

**MINUTES OF THE SPECIAL BOARD MEETING
RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY
December 21, 2022**

Meeting was called to order at 5:05 PM by Chairman James Farley.

Present: James Farley, Chairman
Lori Ann Pipczynski, Vice Chair
Anthony (Tony) Barresi, Secretary
Doug Williams

Absent: Lee Mendelson, Treasurer

Signifying a quorum.

Others in Attendance: Tracy Stark-James, Executive Director
William Weir, Counsel (virtual attendance)

Anthony Barresi moved to adopt the proposed agenda. Doug Williams seconded. The agenda was adopted.

Governance Committee Report

Chairwoman Lori Ann Pipczynski reported that the committee held a virtual meeting on December 17th to discuss legal representation for the CAT/TOR application for financial assistance. She noted that although several opinions were obtained that there was no legal conflict of interest with Nixon Peabody as transaction counsel, due to the perception of a conflict of interest in the community and out of an abundance of sensitivity to those concerns, the committee felt that engaging with a separate firm was warranted to advance the review process without any perceived prejudice. After a search and recommendations from other agencies, the committee decided to recommend to the board the firm Phillips Lytle given their extensive IDA experience with similarly large and complex development projects, their cross-disciplinary approach across nationwide offices - particularly as it relates to the SEQRA process, their experience in configuring innovative finance arrangements for public infrastructure, and their understanding and willingness to satisfy the Committee's desire for public information sessions about the project.

The second item on the agenda was correspondence from Lenape requesting a continuation of financing with the agency. She noted that when the Town Board of Riverhead entered into a contract for this project, they determined that the length of support should not exceed 40 years. The Agency became involved and took over the PILOT in 2005 when the project sold and refinanced. At the time the agency agreed to uphold the initial intentions by the town and continue the PILOT as was structured. During the committee meeting the members affirmed its contention that it is not its policy to finance a project in perpetuity and maintained the terms originally set forth by the Town Board. Additionally the committee did not think the proposed investment warranted a real property tax abatement, but would consider assistance of a sales tax exemption.

Anthony Barresi motioned to accept the report. Doug Williams seconded. Motioned approved unanimously with one absent.

RESOLUTIONS:

RESOLUTION #55-22 AUTHORIZES REFINANCING AND PERMANENT FINANCING FOR 331 EAST MAIN STREET, LLC

Anthony Barresi offered the following resolution, which was seconded by Doug Williams.

WHEREAS, upon proceedings held the Agency induced 331 East Main Street, LLC (the "**Company**") to acquire real property at 331 East Main Street, Riverhead, New York 11901 for the development of a 36 market-rate rental unit apartment community with amenities including approximately 838 square feet of ground floor commercial space and a parking garage as more particularly set forth in Agency resolution number 40-20 adopted October 5, 2020 (the "**Facility**"), which, among other inducements, granted an exemption from mortgage recording tax on a previous mortgage (the "**Existing Mortgage**") in a principal amount up to \$9,000,000; and

WHEREAS, the Company duly acquired the real property and constructed the required renovations and has placed the Facility into service at a total detailed cost of \$13,143,850; and

WHEREAS, the Agency acquired a leasehold interest in the Facility pursuant to a certain Ground Lease dated as of January 1, 2021 (the "**Ground Lease**"), by and between the Agency and the Company; and

WHEREAS, the Agency leased the Facility back to the Company pursuant to a certain Lease Agreement dated as of January 1, 2021 (the "**Lease Agreement**"), as amended to date, by and between the Agency and the Company; and

WHEREAS, the Existing Mortgage was used to finance the acquisition and renovation of the Facility; and

WHEREAS, Webster Bank, National Association (the "**Lender**") has issued its commitment letter to provide permanent financing for the Facility in the amount currently estimated to be \$17,000,000 but not to exceed \$20,000,000 (the "**Loan**"); and

WHEREAS, the Agency now contemplates that it will authorize the execution of one or more mortgages securing the Loan, to encumber the Facility; and

WHEREAS, the Loan will be used to refinance the balance of the Existing Mortgage, and the remainder of the Loan will be used to pay transaction and other costs associated with the Loan and to provide funds to the Company to be used in its discretion; and

