

**MEETING HELD APRIL 13, 2000**

A meeting of the Industrial Development Agency was held on Thursday, April 13, 2000 at 7:00 P.M., in the Courtroom at 10 Pearl Street, Port Chester, New York with Chairperson, Marianne Cotter presiding.

Present were members Angelo Rubino, Jr., Robert Rodriguez, John Heinsch, Shari Melillo and Jo-Ann Strazza.

It should be noted that member John Ryan was absent.

Also present were Mark Tulis, Special Counsel to the IDA and Joseph Carlucci, counsel with Cuddy & Feder & Worby, LLP, representing Neri's Bakery and Nadel Industries.

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Mr. Carlucci made a presentation to the IDA concerning the need for Neri's Bakery to expand their operation. He said they want to construct a new building next to their existing location to handle their increased business and are requesting that the IDA approve tax-exempt IDA Revenue Bonds in order to accomplish this new addition.

On motion of COMMISSIONER RUBINO, JR., seconded by COMMISSIONER HEINSCH, the following resolution was adopted by the Port Chester Industrial Development Agency, Port Chester, New York:

RESOLUTION OF THE VILLAGE OF PORT CHESTER INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION TOWARD THE ISSUANCE OF TAX-EXEMPT INDUSTRIAL DEVELOPMENT REVENUE BONDS IN AN AMOUNT SUFFICIENT TO FINANCE CERTAIN COSTS OF THE NERI'S BAKERY PRODUCTS, INC. / 40 PEARL STREET INC. FACILITY, APPOINTING NERI'S BAKERY PRODUCTS, INC. OR 40 PEARL STREET INC., THE PRINCIPALS OF NERI'S BAKERY PRODUCTS, INC. OR 40 PEARL STREET INC. AND/OR RESPECTIVE ENTITIES

FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING, AGENT OF THE ISSUER FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING AND EQUIPPING THE FACILITY, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT, MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE FACILITY AND REQUESTING THE VILLAGE OF PORT CHESTER TO APPROVE THE ISSUANCE OF THE BONDS.

WHEREAS, Neri's Bakery Products, Inc. ("Neri's Bakery Products, Inc.") or 40 Pearl Street Inc. ("40 Pearl Street, Inc."), each a New York corporation, on behalf of themselves and/or the principals of Neri's Bakery Products, Inc. or 40 Pearl Street Inc., and/or respective entities formed or to be formed on behalf of any of the foregoing (individually or collectively, the "Company") has applied to the Village of Port Chester Industrial Development Agency (the "Issuer") to issue its Industrial Development Revenue Bonds (the "Bonds") in amount sufficient to finance certain costs of an industrial development facility consisting of the acquisition of an approximately 0.63 acre parcel of land located at 53-57 Pearl Street, Village of Port Chester, Town of Rye, Westchester County, New York, and the construction and equipping thereon of a two-story, approximately 51,800 square foot building to be used by the Company for the manufacture and production of bread, rolls, bagels and bread products (the "Facility"), including the following as they relate to the appointment of the Company as agent of the Agency pursuant to Section 5 hereof with respect to the acquisition, construction and equipping of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, construction and equipping of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the acquisition, construction and equipping of the Facility, and (iii) all equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under such Facility; and

WHEREAS, either Company entity may be the Sublessee (the "Sublessee") from the other Company entity as identified above in the capacity of lessee from the Issuer; and

WHEREAS, the Facility will be lease (with the obligation to purchase) or sold to the Company or such other person as may be designated by the Company and agreed upon by the Issuer, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 632 of the Laws of 1972 of the State of New York, as the same may be amended from time to time (collectively, the "Act"); and

WHEREAS, the Act authorizes and empowers the Issuer to issue its bonds 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, in addition to the issuance of the Bonds, the Issuer contemplates that it will provide financial assistance to the Company in connection with the Facility, consistent with the policies of the Issuer, in the form of exemptions from mortgage recording taxes, exemptions from sales and use taxes and abatement of real property

taxes on the increase assessment resulting from improvements to the Facility to be more particularly described in a Bond Resolution to be adopted by the Issuer prior to the issuance of the Bonds; and

WHEREAS, pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), interest on the Bonds will not be excluded from gross income for federal income tax purposes unless the issuance of the Bonds is approved by the "applicable elected representative" of the Village of Port Chester (the "Village") after a public hearing has been held regarding the Facility and the issuance of the Bonds; and

WHEREAS, prior to the issuance of the Bonds and the granting of any tax benefits, public notice of the hearing will be given as required by law, a copy of which (together with proof of publication) will be annexed hereto as Exhibit A, and such notice will comply with all requirements of the Code; and

WHEREAS, public hearing will be held to hear all persons interested in the issuance of the Bonds, the granting of any tax benefits and the location and nature of the Facility, and any other financial assistance contemplated, the minutes of which will be annexed as Exhibit B.

