

5/01/2001minutes

Minutes of a Community Development Meeting held by the Town Board of the Town of Riverhead at Town Hall, Howell Avenue, Riverhead, New York on Tuesday, May 1, 2001, at 7:00 p.m.

**Present:**

Robert Kozakiewicz,	Chairman
Edward Densieski,	Member
James Lull,	Member
Christopher Kent,	Member
Philip Cardinale,	Member

**Also Present:**

Andrea Lohneiss,	Director
Barbara Grattan,	Town Clerk
Dawn Thomas, Esq.,	Town Attorney

Supervisor Kozakiewicz called the meeting to order at 8:59 p.m.

Supervisor Kozakiewicz: "Let the record reflect that it's 8:59 and we'll convene the CDA portion of tonight's meeting."

Resolution #10

Andrea Lohneiss: "Resolution #10 amends a prior resolution that was authorized by the Town Board last July for a company called BMB Inc. They were previously approved to occupy three buildings at Calverton totaling 23,477 square feet and did not execute that agreement and subsequently have requested use of a larger building beginning, the resolution says May 15<sup>th</sup>. However, the applicant has specifically requested June 1<sup>st</sup>."

Chairman Kozakiewicz: "Right. So we need to amend the resolution."

Member Kent: "Yes. I'll move the resolution. But first I'll move to amend the second Whereas clause, change the word May to June, number 15 to 1. In the fourth Whereas clause, change it from August 15<sup>th</sup> to September 1<sup>st</sup> and in the second Resolve clause, I'd like to add that a copy shall be also provided to John Graziano in care of BMB Millwork, Inc., 66 Old Country Road, POB 1659, Quogue, New York 11959."

Chairman Kozakiewicz: "Is there a second to move the resolution

5/01/2001minutes

with those amendments?"

Member Lull: "I'll second it and, Barbara, that address is on the next page."

Chairman Kozakiewicz: "Okay, moved and seconded."

The Vote: "Densieski, yes; Cardinale."

Member Cardinale: "I have a concern that I expressed at the work session. I'm not sure that it's been resolved. When we- I think this is great, the more rentals we get up there and I'm satisfied with the \$5.00 rather than the five and a half. However, if we're going to be selling the property in two months according to statements made, I'm concerned that these six months leases are not as required by our contract approved by Burman. Because this could be used as yet another reason not to close. Bob, are you concerned with that or what's your view on it?"

Chairman Kozakiewicz: "I- "

Member Kent: "Isn't this building being- the one that's being sold?"

Member Cardinale: "I don't know but I know we're required to get the permission of Burman to lease and I learned at the work session that we have not done so in the last several leases."

Andrea Lohneiss: "This building Mr. Burman is in negotiations to sell to an individual who is in negotiations to lease it to Mr. Graziano."

Member Cardinale: "However, it is true is it not that our contract with Burman requires us to either give him vacant possession or to get approval prior to leasing the property?"

Andrea Lohneiss: "That's true."

Member Cardinale: "That's what really concerns me. Rather than belabor the issue I will abstain and we can discuss it further at the next work session."

The Vote (Cont'd.): "Kent."

Member Kent: "Can we receive in the interim between now and

5/01/2001minutes

June 1<sup>st</sup> some type of waiver or confirmation or acceptance of this license agreement from Mr. Burman?"

Chairman Kozakiewicz: "I can tell you that we've been in constant communications with Mr. Petty (phonetics), Burman's counsel. It's my understanding that most of the issues that were outstanding have been narrowed in scope, in context, and I do not believe that this would become an obstacle but what we can do is address it between now and June 1."

Member Kent: "We had- at one time we had some type of form that we used to send him."

Chairman Kozakiewicz: "Right."

Andrea Lohneiss: "We do have a consent form."

Chairman Kozakiewicz: "Right."

Member Kent: "Well, why don't we send that out to him."

Chairman Kozakiewicz: "Sounds like a good suggestion."

Member Kent: "Wouldn't that be easier?"

Chairman Kozakiewicz: "I think in the past he had agreed orally- "

Member Kent: "Okay."

Chairman Kozakiewicz: "-- and then we had a problem with him agreeing in writing."

Member Kent: "Okay. I think we can even do it by fax. I think it would be acceptable."

Chairman Kozakiewicz: "Well, I think- as I said, he had agreed orally and then the issue became where he withheld the written consent and obviously given the fact that there was an incurring loss, we chose this course."

Member Kent: "Well, since we have now until June 1<sup>st</sup>, I would suggest that we send him the consent form if and see if we can get him to execute that, and I'll vote yes."

