

Date: December 1, 2015

At a meeting of the Town of Islip Industrial Development Agency (the “Agency”), held at Islip Town Hall, 655 Main Street, Islip, New York on the 1st day of December, 2015 the following members of the Agency were:

Present: Supervisor Carpenter  
Councilman Flotteron  
Councilwoman Bergin Weichbrodt  
Councilman Senft  
Councilman Cochrane

Absent:

Also Present:

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 amendment and modification of a certain industrial development facility more particularly described below (Prime Eleven Tower, LLC/Pods Enterprises, LLC 2015 Facility) and the continued leasing of the facility to Prime Eleven Tower, LLC for further sublease to Pods Enterprises, LLC.

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

Voting Aye

Voting Nay

Supervisor Carpenter  
Councilman Flotteron  
Councilwoman Bergin Weichbrodt  
Councilman Senft  
Councilman Cochrane

RESOLUTION OF THE TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE AMENDMENT OF DOCUMENTS, CONSENTING TO THE SUBLEASING OF A PORTION OF THE FACILITY AND AUTHORIZING ADDITIONAL BENEFITS ALL RELATED TO A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY LEASED TO PRIME ELEVEN TOWER, LLC, A NEW YORK LIMITED LIABILITY COMPANY AND TO BE SUBLEASED TO PODS ENTERPRISES, LLC, A FLORIDA LIMITED LIABILITY COMPANY AND APPROVING THE FORM, SUBSTANCE AND 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 47 of the Laws of 1974 of the State of New York, as amended from time to time (collectively, the “**Act**”), the Town of Islip Industrial Development Agency (the “**Agency**”) was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the Agency has previously assisted Prime Eleven Tower, LLC, a limited liability company duly organized and validly existing under the laws of the State of New York (the “**Company**”), in the acquisition of a parcel of land located at 500 Prime Place North Parcel, Hauppauge, Town of Islip, Suffolk County, New York (the “**Land**”), and the construction and equipping of an approximately 42,150 square foot building located thereon (the “**Facility Equipment**”; and together with the Land, the “**Company Facility**”), all to be leased by the Agency to the Company and subleased by the Company to a future tenant; and

WHEREAS, the Company leased the Land to the Agency pursuant to the terms of a Company Lease Agreement, dated as of October 1, 2013 (the “**Company Lease**”), by and between the Company, as lessor and the Agency, as lessee; and

WHEREAS, the Company transferred title to the Facility Equipment to the Agency pursuant to a Bill of Sale, dated October 4, 2013 (the “**Bill of Sale**”); and

WHEREAS, the Agency leased and subleased the Company Facility to the Company pursuant to the Lease Agreement, dated as of October 1, 2013 (the “**Lease Agreement**”), between the Agency, as lessor, and the Company, as lessee; and

WHEREAS, the Agency and the Company entered into a Recapture Agreement, dated as of October 1, 2013 (the “**Recapture Agreement**”), pursuant to which the Agency has the right to recapture certain economic benefits and assistance granted to the Company upon the terms and conditions set forth in the Recapture Agreement); and

WHEREAS in connection with the leasing and subleasing of the Company Facility, the Agency and the Company entered into a certain Environmental Compliance and Indemnification Agreement, dated as of October 1, 2013 (the “**Environmental Compliance and Indemnification Agreement**”), from the Company to the Agency; and

WHEREAS, the Company has completed the construction and equipping of the Company Facility and has requested the Agency's consent to the subleasing of the Company Facility to Pods Enterprises, LLC, a limited liability company organized and existing under the laws of the State of Florida (the "**Sublessee**"), and the Agency's assistance in the acquisition and installation of certain equipment and personal property including, but not limited to office furniture, forklifts and computers (collectively, the "**Equipment**"), which Equipment is to be leased by the Agency to the Sublessee (the Company Facility and the Equipment are collectively referred to herein as the "**Facility**"), for use by the Sublessee in the warehousing of portable storage units; and