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

Section 1. Consistent with the negative declaration issued by the Village of Port Chester Planning Commission, dated November 29, 1999 and based upon the review of the negative declaration issued by the Village of Port Chester Planning Commission, the Environmental Assessment Form provided by the Company and other representations and information furnished by the Company regarding the Facility, the Issuer determines that the action relating to the financing, acquisition, construction, equipping and operation of the Facility is an "unlisted" action, as that term is defined in the State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law) ("SEQRA"). The Issuer also determines that the action will not have a "significant effect" on the environment, and therefore, an environmental impact statement will not be prepared. This determination constitutes a negative declaration for purposes of SEQRA. Notice of this determination shall be filed to the extent required by the applicable regulations under that Act or as may be deemed advisable by the Chairperson of the Issuer or counsel to the Issuer.

Section 2. (a) The acquisition, construction and equipping of the Facility and the financing thereof by the Issuer, through the issuance of the Bonds pursuant to the Act, and the provision of other financial assistance in connection therewith pursuant to the Act, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Village and the people of the State of New York and improve their

standard of living, and thereby serve the public purposes of the Act, and the same is, therefore, approved;

(b) It is desirable and in the public interest for the Issuer to issue the Bonds for the purpose of financing the costs of the acquisition, construction and equipping of the Facility, together with necessary incidental expenses in connection therewith, as reflected in the Company's application to the Issuer, as amended from time to time prior to the issuance of the Bonds. The currently estimated aggregate principal amount of the Bonds to be issued is approximately \$6,500,000, but not to exceed \$8,700,000.

Section 3.

The form and substance of a proposed inducement agreement (in substantially the form presented to this meeting) by and between the

Issuer

and the Company setting forth the undertakings of the Issuer and the Company with respect to the issuance of the Bonds and the development of the Facility (the "Agreement") are hereby approved. The Chairperson of the Issuer is hereby authorized, on behalf of the Issuer, to execute and deliver the Agreement, with such changes in terms and form as the Chairperson shall approve. The execution thereof by the Chairperson shall constitute conclusive evidence of such approval.

Section 4.

Subject to the conditions set forth in Section 4.02 of the Agreement and the approval of the issuance of the Bonds by Hon. Christine Korff, and the compliance with any other applicable provisions of the Code, the Issuer shall (i) issue the Bonds in an amount and with maturities, an interest rate, redemption terms and other terms and provisions to be determined by a further resolution of the Issuer, (ii) acquire, construct and equip the Facility, (iii) lease (with an obligation to purchase) or sell the Facility to the Company pursuant to an agreement by and between the Issuer and the Company whereby the Company will be obligated, among other things, to make payments to or for the account of the Issuer in amounts and at times so that payments will be adequate to pay the principal of , premium, if any, and interest on the Bonds, and (iv) secure the Bonds in such manner as the Issuer, the Company and the purchaser(s) of the Bonds mutually deem appropriate. If the proceeds of the sale of the Bonds are insufficient to finance completion of the acquisition, construction and equipping of the Facility, the Issuer will, subject to the terms of the Agreement, and upon the request of the Company, take such actions and execute such documents as may be necessary to effect the issuance from time to time of additional bonds, whether on a parity with the Bonds or otherwise, for the purpose of paying the costs of completing the Facility.

Section 5.

The Company is herewith and hereby appointed the agent of the Issuer to acquire, construct and equip the Facility. The Company is hereby empowered to delegate its status as agent of the Issuer to agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to acquire, construct and equip the Facility. The terms and conditions of the

appointment of the Company as agent of the Issuer for the purposes described in this resolution are set forth in the form of the attached letter addressed to the Company, marked as Exhibit C to this resolution. The form of such letter is incorporated herein by reference and is approved and adopted by the Issuer, and the Chairperson and all other duly authorized officials of the Issuer are authorized to execute and deliver

such letter to the Company. The Issuer hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Issuer solely for purposes of making sales or leases of goods, services and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialman, vendor or supplier and the Company, as agent of the Issuer, shall be determined to be on behalf of the Issuer and for the benefit of the Facility. The Company shall indemnify the Issuer with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and /or suppliers and the Company, as agent of the Issuer. The aforesaid appointment of the Company as agent of the Issuer to acquire, construct and equip the Facility shall expire at the earlier of (a) the completion of such acquire, construct and equip of the Facility, or (b) such date as the Issuer designates; provided however, such appointment may be extended at the discretion of the Issuer, upon written request of the Company, if such activities and improvements are not completed by such time. The aforesaid appointment of the Company is subject to the Issuer conducting a public hearing following public notice thereof as required by the Act and the adoption by the Agency of a ratification resolution after such public hearing has been held and minutes thereof have been made available to the members of the Issuer to aid in their deliberations.

