

Date: February 19, 2014

At a meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), held at 1 Independence Hill, 3<sup>rd</sup> Floor, Farmingville, New York 11738 on the 19th day of February, 2014, the following members of the Agency were:

Present: Frederick C. Braun, III, Gasper C. Celauro, Felix J. Grucci, Jr.,  
John Rose & Ann-Marie Scheidt

Absent:

Also Present: Lisa M. G. Mulligan, Chief Executive Officer  
James Ryan, Chief Financial Officer

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 pertaining to acquisition of an interest in, or title to, a certain industrial development facility more particularly described below (Nicola Enterprises of Long Island, Corp./Pallets R Us Inc. 2014 Facility).

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Braun  
Celauro  
Grucci  
Rose  
Scheidt

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, INSTALLATION AND EQUIPPING OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY FOR NICOLA ENTERPRISES OF LONG ISLAND CORP. AND PALLETS R US INC. AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT AND MODIFICATION AGREEMENT AND AN AMENDED AND RESTATED PAYMENT-IN-LIEU OF TAX AGREEMENT AND APPROVING THE FORM, SUBSTANCE AND EXECUTION AND DELIVERY OF 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 Pallets 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./Pallets 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 (the "**Original 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, in connection with the leasing and the subleasing of the Original Facility, the Agency, the Company and the Sublessee entered into a Payment-in-Lieu-of-Tax Agreement, dated as of November 1, 2008 (the "**PILOT Agreement**"), whereby the Company and the Sublessee agreed to make certain payments-in-lieu-of real property taxes on the Original Facility (as defined therein); and

WHEREAS, in connection with the leasing and the subleasing of the Original Facility, the Agency, the Company and the Sublessee entered into an Environmental Compliance and Indemnification Agreement, dated as of November 1, 2008 (the "**Environmental Compliance and Indemnification Agreement**"), whereby the Company and the Sublessee agreed to comply with all Environmental Laws (as defined therein) applicable to the Original Facility; and

WHEREAS, the Company and the Sublessee have now requested the Agency's assistance in (i) the construction and equipping of an approximately 16,000 square foot addition to the Original Facility, and (ii) the acquisition, equipping and furnishing of the addition including landscaping and repaving of the existing parking area (collectively, the "**2014 Facility**"; and together with the Original Facility, the "**Facility**"); and

WHEREAS, the Company will convey or cause to be conveyed an interest in the 2014 Facility to the Agency pursuant to a Bill of Sale, dated a date to be determined (the "**2014 Bill of Sale**"), from the Company to the Agency; and

WHEREAS, the Agency, the Company and the Sublessee shall enter into an amendment and modification agreement or such other agreement or agreements, to be dated as of February 1, 2014 or such other date as may be determined (collectively, the "**Amendment Documents**"), by and among the Agency, the Company and the Sublessee, whereby the definition of Facility will be revised to include the 2014 Facility, the term of the Lease Agreement will be extended and each of the Transaction Documents (as defined in the Lease Agreement) will be amended to reflect such addition of 2014 Facility; and

WHEREAS, as security for a loan or loans from a lender or lenders not yet determined (collectively, the "**Lender**"), the Agency, the Company and the Sublessee will execute and deliver to the Lender, one or more mortgages, each dated a date to be determined and each from the Sublessee, the Company and the Agency to the Lender, and such other loan documents satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably required by the Lender (collectively, the "**Loan Documents**"), in connection with the financing, refinancing or permanent financing of the costs of acquiring, constructing and equipping of the 2014 Facility; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company and the Sublessee, consistent with the policies of the Agency, in the form of exemptions from mortgage recording taxes in connection with the financing or permanent financing or any subsequent refinancing of the 2014 Facility, if a mortgage or mortgages are required, exemptions from sales and use taxes and abatement of real property taxes on the increased assessment, resulting from installation of the 2014 Facility (as set forth in the PILOT Schedule attached as Exhibit D hereof), consistent with the policies of the Agency; 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, prior to the closing of the transaction described herein, a public hearing (the "**Hearing**") will be held so that all persons with views in favor of or opposed to either the financial assistance contemplated by the Agency or the location or nature of the 2014 Facility can be heard; and

WHEREAS, notice of the Hearing will be given prior to the closing of the transaction described herein, and such notice (together with proof of publication) will be substantially in the form annexed hereto as Exhibit A; and

WHEREAS, the minutes of the Hearing are or will be annexed hereto as Exhibit B; and

WHEREAS, the Agency has given due consideration to the application of the Company and the Sublessee and to the representations by the Company and the Sublessee that the actions of the Agency as contemplated by this resolution and the Amendment Documents are either an inducement to the Company and the Sublessee to maintain and expand the Facility in the Town of Brookhaven or are necessary to maintain the competitive positions of the Company and the Sublessee in their respective industries; 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 2014 Facility, the Amendment Documents and the continued leasing of the Facility to the Company; and

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 2014 Facility constitutes a "project", as such term is defined in the Act;

(c) The continued leasing of the Facility by the Agency to the Company will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven and the State of New York and improve their standard of living and thereby serve the public purposes of the Act;

(d) Based upon representations of the Company, the Sublessee and their counsel, 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 are located;