WHEREAS, the Company will sublease the Company Facility to the Sublessee pursuant to a Lease Agreement, to be dated a date not yet determined (the "**Sublease Agreement**"), by and between the Company and the Sublessee, for a term of 10 years with an option to extend for 5 and additional years; and

WHEREAS, the Company Facility may not be subleased, in whole or in part, without the prior written consent of the Agency; and

WHEREAS, such consent may be manifested by the execution and delivery of an Agency Compliance Agreement, dated a date to be determined, between the Agency and the Sublessee (the "**Agency Compliance Agreement**"); and

WHEREAS, in connection therewith, the Company and the Sublessee have submitted a request for the Agency's consent to an increase in the total acreage of the Land to be approximately 1.8862 acres and for the Agency to provide payments-in-lieu-of-taxes benefits in connection with the Facility and an increase in exemptions from sales and use taxes; and

WHEREAS, in connection therewith the Company Lease, the Lease Agreement, the Recapture and the Environmental Compliance and Indemnification Agreement will be amended and restated; and

WHEREAS, the Agency consents to the increase of the acreage of the Land and in accordance with such increase, the parties intend to enter into (i) an Amended and Restated Company Lease (the "**Amended and Restated Company Lease**"), (ii) an Amended and Restated Lease Agreement (the "**Amended and Restated Lease Agreement**"), (iii) an Amended and Restated Recapture Agreement (the "**Amended and Restated Recapture Agreement**"), and (iv) an Amended and Restated Environmental Compliance and Indemnification Agreement (the "**Amended and Restated Environmental Compliance and Indemnification Agreement**"), each dated as of December 1, 2015 or such other date as may be determined, and each by and between the Company and the Agency, whereby, among other things, (i) the description of the Land as defined in the Company Lease, the Lease Agreement, the Environmental Compliance and Indemnification Agreement and the Recapture Agreement will be amended to include the increase in acreage, (ii) the terms of the Company Lease and the Lease Agreement will be extended to be coterminous with the proposed PILOT Agreement (as defined below), and (iii) the Recapture Agreement will be amended and restated to include a provision of recapture for the proposed PILOT benefits; and

WHEREAS, the Agency will lease the Equipment to the Sublessee pursuant to a certain Equipment Lease Agreement, dated as of December 1, 2015 or such other date as the Chairman or Executive Director of the Agency and counsel to the Agency shall agree (the “**Equipment Lease Agreement**”), by and between the Agency and the Sublessee; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company and the Sublessee consistent with the policies of the Agency, in the form of (i) exemptions from mortgage recording taxes for one or more mortgages securing the principal amount presently estimated to be \$4,500,000 but not to exceed \$6,000,000 in connection with the financing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing and equipping the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$174,470, in connection with the purchase or lease of equipment, building materials, services or other personal property, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof), consistent with the policies of the Agency; and

WHEREAS, the Act authorizes and empowers the Agency 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 order to define the Company and the Sublessee’s obligations regarding payments-in-lieu-of taxes with respect to the Facility, the Agency, the Company and the Sublessee will enter into a certain Payment-in-Lieu-of-Tax Agreement, dated as of December 1, 2015, or such date as may be determined by the Chairman or Executive Director of the Agency and counsel to the Agency (the “**PILOT Agreement**”), pursuant to which the Company and the Sublessee will make payments-in-lieu-of-taxes on the Facility; and

WHEREAS, as security for a loan or loans, the Agency and the Company will execute and deliver to a lender or lenders not yet determined (collectively, the “**Lender**”), a mortgage or mortgages, and such other loan documents satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably required by the Lender, to be dated a date to be determined, in connection with the financing, any refinancing or permanent financing of the costs of the acquisition, construction and equipping of the Facility (collectively, the “**Loan Documents**”); and

WHEREAS, the Company and the Sublessee have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company and the Sublessee;

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

Section 1. The Agency hereby finds and determines:

(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 Facility continues to constitute a “project”, as such term is defined in the Act; and

(c) The acquisition, construction and equipping of the Company Facility, the continued leasing of the Company Facility to the Company, the subleasing of the Company Facility by the Company to the Sublessee, and the acquisition and installation of the Equipment and the leasing of the Equipment to the Sublessee will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Town of Islip, and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The acquisition, construction and equipping of the Facility is reasonably necessary to induce the Company and the Sublessee to maintain and expand their respective business operations in the State of New York; and