5/01/2001minutes

Chairman Kozakiewicz: "Okay."

The Vote (Cont'd.): "Lull, yes; Kozakiewicz, yes. The resolution is adopted."

Resolution #11

Andrea Lohneiss: "Resolution 11 designates Altitude Express doing business as Skydive Long Island as a qualified and eligible sponsor for the leasing of the 10,000 foot runway at the Calverton site. We have previously held a hearing on the subject on April the 3<sup>rd</sup>."

Member Kent: "I will move the resolution designating Altitude Express d/b/a Skydive Long Island as a qualified and eligible sponsor for the non-exclusive leasing of the eastern runway and the aircraft tie down area adjacent thereto at the former Naval Weapons Industrial Reserve Plant."

Member Lull: "Second. Sorry."

Member Kent: "Are you seconding it?"

Member Lull: "Yup."

Member Kent: "Discussion."

Chairman Kozakiewicz: "Yes."

Member Kent: "I still have a question on this agreement. I raised it at the hearing; I've raised it when I think we were first considering this many months ago, I think it was in December. It's the same issue. Can we enter into a longer term agreement for use of the runway without a contemporaneous agreement for the- for a similar length of time or longer for one of the buildings at the site? I never really received a response to that."

Chairman Kozakiewicz: "Was this the zoning question or just a question of contract law?"

Member Kent: "This is the issue of whether- this is the issue of whether the runway is an accessory to a primary use which is industrial- "

Chairman Kozakiewicz: "Whether it needs to be tied to a

5/01/2001minutes

building?"

Member Kent: "Correct."

Member Cardinale: "It depends on whether you're asking Eddie or I the question."

Member Kent: "Well, actually I'm asking neither of you. I don't really care what- I'm asking Dawn because- "

Chairman Kozakiewicz: "Your opinions don't count."

Member Cardinale: "Right. We're beginning to realize that, Bob, thank you."

Chairman Kozakiewicz: "I just wanted to reinforce it."

Member Cardinale: "The- Dawn, I think you said you had an opinion but we never saw it in writing and I would probably get another opinion if I saw it in writing and didn't like it. But the question is interpretation of the zoning statute, yes, and that exists, that issue, still as I understand it."

Dawn Thomas: "I think that if you read the zoning statute, there is nothing in it that prohibits the use of the runway without an existing building. There was a discussion that we did have at the work session I think that involved the conflict in the paragraph that allows aviation uses and indicates that general aviation is permitted, and I'm not looking at the statute right now but I think you're familiar with it, that said that aviation uses are permitted and it lists some specific and then- but excluding general aviation- and I think commercial- regularly scheduled commercial flights. So I think that was where we sort of left that discussion and I think that Skydive fell into one of the permitted uses there that was not excluded or part of that confusion and I think there's nothing else in the statute that requires or indicates that aviation is an accessory use. It says it's a permitted use."

Member Cardinale: "Yes, it says- it does- I think the only actually stated use related to the 7,000 foot runway and it said flight school."

Chairman Kozakiewicz: "No. We're referring to the 10,000 as a permitted use."

5/01/2001minutes

Member Cardinale: "No, and on the 10,000."

Chairman Kozakiewicz: "As a permitted use. As opposed to an accessory."

Member Cardinale: "Yeah, and in that there is an indication of aviation use excluding general aviation use and not including this particular use. So there's no specific permission of this use. That much we can agree on. It's just the language that is there, what does it mean? What do we interpret it to mean? I wish we had the language in front of us. I had wanted- "

Chairman Kozakiewicz: "Well, no, I think the critical question is whether in your opinion as counsel for this Town Board, the members, and as the acting body for the Community Development Agency, you are of the opinion that this agreement- no, this resolution, designating Skydivers as a qualified and eligible sponsor and therefore providing for the extended use of the runway, non-exclusive, in the absence of an established building is allowed or is not."

Dawn Thomas: "I think that with respect to Skydive that it would be allowed."

Chairman Kozakiewicz: "Okay. I think that's the issue."

Member Kent: "Okay, then the practical question follows that if he's not renting a building there- "

Chairman Kozakiewicz: "But he currently is."

Member Kent: "No, I know that, but it's for a short term. If he chooses not to extend the license or no longer rents a building at the site, can he continue to use the runway for the Skydive operations? The way it's set up now, yes, he could. Is that the way- is that what we intended under the zoning? I don't believe so. So it comes down to a question of intent beyond just the zoning. Zoning often does look to legislative intent. So I've had this question. I'm not bringing this up at the eleventh hour here."

