

**MINUTES OF THE MEETING OF THE
VILLAGE OF PORT CHESTER
INDUSTRIAL DEVELOPMENT AGENCY**

HELD: March 23, 2015

TIME AND PLACE: 6:55 P.M., Village Hall, Conference Room, 222 Grace Church Street, Port Chester, New York

A special meeting of the Village of Port Chester Industrial Development Agency was convened on Monday, March 23, 2015, at 6:55 p.m. at 222 Grace Church Street, Port Chester, New York 10573.

Roll Call

The meeting was called to order by Chairman Frank Ferrara. On the motion of Board member Dennis Pilla, which was seconded by Vice Chairman Neil Pagano the meeting was called to order with the following Board members being present: Neil Pagano, Dennis Pilla, and James Taylor.

Also in attendance were Board Council Justin Miller, Treasurer Leonie Douglas and Acting Board Secretary Constance Phillips

Dan Tartaglia, Counsel for G&S Port Chester LLC was also in attendance

ROLL CALL

| <u>MEMBER</u> | <u>MOTION</u> | <u>SECOND</u> | <u>YES</u> | <u>NO</u> | <u>ABSTAIN</u> |
|----------------|---------------|---------------|------------|-----------|----------------|
| <u>CUDDY</u> | | | | | <i>absent</i> |
| <u>FERRARA</u> | | | <u>X</u> | | |
| <u>HIENSCH</u> | | | | | <i>absent</i> |
| | | | | | |
| <u>PILLA</u> | <u>X</u> | | <u>X</u> | | |
| <u>TAYLOR</u> | | | <u>X</u> | | |
| <u>PAGANO</u> | | <u>X</u> | <u>X</u> | | |

Chairman Ferrara told the Board that we have had the Public Hearing with regard to the G&S Refinancing and there is an authorizing resolution before the Board for discussion and possible acceptance and approval. Chairman Ferrara reiterated for the record that no one from the public showed up for the Public Hearing and the hearing was left open for a reasonable amount of time before being closed.

Board member Dennis Pilla said for the record we have not heard anything adverse from any of the other jurisdictions. Recognizing that we do have the ability with the proceeds that IDA will be garnering to do good strategic things for economic development.

Board member James Taylor inquired of Mr. Tartaglia as to when G&S would be closing, to which Mr. Tartaglia answered they would be closing the next day. (March 24th). Mr. Taylor also thanked Chairman Ferrara for putting together the Cost Benefit Analysis document.

On the motion of Vice Chairman Neil Pagano, which was seconded by Board member James Taylor, the project authorizing resolution was approved.

ROLL CALL

| <u>MEMBER</u> | <u>MOTION</u> | <u>SECOND</u> | <u>YES</u> | <u>NO</u> | <u>ABSTAIN</u> |
|----------------|---------------|---------------|------------|-----------|----------------------|
| <u>CUDDY</u> | | | | | <i><u>absent</u></i> |
| <u>FERRARA</u> | | | <u>X</u> | | |
| <u>HIENSCH</u> | | | | | <i><u>absent</u></i> |
| | | | | | |
| <u>PILLA</u> | | | <u>X</u> | | |
| <u>TAYLOR</u> | | <u>X</u> | <u>X</u> | | |
| <u>PAGANO</u> | <u>X</u> | | <u>X</u> | | |

(See resolution next page)

PROJECT AUTHORIZING RESOLUTION

*(G&S Port Chester, LLC Modified Marina Redevelopment Project -
Assignment and Refinance Request)*

A special meeting of the Village of Port Chester Industrial Development Agency was convened on Monday March 23, 2015 at 6:55 p.m. at 222 Grace Church Street, Port Chester, New York, 10573.

The meeting was called to order by the Chairman, with the following members being:

PRESENT: Frank Ferrara, Neil Pagano, Dennis Pilla and James Taylor

ABSENT: Richard Cuddy and John Hiensch

THE FOLLOWING PERSONS WERE ALSO PRESENT:

Board Counsel Justin Miller, Board Financial Officer Leonie Douglas,
Board Acting Secretary Constance Phillips

Dan Tartaglia, G&S Port Chester LLC Legal Counsel was also in attendance

On motion duly made and seconded, the following resolution was placed before the members of the Village of Port Chester Industrial Development Agency:

Resolution No. 2015 - ____

RESOLUTION OF THE VILLAGE OF PORT CHESTER INDUSTRIAL DEVELOPMENT AGENCY (i) AUTHORIZING AN ASSIGNMENT (AS DEFINED HEREIN) AND THE EXECUTION OF CERTAIN FINANCING DOCUMENTS (AS DEFINED HEREIN) IN CONNECTION WITH CERTAIN UNITS WITHIN THE MODIFIED MARINA REDEVELOPMENT PROJECT; (ii) AUTHORIZING THE PROVISION OF FINANCIAL ASSISTANCE TO (AS MORE FULLY DESCRIBED HEREIN); AND (iii) AUTHORIZING THE EXECUTION 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 632 of the Laws of 1972 of the State of New York, as amended (hereinafter collectively called the "Act"), the **VILLAGE OF PORT CHESTER INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, in furtherance of a certain in Modified Marina Redevelopment Project (the "Project") undertaken by G&S Port Chester, LLC ("G&S"), the Agency, along with the Village of Port Chester (the "Village") entered into a Land Acquisition and Disposition Agreement, dated as of July 14, 1999, and

amendments thereto (collectively, the “LADA”), wherein the parties thereto memorialized their respective rights and obligations in connection with the Project; and

