



AGENDA

October 19, 2022

1. Call to Order.
2. Roll Call.
3. Pledge of Allegiance.
4. **Resolution # 1**

Accept the minutes from the IDA/IDC Board Meeting of September 14, 2022.

5. **Resolution # 2**

Resolution adopting an amendment to the Fee Policy.

6. **Resolution # 3**

Resolution authorizing an amendment to project documents relating to the Florio Food Corp., d/b/a/ Cannoli Factory Project.

7. **Resolution # 4**

Resolution permitting the Termination of Lease and Project Agreement and Company Lease and authorizing the Chief Executive Officer to convey the Facility Equipment and terminate the Sales Tax Exemption regarding the premises located at 25 & 45 Brook Avenue, Deer Park, New York 11729 (SCTM# 0100 118.00 03.00 030.000 & 031.000), to DFA, LLC.

8. **Resolution # 5**

Resolution permitting the Termination of Lease and Company Lease and authorizing the Chief Executive Officer to convey the Facility Equipment and terminate the Sales Tax Exemption regarding the premises located at 590 Oak Street, Copiague, New York (SCTM# 0100 198.00 02.00 004.000), to R.R. 590 Oak Family Limited Partnership.

9. Resolution # 6

Approval of the 2023 Budget.

10. Chief Executive Officer's report.

11. Old Business.

12. New Business.

13. Adjournment.

BABYLON INDUSTRIAL DEVELOPMENT AGENCY

IDA/IDC MEETING MINUTES

September 14, 2022

Present: Tom Gaulrapp, Chairman
Justin Belkin, Vice Chairman
Paulette Laborne, Secretary
Marcus Duffin
William Celona
William Bogardt
Rosemarie Dearing
Vincent Piccoli

Absent: Carol Quirk

Also Present: Thomas Dolan, Chief Executive Officer
Frank Dolan, Chief Operations Officer
David Batkiewicz, Special Projects Manager
Joseph Ninomiya, Special Projects Manager
Antonio Martinez, Deputy Supervisor
William Wexler, Agency Counsel

A quorum being present, the meeting was called to order at 8:00 A.M.

A motion was made by Justin Belkin and seconded by Paulette Laborne to accept the minutes from the IDA/IDC Board Meeting of August 17, 2022. All in favor, motion carries.

A motion was made by Rosemarie Dearing and seconded by Marcus Duffin to accept the minutes from the Public Hearing held August 30, 2022, for Lin's Waha International Corp. and J & M Real Estate Lam's Group LLC. All in favor, motion carries.

A motion was made by William Celona and seconded by Paulette Laborne to accept the minutes from the Public Hearing held September 13, 2022 for Dixon 145 Associates LLC, Jaxson LLC a/k/a Infinity Drain Ltd. All in favor, motion carries.

A motion was made by William Bogardt and seconded by Rosemarie Dearing to accept the minutes from the Public Hearing held September 13, 2022 for P & M, LLC and Sefi Realty LLC. All in favor, motion carries.

A motion was made by William Bogardt and seconded by Justin Belkin in favor of a resolution of the Town of Babylon Industrial Development Agency approving the acquisition, renovation and equipping of a certain facility for Lin's Waha International Corp and J&M Real Estate Lam's Group LLC and approving the form, substance and execution of related documents and determining other matters in connection therewith. All in favor, motion carries.

A motion was made by Marcus Duffin and seconded by William Celona in favor of a resolution granting approval of and authorizing the grant of certain financial assistance by the Town of Babylon Industrial Development Agency to Dixon 145 Associates LLC and Always Affiliation Inc. in connection with the renovation, construction, equipping and furnishing of a manufacturing and distribution facility. All in favor, motion carries.

A motion was made by Rosemarie Dearing and seconded by William Bogardt in favor of a resolution of the Town of Babylon Industrial Development Agency determining that the acquisition, renovation, construction, reconstruction and equipping of a certain project will not have a significant adverse effect on the environment. All in favor, motion carries.

A motion was made by Paulette Laborne and seconded by Vincent Piccoli in favor of a resolution of the Town of Babylon Industrial Development Agency approving the acquisition, construction, reconstruction and equipping of a certain facility for P & M, LLC and Sefi Realty LLC and approving the form, substance and execution of related documents and determining other matters in connection therewith. All in favor, motion carries.