Dawn Thomas: "This question and I agree that it was raised before, wasn't raised with respect to Skydive. It was raised with respect to a different application for a license agreement. So- and I think as I said before, I don't think that the zoning as it currently exists excludes that use. It's-- aviation use is a permitted use. It doesn't indicate that it's an accessory use there. And, yes, there

5/01/2001minutes

is- there are limits on the aviation uses permitted on the property and there is not- it's not as clear as I think anybody would like it to be as to what those are, what uses are included. But I think the opinion of my office was that this particular use was a permitted use."

Member Cardinale: "With all due respect for the Town Attorney, an opinion, unsupported by case law and unsupported by the text of the statute or these local ordinances and unsupported by any other support, is simply an opinion, which it doesn't raise to the level of a legal opinion. It's her opinion that she read the statute which she can't remember the words of and she believes that this is what- "

Chairman Kozakiewicz: "I don't think that's what she said. I think what-- what -- "

Member Cardinale: "She did because she cannot- "

Councilman Densieski: "I can tell you what the words are."

Dawn Thomas: "I hope you don't expect me to memorize the zoning- "

Member Cardinale: "No, but I would expect- "

Dawn Thomas: "-- if you have a question, I'd be happy to answer it. This is the first time it's been raised to me."

Member Cardinale: "But I would have expected- I expected what I asked for two months ago and what Chris asked for which was a written opinion of the Town Attorney citing law and the statute and the legislative intent. That's what I needed and that's what I don't have."

Chairman Kozakiewicz: "All right. Is there any further discussion?"

Member Densieski: "Yes, some further discussion."

Member Kent: "Could I just ask a question? I'm sorry. Would it be that difficult- I'm not- maybe the practical solution to this is that we enter into some type of longer term lease for the building with maybe some escalators so that he can remain in the building? You talk about the zoning and the uses. The aviation uses I believe don't refer just to somebody coming in and using the runway. I would think

5/01/2001minutes

the uses mean some property on the site."

Dawn Thomas: "I think that there's two different issues here that we're talking about; one is whether or not you need a use to go with the building, and whether or not you can use the- put the runway for what you're asking to use it for."

Member Kent: "Without a use of a building- "

Dawn Thomas: "Yeah- "

Member Kent: "I think the runway- I still believe because we went around on this back when we were adopting the zoning, that the 10,000 foot runway is zoned as part of the industrial property and its intent was to be used by industry that is located in the industrial- in the industrial park, in EPCAL. That this runway would be used by industry that had either a lease or ownership of property that was within the industrially zoned property and that is who's going to be using the runway. We're not going to let people who are not located at the site to use the runway. So even if we allow planes in the future or aviation uses to come in and use the runway, I would think it would be connected to some type of agreement where they either store their plane at the site, with some type of a company that has hanger facilities for storage of planes. We're not going to just let people come in with no connection to the site and land their planes."

And the way this is set up now is that he has a short- for a short time he has a lease to remain in one of the buildings. But after that, that runs out. Are we then going to allow him to continue to use the runway with no connection to the site? That's the question. And I think the intent was no but I could be wrong and that's why I asked- "

Member Cardinale: "I think the original- the original lease, what conditioned- the initial runway agreement was conditioned on the existence of a lease. We would be changing that policy by this."

Member Kent: "Can we- I mean if we designate a- "

Chairman Kozakiewicz: "We're not voting on the lease today. We're voting on the issue of qualified and eligible sponsorship, is what we're voting on."

Member Densieski: "We're voting on qualified and eligible sponsor."

5/01/2001minutes

Member Kent: "Right. So can we expand it maybe-- "

Chairman Kozakiewicz: "So we're clear on that. That's the vote."

Member Kent: "Right."

Chairman Kozakiewicz: "The issue of lease and the language of the lease and whether it needs to be tied into the use of a building is something we can take up at a future date because we're not signing off on an extended lease today unless I'm missing something."

Member Kent: "Well, it's- "

Chairman Kozakiewicz: "-- or- "

Member Kent: "-- qualified or eligible sponsor- "

Chairman Kozakiewicz: "Qualified and eligible sponsorship is what we're deciding upon."

Member Kent: "For the purpose of- I'm sorry I'm right here- for the purpose of the eastern runway and the tie down area adjacent thereto."