(e) Based upon representations of the Company and the Sublessee and counsel to the Company and the Sublessee, the Facility conforms with the local zoning laws and planning regulations of the Town of Islip, Suffolk County, and all regional and local land use plans for the area in which the Facility is located; and

(f) The Facility and the operations conducted therein do 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

(g) It is desirable and in the public interest for the Agency to continue to lease and sublease the Company Facility to the Company and to lease the Equipment to the Sublessee; and

(h) The Amended and Restated Company Lease will be an effective instrument whereby the Agency continues to lease the Land and the Improvements from the Company; and

(i) The Amended and Restated Lease Agreement will be an effective instrument whereby the Agency continues to lease and sublease the Company Facility to the Company; and

(j) The Equipment Lease Agreement will be an effective instrument whereby the Agency leases the Equipment to the Sublessee; and

(k) The PILOT Agreement will be an effective instrument whereby the Agency, the Company and the Sublessee set forth the terms and conditions of their agreement regarding the Company's and the Sublessee's payments in lieu of real property taxes; and



(l) The Amended and Restated Recapture Agreement will be an effective instrument whereby the Agency, the Company and the Sublessee agree to provide for the obligations of the Company and the Sublessee under the Transaction Documents (as defined in the Lease Agreement) and describe the circumstances in which the Agency may recapture some or all of the benefits granted to the Company and the Sublessee; and

(m) The Amended and Restated Environmental Compliance and Indemnification Agreement will be an effective instrument whereby the Company and the Sublessee agree to comply with all Environmental Laws (as defined therein) applicable to the Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws; and

(n) The Agency Compliance Agreement, dated as of December 1, 2015 or such other date as may be determined by the Chairman or the Executive Director of the Agency and counsel to the Agency (the “**Agency Compliance Agreement**”), between the Agency and the Sublessee will be an effective instrument whereby the Sublessee will provide certain assurances to the Agency with respect to the Lease Agreement.

(o) The Loan Documents to which the Agency is a party will be effective instruments whereby the Agency and the Company agree to secure the Loan made to the Company by the Lender.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) amend the legal description and extend the terms of the Company Lease and the Lease Agreement, (ii) continue to lease the Land and the Improvements from the Company pursuant to the Amended and Restated Company Lease, (iii) execute, deliver and perform the Amended and Restated Company Lease, (iv) continue to lease and sublease the Company Facility to the Company pursuant to the Amended and Restated Lease Agreement, (v) execute, deliver and perform the Amended and Restated Lease Agreement, (vi) lease the Equipment to the Sublessee pursuant to the Equipment Lease Agreement, (vii) execute, deliver and perform the Equipment Lease Agreement, (viii) execute, deliver and perform the PILOT Agreement, (ix) execute, deliver and perform the Amended and Restated Recapture Agreement, (x) execute and deliver the Amended and Restated Environmental Compliance and Indemnification Agreement, (xi) execute and deliver the Agency Compliance Agreement, (xii) grant a mortgage on and security interests in and to the Facility pursuant to the Loan Documents, and (xiii) execute, deliver and perform the Loan Documents to which the Agency is a party.

Section 3. The Agency is hereby authorized to acquire the personal property described in Exhibit A to the Equipment Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 4. The Agency is hereby authorized to acquire the Facility and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed. The Agency is hereby further authorized to execute and deliver the Loan Documents in

connection with the financing of the costs of acquiring, constructing and equipping the Facility and any future Loan Documents in connection with any future refinancing or permanent financing of such costs of acquiring, constructing and equipping of the Facility without the need for any further or future approvals of the Agency.

Section 5. The Agency hereby authorizes and approves the following economic benefits to be granted to the Company and the Sublessee in connection with the acquisition, construction and equipping of the Facility in the form of (i) exemptions from mortgage recording taxes for one or more mortgages securing the principal amount presently estimated to be \$4,500,000 but not to exceed \$6,000,000 in connection with the financing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing and equipping the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$174,470, in connection with the purchase or lease of equipment, building materials, services or other personal property, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof), consistent with the policies of the Agency.

