

RESOLUTION AMENDING AND RESTATING IN WHOLE THE RESOLUTION OF THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY DATED FEBRUARY 10, 2015 RELATING TO NEW FRONTIER CO., LLC AND GRANTING APPROVAL OF AND AUTHORIZING THE GRANT OF CERTAIN FINANCIAL ASSISTANCE BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY TO NEW FRONTIER CO., LLC IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A MULTI-PHASED, MULTI-FAMILY RESIDENTIAL/COMMERCIAL MIXED USE RENTAL FACILITY IN THE TOWN OF BABYLON

WHEREAS, the Town of Babylon Industrial Development Agency (the "Agency") is authorized under the laws of the State of New York, and in particular under the provisions of the New York State Industrial Development Agency Act and the Agency's enabling legislation, respectively constituting Article 18-A and Section 907-a of the General Municipal Law (Chapter 24 of the Consolidated Laws of New York), as amended (the "Act"), to assist in providing for manufacturing, warehousing, research, civic, commercial and industrial facilities in the Town of Babylon; and

WHEREAS, representatives of New Frontier Co., LLC and any business entity owned or controlled by the principals of New Frontier Co., LLC (the "Company"), have supplied information to the Town of Babylon Industrial Development Agency (the "Agency") with respect to a project (the "Project") consisting of the acquisition, construction and equipping by the Company of a multi-phased, multi-family residential/commercial mixed use rental facility which at completion will contain 500 residential units and approximately 38,000 square feet of retail space to be located on a site (the "Development Site") containing approximately 20.265 acres located at 805 Broadway in Amityville, New York, Suffolk County Tax Map District 100, Section 163, Block 1, Lots 057.001, 057.002 and 057.003 and Suffolk County Tax Map District 100, Section 164, Block 2, Lots 025.001 and 025.002 (the "Facility") in the Town of Babylon, New York (the "Town"), for use by Company as a residential/commercial rental project; and

WHEREAS, the Development site is currently used as a mobile home park containing 358 mobile homes and various support buildings. The existing mobile home park is not connected to sanitary waste treatment systems, even though it significantly exceeds the allowable flow established under Article 6 of the Suffolk County Sanitary Code and has numerous pending violations issued with respect to sanitary code compliance. In addition, many of the structures located at the mobile home park do not have proper Certificates of Occupancy and are the subject of Town code violations and existing site conditions are substandard and dangerous. The area surrounding the Development site is residential in nature primarily consisting of single family residences; and

WHEREAS, in connection with the Project the Long Island Center For Socio-Economic Policy prepared an economic development study dated October 31, 2011 with respect to the Project and the conclusions of such study provide that the community of North Amityville and the census tract containing Frontier Park will economically benefit from the Project, that the 1,201 new residents of the Facility will bring North Amityville a minimum of \$35.4 million in new permanent family income, at least \$61.9 million in new economic activity and an additional \$4.0 million of new State and Local Sales Tax revenues and that as a result of the Project

families earning in excess of \$50,000 in North Amityville will increase 40 percent from 2,527 families to 3,548 and by 96 percent in the Frontier Park census tract from 1,062 to 2,083; and

WHEREAS, representatives of the Company have indicated that the development of the Project will take place over a number of years and the construction itself will result in a substantial number of construction jobs within the Town of Babylon over the next years and the Project and the Facility will result in the location and growth of a substantial number of permanent full time jobs within the Town of Babylon over the next years; and

WHEREAS, although the Project is expected to provide significant economic benefits to the Town of Babylon and the greater North Amityville area it will also result in the displacement of the current residents of the trailer park; and

WHEREAS, in connection with the Project and in order to capitalize on the economic benefits of the Project and to mitigate the displacement of current residents of the trailer park, the Town of Babylon L.D. Corporation II will enter into a Community Benefit Agreement with the Company pursuant to which certain trust funds will be established to foster economic development and affordable housing in the Town; and

WHEREAS the as an incentive for the Agency to provide financial assistance to the Project and enter into requisite documentation relating thereto, the Company has agreed to make payments to the Town of Babylon L.D. Corporation II pursuant to the Community Benefits Agreement and the provision of such financial assistance to Company as authorized herein will be contingent upon execution of and compliance with the Community Benefits Agreement; and

WHEREAS, in order to induce such facilities within the Town it appears necessary to assist the Company by taking legal leasehold title to the Facility so as to afford the Company certain relief from mortgage recording taxation, relief from real property taxation and relief from sales and use taxation for a limited period; and

WHEREAS, the financial assistance to be provided to the Project will deviate from the Uniform Tax Exemption Policy of the Agency and such deviations have been the subject of public hearings held by the Agency on May 28, 2013 and March 25, 2015; and

WHEREAS, it is contemplated that the Company or the current owner of the Facility will lease the Facility to the Agency pursuant to a Company Lease Agreement (the "Company Lease") and the Agency will assist the Company to undertake the Project and will sublease the Facility to the Company pursuant to a lease agreement (the "Lease Agreement"), by and between the Company and the Agency pursuant to which the Company agrees, among other things, to make lease payments in such amounts as specified in the Lease Agreement; and

WHEREAS, pursuant to the Lease Agreement the Company has agreed to make certain payments in lieu of real property taxes with respect to the Facility to the Agency; and

WHEREAS, it is desired that the Agency authorize the granting of certain financial assistance to the Company in connection with the Project including exemption from mortgage recording taxes, real property taxes and sales and use taxes.

