

**MEETING HELD JULY 25, 2000**

A meeting of the Industrial Development Agency of the Village of Port Chester, New York, was held on Tuesday, July 25, 2000 at 7:06 P.M., in the Courtroom at 10 Pearl Street, Port Chester, New York with Chairperson, Marianne Cotter presiding.

Present were members John Heinsch, Robert Rodriguez and John Ryan.

It should be noted that members Shari Melillo and Angelo Rubino, Jr. were absent and member Jo-Ann Strazza arrived at 7:09 p.m.

Also present were Mark Tulis, counsel for the Agency and Joseph Carlucci, counsel with Cuddy & Feder & Worby, LLP, representing Neri's Bakery.

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On motion of Commissioner Rodriguez, seconded by Commissioner Heinsch, the Commissioners approved the minutes of January 19, 2000, March 29, 2000, April 3, 2000 and April 13, 2000.

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On motion of COMMISSIONER HIENSCH, seconded by COMMISSIONER RODRIGUEZ, the following resolution was adopted by the Port Chester Industrial Development Agency, Port Chester, New York:

WHEREAS, pursuant to Section 900-a of the General Municipal Law of the State of New York, New York States Legislature created the Village of Port Chester Industrial Development Agency ( the "Agency") subject to the provisions of Article 18-A (the "Act") of the New York State General Municipal Law ("GML"); and

WHEREAS, pursuant to GML Section 858-a(7) of the Act the Agency appoints officers, agents and employees; and

WHEREAS, it is in the best interest of the Agency that Mark S. Tulis, Esq., as counsel to the Agency, be appointed as Assistant Secretary for the purposes of signing certain documents in connection with lawsuits, actions and proceeding involving the Agency. Now, therefore be it

RESOLVED, that the Agency adopts the following:

- (a) Mark S. Tulis, Esq. is hereby appointed Assistant Secretary of the Agency for the purposes of signing documents in connection with litigation by or against the Agency.

ROLL CALL

AYES: Commissioners Hiensch, Rodriguez, Ryan, Strazza and  
Chairperson Cotter

NOES: None

ABSENT: Commissioners Melillo and Rubino, Jr.

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RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF THE ISSUER'S VARIABLE RATE DEMAND INDUSTRIAL DEVELOPMENT REVENUE BONDS, SERIES 2000 (40 PEARL STREET, LLC/NERI'S BAKERY PRODUCTS, INC. FACILITY), IN THE AGGREGATE PRINCIPAL AMOUNT PRESENTLY ESTIMATED TO BE APPROXIMATELY \$4,850,000, BUT NOT TO EXCEED \$6,500,000, AND THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS.

On motion of COMMISSIONER HIENSCH, seconded by COMMISSIONER

RODRIGUEZ, the following resolution was adopted by the Port Chester Industrial Development Agency, Port Chester, New York:

WHEREAS, by 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 (collectively, the "Act"), the Issuer was created with the authority and power to issue its special revenue bonds for the purpose of, among other things, acquiring certain industrial facilities as authorized by the Act; and

WHEREAS, there was submitted to the Issuer a proposal to issue its Variable Rate Demand Industrial Development Revenue Bonds, Series 2000 (40 Pearl Street, LLC/Neri's Bakery Products, Inc. Facility) (the "Bonds") to finance the cost 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 Neri's Bakery Products, Inc., a New York business corporation (the "Company") for the manufacture and production of bread, rolls, bagels and bread products (collectively, the "Facility"), and to provide the Facility to the Company; and

WHEREAS, the Issuer by resolution duly adopted on April 13, 2000, decided to proceed under the provisions of the Act to issue the Bonds for the purpose of financing the cost of acquiring, renovating and equipping the Facility; and

WHEREAS, the Company proposes that the Issuer lease the Facility to 40 Pearl Street, LLC, a New York limited liability company (the "Lessee") pursuant to a certain Lease Agreement, dated as of August 1, 2000 (the "Lease Agreement"), by and between

the Issuer and the Lessee, and that the Lessee sublease the Facility to Company pursuant to a certain Sublease Agreement, dated as of a date in August, 2000 (the "Sublease Agreement"), by and between the Lessee and the Company; and

WHEREAS, the Lessee has agreed to indemnify the Issuer against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the lease of the Facility and the issuance and purchase of the Bonds; and

WHEREAS, in compliance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and Section 859-a of the Act, the Issuer on June 2, 2000, held a public hearing on the issuance of the Bonds following public notice on May 8, 2000; and

WHEREAS, by Certificate of Approval to be executed on \_\_\_\_\_, 2000, the "applicable elected representative", as required under Section 147(f) of the Code, is expected to approve the issuance of the Bonds; and