Chairman Kozakiewicz: "Right. But then there will be a new document which will need to be negotiated between the CDA and Skydive with respect to extending that non-exclusive runway use agreement. That's- "

Member Kent: "Well, do we want to also find him as a qualified and eligible sponsor to utilize a building on the property for the amount of time? That's the question. That's basically what I'm asking. I should have been clear. Do we want to commit him to a building also as a qualified and eligible sponsor or do we want to just say that he has the non-exclusive right to use the runway? I'm sorry to be a stick in the mud but this is- "

Andrea Lohneiss: "Bob, we haven't entertained his use for five years, long term for the buildings because we don't expect to own those buildings."

Chairman Kozakiewicz: "Right."

Member Densieski: "Mr. Supervisor, may I say something,

5/01/2001minutes

please?"

Chairman Kozakiewicz: "Yes."

Member Densieski: "Page two of the zoning says permitted uses: aviation. Now if you go to page three under accessory uses, that's what you'll get Mr. Cardinale's opinion. It clearly states aviation is a permitted use. It has nothing to do with this resolution. This resolution clearly is just to designate him a qualified sponsor. So with that said, I would request that we move the resolution."

Chairman Kozakiewicz: "Any other discussion? If not, let's move for a vote."

The Vote: "Densieski, yes; Cardinale."

Member Cardinale: "I have reservations in addition to the ones expressed by Chris and discussed a moment ago. One is we have had no leases over there for more than six months. I am concerned about a lengthier lease which would preclude the possibility of a home run lease in the future. For example, by giving this access to the runway, are we precluding the possibility later on of a major player such as an airline- "

Chairman Kozakiewicz: "No."

Member Cardinale: "-- not coming in because they would have to share this runway. I believe that we are because we are saying that they have a right for five- over five years to use this runway as we proceed here. Secondly, we're- it's a very minor lease, it's a \$2,000 a month lease and I don't know what it's going to look like in its end but this reference \$2,000 per month without escalators.

Thirdly, in addition to the money and the lack- and the extension of the commitment to a lengthy period, I think the use, and this is probably most significant, the use- I have spoken with, and we have had before us during- Michael Spindler, an aviation- a pilot, professional pilot. I've spoken to Anthony Mauro of the Flight Standards Bureau, Craig Edwards, Traffic Control, I've received a letter from Peter Winthrop, union rep of the National Air Traffic Control Association, and the existence of this use at that site for an extended period will interfere with other potential aviation uses.

So even if I were anxious to have greater aviation use at the site as is Ed, I would not wish to extend this use for five and a half

5/01/2001minutes

years there. And, finally, I see no ability- I don't feel it is appropriate to approve an entity as a sponsor for purposes of granting a six year lease. And that's exactly why we're doing this. We're required to find them an eligible sponsor for the area because the lease is lengthy. I feel that it is inappropriate to do that without having the lease before us. We're declaring them a sponsor for the purposes of signing lease and yet we have no lease. For those reasons, I vote no."

The Vote (Cont'd.): "Kent."

Member Kent: "I'm put in a difficult position. I really feel that the runway- in order to use the runway at Calverton, you should be a tenant at the property or have some connection to a tenant at the property. This agreement- what this is providing, I have no problem finding him a qualified and eligible sponsor. But I think at the same time, we should be making him commit to a long term lease of a building at the property or some commitment to be located at the property in some structure in order to use the runway. That was my intent when I voted on the zoning, that the runway would be used by aviation uses that had connection to the property.

And without any type of long term lease which would commit his connection to the industrial property for an equal or greater amount of time as we're allowing under this agreement for use of the runway, I don't see how we could do this. What it provides is that he could then use the runway without having any connection to the property. And I don't think that's his intent.

So I think that we are premature in doing this. I think we should be negotiating some type of agreement on both things, both for the use of a building and for the use of the runway. So I'm going to abstain and I'm going to hope that even though if this is adopted, I will continue to work with Mr. Maynard. I think if it's adopted and he's found to be qualified and eligible, I hope he'll work with me anyway in reaching some type of agreement for longer term use of a building at the site because I think they go hand in hand. So I'm going to abstain at this time."

The Vote (Cont'd.): "Lull."

Member Lull: "To me it makes sense to figure out, to make a decision as to whether somebody is a qualified and eligible sponsor before you begin serious negotiations. Chris has a point, we follow up the negotiations. But at this point I see no reason to deny him as

5/01/2001minutes

a qualified and eligible sponsor. Yes."

The Vote (Cont'd.): "Kozakiewicz."

