

At a meeting of the Town of Riverhead Industrial Development Agency, Suffolk County, New York, held at the Town Hall, 200 Howell Avenue, Riverhead, New York, on December 20, 2004 at 5:00 o'clock P.M., Prevailing Time, the following Members of the Agency were:

PRESENT: Robert C. Dick, Chairman
August Groeber, Vice Chairman
Tina Van Allen, Secretary
Sean McCabe, Treasurer
Jeanmarie Costello, Member
Philip Swotkewicz, Member

ABSENT: Fred Reeve, Member

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to the issuance and sale of the Agency's proposed Industrial Development Revenue Bonds, Series 2004A and Series 2004B (C.A.P.S. Realty Holdings, LLC/Eastern Wholesale Fence Co., Inc. Facility) (the "Bonds").

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

AYE

NAY

Robert C. Dick
August Groeber
Tina Van Allen
Sean McCabe
Jeanmarie Costello
Philip Swotkewicz

A RESOLUTION DETERMINING A PROJECT FOR C.A.P.S. REALTY HOLDINGS, LLC AND EASTERN WHOLESALE FENCE CO., INC. TO BE A PROJECT, APPROVING THE PROVIDING OF FINANCIAL ASSISTANCE TO C.A.P.S. REALTY HOLDINGS, LLC AND EASTERN WHOLESALE FENCE CO., INC., AUTHORIZING THE ISSUANCE AND SALE OF THE AGENCY'S INDUSTRIAL DEVELOPMENT REVENUE BONDS, SERIES 2004A AND SERIES 2004B (EASTERN WHOLESALE FENCE CO., INC. PROJECT), AND THE APPROVAL AND EXECUTION OF RELATED DOCUMENTS.

WHEREAS, Eastern Wholesale Fence Co., Inc., a privately-held business corporation formed and existing under the laws of the State of New York (the "Lessee"), and C.A.P.S. Realty Holdings, LLC, a New York limited liability company (the "Company"), have made application (the "Application") to the Town of Riverhead Industrial Development Agency, a public benefit corporation and an industrial development agency of the State of New York (the "Agency"), for financial assistance, as hereinafter defined, with respect to the acquisition by the Company of certain land at the Calverton Enterprise Park in the Town of Riverhead (the "Land") and the building located thereon (the "Building"), the Land and Building being located at 4062 Grumman Boulevard and commonly known as Building No. 169 at the Calverton Enterprise Park, Riverhead, and for the purpose of financing the partial renovation of the Building and the purchase and installation of equipment in the Building (the "Equipment"), the Land and the Building to be leased by the Company to the Issuer and then leased by the Issuer to the Company and subleased by the Company to the Lessee, and the Equipment to be leased by the Issuer to the Lessee and the Land, Building and Equipment (collectively, the "Facility") to be used by the Lessee for the manufacture of extruded P.V.C. fence profiles and to assemble P.V.C. fence sections, gates and posts, including incidental expenses in connection therewith, said lease to be under taken pursuant to a certain Ground Lease and Lease Agreement, dated as of December 1, 2004 (the "Lease Agreement"), by and between the Issuer and the Company, including incidental expenses in connection therewith; and

WHEREAS, the Agency has acted as "lead agency", in accordance with the provisions of the State Environmental Quality Review Act ("SEQRA") with respect to the Agency's providing financial assistance to the Lessee and the Company for the Project and has determined that the providing of financial assistance to the Lessee and the Company for the Project, as proposed, will have no significant effect on the environment; and

WHEREAS, by resolution duly adopted by the Members of the Agency on November 1, 2004, the Agency called a public hearing with respect to the providing of financial assistance by the Agency to the Lessee and the Company for the Project and to comply with the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, regarding public approval of the Project (the "Public Hearing"), the Public Hearing being noticed as required by law by publication of a notice of hearing on November 18, 2004 and having been held on December 20, 2004, at 5:00 P.M., Prevailing Time, at the Town Hall, 200 Howell Avenue, in Riverhead, New York;