WHEREAS, the Lessee has received a commitment from BNY Capital Markets, Inc. (the "Placement Agent") to privately place the Bonds in the aggregate principal amount presently estimated to be approximately \$4,850,000, but not to exceed \$6,500,000; and

WHEREAS, the Bonds will be credit enhanced by an irrevocable direct pay Letter of Credit (the "Letter of Credit") issued by the Bank of New York (the "LOC Bank") to The Bank of New York, as trustee (the "Trustee"), for the account of the Lessee, pursuant to the terms of a Letter of Credit and Reimbursement Agreement, dated a date to be determined (the "Reimbursement Agreement"), by and among the Lessee, the Company and the LOC Bank.

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

Section 1. The Issuer hereby finds and determine:

(a) By virtue of the Act, the Issuer 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; and

(b) The Facility constitutes a "project", as such terms is defined in the Act; and

(c) The acquisition, construction and equipping of the Facility and the lease of the Facility to the Lessee pursuant to the Lease Agreement will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Village of Port Chester and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The Issuer approves of the location of the site of the Facility; and

(e) The Facility conforms with the local zoning laws and planning regulations of Westchester County and all regional and local land use plans for the area in which the Facility is located; and

(f) The financing of the Facility is reasonably necessary to induce the Lessee and the Company to maintain and expand their respective operations with the State of New York; and

(g) The Facility and the operations conducted therein will not cause or result in the violation of the health, labor or other laws of the United States of America, the State of New York or Westchester County; and

(h) The Facility and the operations conducted therein will 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; and

(i) It is desirable and in the public interest for the Issuer to issue and sell the Bonds in the aggregate principal amount presently estimated to be approximately \$4,850,000, but not to exceed \$6,500,000, upon the terms and conditions set forth in a certain Bond Placement Agreement, dated a date to be determined (the "Bond Placement Agreement"), by and among the Issuer, the Lessee and the Placement Agent for the purpose of financing the cost of acquiring, constructing and equipping the Facility, together with necessary incidental expenses in connection therewith; and

(j) The Indenture of Trust, dated as of August 1, 2000 (the "Indenture"), by and between the Issuer and the Trustee, will be an effective instrument which, among other things, secures the Bonds, assigns to the Trustee certain rights and remedies of the Issuer under the Lease Agreement, and authorizes the Trustee to accept and execute trusts of the character set forth in the Indenture; and

(k) The Lease Agreement will be an effective instrument whereby the Issuer will lease the Facility to the Lessee; and

(l) The Sublease Agreement will be an effective instrument whereby the Lessee will sublease the Facility to the Company; and

(m) The Bond Placement Agreement, dated a date to be determined, will be an effective instrument to offer, sell, and privately place the Bonds; and

(n) The Pledge and Assignment, dated as of August 1, 2000 (the "Assignment"), from the Issuer to the Trustee and the LOC Bank, with Acknowledgment by the Lessee, will be an effective instrument under which the Issuer assigns to the Trustee and the LOC Bank certain of its rights and remedies under the Lease Agreement, including the right to collect and receive certain moneys due and to become due thereunder (except for Issuer's Unassigned Rights as defined in the Indenture); and

(o) The Guaranty Agreement, dated as of August 1, 2000 (the "Guaranty"), from the Lessee and the Company and 40 Pearl Street, Inc. (the "Corporate Guarantor") to the Issuer and the Trustee, will be an effective instrument whereby the Lessee, the Company and the Corporate Guarantor will guarantee to the Issuer and the

Trustee the full and prompt payment when due of the principal of, premium, if any, and interest on the Bonds, the payment and performance of the Lessee's obligations under the Lessee Documents, and the payment and performance of the Company's obligations under the Company Documents (as such terms are defined in the Indenture), and will enhance the marketability of the Bonds; and

(p) The Environmental Compliance and Indemnification Agreement, dated as of August 1, 2000 (the "Environmental Compliance and Indemnification Agreement"), by and among the Issuer, the Company, the Lessee, the Corporate Guarantor, the LOC Bank and the Trustee, will be an effective instrument whereby the Lessee, the Company and the Corporate Guarantor promises to indemnify the Issuer, the LOC Bank and the Trustee for liability in connection with certain environmental matters; and

(q) The Payment-in-Lieu-of-Tax Agreement, dated as of August 1, 2000 (the "PILOT Agreement"), by and among the Lessee, the Company and the Issuer, will be an effective instrument whereby the Lessee and the Company agree to make payments in lieu of taxes ("PILOT Payments") to the appropriate Taxing Authorities (as such terms is defined in the PILOT Agreement); and