WHEREAS, in furtherance of the Project and applicable provisions of the LADA, the Agency, by and through the Village and G&S, acquired certain parcels of real estate within the Village to be incorporated into the Project and thereafter leased certain portions of the Project lands to G&S and certain affiliates, including: (i) those certain lands and improvements associated with a certain Unit Lease Agreement, dated as of October 3, 2001, as amended (the “Unit 1 Lease”), relating to Unit 1 of the Project (as defined within Unit 1 Lease) whereby the Agency leased its interest in Unit 1 to G&S, such interest and Unit 1 Lease having been previously assigned to G&S Port Chester Retail 1, LLC; (ii) those certain lands and improvements associated with a Unit Lease Agreement, dated as of December 11, 2003 (the “Unit 2A Lease”), relating to Unit 2A of the Project (as defined within Unit 2A Lease) whereby the Agency leased its interest in Unit 2A to G&S Port Chester Unit 2A, LLC; (iii) those certain lands and improvements associated with a Unit Lease Agreement, dated as of January 15, 2008 (the “Unit 4A Lease”), relating to Unit 4A of the Project (as defined within Unit 4A Lease) whereby the Agency leased its interest in Unit 4A to G&S Port Chester Unit 4A, LLC; and (iv) those certain lands and improvements associated with a Unit Lease Agreement, dated as of December 30, 2003 (the “Unit 2C Lease”, and collectively with the Unit 1 Lease, Unit 2A Lease, and Unit 4A Lease, the “Unit Leases”), relating to Unit 2C of the Project (as defined within Unit 2C Lease) whereby the Agency leased its interest in Unit 2C to G&S Port Chester Unit 2C, LLC (such entity, along with G&S Port Chester Retail 1, LLC, G&S Port Chester Unit 2A, LLC and G&S Port Chester Unit 4A, LLC being collectively hereafter referred to as the “Assignors”); and

WHEREAS, in furtherance of the Project, and pursuant to the LADA and Unit Leases, the Agency, G&S and Assignors entered into certain Payment In Lieu of Taxes Agreements relating to each Unit of the Project wherein the Unit Lessee is required to timely pay all payment-in-lieu-of-taxes (“PILOT Payments”), including those certain (i) Payment in Lieu of Taxes Agreement, dated as of October 3, 2001, and entered into by and between the Agency and G&S, as amended by that certain Amended Payment in Lieu of Taxes Agreement, dated as of January 12, 2012, by and between Agency and G & S Port Chester Retail I LLC, as assignee (the “Unit 1 PILOT Agreement”); (ii) Payment in Lieu of Taxes Agreement, dated as of December 15, 2003, and entered into by and between the Agency and G&S, as amended by that certain Amended Payment in Lieu of Taxes Agreement, dated as of January 12, 2012, by and between Agency and G & S Port Chester Retail 2A LLC, as assignee (the “Unit 2A PILOT Agreement”); (iii) Payment in Lieu of Taxes Agreement, dated as of December 30, 2003, and entered into by and between the Agency and G&S Port Chester Unit 2C, LLC, as amended by that certain Amended Payment in Lieu of Taxes Agreement, dated as of January 12, 2012 (the “Unit 2C PILOT Agreement”); and (iv) Payment in Lieu of Taxes Agreement, dated as of October 15, 2007, and entered into by and between the Agency and G & S Port Chester Unit 4A, LLC, as amended by that certain Amended Payment in Lieu of Taxes Agreement, dated as of January 12, 2012 (the “Unit 4 PILOT Agreement”; together with the Unit 1 PILOT Agreement, the Unit 2A PILOT Agreement and the Unit 2C PILOT Agreement, individually and/or collectively, as the context may require, each as assigned to Borrower, the “PILOT Agreements”); and

WHEREAS, in connection with the proposed refinance of the above-described Units (the “Refinance”, as more particularly described herein) and pursuant to provisions contained within Section 9.3 of each of the Unit Leases, the Assignors have requested the Agency’s approval of the assignment (the “Assignment”) of the Unit Leases by the Assignor and assumption thereof by G&S Port Chester Retail 1 DE, LLC, G&S Port Chester Unit 2A DE, LLC, G&S Port Chester Unit 2C DE, LLC, and G&S Port Chester Unit

4A DE, LLC (collectively, the “Assignees”) all pursuant to proposed certain Assignment and Assumption Agreement with Acknowledgments (the “Assignment Agreements”); and

WHEREAS, the Assignees desire to enter into certain agreements with Morgan Stanley Bank, N.A. (the “Lender”) in connection with a certain loan (the “Loan”) to be secured by, among other things, a Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement to be granted by Assignees and the Agency in favor of Lender (the “Mortgage”) encumbering the Agency’s and Lessee’s respective interests in the property associated with the Unit Leases; and

