

Date: April 13, 2022

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held electronically via webinar, on the 13th day of April, 2022, the following members of the Agency were:

Present: Frederick C. Braun III, Chairman
Felix J. Gucci, Jr., Vice Chair
Martin Callahan, Treasurer
Ann-Marie Scheidt, Secretary
Gary Pollakusky, Asst. Secretary
Frank C. Trotta, Member
Lenore Paprocky, Member

Recused: Felix J. Gucci, Jr., Vice Chair

Excused:

Also Present: Lisa M. G. Mulligan, Chief Executive Officer
Lori LaPonte, Chief Financial Officer
Jocelyn Linse, Executive Assistant
Terri Alkon, Administrative Assistant
Amy Illardo, Administrative Assistant
Annette Eaderesto, Esq., Counsel to the Agency
William F. Weir, Esq., Transaction Counsel
Howard Gross, Esq., Transaction Counsel

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to authorizing a refinancing of a certain industrial development facility more particularly described below (Nicola Enterprises of Long Island, Corp./Pallets R Us Inc. 2014 Facility).

Voting Aye

Voting Nay

Braun
Callahan
Scheidt
Pollakusky
Trotta
Paprocky

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING A
MORTGAGE REFINANCING AND THE EXECUTION AND
DELIVERY OF LOAN DOCUMENTS IN CONNECTION
THEREWITH FOR THE NICOLA ENTERPRISES OF LONG
ISLAND, CORP./PALLETES R US INC. 2014 FACILITY AND
APPROVING THE FORM, SUBSTANCE, EXECUTION AND
DELIVERY OF SUCH RELATED DOCUMENTS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as the same may be amended from time to time (collectively, the “**Act**”), the Town of Brookhaven Industrial Development Agency (the “**Agency**”), was created with the authority and power among other things, to assist with certain industrial development projects as authorized by the Act; and

WHEREAS, the Agency previously provided its assistance to Nicola Enterprises of Long Island Corp., a New York business corporation duly organized and validly existing under the laws of the State of New York (the “**Company**”) and Palletes R Us Inc., a New York business corporation duly organized and validly existing under the laws of the State of New York (the “**Sublessee**”) through the issuance of its \$9,500,000 Industrial Development Revenue Bonds, Series 2008 (Nicola Enterprises of Long Island Corp./Palletes R Us Inc. Facility) to finance the acquisition of an approximately 19.2 acre parcel of land located at 555 Woodside Avenue, Bellport, Town of Brookhaven, New York (and further identified as Section 844.00 Block 03.00 Lot 022.010) and the construction and equipping of an approximately 115,000 square foot facility located thereon, which was leased by the Agency to the Company and further subleased by the Company to, and used by the Sublessee for the manufacturing, remanufacturing, repairing and recycling of all types of wooden pallets and related products (the “**Original Facility**”); and

WHEREAS, the Agency leased the Original Facility to the Company pursuant to and in accordance with a certain Lease Agreement, dated as of November 1, 2008 as amended and restated as of May 1, 2014 (the “**Lease Agreement**”) by and between the Agency and the Company; and

WHEREAS, the Company subleased the Original Facility to the Sublessee pursuant to and in accordance with a certain Sublease Agreement, dated as of November 1, 2008 (the “**Sublease Agreement**”), by and between the Company and the Sublessee; and

WHEREAS, the Agency previously provided its assistance to the Company and the Sublessee in (i) the acquisition, construction and equipping of an approximately 16,000 square foot addition to the Original Facility, including landscaping and repaving of the existing parking area (the “**2014 Improvements**”), and (ii) the equipping and furnishing of the 2014 Improvements (the “**2014 Equipment**”); and together with the 2014 Improvements, the “**2014 Facility**”) (the 2014 Facility and the Original Facility are collectively referred to herein as, the “**Facility**”); and

WHEREAS, the Sublessee conveyed and interest in the 2014 Equipment to the Agency pursuant to a certain 2014 Equipment Bill of Sale, dated May 30, 2014 (the "**2014 Equipment Bill of Sale**"), from the Sublessee to the Agency; and

WHEREAS, the Company conveyed an interest in the 2014 Improvements to the Agency pursuant to a 2014 Improvements Bill of Sale, dated May 30, 2014 (the "**2014 Improvements Bill of Sale**"), from the Company to the Agency; and

WHEREAS, as security for a certain Industrial Development Revenue Bond, Series 2008, issued by the Agency in the amount of \$9,500,000 and currently outstanding in the amount of \$4,742,000, the Agency and the Company previously executed and delivered to Omega Commercial Mortgage Corp., an affiliate of New York Community Bank (the "**2008 Bondholder**"), three mortgages, each as of November 1, 2008 (collectively, the "**2008 Mortgage**"); and

WHEREAS, the Company has now requested the Agency's assistance in the permanent financing of the Facility with New York Community Bank (the "**2022 Lender**") with respect to the Facility in the aggregate principal amount presently estimated to be \$6,800,000 but not to exceed \$7,100,000 (the "**2022 Loan**"), in order to refinance the 2008 Mortgage, certain other indebtedness held by New York Community Bank and the Small Business Administration, and certain other short term indebtedness and obligations of the Company; and

