

At a meeting of the Town of Riverhead Industrial Development Agency held at Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York 11901, November 3, 2014 at 5:00 o'clock, p.m.

The meeting was called to order by Thomas Cruso, and, upon the roll being called, the following were

PRESENT: Thomas Cruso

Lou Kalogeras

Carl Gabrielsen

Dawn Thomas (recused)

ABSENT: Paul Thompson

ALSO PRESENT: Tracy James

Richard Ehlers

The following resolution was offered by Lou Kalogeras and seconded by Carl Gabrielsen with the members voting:

AYE

NAY

ABSENT

Thomas Cruso

Dawn Thomas (recused)

Lou Kalogeras

Paul Thompson

Carl Gabrielsen

RESOLUTION #65-14 AUTHORIZING THE MODIFICATION OF THE TERMS OF THE TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY INDUSTRIAL DEVELOPMENT REVENUE BONDS (EASTERN WHOLESALE FENCE CO., INC. PROJECT), SERIES 2004A ORIGINALLY ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF ONE MILLION NINE HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$1,995,000), SO AS TO CHANGE THE INTEREST RATE APPLICABLE TO THE OUTSTANDING PRINCIPAL THEREOF, AND APPROVING THE EXECUTION AND DELIVERY OF THE MODIFIED BONDS AND RELATED DOCUMENTS

WHEREAS, the Town of Riverhead Industrial Development Agency (the "Agency") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "State") and Chapter 624 of the Laws of 1980 of the State (collectively, the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, civic, manufacturing, warehousing, pollution control, commercial, research and recreation facilities for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to issue its industrial development revenue bonds to finance the cost of the acquisition, construction, renovation and equipping of one or more "Projects" (as defined in the Act), and to refund said bonds by issuing new bonds when it deems expedient; and

WHEREAS, in the year 2004, Eastern Wholesale Fence Co., Inc., a corporation organized and existing under the laws of the State ("Eastern"), presented an application to the Agency on behalf of Eastern and C.A.P.S. Realty Holdings, LLC, a limited liability company organized and existing under the laws of the State (the "Company"), and requested that the Agency consider assisting in a project by:

(1) the issuance of its industrial development revenue bonds in one or more issues or series in an aggregate principal amount not to exceed \$4,900,000 to provide funds for certain costs in connection with a project (the "Project") consisting of: the acquisition by the Company of a parcel of land of approximately 6.4 acres and the 32,000 square foot building located thereon, such building being located at 4062 Grumman Boulevard, Calverton, and commonly known as building No. 169 at the Calverton Enterprise Park, Riverhead (the "Project Facility"), and the purchase and installation of equipment by either Eastern or the Company in such building No. 169, and incidental expenses in connection therewith, at an aggregate cost, including costs associated with the issuance of obligations, to be issued therefor estimated not to exceed \$5,222,875, all to permit Eastern to manufacture extruded P.V.C. fence profiles and to assemble P.V.C. fence sections, gates and posts;

(2) the provision of an exemption from sales and compensating use taxes on certain property, including tangible personal property, resultant from the Agency's appointment of the Company as the Agency's agent with respect to constructing and equipping the Project Facility in connection with the purchase of qualifying personal property to be incorporated into the Project Facility; and

(3) the provision of an exemption from mortgage recording taxes in connection with mortgages necessary or convenient to the financing of the Project; and

WHEREAS, the Agency, on December 29, 2004 issued its Industrial Development Revenue Bonds (Eastern Wholesale Fence Co., Inc. Project), Series 2004 A in the aggregate principal amount of ONE MILLION NINE HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$1,995,000), maturing January 1, 2030 (the "Bond"), pursuant to an authorizing Resolution dated December 20, 2004;

WHEREAS, under the original terms of the Bond, the holder of the Bond has the right to either (i) negotiate an adjusted interest rate (which shall be a market rate acceptable to the holder) for the subsequent ten year period that the Bond will be outstanding or (ii) opt for the redemption of its Bond upon giving notice at least one hundred and eighty (180) days prior January 1, 2015 and January 1, 2025;

WHEREAS, the Agency has been requested by representatives of Eastern to participate in a modification of the interest rate and certain related terms of the Bond and related documentation, with no additional borrowing or change in final maturity date of the Bond, and with no additional financial assistance provided by the Agency, all as contemplated under the original terms of the Bond described in (i) of the paragraph above;

WHEREAS, Eastern has agreed, as a condition of said modification, to pay all expenses of the Agency incurred in effecting the modification, including the fees and expenses of its counsel, and an Agency fee of \$2500;

WHEREAS, the cooperation by the Agency in the present circumstances is undertaken in accordance with the original terms of the Bond, which provided for the possibility of a modification of certain terms of the Bond, and demonstrates the willingness of the Agency to assist private industry and commerce, thereby facilitating the achievement of the public purposes of the Agency to attract commerce and industry and create employment;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:.