WHEREAS, the Assignors and Assignees have requested the Agency’s approval to execute and deliver the Mortgage, and in doing so, exempt the recording of the Mortgage from applicable mortgage recording taxes (hereinafter, the “Financial Assistance”); and

WHEREAS, pursuant to Section 859-a of the Act and a resolution adopted by the Agency on March 11, 2015 (the “Initial Resolution”) the Agency (i) described the forms of Financial Assistance (as defined in the Initial Resolution) being contemplated by the Agency, (ii) directed that a public hearing be held with respect to the proposed Financial Assistance in compliance with the Act, and (iii) authorized the negotiation of the Assignment Agreements, Mortgage and related documents (collectively, the “Financing Documents”), with the Company and Lender; and

WHEREAS, the Agency has identified the Assignment and execution of the Mortgage as “Type II” Actions as defined pursuant to Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, “SEQRA”) and that no formal SEQRA review is required; and

WHEREAS, pursuant to Section 859-a of the Act, on March 23, 2015, at 6:30 p.m., local time, at Village Hall, 222 Grace Church Street, Port Chester, New York 10573, the Agency held a public hearing with respect to the proposed Financial Assistance being contemplated by the Agency (the “Public Hearing”) whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. (A copy of the minutes of the Public Hearing along with the Notice of Public Hearing published and forwarded to the affected taxing jurisdictions prior to said Public Hearing are attached hereto as **Exhibit A**); and

WHEREAS, in furtherance of the foregoing, the Agency desires to authorize (i) the Assignment; (ii) the execution and delivery of the Financing Documents; and (iii) the provision of the Financial Assistance to the Company, which shall include a mortgage recording tax exemption.

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

Section 1. Based upon the representations made by the Company to the Agency, the Agency hereby finds and determines that:

(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; and

(B) The contemplated actions to be taken by the Agency will stabilize the financial position of the Project and contribute to the retention of employment opportunities in the Village of Port Chester and otherwise furthering the purposes of the Agency as set forth in the Act; and

(C) Pursuant to Section 862(2)(a) of the Act, the Project constitutes a "retail" project, and, based on representations made by the Company to the Agency, the Agency hereby finds is likely to attract a significant number of visitors from outside the economic development region as established by section two-hundred thirty of the New York State Economic Development Law. Therefore, the Agency may provide the Financial Assistance to the Company in furtherance of the Project.

Section 2. Subject to the terms and conditions contained within the Unit Leases and Assignment Agreements, the Agency hereby authorizes the Assignment.

Section 3. The Agency hereby further authorizes the execution and delivery of the Financing Documents, along with the undertaking of the obligations of the Agency contained therein.

Section 4. The Chairman, Vice Chairman and/or Administrative Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Financing Documents and related documents with such changes as shall be approved by the Chairman, Vice Chairman, the Administrative Director and counsel to the Agency upon execution. The foregoing authorization includes the Mortgage and any related assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by a lender to be identified by the Lender up to the maximum principal amount contained within the Mortgage; and, where appropriate, the Secretary or Acting Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Financing Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman and/or Administrative Director of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman and/or Administrative Director of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

Section 5. 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 and to execute and deliver all such certificates, instruments and documents, to 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 resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 6. These Resolutions shall take effect immediately upon adoption.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

| | YEA | NAY | ABSTAIN | ABSENT |
|------------------|-------|-----|---------|--------|
| Hon. Neil Pagano | [X] | [] | [] | [] |
| Dennis Pilla | [X] | [] | [] | [] |
| James Taylor | [X] | [] | [] | [] |
| John Hiensch | [] | [] | [] | [X] |
| Frank Ferrara | [X] | [] | [] | [] |
| Richard Cuddy | [] | [] | [] | [X] |

The Resolution was thereupon duly adopted.

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EXHIBIT A

[Notice Documents]

Attached hereto

SECRETARY'S CERTIFICATION

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) SS:

I, the undersigned Secretary of the Village of Port Chester Industrial Development Agency,
DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Village of Port Chester Industrial Development Agency (the "Agency"), including the resolution contained therein, held on March 23, 2015, 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 resolution 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 all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 23 day of March, 2015.

Constance R. Phillips
Secretary

[SEAL]

On the motion of Vice Chairman Neil Pagano, which was seconded by Board member Dennis Pilla the meeting was adjourned.

ROLL CALL

| <u>MEMBER</u> | <u>MOTION</u> | <u>SECOND</u> | <u>YES</u> | <u>NO</u> | <u>ABSTAIN</u> |
|-----------------------|----------------------|----------------------|-------------------|------------------|-----------------------|
| <u>CUDDY</u> | | | | | <i>absent</i> |
| <u>FERRARA</u> | | | <u>X</u> | | |
| <u>HIENSCH</u> | | | | | <i>absent</i> |
| | | | | | |
| <u>PILLA</u> | | <u>X</u> | <u>X</u> | | |
| <u>TAYLOR</u> | | | <u>X</u> | | |
| <u>PAGANO</u> | <u>X</u> | | <u>X</u> | | |