NOW, THEREFORE, BE IT DETERMINED, APPROVED AND RESOLVED by the members of the Agency as follows:

Section 1. (a) The Agency hereby finds and determines that (i) the Project constitutes a “Project” within the meaning of the Industrial Development Agency Act Article 18-A of the General Municipal Law of the State of New York (the “Act”); and (ii) the granting of mortgage recording tax abatements, real property tax abatements and sales and use tax abatements (collectively the “Financial Assistance”) by the Agency with respect to the Facility pursuant to the Act, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Town of Babylon, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act.

(b) It is desirable and in the public interest for the Agency to grant Financial Assistance to the Company with respect to the Project.

(c) The Agency shall grant Financial Assistance in the form of state and local sales and use tax abatements and in the event of the occurrence of a recapture event under the Lease Agreement, the Agency will pursue recapture of Financial Assistance as provided in the Lease Agreements.

Section 2. To accomplish the purposes of the Act, the Agency shall take legal title to the Facility, assist the Company to undertake the Project and lease the Facility to the Company pursuant to the Lease Agreement.

Section 3. Pursuant to the Lease Agreement, the Company shall make certain payments in lieu of real property taxes (“Pilots”) which would be otherwise due and payable with respect to the Facility.

Section 4. In order to provide the Company with financial assistance with respect to exemption from New York State and local Sales and Use Taxes with respect to the Project the Agency may issue to the Company’s agents sale tax authorization letters (“Sales Tax Authorization Letters”) which shall be used pursuant to the terms contained therein and in the Lease Agreement.

Section 5. In order to secure amounts to be loaned by M&T Bank (and/or any other mortgage lender acceptable to the Chief Executive Officer (the “CEO”) of the Agency) to Company, the Agency hereby authorizes the execution of one or more mortgages and assignments of leases and rents (collectively, the “Mortgage”) granted at the initial closing of the transaction or any time thereafter during the term of the Lease Agreement, from the Agency and Company to M&T Bank (or any other mortgage lender acceptable to the CEO of the Agency) in form acceptable to the CEO of the Agency and Counsel to the Agency.

Section 6. The form and substance of the Lease Agreement in substantially the form previously approved by the Agency for other “straight lease” transactions is hereby approved.

Section 7. Matthew McDonough, as Chief Executive Officer or any successor Chief Executive Officer, including any Acting Chief Executive Officer (the “CEO”) of the Agency or

any other Authorized Representative, is hereby authorized, on behalf of the Agency, to execute and deliver final forms of the Lease Agreement, the Sales Tax Authorization Letters, the Mortgage and any other agreements or certificates consistent herewith (hereinafter collectively called the "Agency Documents"), all in substantially the forms previously executed by the Agency for other "straight lease" transactions acceptable to Agency Counsel, with such changes, variations, omissions and insertions in the Agency Documents as the CEO of the Agency or any other authorized representative of the Agency shall upon advice of counsel approve. The execution thereof by the CEO of the Agency or any other authorized representative shall constitute conclusive evidence of such approval.

The CEO or any other Authorized Representatives are further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives including the Chairman, the Secretary or Assistant Secretary of the Agency, to execute any Agency Documents or certificates of the Agency authorized pursuant to this Resolution and determine the terms of the Agency Documents.

The Secretary, Assistant Secretary or Counsel to the Agency is hereby authorized to attest to the CEO's or any other Authorized Representative's signature on the foregoing documents and to impress or affix the seal or facsimile seal of the Agency thereto.

Section 8. The CEO, the Chief Financial Officer ("CFO") of the Agency, the Chairman or the Secretary and any member of the Agency (as used in this resolution, the "Authorized Representatives") are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to cause the transactions as described in the Lease Agreement to be undertaken and in relation thereto, to execute and deliver any and all papers, instruments, agreements, opinions, certificates, affidavits and other documents, and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution, and the Agency Documents including such changes or revisions in the forms of such documents as may be requested by counsel to the Agency.

Section 9. 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, agreements 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 10. All covenants, stipulations, obligations and agreements of the Agency contained in this resolution, and the Agency 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 the Agency and its successors from time to time and 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 Agency 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.

Section 11. The provision of Financial Assistance as authorized hereby shall be contingent upon the execution of and compliance with the Benefits Agreement by the Company.

Section 12. No covenant, stipulation, obligation or agreement contained in this resolution, or the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency or the Town of Babylon in his or their individual capacity and neither the members of the Agency nor any officer shall be liable personally on the Agency Documents or be subject to any personal liability or accountability by reason of the execution thereof.

Section 13. The law firm Winston & Strawn LLP is hereby appointed transaction counsel to the Agency for this transaction.

Section 14. Notwithstanding the foregoing, the Agency will not grant any Financial Assistance (as such term is defined in the Act) in excess of \$100,000 to the Company until the Agency has held a public hearing with respect to the Project in accordance with the provisions of the Act.

Section 15. This resolution amends and restates in whole the resolution of the Agency dated February 10, 2015 relating to the Project and the Company.

Section 16. 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:

The resolution was thereupon declared duly adopted.

Adopted: March 25, 2015

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

I, Chris Ferencsik, the duly elected, qualified Secretary of the Town of Babylon Industrial Development Agency (the "Agency"), hereby certify that:

1. The foregoing is a true, correct and complete copy of the record of proceedings of the Agency had and taken at a lawful meeting of the Agency held at the Law Office of John Braslow, 816 Deer Park Avenue, North Babylon, New York on March 25, 2015, commencing at the hour of 7:00 P.M., as recorded in the regular official book, of the proceedings of the Agency, those proceedings were duly had and taken as shown therein.

2. All members of the Agency and the public were duly notified of that meeting pursuant to law.

IN WITNESS WHEREOF, I have signed this certificate and affixed the seal of the Agency the 25th day of March, 2015.


Secretary

(SEAL)