A motion was made by Justin Belkin and seconded by Rosemarie Dearing in favor of a preliminary inducement resolution of the Town of Babylon Industrial Development Agency relating to the granting of preliminary approval to Prologis, L.P. in connection with the potential grant of certain financial assistance. All in favor, motion carries.

A motion was made by Vincent Piccoli and seconded by Rosemarie Dearing in favor of a resolution authorizing the Town of Babylon Industrial Development Agency to execute a mortgage agreement between the Agency to execute a mortgage agreement between the Agency, 51 Executive Realty LLC and JPMorgan Chase Bank, N.A. in an amount not exceed \$12,000,000.00. All in favor, motion carries.

A motion was made by Rosemarie Dearing and seconded by Paulette Laborne in favor of a resolution authorizing the Town of Babylon Industrial Development Agency to execute a revolving credit line mortgage, assignment of leases and rents and security agreement and fixture filing between the Agency, 109 Properties LLC and 1110A Equities LLC and the First National Bank of Long Island in an amount not to exceed \$1,500,000.00. All in favor, motion carries.

CEO Report

Mr. Dolan informed the Board that they would be receiving a letter by the end of the week outlining the timeline for the 2023 budget certification process. Mr. Dolan thanked the Board for their continued leadership.

Old Business

No old business.

New Business

No new business.

A motion was made by William Bogardt and seconded by William Celona to adjourn the meeting.
All in favor, motion carries.

RESOLUTION ADOPTING AN AMENDEMENT TO THE AGENCIES FEE POLICY.

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, the Agency has various policies regarding the governance of the Agency;

WHEREAS, the Governance Committee has recommended making the following changes to the Fee Policy: (1) increase application fee to \$2,500 for projects under \$10,000,000; (2) increase application fee to \$5,000 for projects over \$10,000,000; (3) add a Housing Projects Independent Study Fee that would cover the cost of all independent third party studies for housing projects; and (4) add an annual compliance fee of \$1,000 for projects over \$10,000,000.

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

Section 1.

The members of the Board of Directors hereby adopt the amendment to the Agencies Fee Policy.

Section 2.

This resolution shall take effect immediately.

Fee Policy

Application Fee: Projects under \$10,000,000 - \$2,500
 Projects over \$10,000,000 - \$5,000

Straight Lease Transaction: 1.25% of hard costs plus 1% of savings (PILOT, estimated sales tax, mortgage recording)

Unconnected Campus: All newly acquired buildings shall be subject to a 1.25% IDA transaction fee. Existing buildings shall be charged .75% of fair market value plus 1.25% on equipment and renovations plus 1% of combined savings (PILOT, estimated sales tax, mortgage recording)

Deals involving leases and reups: A list of six (6) recent deals similar in size will be created. The average fee of that list shall be divided by the average square footage of that list. The average per square foot calculation shall be multiplied by the building's square footage reups plus 1% of savings plus 1.25% on equipment and renovations.

Large developments over \$30 million:

1% first \$10 million

$\frac{3}{4}$ of 1% between 10 – 20

$\frac{1}{2}$ of 1% between 20 – 30

$\frac{1}{4}$ of 1% over 30

Plus .75% of savings

Bond Schedule

$\frac{3}{4}$ of 1% first \$15 million

$\frac{1}{2}$ of 1% between 15 – 25

$\frac{1}{4}$ of 1% between 25 – 35

1/10 of 1% over 35

Ability to negotiate: The CEO shall have the ability to negotiate the fee. The CEO may not extend greater than a 20% discount on the fee without Board consent.

Legal Fee: Applicant is responsible for all legal fees at closing, which include both local and project counsel.

Administrative Fee: \$2,500 everything else (termination of lease, mortgage modifications); \$5,000 – amendments to lease (sales tax extensions, PILOT schedule changes); and the cost of legal advertising in Newsday

Housing Projects Independent Study Fee: All potential housing projects are required to cover the entire cost of any independent third party studies commissioned in relation to the potential project.

CERTIFICATION FOR BOND

Upon successful conclusion and sale of the required bond issue, the applicant shall pay to the Agency an administrative fee set by the Agency not to exceed an amount equal to 1% of the total project cost financed by the bond issue, which amount is payable at closing. The Agency's Bond Counsel's fees, its general counsel's fees and the administrative fee may be considered as a cost of the project and included as party of any resultant bond issue.

CERTIFICATION (Straight Lease)

The applicant shall pay to the Agency an administrative fee set by the Agency not to exceed an amount equal to 1 % of the total project cost, which amount is payable at closing.

