

**MINUTES OF A REGULAR MEETING  
RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY  
August 5, 2013**

Meeting was called to order by Chairman Tom Cruso at 5:02 p.m.

Present: Tom Cruso, Chairman  
Dawn Thomas, Asst. Treasurer/Secretary  
Paul Thompson, Treasurer  
Elias (Lou) Kalogeras, Vice Chairman

Others in Attendance: Tracy James, Executive Director of RIDA  
Richard Ehlers, Agency Counsel

Absent: Carl Gabrielsen, Secretary

Lou Kalogeras motioned to approve the agenda. Paul Thompson seconded. The Agenda was approved.

**MINUTES:**

The Board moved to dispense with the reading of and voted on the June 3<sup>rd</sup> and July 8th meeting minutes.

**#48-13 RESOLUTION APPROVES MINUTES OF SPECIAL MEETING MINUTES OF JUNE 3, 2013.**

Lou Kalogeras offered the following resolution, which was seconded by Dawn Thomas.

**RESOLVED**, the minutes of the meeting of June 3, 2013 as prepared and e-mailed be and are hereby approved, and

**BE IT FURTHER RESOLVED**, that a copy of said minutes be maintained in the files of the Agency and become a part of the record of the Agency.

**Vote:** 4 Yes  
1 Absent

**#48B-13 RESOLUTION APPROVES MINUTES OF SPECIAL MEETING MINUTES OF JULY 8, 2013.**

Paul Thompson offered the following resolution, which was seconded by Dawn Thomas.

**RESOLVED**, the minutes of the meeting of July 8, 2013 as prepared and e-mailed be and are hereby approved, and

**BE IT FURTHER RESOLVED**, that a copy of said minutes be maintained in the files of the Agency and become a part of the record of the Agency.

**Vote:** 3 Yes

1 Abstain (Kalogeras)

1 Absent

The Chairman moved to recess the regular meeting and call to order the Public Hearings

**PUBLIC HEARINGS:**

The Chairman opened the first Public Hearing at 5:05pm. The Chairman noted that at the request of the applicant, Simshabs X, LLC, the public hearing would adjourn until September 9, 2013. The applicant had requested more time to submit required documentation.

The Chairman then moved to open the second public hearing on behalf of 1998 Peconic/Allied Building Supply at 5:10pm. The ED noted that all requested documents have been submitted by the applicant. Member Paul Thompson reiterated a number of key points regarding the project. There were no questions or comments from the public. The Chairman moved to close the hearing at 5:15???

The Chairman reopened the regular meeting.

**CORRESPONDENCE:** There was no correspondence relayed to the board

**TREASURER'S REPORT:** The Treasurer reported that the Agency's

Cash Balance as of July 31st, 2013	\$130,369.38
Revenue for July (application/closing fees)	\$57,301.90
Profit and Loss (July)	\$40,866.47
Total Year	\$102,402.75
Accounts Receivable	\$4,707.43
Total Bills Paid for June	\$8,554.01

**#49-13 RESOLUTION ACCEPTS REPORT OF EXPENSES AND AUTHORIZES PAYMENT OF BILLS AS OF July 31, 2013**

**WHEREAS**, Denise Cooper, CPA and Tracy Stark-James, Executive Director, submitted a monthly financial report, including a report of expenses, to the Riverhead Industrial Development Agency for the period of July 1 to July 31, 2013 **as attached**,

**NOW, THEREFORE, BE IT RESOLVED**, that said monthly financial report dated August 2, 2013 covering the month of July, be and are hereby accepted and expenses as listed are authorized for payment.

Lou Kalogeras made a motion to accept Treasurer's Report, which was seconded by Dawn Thomas. **Motion approved.**

**Vote:** 4 Yes  
1 Absent

**COMMITTEE REPORTS**

There was no audit committee report.

There was no governance committee report.

Personnel committee meeting will be held in Executive Session.

Finance Committee was provided a draft budget for 2014 and informed that the final budget must be approved by the Oct 1<sup>st</sup> meeting. There were no comments regarding the draft budget at this time.

**OLD BUSINESS:**

- A.** From the floor: The ED reported to the board that she received a resolution from Fulbright & Jaworski just this morning to address a bond modification for Riveredge and requested that the board consider it. Counsel explained the transaction and the board moved to consider.

The following resolution was offered by Lou Kalogeras and seconded by Dawn Thomas.