Chairman Kozakiewicz: "Just a couple points. What this is doing is designating Skydive or Altitude Express as a qualified and eligible sponsor and I think Mr. Maynard who is operating this business would love to get an extended lease and work out a deal between the town, CDA and Mr. Burman for an extended use for a structure on the property. He would love to do that and if we can accomplish that and work out the terms, I'm sure he would be more than a willing participant in such a three way transaction.

It should be noted- and the words non-exclusive lease are critical here. That this does not give him an exclusivity to the use of that eastern runway. I think if an individual wants to come in and see Mr. Riley's operation in order to see the operation first hand he's going to be able to get use of that runway in conjunction with Skydive. It's not going to prevent it. If Airbus wants to come to the property, they're not going to stop coming to the property and taking advantage of the site because of Skydive.

Furthermore, I, too, had some conversations with individuals from Traycon (phonetic), in particular Phil Barbarello (phonetic) who called me on April 17<sup>th</sup> and indeed told me that the question with regard to Traycon and the question with regard to how this operation conducted was an issue that they needed to address. However, they also stated to me or he stated to me, that they did not believe that these issues could not be resolved by the parties getting together and providing for and adopting rules and procedures. And I understand that that information was passed along to Mr. Maynard and Mr. Maynard is prepared to meet with Mr. Barbarello and provide and safety recommendations or implement any safety recommendations that they would require of his operation.

For all these reasons, I vote yes."

Andrea Lohneiss: "The resolution is adopted."

Resolution #12

Andrea Lohneiss: "Authorizes the Chairman to execute a runway use agreement for one year- for I'm sorry, for three months with United Aerial Advertising from May 25<sup>th</sup> of this year until September 4<sup>th</sup> for the purpose of banner towing, landing, refueling, banner

5/01/2001minutes

storage and take off."

Chairman Kozakiewicz: "Is there a motion?"

Member Densieski: "What number are we- "

Chairman Kozakiewicz: "It's 12. CDA 12."

Member Cardinale: "Oh yes, number 12. Authorizes the Chairman to execute runway use agreement with United Aerial Advertising. So moved."

Member Densieski: "Second the motion."

Chairman Kozakiewicz: "Moved and seconded."

The Vote: "Densieski, yes; Cardinale."

Member Cardinale: "I understand this is a three month agreement which is consistent with our short term agreements and that these individuals are renting certain spaces. Is that correct? For their banner?"

Andrea Lohneiss: "No."

Member Cardinale: "Is there any condition in this contract to that effect?"

Dawn Thomas: "Yes. "

Chairman Kozakiewicz: "There is discussion of it in there."

Dawn Thomas: "There's a condition in the license agreement requiring them to have space for banner storage, yes."

Member Cardinale: "That was my understanding."

Member Kent: "Are they going to pay separate rent for that or-"

Dawn Thomas: "We're leaving it up to them to make the arrangement whether to make it (inaudible) license agreement or whether to make it- "

Member Kent: "Okay. They're going to be required to locate it somewhere."

5/01/2001minutes

Andrea Lohneiss: "It would be a very small amount of space that would be required to store the banners that they're not using."

Member Kent: "Okay."

Member Cardinale: "And it's a three month lease. I vote yes."

The Vote (Cont'd.): "Kent."

Member Kent: "Yes, this is going to be subject to them locating at the property. It's short term, it's not a lot of money though but I'll vote yes."

The Vote (Cont'd.): "Lull, yes; Kozakiewicz, yes."

Andrea Lohneiss: "The resolution is adopted."

#### Resolution #13

Andrea Lohneiss: "Authorizes the Chairman to execute a license agreement, a one year license agreement with New York State Empire State Development Corp. for the use of a portion of the property at the Calverton facility for the provision of small business assistance to the east end of Long Island."

Member Lull: "Andrea, I believe we're going to move to table this because we need some more of the- the parties involved."

Member Kent: "The agreement doesn't have all the parties named."

Chairman Kozakiewicz: "I believe and we'll verify this. I think this is going to be a joint arrangement between the Empire State Development Corp. and LIDC so we should- and I'll clarify that so that we can address it at the next meeting."

Andrea Lohneiss: "Rather than amend it."

Member Densieski: "Second."

Chairman Kozakiewicz: "Unless there's a motion to amend, we can put LIDC on tonight."

Member Kent: "Yeah, but that would be- then what if they're not?"

5/01/2001minutes

Chairman Kozakiewicz: "Well, I understood they were. They both met with me and they both desired- indicated a desire to jointly use the property. They should both have been on it."

Member Kent: "Okay. So we're only adding just the Long Island Development Corporation?"

Chairman Kozakiewicz: "Correct."