Section 6. Subject to the provisions of this resolution, the Company and the Sublessee are herewith and hereby appointed the agents of the Agency to acquire, equip and furnish the Facility. The Company and the Sublessee are hereby empowered to delegate their respective status as agent of the Agency to their respective agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company and the Sublessee may choose in order to acquire, equip and furnish the Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company and the Sublessee as agents of the Agency 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, materialmen, vendor or supplier, and the Company and the Sublessee, as agents of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. This agency appointment expressly excludes the purchase by the Company and the Sublessee of any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The Company and the Sublessee shall indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company and the Sublessee, as agent of the Agency. The aforesaid appointment of the Company and the Sublessee as agents of the Agency to acquire, equip and furnish the Facility shall expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which the Company and/or the Sublessee have received a total of exemptions from sales and use taxes in an amount of \$174,470, in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company and/or the Sublessee if such activities and improvements are not completed by such time. The aforesaid appointment of the Company and the Sublessee is subject to the execution of the documents contemplated by this resolution.

Section 7. The Company and the Sublessee hereby agree to comply with Section 875 of the Act. The Company and the Sublessee further agree that the exemption of sales and use tax provided pursuant to the Act and the appointment of the Company and the Sublessee as agents of the Agency pursuant to this Authorizing Resolution is subject to termination and recapture of benefits pursuant to Section 875 of the Act and the Recapture Agreement.

Section 8. The form and substance of the Amended and Restated Company Lease, the Amended and Restated Lease Agreement, the Equipment Lease Agreement, the PILOT Agreement, the Amended and Restated Recapture Agreement, the Amended and Restated Environmental Compliance and Indemnification Agreement, the Agency Compliance Agreement and the Loan Documents to which the Agency is a party (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 9.

(a) The Chairman, Vice Chairman, Executive Director or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Amended and Restated Company Lease, the Amended and Restated Lease Agreement, the Equipment Lease Agreement, the PILOT Agreement, the Amended and Restated Recapture Agreement, the Amended and Restated Environmental Compliance and Indemnification Agreement, the Agency Compliance Agreement and the Loan Documents to which the Agency is a party, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Executive Director or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, Vice Chairman, Executive Director or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, Executive Director or any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 10. 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 or provided for by the provisions of the Agency 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 Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 11. This resolution shall take effect immediately.



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

I, the undersigned Secretary of the Town of Islip Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Islip Industrial Development Agency (the “Agency”), including the resolutions contained therein, held on the 1st day of December, 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 resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 1st day of December, 2015.

By:   
Assistant Secretary

EXHIBIT A

Form of Proposed PILOT Benefits

Formula for In-Lieu-of-Taxes Payment: Town of Islip (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Hauppauge Union Free School District, Suffolk County and Appropriate Special Districts

Definitions

X = \$[ ] – to be determined prior to the date of closing.

Y = increase in assessment above X resulting from the acquisition, construction and equipping of the Facility.

Normal Tax Due = Those payments for taxes and assessments, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Islip (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located) which are or may be imposed for special improvements or special district improvements, that the Company and/or the Sublessee would pay without exemption.

Payment

Tax Year (following first taxable status date after the election by Company and/or the Sublessee, more specifically set forth in paragraph 1(c) of the PILOT Agreement)

Formula

1	100% normal tax on X and 50% normal tax on Y
2	100% normal tax on X and 55% normal tax on Y
3	100% normal tax on X and 60% normal tax on Y
4	100% normal tax on X and 65% normal tax on Y
5	100% normal tax on X and 70% normal tax on Y
6	100% normal tax on X and 75% normal tax on Y
7	100% normal tax on X and 80% normal tax on Y
8	100% normal tax on X and 85% normal tax on Y
9	100% normal tax on X and 90% normal tax on Y
10	100% normal tax on X and 95% normal tax on Y
11 and	100% normal tax on X and 100% normal tax on Y