**#53-13 RESOLUTION AUTHORIZING THE MODIFICATION OF THE TERMS OF THE TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AUTHORITY INDUSTRIAL DEVELOPMENT REVENUE BONDS (RIVEREDGE, LLC PROJECT), SERIES 2007 ORIGINALLY ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$7,500,000), 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 of New York (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 2007, Riverhead Building Supply Corp., a corporation organized and existing under the laws of the State ("RBSC"), presented an application (as amended, the "Application") to the Agency on behalf of RBSC and Riveredge 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 \$10,000,000 (the "Bonds") to provide funds for certain costs in connection with a project (the "Project") consisting of:

the acquisition of a parcel of land of approximately 32.33 acres in Riverhead, New York (the "Land"), the construction on the Land of a 110,000 square foot manufacturing and warehouse facility (the "Facility"),

and the purchase and installation of equipment for use in the Facility (the "Equipment" and together with the Land and the Facility, the "Project Facility");

paying certain costs of issuance of the Bonds; and

funding interest on the Bonds during the construction period of the Project Facility;

(2) the provision of an abatement of real property taxes through a payment in lieu of tax agreement requiring payments in an amount less than that which would otherwise be required to be paid as real property taxes and in accordance with the standard uniform tax exemption policy of the Agency;

(3) 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

(4) the provision of an exemption from mortgage recording taxes in connection with mortgages necessary or convenient to the financing of the Project (together with the issuance of the Bonds and the granting of the real property tax exemption and the sales tax exemption, the "Financial Assistance"); and

WHEREAS, the Agency, on September 6, 2007 issued its Industrial Development Revenue Bonds (Riveredge, LLC Project), Series 2007 in the aggregate principal amount of SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$7,500,000) (the "Bond") pursuant to an authorizing Resolution dated August 20, 2007 (the "Bond Resolution");

WHEREAS, the Agency has been requested by representatives of Riveredge LLC 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;

WHEREAS, Riveredge LLC 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 \$\_\_\_\_\_;

WHEREAS, the cooperation by the Agency in the present circumstances 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:

The Agency hereby determines i) to modify the terms of the Bond to provide for a variable interest rate 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 Riveredge LLC to the Agency at the time of the original issuance of the Bond, ii) to deliver such modified Bond to Sovereign Bank (the "Bank") without cost to the Agency and subject to the terms and conditions set forth in the existing bond purchase, building loan and lease agreement (the "Agreement") by and among the Agency, the Company and the Bank, dated September 6, 2007 (the "Closing Date"); (ii) 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 Bonds and file a form 8038 with the Internal Revenue Service; and (iii) 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. The form and substance of the Bond (in substantially the form presented to this meeting as an exhibit to the Agreement, but with such changes as shall be acceptable to the Chair of the Agency) are hereby approved. The Agency is hereby authorized to issue, execute and deliver the modified Bond, all in accordance with the provisions of the Agreement, provided that:

*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.*

*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.*

*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.*

*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 First Mortgage, the First ALR and any guaranty provided by the Company or RBSC.*

1. 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.

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.

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.

This resolution shall take effect immediately.

Vote: 4 Yes

1 Absent

- B. The board considered and approved the resolution for 400 Burman Boulevard to execute final documents

**#52-13 RESOLUTION APPROVES FINANCING DOCUMENTS RE: 400 BURMAN BOULEVARD, LLC AND AUTHORIZES EXECUTION**

Lou Kalogeras offered the following resolution, which was seconded by Dawn Thomas.

WHEREAS, by resolution adopted July 8, 2013, the Agency did authorize its Executive Director to proceed, at the expense of 400 Burman Boulevard, LLC, to cause agreements and documents to be prepared that will enable approved benefits to be provided to 400 Burman Boulevard, LLC, and to submit such agreements and documents to the Agency for approval, and

WHEREAS, said agreements and documents have been prepared and include a Lease Agreement, Ground Lease, Guaranty, and Payment in Lieu of Tax Agreement.

NOW, THEREFORE, BE IT RESOLVED, that said documents are approved and authorized for signature by Chairman, Vice Chairman or Executive Director in substantially the form presented.

Vote: 4 Yes

1 Abstain

- C. The board considered a resolution to approve financial assistance for 1998 Peconic, LLC / Allied Building Supply.

The following resolution was offered by Member Lou Kalogeras, who moved its adoption, seconded by

Member Dawn Thomas, to wit:



**#51-13 A RESOLUTION APPROVING THE PROVISION OF FINANCIAL ASSISTANCE BY THE TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY TO 1998 PECONIC LLC**

WHEREAS, the Town of Riverhead Industrial Development Agency was created by Chapter 624 of the Laws of 1980 and is a public benefit corporation and an industrial development agency of the State of New York (the "Agency") having those powers set forth in, and subject to the requirements of, Article 18-A of the General Municipal Law; and

WHEREAS, the Agency has received an application for financial assistance from 1998 PECONIC LLC as property owner, and ALLIED BUILDING PRODUCTS CORP. as facility user, each being a company qualified to do business in the State of New York ("1998 PECONIC"), with respect to the construction of a 16,667 square foot building located at Edwards Avenue, Calverton, New York (S.C.T.M. #0600-117.000-002-002.008) for use as a distribution facility of building products at an aggregate cost, including costs associated with the financing thereof, estimated to be \$1,845,000 (the "Project"); and

WHEREAS, a public hearing pursuant to Section 859-a of the General Municipal Law was held by the Agency on July 8, 2013 with respect to the application for financial assistance and the Project and the proposed financial assistance requested by 1998 PECONIC with respect to the Project; and

WHEREAS, the Agency provided notice of the Public Hearing to the chief executive officer of each affected tax jurisdiction within which the Project is located; and

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.