(r) The PILOT Mortgage, dated a date to be determined, will be an effective instrument whereby the Lessee and the Company grant a mortgage lien on and a security interest in the Facility to secure the PILOT Payments due under the PILOT Agreement; and

(s) The Agency Project Loan Mortgage, Security Agreement and Assignment of Leases and Rents, dated as of August 1, 2000 (the "Agency Project Loan Mortgage"), from the Issuer and the Lessee to the LOC Bank, the Agency Building Loan Mortgage, Security Agreement and Assignment of Leases and Rents, Dated as of August 1, 2000 (the "Agency Building Loan Mortgage") from the Issuer and the Lessee to the LOC Bank and the Agency Indirect Cost Loan Mortgage, Security Agreement and Assessment of Leases and Rents, dated as of August 1, 2000 (the "Agency Indirect Cost Loan Mortgage") from the Issuer and the Lessee to the LOC Bank, and any alternative, different or additional mortgage or security agreement granted or given by the Lessee and the Issuer to the LOC Bank, in such form as the Chairperson of the Issuer shall approve (collectively, the "Mortgages"), will be effective instruments whereby the Issuer and the Lessee grant mortgage liens on, and assign to the LOC Bank present and continuing security interests in all property and rights described on their respective granting clauses, better to secure payment of the Bonds and performance of the other obligations of the Issuer and the Lessee under the Bond Placement Agreement, the Reimbursement Agreement and the Indenture; and

(t) The Assignment of Leases and Rents, dated as of August 1, 2000 (the "Assignment of Lease and Rents"), from Issuer and the Lessee to the LOC Bank, will be an effective instrument whereby the Issuer and the Lessee assign to the LOC Bank their respective rights under the Lease Agreement (except for certain "Unassigned Rights"), the Sublease Agreement, and any other leases existing or hereafter entered into; and

(u) The Tax Compliance Agreement, to be dated the Closing Date (the "Tax Compliance Agreement"), by and among the Lessee, the Company and the Issuer,

will be an effective instrument whereby the Lessee, the Company and the Issuer set forth certain representations, expectations, conditions and covenants establishing compliance with the restrictions imposed by the Code relating to hearings and approval by the Issuer, activities of the Lessee, the Company, the Bonds, the Facility and the application of Bond proceeds; and

(v) The Agency Compliance Agreement, to be dated as of August 1, 2000 (the "Agency Compliance Agreement"), by and between the Issuer and the Company, is an effective instrument whereby the Company makes certain covenants with respect to the Facility; and

(w) The Building Loan Agreement, dated as of August 1, 2000 (the "Building Loan Agreement"), by and among the Issuer, the Lessee and the LOC Bank, will be an effective instrument whereby the Lessee and the Issuer make certain covenants as to the distribution of proceeds of the Bonds with respect to the acquisition, construction and equipping of the Facility; and

(x) The proposed form of the Private Placement Memorandum (the "Private Placement Memorandum"), to be distributed by the Issuer in connection with the issuance of the Bonds, will contain true and accurate information regarding the ability of the Issuer to issue the Bonds, and the information contained therein regarding the Issuer, the Bonds, the Indenture, the Lease Agreement, the Bond Placement Agreement, the Assignment, the Mortgages and the Guaranty is hereby approved.

Section 2. In consequence of the foregoing, the Issuer hereby determines to: (i) issue and sell the Bonds to the Placement Agent pursuant to and in accordance with the Bond Placement Agreement, (ii) use the proceeds of the Bonds to acquire, construct and equip the Facility, (iii) lease the Facility to the Lessee pursuant to the Lease Agreement, (iv) secure the Bonds by vesting certain powers and duties in the Trustee pursuant to the Indenture, and by assigning to the Trustee and the LOC Bank certain of the Issuer's rights and remedies under the Lease Agreement, including the right to collect and receive amounts payable thereunder (except for Unassigned Rights as defined in the Indenture) pursuant to the Assignment, (v) secure the Bonds and the Lessee and the Company's obligations under the Reimbursement Agreement by granting liens upon and security interests in the Facility to the LOC Bank pursuant to the Mortgages ( in the form approved by the Chairperson), (vi) execute, deliver and perform the PILOT Agreement, (vii) secure the Lessee's obligations under the Assignment of Leases and Rents, (viii) execute, deliver and perform the Agency Compliance Agreement, (ix) obtain the certification by a State official designated by State law or, if there is no such State official, the Governor of the State, that the Bonds meet the requirements of Section 146 of the Code, and (x) file the Information Return for Private Activity Bonds Issues, Form 8038 (the "Information Return"), in the manner and at the places provided in the Code.