WHEREAS, at the Public Hearing all interested parties were provided with reasonable opportunity, both orally and in writing, to present their views with respect to the Project and the providing of financial assistance therefor, as set forth in the notice of the Public Hearing, in the Resolution and in Section 2 of this resolution;

NOW, THEREFORE, BE IT

RESOLVED, by the Members of the Town of Riverhead Industrial Development Agency, Suffolk County, New York, as follows:

Section 1. The Agency, based upon its review of the Application and information provided at and with respect to the Public Hearing, hereby determines (i) that the Project will promote the health, general prosperity and the economic welfare of the inhabitants of the Town

and serves a public purpose as set forth in Article 18-A of the General Municipal Law, and (ii) is a "project" as defined in Section 854(4) of the General Municipal Law.

Section 2. Subject to the execution of financing documents as provided in Section 15 hereof, the provision of financial assistance to the Lessee and the Company through the issuance of obligations of the Agency interest on which is not includable in either the gross income of the owners thereof for federal income tax purposes or in personal income taxes imposed by the State of New York or any political subdivision thereof, the provision of an exemption from certain Mortgage Recording Taxes, the provision of an exemption from sales and compensating use taxes on certain property, including tangible personal property, to the extent available under law, ("Financial Assistance"), is hereby approved. Financial Assistance does not include any abatement of real property taxes, and the Project shall be and remain fully taxable by each relevant taxing jurisdiction.

Section 3. It is desirable and in the public interest for the Agency to issue its Industrial Development Revenue Bonds, Series 2004A and Series 2004B (Eastern Wholesale Fence Co., Inc. Project), in an aggregate principal amount not exceeding \$4,900,000 (the "Bonds") to pay part of the costs of the Project.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (i) arrange for the placement of the Bonds through Commerce Capital Markets, Inc. (the "Placement Agent") pursuant to the terms and conditions set forth in a Trust Indenture by and between the Agency and The Bank of New York, as trustee (the "Trustee") dated as of December 1, 2004 (the "Indenture"), in a Bond Placement Agreement by and between the Placement Agent, the Agency and the Company (the "Bond Placement Agreement") and in a Private Placement Memorandum (the "Private Placement Memorandum") describing certain features of the Bonds, the Company,

the Lessee and the Project; (ii) use the proceeds of the Bonds for the principal purpose of financing the cost of the Project; (iii) secure the Bonds in the manner provided in the Indenture and in a Ground Lease and Lease Agreement, dated as of December 1, 2004 between the Agency and the Company (the "Ground Lease and Lease Agreement"); (iv) execute a Tax Compliance Agreement and an Arbitrage Compliance Agreement in connection with the issuance of the Bonds and file a form 8038 with the Internal Revenue Service; (v) execute a mortgage and security agreement and a pledge and assignment to secure the Bonds (the "Mortgage" and the "Pledge and Assignment", respectively); (vi) accept a guaranty of the Company's and the Lessee's obligations under the Ground Lease and Lease Agreement, dated as of December 1, 2004, from the Company, the Lessee, Mr. Peter Williams, Sr. and Mr. Peter Williams, Jr. (the "Guaranty"), and (vii) do all other things necessary in connection with the issuance, execution, delivery and sale of the Bonds and the execution and delivery of the Financing Documents (as hereinafter defined).

Section 5. The Agency is hereby authorized to accomplish the transaction described in this resolution, and to do all things necessary or appropriate for the accomplishment thereof and all acts heretofore taken by the Agency with respect to such transaction are hereby approved.

Section 6. The form and substance of the Bonds (in substantially the form presented to this meeting), are hereby approved.

Section 7. The form and substance of the Indenture (in substantially the form presented to this meeting), are hereby approved.

Section 8. The form and substance of the Ground Lease and Lease Agreement (in substantially the form presented to this meeting), are hereby approved.

Section 9. The form and substance of the Mortgage (in substantially the form presented to this meeting) are hereby approved.

Section 10. The form and substance of the Private Placement Memorandum (in substantially the form presented to this meeting) are hereby approved.

Section 11. The form and substance of the Pledge and Assignment (in substantially the form presented to this meeting) are hereby approved.