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

Section 1. It is hereby determined that the Agency shall provide 1998 PECONIC with the following financial assistance with respect to the Project: (i) the provision of an exemption from Sales and Compensating Use Taxes on certain property, including tangible personal property, and (ii) a partial abatement of real property taxes by granting a partial abatement of real property taxes attributable to any increase in assessed value of the real property comprising the Project over the present assessed value of such real property (\$33,000) for a period of ten years as designated in the attached Schedule A, and (iii) the provision of an exemption from Mortgage Recording Taxes. The Executive Director of the Agency is hereby directed to proceed, at the expense of 1998 PECONIC, to cause agreements and documents to be prepared that will enable the aforesaid benefits to be provided to 1998 PECONIC, and to submit such agreements and documents to the Agency for approval. The financial assistance authorized hereby shall not be effective until closing.

Section 2. The Agency has declared itself "lead agency", in accordance with the provisions of the State Environmental Quality Review Act with respect to the Agency's providing financial assistance to 1998 PECONIC, as described in Section 1 of this Resolution and as authorized pursuant to Article 18-A of the General Municipal Law, and has determined that the provision of said financial assistance will not have a significant effect on the environment.

Section 3. This resolution shall take effect immediately.

VOTE: 4 Yes  
1 Absent

D. ByLaws were tabled.

**NEW BUSINESS:**

The Chairman opened a discussion regarding the composition of the board to deliberate on whether it is necessary to request the Town Board to expand the size to seven seats versus the current five seats. After deliberation, the board decided to devise a proposal by September and in the meantime recommend non board members to committees.

## **EXECUTIVE DIRECTORS REPORT**

ED presented conference options to the board. IEDC and LIBDC in Montauk. The ED wanted more time to research IEDC Annual Conference. Board authorized attendance to IEDC Conference based on ED recommendation of value.

ED requested vacation in August 19-30

Date for the next meeting is the meeting September 9, 2013

The Chairman moved to recess the regular meeting to open the Riverhead IDA Economic Job Development Corporation meeting at 5:45pm.

The board reopened the regular meeting of the Riverhead Industrial Development Agency at and move into executive session to discuss personnel matters 5:48pm.

The Board moved out of Executive Session and resumed the regular meeting of the IDA at 6:17pm.

Paul Thompson offered the following resolution, which was seconded by Dawn Thomas

### **#50-13 AUTHORIZES CHAIRPERSON TO EXECUTE EMPLOYMENT AGREEMENT WITH EXECUTIVE DIRECTOR**

WHEREAS, the contract for the position of Executive Director of the Riverhead IDA has expired, and

WHEREAS, the Personnel Committee has provided its report on the evaluation of the staff, and

WHEREAS, it is the desire of the Board of Directors to negotiate and execute a new contract with the Executive Director.

NOW, THEREFORE, BE IT RESOLVED, that the Chairperson be and is hereby authorized to execute Employment Agreement with Tracy Stark-James for the position of Executive Director with the Riverhead IDA.

**Vote:** 4 Yes

1 Absent

Lou Kalogeras motioned to adjourn the meeting, Paul Thompson seconded.  
**There being no further business, the meeting was adjourned at 6:19pm**

8-5-13

Date

  
Secretary

**Riverhead Industrial Development Agency**

**8-5-13**

**Executive Committee Meeting**

Present: Tom Cruso, Chairman  
Dawn Thomas, Asst. Treasurer/Secretary  
Paul Thompson, Treasurer  
Elias (Lou) Kalogeras, Vice Chairman

Absent: Carl Gabrielsen, Secretary

**PERSONNEL COMMITTEE MEETING**

The Chairman moved to open a personnel committee meeting at 5:48pm.

The Personnel Committee Chairman reported on the personnel evaluation and presented a draft contract for approval of the board. The committee recommended review by counsel.

Dawn Thomas motioned to conclude the Personnel committee meeting and move back into the Executive Session. Paul Thompson seconded.

The Executive Board reviewed the recommendations by the personnel committee and recommended review by counsel.

Lou Kalogeras moved to close the Executive Session and reopen the regular meeting. Paul Thompson seconded.

The Executive Session was adjourned at 6:16pm