellar) and related structures, facilities, equipment and furnishings on the Land (collectively, the “Building”), all for the providing of a senior citizen assisted housing facility comprised of approximately 140 living units (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 a potential exemption or partial exemption from real property taxes; and (C) the lease (with an obligation to purchase) 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 and the sublease of the Project Facility to the Applicant; and

WHEREAS, by letter dated January 21, 2013 from the Applicant's counsel (the "Amendment Letter"), the Applicant has decided to proceed only with the acquisition of the Project Facility and has withdrawn its request for additional "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the Project; and

WHEREAS, on or about December 29, 1999, WESTBURY SENIOR LIVING, LLC ("EBS") entered into a transaction with the Agency under the Act, pursuant to which the Agency issued its Revenue Bonds (1999 Westbury Senior Living Project) in the original principal amount of \$25,000,000 (collectively, the "Bonds"), with respect to the original acquisition, construction, renovation and equipping of the Project Facility; and

WHEREAS, on or about February 21, 2007, CSH WESTBURY LP ("CSH") acquired the interests of EBS in and to the Project Facility from EBS and entered into a "straight lease" transaction with the Agency under the Act pursuant to a certain Lease Agreement, dated as of February 1, 2007, between the Agency and CSH (as amended, modified, supplemented and restated, the "Lease Agreement"); and

WHEREAS, pursuant to a certain Amended and Restated Payment in Lieu of Taxes Agreement, dated as of December 1, 2005, originally between EBS and the Agency, as assigned to and assumed by CSH by Assignment and Assumption of PILOT Agreement, dated as of February 1, 2007, among CSH, EBS and the Agency (as amended, modified, supplemented and restated, collectively, the "PILOT Agreement"), CSH agreed to make certain payments in lieu of real property taxes with respect to the Land and the improvements thereon, and such obligation is secured by a certain Amended and Restated PILOT Mortgage Agreement, dated as of February 1, 2007 (as amended, modified, supplemented and restated, the "PILOT Mortgage"), made by CSH and the Agency, as mortgagor, in favor of the County of Nassau, as mortgagee (in such capacity, the "PILOT Mortgagee"), pursuant to which the Agency and CSH granted a first mortgage on the Land and the improvements thereon to the PILOT Mortgagee; and

WHEREAS, pursuant to the Application, as amended by the Amendment Letter, the Applicant has requested that the Agency consent to the transfer by CSH of its interests in and to the Project Facility to the Applicant and to the assignment and assumption of the Lease Agreement and the PILOT Agreement in connection therewith (the "Consent"); and

WHEREAS, no additional "Financial Assistance" (as such term is defined in the Act) is being requested by the Applicant with respect to the transactions contemplated by this Resolution; and

WHEREAS, any approval of the Consent to the transfer of the Project Facility is contingent upon, inter alia, a determination by the members of the Agency to proceed with such consent to the transfer of the Project Facility following a determination by the Agency that (i) any applicable public hearing and notice requirements and other procedural requirements contained in the Act relating to the Consent have been satisfied, and (ii) the undertaking of the Consent to the transfer of the Project Facility by the Agency are and will be in compliance with all other applicable requirements of

SEQRA (as hereinafter defined), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Project (collectively, the "Applicable Laws"); and

WHEREAS, prior to receipt of the Amendment Letter, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the "Public Hearing") to hear all persons interested in the Project contemplated by the Agency with respect to the Project, to be mailed on November 8, 2012 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 8, 2012 in the Nassau edition of Newsday, a newspaper of general circulation available to residents of the Village of Westbury, the Town of North Hempstead and the County of Nassau, New York, (C) conducted the Public Hearing on November 19, 2012 at 11:00 a.m. local time at Village Hall, 235 Lincoln Place, Incorporated Village of Westbury, 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 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 decided to conduct an uncoordinated review of the Project and determined that the Project is a Type II action under SEQRA and that the Project will not have a significant effect on the environment; and

WHEREAS, as preconditions to the Agency's Consent to the transfer of the Project Facility, it is necessary to provide for reaffirmation and/or assignment of certain agreements, the certification of certain facts and the amendment of certain agreements; and

WHEREAS, the Agency is willing to accommodate the Applicant's request pursuant to the Application, as amended by the Amendment Letter, subject to the terms and conditions set forth in this Resolution; and

WHEREAS, to accomplish the foregoing there has been prepared a form of Amended and Restated Lease Agreement, together with certain reaffirmations, assignments, consents, certifications and amendments (collectively, the "Project Documents") for authorization, approval and, where appropriate, execution and delivery by the Agency;

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 Applicant and hereby finds and determines that the requested Consent of the Agency will 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 additional "financial assistance" is being requested by the Applicant 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 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, SEQRA and all other Applicable Laws that relate thereto.

Section 5. 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 and the Consent.

Section 6. The Agency hereby consents to the transactions contemplated by the Project Documents and hereby authorizes and approves the execution and delivery of the Project Documents. The Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency, acting individually or jointly, are each hereby authorized to execute, acknowledge and deliver each Project Document requiring execution by the Agency, and the Secretary, Assistant Secretary, Administrative Director and Executive Director of the Agency, if required, acting individually or jointly, are each hereby authorized to affix the seal of the Agency on any such Project Document and attest the same. The execution and delivery of any such Project Document by any one of said officers shall be conclusive evidence of due authorization and approval.

Section 7. 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 to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and the transactions contemplated herein, including, without limitation, the execution and delivery of one (1) or more replacement or amended and restated mortgages in replacement or amendment of the Bank Mortgage.

Section 8. The authorizations set forth in this Resolution are subject to the condition that the Applicant 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 attorneys' fees and disbursements incurred by the Agency.

Section 9. All covenants, stipulations, obligations and agreements of the Agency

contained in this Resolution and the Project 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 and the Project 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 the any Project Document shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent (other than the Applicant) or employee of the Agency in his or her individual capacity and neither the members of the Agency nor any officer executing any Project Document shall be liable personally on such Project Document or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 10. The Agency hereby waives any recapture of benefits that would be applicable under the Lease Agreement in connection with the transactions contemplated by the Project Documents, subject to closing of the transactions contemplated therein.

Section 11. 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 such officers of the Project Documents containing such modifications.

Section 12. 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 Applicant and such other parties as any such officer may determine.

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	EXCUSED	
Christopher Fusco	VOTING	Aye
John T. Ahern	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 January 31, 2013, 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 8<sup>th</sup> day of ~~January~~<sup>February</sup>, 2013.

  
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[Asst.] Secretary

(SEAL)