Member Lull: "My motion to table has not been seconded. So, whatever."

Chairman Kozakiewicz: "So do you want me to just put that- because it should have been both agencies."

Member Kent: "You withdraw your motion to- "

Chairman Kozakiewicz: "You withdraw your motion to table?"

Member Lull: "Yes."

Chairman Kozakiewicz: "Okay."

Member Kent: "Okay, so now you're going to move the resolution to amend- amend the resolution to add Long Island Development Corporation as a party."

Chairman Kozakiewicz: "And that would be the attention of Roz Goldmacher (phonetic)."

Member Kent: "Okay."

Member Lull: "So move both and the last Resolve paragraph and as part of the agreement. Yes."

Member Kent: "And I'll second the resolution as amended."

Andrea Lohneiss: "Discussion. That would mean that they would work out their- the items that are their cost would be worked out between the two parties?"

Chairman Kozakiewicz: "Correct."

Andrea Lohneiss: "And neither one would be the lead entity?"

5/01/2001minutes

Chairman Kozakiewicz: "That was the way I understood it to be. I mean if- I don't want to hold off on this because I would like to get them to the property. Because I think it will help us as far as entertaining businesses that are looking to develop there as well as businesses on the east end. So- "

Member Cardinale: "I have a question in regard to the amendment. There is no rental being paid here for town property. The theory is that their presence of the Empire State Development Corp. and the Long Island Development Corp. will enhance the quick marketing of the property."

Chairman Kozakiewicz: "Well more than that."

Member Cardinale: "And their presence, well- you can- I'd like you to state that if you could but my question is this. I don't see any insurance here that they will be at the site for a committed number of hours per week in consideration for the no rent rent. And without that, I cannot support this and I thought that was discussed at work session. And I'm talking about the license agreement does not indicate that they will be there for five days a week or staff it so that we may wind up- we may wind up renting it for nothing for no reason."

Member Densieski: "Well, if they- "

Chairman Kozakiewicz: "However, they're responsible for all the costs that are associated with that rental and we're talking about 133 square feet of office space."

Member Cardinale: "Well, that's another question. It says 132 square feet in the guardhouse as well as the shared uses of all adjoining conference rooms. So they're getting exclusive 132 and then they're getting the rest. And when we sell, which you say is two months, they will have the use of the entire building."

Chairman Kozakiewicz: "We're aiming for that, that's correct."

Member Cardinale: "So we're going to- that whole guardhouse there which is several thousand square feet would be utilized without rent and with no assurance that it wouldn't be empty. And when you saying they're paying, they are paying utilities and nothing more. That's the kind of rent I'd like my landlord to charge me."

Chairman Kozakiewicz: "That's phone lines, there's other things

5/01/2001minutes

(inaudible)."

Member Densieski: "They will be working for us for free also."

Member Cardinale: "Not unless we insist that they be in that location for a certain number of hours each week. Otherwise we're just going to have an empty building there because they won't go there unless they have to meet somebody there."

Member Densieski: "Why would they want the office space if they're not going to work there?"

Member Cardinale: "As a place to- as an east end presence. If they want to meet someone, they meet them in the east end. They have offices to the west."

Chairman Kozakiewicz: "Why don't we just table it and have Roz Goldmacher and Henry Mund come back if need be?"

Member Kent: "No, but we did discuss- "

Chairman Kozakiewicz: "I mean they've committed to this site that not only do they feel they could help businesses locating to the community but they would be able to help both commercial and industrial development in the township such as the fellow who wanted to start a bakery in the town of Riverhead, the LIDC does small business loans and they felt that their presence on the east end could be something that would be very welcome, not something that we would be going (inaudible)."

Member Cardinale: "Perhaps they would commit to a five day a week, six hour a day presence, then I would be happy to give them the room."

Chairman Kozakiewicz: "And if they don't commit to five days, you still would not be in favor of it?"

Member Cardinale: "If they do not commit to a substantial presence, I feel it would be pointless it for nothing."

Chairman Kozakiewicz: "Define substantial, just so I can tell them what it is you're asking for."

Member Cardinale: "I would like them- I would expect them to there every day for at least half a day."

5/01/2001minutes

Member Lull: "And I would expect that their job to do- with the job that they have to do is what is their substantial presence. Their presence is dependent upon doing a job and that is promote small business on the east end. If they are doing that job, then they are doing that job. Whether they do it in that office or not will not make a difference."

Member Cardinale: "Yeah, but they have offices paid for by the state in Nassau County for that purpose. They're asking us to provide one free to them in Suffolk."