Section 3. The Issuer is hereby authorized to acquire the real and personal property described in Exhibits A and B to the Lease Agreement and to lease the same to the Lessee pursuant to the terms of the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Issuer with respect to such acquisition are hereby approved, ratified and confirmed.

Section 4. The form and substance of the Bonds, the Bond Placement Agreement, the Indenture, the Lease, the Sublease, the Assignment, the Guaranty, the Private Placement Memorandum, the Mortgages (in the form approved by the Chairperson), the Assignment of Leases and Rents, the Building Loan Agreement, the Guaranty, the Tax Compliance Agreement, the Environmental Compliance and Indemnification Agreement, the Agency Compliance Agreement, the PILOT Agreement and the PILOT Mortgage (each in substantially the forms presented to the Issuer and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 5. The Issuer is hereby authorized to issue and execute, sell and deliver the Bonds in the principal amount of an amount presently estimated to be \$4,850,000, but not to exceed \$6,500,000, to the Placement Agent pursuant to the Act and in accordance with the Bond Placement Agreement, provided that:

(a) The Bonds shall (i) be issued, executed and delivered at such time as the Chairperson shall determine, and (ii) bear interest at the rate, be subject to redemption prior to maturity, and have such other provisions and be issued in such manner and on such conditions as are set forth in the Bonds, the Bond Placement Agreement and the Indenture, which terms are specifically incorporated herein with the same force and effect as if fully set forth herein.

(b) The Bonds shall be issued solely for the purposes of providing funds to finance the Costs of the Facility, funding the Debt Service Reserve Fund, if any, in an amount up to the Debt Service Reserve Fund Requirement, if any, and paying certain costs of issuance, including, without limitation, the administrative, legal, financial and other expenses of the Issuer incurred in connection with the acquisition, construction and equipping of the Facility and incidental to the issuance of the Bonds.

(c) The Bonds and the interest payable thereon are not and shall never be a debt of the State of New York or the Village of Port Chester, New York, and neither the State of New York nor the Village of Port Chester, New York shall be liable thereon.

(d) The Bonds, together with interest payable thereon, shall be a special obligation of the Issuer payable solely from the revenues and receipts derived from the lease of the Facility or from the enforcement of the security provided by the Mortgages, the Assignment of Leases and Rents, the Lease Agreement, the Assignment and the Letter of Credit.

(e) Notwithstanding any other provision of this resolution, the Issuer covenants that it will make no use of the proceeds of the Bonds or of any other funds which, had such use been reasonably expected on the date of issue of the Bonds, would cause any of the Bonds to be an "arbitrage bond" within the meaning of Section 148 of the Code.

Section 6.

(a) The Chairperson and all members of the Issuer are hereby authorized on behalf of the Issuer, to (i) execute and deliver the Bonds, the Bond Placement Agreement, the Indenture, the Lease Agreement, the Assignment, the Private Placement Memorandum, the Agency Compliance Agreement, the Mortgages, the Assignment of Leases and Rents, the Building Loan Agreement, the Tax Compliance

Agreement, the Environmental Compliance and Indemnification Agreement and the PILOT Agreement, and (ii) execute, accept and deliver the PILOT Mortgage and the Guaranty (hereinafter collectively called the "Financing Documents") and the Information Return, where appropriate, and the Secretary or any assistant secretary of the Issuer is hereby authorized to affix the seal of the Issuer to the Bonds, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairperson or any member of the Issuer shall approve. The execution therefore by the Chairperson or any member of the Issuer shall constitute conclusive evidence of such approval.

(b) The Chairperson and all members of the Issuer are further hereby authorized, on behalf of the Issuer, to designate any additional Authorized Representatives of the Issuer (as defined in and pursuant to the Indenture).

(c) The Issuer is hereby authorized to allocate to the Bonds an amount of its private activity bond volume cap equal to the face amount of the Bonds, to do all actions and things with respect to such allocation as may be necessary or desirable to accomplish said allocation and to certify that the aggregate face amount of all bonds issued by the Issuer during 2000 that are subject to the private activity bond volume cap does not exceed the Issuer's private activity bond volume cap for 2000 under Section 146 of the Code. The Chairperson and all members of the Issuer are further hereby authorized on behalf of the Issuer to do all acts and things required or provided for pursuant to this subsection.

Section 7. The officers, employees and agents of the Issuer are hereby authorized and directed for and in the name and on behalf of the Issuer to do all acts and things required or provided for by the provisions of the Financing 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 Issuer with all of the terms, covenants and provisions of the Financing Documents binding upon the Issuer.