(e) The Facility and the operations conducted therein does not have a significant effect on the environment, as determined in accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder;

(f) The Agency has determined that the acquisition, construction, equipping and furnishing of the 2014 Facility, will promote and further the purposes of the Act;

(g) It is desirable and in the public interest for the Agency to acquire an interest in the 2014 Facility and lease the 2014 Facility to the Company;

(h) The 2014 Bill of Sale will be an effective instrument whereby the Agency will acquire an interest in the 2014 Facility;

(i) The Amendment Documents will be effective instruments whereby the Agency, the Company and the Sublessee agree to amend the definition of Facility to include the 2014 Facility, to extend the term of the Lease Agreement and to reflect that the Agency will lease the 2014 Facility to the Company;

(j) The Amended and Restated Payment-in-Lieu-of-Tax Agreement, dated as of February 1, 2014 (the "**Amended and Restated PILOT Agreement**"), or such other date as the Chairman and Agency Counsel shall agree, by and among the Company, the Sublessee and the Agency, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency, the Company and the Sublessee set forth the terms and conditions of their agreement regarding the Company's payments in lieu of real property taxes in connection with the increased assessment on the 2014 Facility;

(k) The Recapture Agreement, dated as of February 1, 2014 (the "**Recapture Agreement**"), or such other date as the Chairman and Agency Counsel shall agree, by and among the Company, the Sublessee and the Agency, in the form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency, the Sublessee and the Company describe the circumstances in which the Agency may recapture some or all of the benefits granted to the Company and the Sublessee with respect to the 2014 Facility; and

(l) The Loan Documents will be effective instruments whereby the Agency and the Company and the Sublessee agree to secure the Loan and assign to the Lender their respective rights under the Lease Agreement (except for the Agency's Unassigned Rights).

Section 2. Subject to the terms of this resolution, the Company and/or the Sublessee are hereby appointed the true and lawful agent(s) of the Agency to construct, and equip the 2014 Facility on behalf of the Agency, with the authority to delegate their respective status as agents of the Agency to their respective agents, subagents, contractors, subcontractors, suppliers, vendors and other such parties as the Company and/or the Sublessee may choose. The terms and conditions for the appointment of the Company and the Sublessee as agents of the Agency for the purposes described in this Section 2 are set forth in the form of the attached letter addressed to the Company and the Sublessee, marked as Exhibit C to this resolution, which is incorporated herein by reference. The appointment described above includes the following activities as they relate to the acquisition,

construction and equipping of the 2014 Facility, whether or not the materials, services or supplies described below are incorporated into or become an integral part of the 2014 Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, construction and equipping of the 2014 Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with acquisition, construction and equipping of the 2014 Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under the 2014 Facility. This agency appointment includes the power to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agents for the Agency, and in general to do all things which may be requisite or proper for completing the 2014 Facility, all with the same powers and with the same validity as would the Agency if acting on its own behalf. This agency appointment expressly excludes the Company and the Sublessee from purchasing motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The aforesaid appointment of the Company and the Sublessee as agents of the Agency to construct and equip the 2014 Facility shall expire at the earlier of (A) the completion of such acquisition, construction and equipping of the 2014 Facility, (B) a date determined by the Agency or (C) the date on which the Company has received exemptions from sales and use taxes in connection with the purchase or lease of equipment, building materials, services or other personal property in an amount not to exceed \$[ ]; provided however, such appointment may be extended at the discretion of the Chairman or the Chief Executive Officer of the Agency for up to six (6) additional months, in each case or by the Agency Board for any period beyond such six (6) months, upon the written request of the Company and the Sublessee if such activities and improvements are not completed by such time.

Section 3. Subject to the terms of this resolution, the Agency hereby determines to: (i) acquire an interest in the 2014 Facility and lease the 2014 Facility to the Company pursuant to the Amendment Documents, (ii) execute, deliver and perform the Amendment Documents, (iii) amend and restate the PILOT Agreement pursuant to the Amended and Restated PILOT Agreement to reflect modified benefits related to the 2014 Facility, (iv) execute, deliver and perform the Amended and Restated PILOT Agreement, (v) execute and deliver the Recapture Agreement, (vi) grant mortgage liens on and security interests in and to the 2014 Facility pursuant to the mortgages, if a mortgage is required, and (vii) execute, deliver and perform any other documents to which the Agency is party in connection with the Loan Documents.

Section 4. Subject to the terms of this resolution, the Agency is hereby authorized to acquire title to the 2014 Facility and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 5. The form and substance of the Amendment Documents, the mortgage, if any, the Amended and Restated PILOT Agreement, the Recapture Agreement and any Loan Documents to which the Agency is a party (each in substantially the forms presented to

or approved by the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 6. (a) The Chairman, Vice Chairman, Chief Executive Officer, or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Amendment Documents, the Amended and Restated PILOT Agreement, the Recapture Agreement, the mortgage, if any, and any Loan Documents to which the Agency is a party in substantially the form thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Chief Executive Officer, or any member of the Agency shall approve, and 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.

(b) The Chairman, Chief Executive Officer, or any member of the Agency is further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency.

Section 7. 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 8. This resolution shall take effect immediately.


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

I, the undersigned Secretary 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 19th day of February, 2014, 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.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, 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 19th day of February, 2014.

By:   
Secretary