Chairman Kozakiewicz: "Any further discussion? Do we wish to take up the vote?"

Member Kent: "What are we voting on? The resolution?"

Andrea Lohneiss: "On the resolution to amend."

Chairman Kozakiewicz: "The resolution."

Member Kent: "The resolution or to table it?"

Member Cardinale: "I second- "

Chairman Kozakiewicz: "I don't think there's been a motion. There's been a motion to table. There hasn't been a second yet."

Member Cardinale: "I second the motion to table for further discussion."

Barbara Grattan: "I thought you withdrew it."

Member Kent: "I never moved. I sat down here still."

Member Lull: "I was the one who motioned to table."

Barbara Grattan: "Exactly. So there's no one that- "

Member Kent: "You want to move to table?"

Member Cardinale: "I move to table."

Member Kent: "Bob- "

Chairman Kozakiewicz: "Is there a second?"

5/01/2001minutes

Member Kent: "I'll second the motion to table."

Chairman Kozakiewicz: "Let's get the issues rectified and we'll get it addressed next time. Motion to table; second to table."

Barbara Grattan: "Okay, Kent, you second it to table?"

Member Kent: "Yes. Let's move it on."

Chairman Kozakiewicz: "Move to the vote."

The Vote: "Densieski."

Member Densieski: "We have the ability to get the Empire State Development Corporation to work for free for us to lure economic engines to the Grumman site if we let them use 132 square foot of office space, they'll pay their own telephones. No to table."

The Vote (Cont'd.): "Cardinale."

Member Cardinale: "I'm very glad to have them work for us if they come. There is not 132 square feet. It's going to wind up being several thousand square feet when the property is sold and several thousand shared before the property is sold. I'd like them to commit to be there. I vote to table to discuss that with them."

The Vote (Cont'd.): "Kent."

Member Kent: "There was discussion at the work session that I think the Supervisor was going to be in contact with them in order to gain some type of agreement on committed time to the location. I think that should be worked out. If they're going to come here and we're going to provide them with free space we should get some commitment from them to provide services. So, I think it would be worthwhile to table this and allow the Supervisor to work out some of the details. So I'm going to vote yes to table."

The Vote (Cont'd.): "Lull."

Member Lull: "The measure of a job done is the measure of a job done, not the time put in. I vote no to table."

The Vote (Cont'd.): "Kozakiewicz."

Chairman Kozakiewicz: "No to table."

5/01/2001minutes

Andrea Lohneiss: "The resolution was not adopted. Is there a motion on the resolution as- "

Member Densieski: "I'll move it."

Member Kent: "I'll second so we can get a vote in on it."

Member Cardinale: "I'll move to amend the resolution by adding that in consideration of the free rent they will be accorded, that they will be in that office for at least 20 hours a week, four hours a day during the work week. With that- "

Member Kent: "Does it have to be four hours a day or could it be 20 hours a week? Could it be three days of six hours?"

Member Cardinale: "I'll take the 20 hours a week."

Chairman Kozakiewicz: "I'm just amazed."

Member Cardinale: "I'll take the 20 hours a week. They have to be there. What I believe that they're going to do is simply use it as a place to meet their clients from up (inaudible) on occasion and I would prefer to rent it to someone else if that is the case."

Andrea Lohneiss: "Okay, that was a motion by Cardinale, seconded by Kent. The Vote."

Member Kent: "I don't think anybody moved it. Phil moved to amend it."

Member Densieski: "Did anybody second it?"

Chairman Kozakiewicz: "Phil moved to amend it."

Andrea Lohneiss: "Right. That's what I- "

Member Densieski: "There was no second."

Chairman Kozakiewicz: "There wasn't a second."

Barbara Grattan: "No, there was no second yet."

Member Densieski: "Did you second?"

Member Kent: "To amend it to that effect? We left- let me-

5/01/2001minutes

this- something is being missed here. We left this to the Supervisor to negotiate acceptable terms."

Chairman Kozakiewicz: "There was a question-- this was an issue that- "

Member Kent: "At work session."

Chairman Kozakiewicz: "-- Councilman Cardinale raised. I don't believe I ever said I wouldn't make this demand on them, but- "

Member Kent: "No, you did to speak to them to see what type of commitment they would make to the site. I did remember that there was some discussion about that at work session."

Chairman Kozakiewicz: "Okay."

Member Kent: "We have no videotape. It was at work session. Might have even been- no, it was not executive session. I think Henry was here."

Member Lull: "Yes, he was."