WHEREAS, as security for the Loan being made to the Company by the Lender, the Company has further requested to the Agency that it join with the Company in executing and delivering to the Lender one or more mortgages and such other loan documents, satisfactory to the

Agency, upon advice of counsel, in both form and substance, as may be reasonably requested by the Lender (the “**Loan Documents**”); and

WHEREAS, the Agency is not authorizing exemptions from mortgage recording taxes or any other financial assistance in connection with the Loan, and the Company shall pay mortgage recording taxes to the same extent as if the Agency were not a party to the Loan Documents; and

NOW, THEREFORE BE IT RESOLVED,

Section 1. The Agency hereby finds and determines:

- (a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act.
 - (b) The Facility continues to constitute a “project” as such term is defined in the Act.
 - (c) The financing and refinancing of the Facility will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Riverhead, Suffolk County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act.
 - (d) The financing and refinancing of the Facility as contemplated in this resolution is reasonably necessary to maintain the competitive position of the Company in its industry.
 - (e) It is desirable and in the public interest for the Agency to assist in the financing and refinancing of the Facility.
 - (f) The Loan Documents will be effective instruments whereby the Agency and the Company agree to secure the Loan and assign to the Lender their respective rights under the Lease Agreement (except the Agency’s certain unassigned rights).
- (a) In consequence of the foregoing, the Agency hereby determines to execute, deliver and perform the Loan Documents to which the Agency is a party.
 - (b) The Agency is hereby authorized to execute and deliver the Loan Documents without the need for any further or future approvals of the Agency.
 - (c) The Agency hereby authorizes and approves the execution of one or more mortgages securing an amount presently estimated to be \$17,000,000 but not to exceed \$20,000,000, to encumber the Facility (the “**Mortgage**”).
 - (d) The Chairman or Vice Chairman are hereby authorized, on behalf of the Agency, to execute and deliver the Mortgage and other Loan Documents to which the Agency is a party, all in substantially the forms thereof presented to this meeting with such changes, variations,

omissions and insertions as the Chairman and Vice Chairman or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman, Vice Chairman, and counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”).

(e) The officers, employees and agents of the Agency are hereby authorized and directed 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 Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, 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, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

(f) Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. The Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility.

BE IT FURTHER RESOLVED that this resolution shall become effective upon the payment by 331 East Main Street, LLC of the Agency fee of \$4,000. and all reasonable Agency counsel fees.

VOTE: 4 Yes
1 Absent

RESOLUTION #56-22

A RESOLUTION AUTHORIZING THE EXTENSION OF PROJECT COMPLETION DATE BY THE TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY TO ISLAND WATER PARK CORP. AND RELATED ENTITIES

WHEREAS, the Town of Riverhead Industrial Development Agency was created by Chapter 624 of the Laws of 1980 and is a public benefit corporation and an industrial development agency of the State of New York (the “**Agency**”) having those powers set forth in, and subject to the requirements of, Article 18-A of the General Municipal Law; and

WHEREAS, the Agency previously provided assistance to Island Water Park Corp., a business corporation organized and existing under the laws of the State of New York (the “**Company**”), and Island Water Park Operations, LLC, a limited liability company organized and

existing under the laws of the State of New York (the “**Sublessee**”), in: (a) the acquisition of an approximately 42 acre parcel of land located at 5835 Middle Country Road, Calverton, New York 11933 (SCTM# 0600-135.00-01.00-007.034) (the “**Land**”), the construction of an approximately 75,000 square foot building thereon (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property, not part of the Equipment (as defined below) (the “**Facility Equipment**”; and together with the Land and the Improvements, the “**Company Facility**”), which Company Facility is subleased by the Agency to the Company and subleased by the Company to the Sublessee; and (b) the acquisition and installation of certain equipment and personal property, including but not limited to, kitchen equipment, computer and information technology systems, lighting, furniture, televisions, HVAC, plumbing and equipment for its attractions as more fully described below (the “**Equipment**”; and together with the Company Facility, the “**Facility**”), which Equipment is leased by the Agency to the Sublessee and which Facility is to be used by the Sublessee as an indoor/outdoor extreme water sports park including an indoor surf pool, rock climbing walls, indoor and outdoor volleyball courts, a zip line, spectator seating, obstacle courses, bumper boats, water slides, fitness center, spa, a pro shop, restaurants and recreational facility to be used year-round by visitors of the Town of Riverhead (the “**Project**”); and