- Section 6. The Company is hereby authorized to undertake the financing of the Facility with the Bonds.
- Section 7. To the extent the Company has paid or incurred or will pay or incur preliminary expenditures or hard costs in connection with the Facility with current funds, it reasonably expects to reimburse itself with proceeds from the Bonds.
- Section 8. The law firm of Nixon, Peabody LLP is hereby appointed Bond Counsel to the Issuer in connection with the issuance of the Bonds.
- Section 9. Counsel to the Issuer and Bond Counsel are hereby authorized to work with counsel to the Company and others to prepare, for submission to the Issuer, all documents necessary to effect the authorization, issuance and sale of the Bonds.
- Section 10. The Chairperson of the Issuer is hereby authorized and directed (i) to distribute copies of this resolution to the Company, (ii) to request Hon. Christine Korff to approve the issuance of the Bonds and to concur in

the Issuer's determination under SEQRA, and (iii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 11. This resolution shall take effect immediately.

ROLL CALL

AYES: Commissioners Cotter, Heinsch, Melillo, Rubino, Rodriguez and Strazza  
NOES: None  
ABSENT: Commissioner Ryan  
DATED: April 13, 2000

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On motion of Commissioner Rodriguez, seconded by Commissioner Rubino, Jr., the Industrial Development Agency set a public hearing for June 2, 2000 at 10:00 am in the Rye Town Courtroom, 10 Pearl Street, Port Chester, New York with regard to the issuance of Industrial Development Revenue Bonds for Neri's Bakery Products, Inc. or 40 Pearl Street Inc.

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It should be noted that Commissioner Rodriguez was excused at 7:25 p.m.

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Mr. Carlucci explained to the Agency that bonds issued to Nadel Industries by the IDA in 1996 need to be paid off so that the property can be condemned as part of the Marina Redevelopment Project. He said that in order to accomplish this, IDA approval is required.

On motion of COMMISSIONER RUBINO, JR., seconded by CHAIRPERSON COTTER, the following resolution was adopted by the Port Chester Industrial Development Agency, Port Chester, New York.

Regarding the Modification of Documents Related to Defeasance of Bonds

Relating to the

Village of Port Chester Industrial Development Agency  
Industrial Development Revenue Bonds  
(Nadel Industries, Inc. Project)  
Series 1996  
issued in the original aggregate principal amount of \$5,000,000

Under a Trust Indenture with  
First Union National Bank, as Trustee

WHEREAS, the Village of Port Chester Industrial Development Agency (the "Agency"), on February 20, 1996 issued \$5,000,000 of its Industrial Development Revenue Bonds (Nadel Industries, Inc. Project) dated as of February 20, 1996 (the "Bonds") to finance a project in the Village of Port Chester, New York consisting of an industrial facility consisting of existing buildings for the manufacturing, storage and shipping of plastic injection molding packaging and related material, together with related improvements, fixtures, machinery and equipment and all machinery, equipment, furniture and other personal property related thereto (the "Project"), as referred to in and pursuant to a Lease Agreement (the "Lease Agreement") dated as of February 1, 1996 between the Agency and SR LLC, a New York limited-liability company ( the "Lessee"), by means of which the Agency leased the Facility Realty to the Lessee on the terms and conditions therein set forth and the Equipment Lease Agreement dated as of February 1, 1996 (the "Equipment Lease Agreement"); and

WHEREAS, the Lessee intends to provide for all amounts due under the Lease Agreement and the Equipment Lease Agreement and to have both Series of Bonds defeased in full; and

WHEREAS, First Union National Bank, the Trustee, intends to permit said supplement to the Indenture and related modification subject to certain conditions; and

WHEREAS, the Lessee has requested the Agency and First Union National Bank, the Trustee to consent to (i) the prepayment of lease rental payments and (ii) the related defeasance of Bonds in accordance with the Supplemental Indenture, dated as of March 1, 2000, with provision for redemption on an Interest Payment Date in 2006 and/or 2008 and /or 2016, and without the necessity of complying with the various notice periods for each under the Lease Agreement, the Bonds and the Indenture and despite the general prohibition of prepayment of Series 1996 Bonds maturing in 2006;

NOW THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE VILLAGE OF PORT CHESTER INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

1. To accomplish the purposes of the Agency and to further the interests of the Project, the Agency hereby approves and consents to the execution and delivery by the Chairperson and the Secretary of all documentation concerning the (a) supplement to the Indenture in the form attached; (b) modification of the documents with respect to the redemption of the Bonds, ( c) the effectuation of the redemption of the Bonds in 2006 and/or 2008 and/or 2016, and (d) all other documentation, acceptable in form and substance to Agency Counsel, and with such written consents of the Series A Bondholder,

the Sublessee and the Trustee as required by Agency Counsel, necessary to effectuate such transactions.

2. This resolution shall take effect immediately.

ROLL CALL

AYES: Commissioners Cotter, Heinsch, Melillo, Rubino and Strazza

NOES: None

ABSENT: Commissioners Rodriguez and Ryan

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There being no further business on motion by Commissioner Rubino, Jr., seconded by Commissioner Heinsch, the meeting was adjourned at 7:36 P.M.

Respectfully submitted,

Angelo Rubino, Jr.  
Secretary