Annual compliance: Projects over \$10,000,000 must pay an annual compliance fee of \$1,000 for the duration of the PILOT.

RESOLUTION AUTHORIZING AN AMENDMENT TO PROJECT DOCUMENTS
RELATING TO THE FLORIO FOOD CORP., D/B/A/ CANNOLI FACTORY PROJECT

WHEREAS, pursuant to a resolution adopted on August 17, 2010 authorizing the undertaking of a Project, the Town of Babylon Industrial Development Agency (the "Agency") entered into a straight lease transaction with Marsala Realty Group LLC ("Lessee") and Florio Food Corp., d/b/a Cannoli Factory ("Original Sublessee") pursuant to which the Agency granted the Lessee and Original Sublessee financial assistance in the form of among others, exemptions from real property taxes and state and local sales and use taxes in accordance with a Lease Agreement, between the Agency and Lessee dated September 30, 2010 (the "Lease Agreement") and a Sublease Agreement, between Lessee and Original Sublessee dated September 30, 2010 (the "Sublease Agreement"), covering the property located at 75 Wyandanch Avenue, Wyandanch, New York; and

WHEREAS, the Lessee and the Original Sublessee were owned and controlled by John Alair-Garcia; and

WHEREAS, on April 30, 2016 the assets of the Original Sublessee were acquired by Vivi Foods LLC ("Vivi"), which was wholly owned by Indulge Intermediate LLC whose controlling member was John Alair-Garcia; and

WHEREAS, Vivi has been acquired by Emmi Dessert USA LLC ("Emmi") and Emmi now desires to assume, all of Original Sublessee's right, title and interest in, to and under the Sublease Agreement and, in connection with such assignment and assumption, the Lessee and Emmi desire to enter into an Amended and Restated Sublease Agreement (the "Amended and Restated Sublease"); and

WHEREAS, John Alair-Garcia does not own and control Emmi but continues to maintain a controlling interest in the Lessee; and

WHEREAS, representatives of Emmi have informed the Agency that Emmi has and will continue to provided employment at the Facility (as defined in the Lease Agreement) at the same levels as had been previously provided by the Original Sublessee; and

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

Section 1. The Agency hereby approves of and consents to the execution of the Amended and Restated Sublease by and between the Lessee and Emmi.

Section 2. Thomas E. Dolan as Chief Executive Officer (the "Chief Executive Officer") or any other Authorized Representative, is hereby authorized, on behalf of the Agency, to consent to final forms of the Amended and Restated Sublease Agreement and any other consents, agreements or certificates consistent herewith (hereinafter collectively called the "Amended Documents"), all in form acceptable to the Agency upon the advice of counsel to the Agency. The execution thereof by the Chief Executive Officer shall constitute conclusive evidence of the approval of the Amended Documents.

The Chief Executive Officer 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 Amended Documents or certificates of the Agency authorized pursuant to this Resolution and determine the terms of the Amended Documents.

The Secretary, Assistant Secretary or Counsel to the Agency is hereby authorized to attest to the Chief Executive Officer'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 3. 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 Amended 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 Amended Documents binding upon the Agency.

Section 4. All covenants, stipulations, obligations and agreements of the Agency contained in this resolution, and the Amended 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 Amended 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 5. No covenant, stipulation, obligation or agreement contained in this resolution, or the Amended 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 Amended Documents or be subject to any personal liability or accountability by reason of the execution thereof.

Section 6. 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 either of the Sublessee or the Lessee until the Agency has held a public hearing with respect to the Project in accordance with the provisions of the Act.

Section 7. This resolution shall take effect immediately.

October 19, 2022

Babylon Industrial Development Agency

Resolution: permitting the Termination of Lease and Project Agreement and Company Lease and authorizing the Chief Executive Officer to convey the Facility Equipment and terminate the Sales Tax Exemption regarding the premises located at 25 & 45 Brook Avenue, Deer Park, New York 11729 (SCTM# 0100 118.00 03.00 030.000 & 031.000), to DFA, LLC.

Now Therefore, Be It

Resolved, that the Town of Babylon IDA Board has approved a resolution permitting the Termination of Lease and Project Agreement and Company Lease and authorizing the Chief Executive Officer to convey the Facility Equipment and terminate the Sales Tax Exemption regarding the premises located at 25 & 45 Brook Avenue, Deer Park, New York 11729 (SCTM# 0100 118.00 03.00 030.000 & 031.000), to DFA, LLC.

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