Section 12. The form and substance of the Guaranty (in substantially the form presented to this meeting) are hereby approved.

Section 13. The Agency is hereby authorized to issue, execute and deliver the Bonds, all in accordance with the provisions of the Indenture and the Bond Placement Agreement, provided that:

- (a) The Bonds shall (i) be issued, executed and delivered at such time as the Chairman or the Vice Chairman shall determine, and (ii) be in such principal amount, bear interest at the rate or rates, be issued in such form, 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 Indenture and the Bond Placement Agreement, which terms are specifically incorporated herein with the same force and effect as if fully set forth in this resolution.
- (b) The Bonds shall be issued solely for the purpose of financing the cost of the Project and the administrative, legal, financial and other expenses of the Agency in connection with and incidental to the issuance of the Bonds.
- (c) The Bonds, the premium, if any, and the interest thereon are not and shall never be a debt of the State of New York or any political subdivision thereof (including,

without limitation, the Town) and neither the State nor any political subdivision (including, without limitation, the Town) thereof shall be liable thereon.

- (d) Neither the members, officers, employees or agents of the Agency, nor any person executing either the Bonds, the Indenture, the Ground Lease and Lease Agreement, the Bond Placement Agreement, the Mortgage, the Pledge and Assignment or any other document authorized to be executed hereunder shall be liable thereon or be subject to any personal liability by reason of the issuance, sale, execution, delivery, distribution or use thereof.
- (e) The Bonds, together with the premium, if any, and interest payable thereon, shall be special obligations of the Agency payable solely from the revenues and receipts derived under the Ground Lease and Lease Agreement and the enforcement of the security provided by the Indenture, the Mortgage, the Pledge and Assignment the Lease Agreement and the Guaranty.
- (f) Notwithstanding any other provision of this resolution, the Agency covenants that it will make no use of the proceeds of the Bonds or of any other funds which, if such use had been reasonable expected on the date of issue of the Bonds, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148(f) of the Internal Revenue Code of 1986, as amended (the "Code").
- (g) The form and substance of the Tax Compliance Agreement (in substantially the form presented to this meeting) are hereby approved. The Agency hereby elects, under Section 144(a)(4) of the Code, to have an aggregate authorized face amount of \$10,000,000 or less apply to the Bonds, in lieu of the \$1,000,000 exemption otherwise provided for in Section 144(a)(1) of the Code.

Section 14.

- (a) The Chairman or the Vice Chairman of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Indenture, the Ground Lease and Lease Agreement, the Bond Placement Agreement, the Private Placement Memorandum, the Mortgage, the Pledge and Assignment, the Tax Compliance Agreement, the Arbitrage Compliance Agreement and the Bonds and any related closing documents required to effectuate the transactions contemplated thereby, and to accept the Guaranty, (hereinafter collectively called the "Financial Documents") and the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman or the Vice Chairman shall approve, including a determination of the aggregate principal amount of the Bonds to be executed and delivered, the rate or rates of interest to be borne, and the amortization of the Bonds. The execution thereof by the Chairman or the Vice Chairman shall constitute conclusive evidence of such approval.
- (b) The Chairman or the Vice Chairman are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representative of the Agency (as defined in and pursuant to the Ground Lease and Lease Agreement).

Section 15.

The members, 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 Financing Documents, and to execute and deliver all such additional certificates, agreements, instruments and documents, including a Form 8038, 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 Financing Documents binding upon the Agency.

Section 16. A copy of this resolution, together with the attachments thereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during regular business hours.

Section 17. This resolution shall take effect immediately and the Bonds are hereby ordered to be issued in accordance with this Resolution.


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

I, the undersigned Secretary of the Town of Riverhead Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Agency, including the resolution contained therein, held on December 20, 2004, 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 relates to the subject matters therein referred to and such resolution has not been amended, modified or rescinded and is in full force and effect on the date hereof.

I FURTHER CERTIFY (i) all members of the Agency had due notice of said meeting (ii) pursuant to Section 103 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that notice of the time and place of said meeting was duly given in accordance with such Section 103, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed the seal of the Agency as of December 20 2004.



(SEAL)