1. The Agency hereby determines (i) to modify the terms of the Bond to provide for an interest rate change from a fixed rate of 4.57% to a new fixed rate effective January 1, 2015, which shall be set by the Bank (as defined below), agreed upon by Eastern and approved by the Chair of the Agency, and to undertake such other related matters as shall be necessary or convenient to effect such modification, provided that no such modification shall impair the indemnities provided by either Eastern or the Company to the Agency at the time of the original issuance of the Bond, (ii) to enter into a Supplemental Indenture of Trust with the trustee of the Bond, to effect the modification of the interest rate and redemption provision of the Bond, and to authorize the trustee to authenticate a modified Bond; (iii) to deliver such modified Bond to TD Bank, N.A. (the "Bank") without cost to the Agency and subject to the terms and conditions set forth in the existing indenture of trust, ground lease and lease agreement, mortgage and security agreements, and guaranty (the "Agreement"), each dated as of December 1, 2004; (iv) to execute a certificate as to arbitrage and the provisions of sections 103 and 141-150 of the Code (the "Tax Certificate") in connection with the modification of the Bond and file a form 8038 with the Internal Revenue Service; and (v) do all other things necessary in connection with the modification and delivery of the Bond and the execution and delivery of any related documents necessary or convenient therefor.

2. The form and substance of the Bond (in substantially the form presented to this meeting as an exhibit to the draft Supplemental Indenture of Trust, but with such changes as shall be acceptable to the Chair of the Agency) are hereby approved.

3. The Agency is hereby authorized to issue, execute and deliver the Supplemental Indenture and modified Bond, all in accordance with the provisions of the Agreement, provided that:

- (a) The modified Bond shall (i) be issued, executed and delivered at such time as the Chairman or the Vice Chairman shall determine, and (ii) be 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 determined by the Chair of the Agency, as evidenced by the execution of the modified Bond on behalf of the Agency by the Chair.
- (b) The Bond 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 of Riverhead) and neither the State nor any political subdivision (including, without limitation, the Town of Riverhead) thereof shall be liable thereon.
- (c) Neither the members, officers, employees or agents of the Agency, nor any person executing either the Bond 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.
- (d) The Bond, together with the premium, if any, and interest payable thereon, shall remain a special obligation of the Agency payable solely from the revenues and receipts derived under the Agreement and the enforcement of the security provided thereby and by the Mortgage and Security Agreements dated as of December 1, 2004, and any guaranty provided by the Company, Eastern or its guarantors.

4. (a) The Chairman or the Vice Chairman of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Bond and any related closing documents required to effectuate the transactions contemplated thereby, (hereinafter collectively called the "Financing 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 with such terms, changes, variations, omissions and insertions as the Chairman or the Vice Chairman shall approve, including a determination of the aggregate principal amount of the Bond to be executed and delivered (which shall not exceed the amount outstanding on the existing Bond at the time of delivery of the modified Bond), 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. The Chairman and Vice Chairman are authorized to delegate to the Executive Director, and unless such delegation is revoked in writing by filing a revocation with the Secretary of the Agency, shall be deemed to have delegated to the Executive Director, the authority

granted to the Chairman or Vice Chairman pursuant to this paragraph. No such delegation shall invalidate any prior or subsequent exercise of such authority by the Chairman or Vice Chairman.

5. 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 the Tax Certificate, 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.

6. A copy of this resolution, together with all attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours. The officers and other appropriate officials of the Agency are hereby authorized to distribute copies of this resolution and to take such other actions as may be necessary or convenient to implement the provisions of this resolution.

7. This resolution shall take effect immediately.

ADOPTED: November 3, 2014

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

I, the undersigned Secretary of the Town of Riverhead Industrial Development Agency, do hereby certify that I have compared the foregoing extract of the minutes of the Town of Riverhead Industrial Agency (the "Agency") held on November 3, 2014 with the original thereof on file in my office, and that the same is a true and correct copy of the original and of the whole of the original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of the meeting, (ii) the meeting was in all respects duly held, (iii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), the meeting was open to the general public and public notice of the time and place of the meeting was duly given to the public and news media in accordance with Section 104 and (iv) there was a quorum of the members of the Agency present throughout the 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 rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 16th day of December, 2014.


Secretary