WHEREAS, the Agency acquired a leasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of December 1, 2021 (the “**Company Lease**”), by and between the Company, as lessor, and the Agency, as lessee, and a memorandum of Company Lease was to be recorded in the Suffolk County Clerk’s office; and

WHEREAS, The Agency currently leases the Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of December 1, 2021 (the “**Lease Agreement**”), by and between the Agency, as lessor, and the Company, as lessee, and a memorandum of Lease Agreement was to be recorded in the Suffolk County Clerk’s office; and

WHEREAS, the Equipment is leased to the Sublessee by the Agency pursuant to an Equipment Lease Agreement, dated as of December 1, 2021 (the “**Equipment Lease**”), between the Agency and the Sublessee; and

WHEREAS, The Company is sub-subleasing the Company Facility to the Sublessee pursuant to a certain Sublease Agreement, dated as of December 1, 2021 (the “**Sublease Agreement**”), by and between the Company, as sublessor and the Sublessee, as sublessee; and

WHEREAS, in connection with the Project, the Agency previously authorized financial assistance for the Company and the Sublessee in the form of sales tax exemptions (the “**Sales Tax Exemption**”); and

WHEREAS, pursuant to Section 3.6 of the Lease Agreement, the Company agreed to complete the Project Work (as defined in the Lease Agreement) by December 31, 2022 (the “**Original Completion Date**”), at which time the Sales Tax Exemption would expire; and

WHEREAS, the Company has submitted a request to the Agency for an extension of the Original Completion Date, in order to extend the time to utilize the Sales Tax Exemption and complete the costs of the acquisition, construction and equipping of the Facility by December 31, 2023 (the “**Completion Date Extension**”); and

WHEREAS, to provide for the Completion Date Extension and to extend the time to use the Sales Tax Exemption, the Agency, the Company and the Sublessee will enter into a certain Extension Agreement, dated as of December 1, 2022, or such other date as may be determined by the Chairman, Chief Executive Director and Counsel to the Agency (the “**Extension Agreement**”), by and between the Agency, the Company and the Sublessee; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Company and the Sublessee have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the Completion Date Extension and the extension of the Sales Tax Exemption as it relates to the Facility; and

NOW, THEREFORE, BE IT RESOLVED, by the members of the Town of Riverhead Industrial Development Agency, Suffolk County, New York, as follows:

Section 1. The Agency hereby finds and determines:

- (g) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act.
- (h) The Facility continues to constitute a “project” as such term is defined in the Act.
- (i) The acquisition, construction and equipping of the Facility, the continued subleasing and leasing of the Facility to the Company, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Town of Riverhead, and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and
- (j) The acquisition, construction and equipping of the Facility is reasonably necessary to induce the Company to maintain and expand its business operation in the State of New York; and
- (k) The Extension Agreement will be an effective instrument whereby the Agency grants the Completion Date Extension and an extension of time to use the Sales Tax Exemption to the Company and the Sublessee.

Section 2. In consequence of the foregoing, the Agency hereby (i) approves the Completion Date Extension and extension of time to use the Sales Tax Exemption, (ii) approves the form and substance of the Extension Agreement, and (iii) authorizes the execution and delivery of the Extension Agreement and such other related documents as may be necessary or appropriate to effectuate the Completion Date Extension.

Section 3. Counsel to the Agency and Nixon Peabody LLP, Transaction Counsel to the Agency are hereby authorized and directed to prepare, for submission to the Agency, the Extension Agreement and all documents necessary to effectuate the Completion Date Extension described in the foregoing resolution.

Section 4. The Chairman, the Chief Executive Director, and any member of the Agency are each hereby authorized and directed (i) to distribute copies of this resolution to the Company and the Sublessee, and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 5. This resolution shall become effective upon the payment by the Company or Sublessee of the Agency fee of \$500.00 and all reasonable Agency counsel fees.