Section 8. The Issuer hereby elects to have the provisions of Section 144(a)(4) of the Code apply to the Bonds.

Section 9.

(a) It is desirable and in the best interest of the Issuer that, in connection with the issuance of the Bonds, the Bonds be qualified or registered for offer in various states authorized by the Issuer and that each of the members, officers, employees and agents of the Issuer be, and they hereby are each, authorized to determine the states in which appropriate action shall be taken to qualify or register for offer all or such part of the Bonds as said members, officers, employees and agents may deem advisable (and any such action taken to date is hereby approved, ratified and confirmed); that each of said members, officers, employees and agents be, and they hereby are each, authorized and directed to take any and all action for and on behalf of the Issuer, in connection with the proposed sale of the Bonds, which they may deem necessary or appropriate to obtain licenses or permits, or register, qualify or notice the Bonds for reoffering and issuance under the securities or Blue Sky laws of such of the

various states as each of said members, officers, employees or agents may deem advisable ( and any such action taken to date is hereby approved, ratified and confirmed), and in connection with such registrations, license, permits, qualifications or notices, to execute and file for and on behalf of the Issuer all such applications, notices, reports, issuer's covenants, resolutions, irrevocable consents to service of process (including appointment of a designated state official to act as agent to receive process), powers of attorney and information, and to take all such further action as any of them may deem necessary or desirable to keep in effect such registrations, licenses, permits, qualifications or notices or to comply with the requirements of any regulatory commission whose approval or notification with respect to the Bonds may be required ( and any such action taken to date is hereby approved, ratified and confirmed); and that the execution by such members, officers, employees and agents of the Issuer of any such paper or document or the doing by them of any act in connection with the foregoing matters shall conclusively establish their authority therefore by the Issuer of the papers and documents so executed and the action so taken (and any such action taken to date is hereby approved, ratified and confirmed).

(b) The Issuer hereby adopts the form of any resolution required by any state authority to be filed in connection with any application, consent to service of process or other document mentioned in the foregoing resolution if (i) in the opinion of a member, officer, employee or agent of the Issuer the adoption of such a resolution is necessary or advisable, and (ii) the Secretary or Assistant Secretary of the Issuer evidences such adoption by attaching to the minutes of this meeting copies of such resolutions, which will thereupon be deemed to have been adopted by the Issuer with the same force and effect as if originally attached to the minutes of this meeting (and any such action taken to date is hereby approved, confirmed and ratified).

(c) The Issuer hereby resolves that each of its members, officers, employees and agents be, and they hereby are each, authorized and directed to take any and all action for and on behalf of the Issuer in connection with the proposed issuance and offering of the Bonds which they may deem necessary or appropriate to render the Bonds legal for investment by savings banks, insurance companies, trust funds and any other institutions in such other of the various states as such members, officers, employees or agents may deem advisable ( and any such action taken to date is hereby approved, confirmed and ratified).

Section 10. This resolution shall take effect immediately, and the Bonds are hereby ordered to be issued in accordance with this resolution.

ROLL CALL

AYES: Commissioners Hiensch, Rodriguez, Ryan, Strazza and  
Chairperson Cotter

NOES: None

ABSENT: Commissioners Melillo and Rubino, Jr.

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On motion of COMMISSIONER RODRIGUEZ, seconded by COMMISSIONER RYAN, the following resolution was adopted by the Port Chester Industrial Development

Agency, Port Chester, New York:

WHEREAS, the Port Chester Fire Department has identified certain vacated buildings in the first phase of the Marina Redevelopment Project Area for fire training exercises; and

WHEREAS, such activity requires the approval of both the Port Chester Industrial Development Agency and G & S Port Chester, LLC; and

WHEREAS, G & S has agreed to such activity provided that there be no fire, controlled or otherwise, and that it be held harmless and be fully indemnified as a result therefrom. Now, therefore, be it

RESOLVED, that the Agency hereby grants permission to the Port Chester Fire Department to use those buildings in the first phase of the Marina Redevelopment Project Area that have been identified as suitable for fire training exercises by the Village Manager after consultation with G & S Port Chester, LLC.

ROLL CALL

AYES: Commissioners Hiensch, Melillo, Rodriguez, Ryan, Strazza, and  
Chairperson Cotter  
NOES: None  
ABSENT: Commissioners Melillo and Rubino, Jr.

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There being no further business on motion by Chairperson Cotter, seconded by  
Commissioner Strazza, the meeting was adjourned at 7:37 P.M.

Respectfully submitted,

Mark Tulis  
Assistant Secretary