WHEREAS, the Company and the Sublessee have also requested the Agency's assistance in securing a line of credit to the Sublessee from the 2022 Lender in an amount presently estimated to be \$2,000,000, but not to exceed \$2,500,000 (the "**2022 Line of Credit**") to be available to pay certain working capital expenses of the Sublessee at the Facility; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company consistent with the policies of the Agency, in the form of exemptions from mortgage recording taxes, to the fullest extent permitted by law, for one or more mortgages securing the principal amount presently estimated to be \$8,800,000 but not to exceed \$9,600,000, corresponding to an exemption from mortgage recording taxes in an amount presently estimated to be \$66,000, but not to exceed \$72,000, in connection with the financing or refinancing of the costs of the acquisition, construction, renovation, equipping, and working capital expenses of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing, renovating, equipping, and working capital expenses of the Facility; and

WHEREAS, as security for such 2022 Loan and the 2022 Line of Credit being made to the Company by the 2022 Lender, the Company has submitted a request to the Agency that it join with the Company in executing and delivering to the 2022 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 2022 Lender (the "**2022 Loan Documents**"); 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 has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the financing or refinancing of the Facility and the continued leasing and subleasing of the Facility.

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

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 refinancing of the acquisition, construction, renovation, equipping, and working capital expenses of the Facility will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven, 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 refinancing of the acquisition, construction renovation, equipping and working capital expenses of the Facility as contemplated in this resolution is reasonably necessary to maintain the competitive position of the Company in its respective industries.
- (e) Based upon representations of the Company and counsel to the Company, the Facility continues to conform with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local land use plans for the area in which the Facility is located.
- (f) It is desirable and in the public interest for the Agency to assist in the financing and refinancing of the acquisition, construction, renovation, equipping and working capital expenses of the Facility.
- (g) The 2022 Loan Documents will be effective instruments whereby the Agency and the Company agree to secure the 2022 Loan and the 2022 Line of Credit and assign to the 2022 Lender their respective rights under the Lease Agreement and Company Lease Agreement (except the Agency's Unassigned Rights as defined therein).

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) grant a mortgage or mortgages on and security interest in and to the Facility pursuant to certain mortgages and security agreements for the benefit of the 2022 Lender (the “**2022 Mortgage**”), (ii) execute, deliver and perform the 2022 Mortgage, and (iii) execute, deliver and perform the 2022 Loan Documents to which the Agency is a party, as may be necessary or appropriate to effect the 2022 Loan and the 2022 Line of Credit or any subsequent refinancing of the 2022 Mortgage.

Section 3. Subject to the provisions of this resolution and the Lease Agreement, the Agency hereby authorizes and approves the following economic benefits to be granted to the Company in the form of exemptions from mortgage recording taxes, to the fullest extent permitted by law related to the aggregate principal amount presently estimated to be \$8,800,000 but not to exceed \$9,600,000, corresponding to an exemption from mortgage recording taxes in an amount presently estimated to be \$66,000, but not to exceed \$72,000, in connection with the financing or refinancing the costs of the acquisition, construction, renovation, equipping, and working capital expenses of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing, renovating, equipping, and working capital expenses of the Facility.

Section 4. Subject to the provisions of this resolution and the Lease Agreement, the Agency is hereby authorized to do all things necessary or appropriate for the execution, delivery and performance of the 2022 Loan Documents and the 2022 Mortgage, and such other related documents as may be necessary or appropriate to effect the 2022 Loan, the 2022 Line of Credit, or any subsequent refinancing of the 2022 Loan, and all acts heretofore taken by the Agency with respect to such financing or refinancing are hereby approved, ratified and confirmed. The Agency is hereby further authorized to execute and deliver any future documents in connection with any future refinancing or permanent financing of such costs of acquiring, constructing, renovating, equipping, and working capital expenses of the Facility without need for any further or future approvals of the Agency.

Section 5.

(a) Subject to the provisions of this resolution and the Lease Agreement; the Chairman, Chief Executive Officer and all other members of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the 2022 Mortgage and 2022 Loan Documents, together with such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, Chief Executive Officer or any member of the Agency shall constitute conclusive evidence of such approval; and

(b) The Chairman, Chief Executive Officer and any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives of the Agency.

Section 6. Subject to the provisions of this resolution and the Lease Agreement, 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.

Section 7. Any expenses incurred by the Agency with respect to the financing or refinancing of the Facility shall be paid by the Company. The Company has agreed to pay such expenses and have further agreed 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 financing or refinancing of the Facility.

Section 8. The provisions of this resolution shall continue to be effective for one year from the date hereof, whereupon the Agency may, at its option, terminate the effectiveness of this Resolution (except with respect to the matters contained in Section 7 hereof).

Section 9. This resolution shall take effect immediately.

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

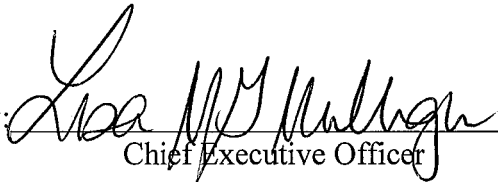
I, the undersigned Chief Executive Officer of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the “**Agency**”), including the resolutions contained therein, held on the 13th day of April, 2022, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that, the Agency’s Board Meeting on April 13, 2022, was held as a public meeting open for the public to attend in person, and that all members of said Agency had due notice of said meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 13th day of April, 2022.

By:  _____
Chief Executive Officer