VOTE: 4 Yes
1 Absent

RESOLUTION #57-22 APPOINTING SPECIAL TRANSACTION COUNSEL WITH RESPECT TO A PROJECT FOR CALVERTON AVIATION & TECHNOLOGY LLC AND THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY

The following resolution was offered by Member Anthony Barresi who moved its adoption, seconded by Member Doug Williams, to wit:

RESOLUTION OF THE TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY APPOINTING SPECIAL TRANSACTION COUNSEL WITH RESPECT TO CALVERTON AVIATION & TECHNOLOGY LLC, A DELAWARE LIMITED LIABILITY COMPANY ON BEHALF OF ITSELF AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF THE FOREGOING AND THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY, A NEW YORK COMMUNITY DEVELOPMENT AGENCY.

WHEREAS, the Town of Riverhead Industrial Development Agency was created by Chapter 624 of the Laws of 1980 and is a public benefit corporation and an industrial development agency of the State of New York (the “**Agency**”) having those powers set forth in, and subject to the requirements of, Article 18-A of the General Municipal Law.

WHEREAS, Calverton Aviation & Technology LLC, a limited liability company organized and existing under the laws of the State of Delaware, on behalf of itself and/or the principals of Calverton Aviation & Technology LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”) and the Town of Riverhead Community Development Agency, a community development agency created under Section 680-c of the General Municipal Law (the “**CDA**”), have jointly submitted a fully completed and executed Application form (the “**Application**”) to the Agency for assistance in connection with a multi-phase industrial development facility consisting of the acquisition and development of certain parcels of land aggregating approximately 2,106 acres located at Enterprise Park at Calverton, Riverhead, New York 11901 also known as Lots 1 through 8 (SCTM# 0600-135.00-01.00-007.33 and 007.400) (collectively, the “**Land**”), and the construction and equipping of multiple buildings thereon.

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Project and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York.

WHEREAS, on September 21, 2022 the Agency adopted its Resolution #44-22 accepting the Application and authorizing the entering into of a Preliminary Agreement with regard to the Project.

WHEREAS, the Agency’s Governance Committee conducted a search for Agency Special Counsel with regard to the Project and recommended that the law firm of Phillips Lytle LLP be retained by the Agency.

WHEREAS, pursuant to this resolution, the Agency appoints Phillips Lytle LLP as Special Transaction Counsel to work with the Agency staff and the Agency’s counsel in all aspects of the Project.

WHEREAS, the Company, the CDA and the Agency shall enter into a Preliminary Agreement (the “**Preliminary Agreement**”), for the purpose of binding the Company to indemnify and hold harmless the Agency and the CDA to pay all costs, expenses, and fees of the Agency, including Phillips Lytle LLP as the Agency’s Special Transaction Counsel, the

Consultants (as defined in the Agency's Resolution #44-22) and any third-party consultant(s) retained by the Agency to assist in its due diligence review and the fees and expenses of the CDA and its counsel in connection with the Application.

NOW, THEREFORE, BE IT RESOLVED by the Town of Riverhead Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

Section 1. The law firm of Phillips Lytle LLP, is hereby appointed Special Transaction Counsel to the Agency with respect to all matters in connection with the Project and the due diligence thereof. Special Transaction Counsel for the Agency is hereby authorized, at the expense of the Company, to work with the Agency's counsel, the Company, counsel to the Company, and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this resolution.

Section 2. The Chairman, the Executive Director and Chief Executive Officer of the Agency are hereby authorized and directed (i) to distribute copies of this resolution to the Company and the CDA, (ii) to execute the Preliminary Agreement as described herein, (iii) to execute a Retainer Agreement with such Special Transaction Counsel, and (iv) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 3. Any fees and expenses incurred by the Agency with respect to the Facility shall be paid by the Company. The Company has agreed pursuant to the Application, and will agree pursuant to the Preliminary Agreement, to pay such fees and expenses of the Agency and the CDA and further agrees to indemnify the Agency and the CDA, and their respective members, directors, employees and agents and hold the Agency and the CDA and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project.

Section 4. This resolution shall take effect immediately.

VOTE: 4 Yes
1 Absent

Seeing no further business, the Chairman moved to adjourn the meeting. Lori Ann Pipczynski motioned to close the meeting. Anthony Barresi seconded. The meeting adjourned at 5:14pm

Dated: _____

Secretary/Chairman

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