Chairman Kozakiewicz: "No, if he was here we would have asked him that question- "

Member Kent: "It was after he left. So nobody wants to- you guys don't want to- I mean, it's fruitless if you guys aren't going to force these guys to be committed to be at the site."

Chairman Kozakiewicz: "I believe they're prepared to do that anyway. I didn't have a chance to talk to them about it. I know that they're looking to- Empire State Development, Henry Mund is looking to do this and prepare a marketing plan. He's looking to work with the Long Island Development Corp. I know I put in all your boxes information with regard to the proposal. It's to provide assistance to Long Island businesses in the Town of Riverhead, East Hampton, Southampton, providing easier access to east end businesses for financial and technical resources. The Long Island Development Corp. had included a proposal as well providing what they do which is I think something that you're familiar with, Chris- "

Member Kent: "I am."

Chairman Kozakiewicz: "-- and it's something that's beneficial

5/01/2001minutes

to small businesses. They help them prepare marketing plans, business plans, provide small business loans."

Member Kent: "I have a small business. Can they give me money?"

Chairman Kozakiewicz: "Yes. So- "

Member Kent: "I'll vote yes."

Andrea Lohneiss: "We need a second."

Member Kent: "Nobody seconded it yet, so we don't have a second. Let's call- "

Chairman Kozakiewicz: "Call the vote."

Andrea Lohneiss: "Without a second?"

Member Kent: "Without a second."

The Vote: "Densieski."

Member Kent: "I know, we're calling the vote on the resolution without the amendments."

Chairman Kozakiewicz: "Right."

Member Kent: "That's what we're doing. Because that what was moved and seconded. Okay?"

Chairman Kozakiewicz: "Is there a second to move it without the amendments?"

Member Kent: "There was- "

Member Densieski: "Okay. I am voting on Resolution 13 for 132 square feet in the guardhouse for one year. Hopefully, we can get some benefits, some economic benefit out of it. Of course, I'm going to vote yes. Obviously, yes."

The Vote (Cont'd.): "Cardinale."

Member Cardinale: "Again, licensor is going to license to the licensee 132 square feet in the guardhouse as depicted in the exhibit

5/01/2001minutes

together with the use- the shared use of adjoining rooms. I don't know if- I wonder sometimes whether I'm on the same wave length as the rest of the world here. But I don't recall getting a waiver of rent or waiver of tax from the town and so when we start waiving rent on town owned property it makes me think that we're giving benefits to certain entities and groups that we are not giving to others and that is not a good practice. It bothers me when town owned property is rented out without rent.

If we're going to do that, it seems to me we should at least assure that the benefit to the town is locked in in the agreement. In this agreement, the benefit to the town of the presence of the entities is not locked in. They don't have to be there for a single moment over the next year but what we have to do is allow them access and charge them nothing for the next year and were we to rent it to someone else it would, even if it was \$100 a year, decrease the amount of your tax bill.

So before we start waiving rent on town owned property, I'd like to see us reduce our taxes. So I vote no."

The Vote (Cont'd.): "Kent."

Member Kent: "Yeah, I'm a little surprised that the Empire State Development Corp.-- I'm sure they have other offices throughout the state where they pay rent. So I'm surprised that they come to us and ask us to give them free space. It is only for a year. Will we receive benefits commensurate with what they are receiving in value of space? I don't know. I would like them to come and do work on the east end but I don't think we should be doing this without some rent. So I'm going to vote no also."

The Vote (Cont'd.): "Lull."

Member Lull: "Okay. There's no reason- there's no debate about what is and is not being offered to them. It's a small office and occasional sharing with the Town of Riverhead one conference room. The one conference room that is there. And we would hope that when they have a need to share the conference room, that means they have more business people who are attending one of their seminars and who will be helped on the east end.

Besides, the EDZ, the Economic Development Zone coordinator is already in that building and the EDZ doesn't pay the town any rent. So it doesn't seem like it's necessary to say to someone who's coming

5/01/2001minutes

here to do the kind of job that they're doing, and you also have to pay us rent. Because what that could- or if you don't pay us rent, you also have to commit to a certain number of hours. Because if you commit to a certain number of hours and there aren't the jobs to do on the east end, then we're talking about somebody sitting in an office with nothing to do. And Phil has frequently defined that as government work and I think he could be quite right there. But I don't think it makes any sense to bring somebody out here to do that. Yes."

The Vote (Cont'd.): "Kozakiewicz."

Chairman Kozakiewicz: "Enough discussion. Yes."

Andrea Lohneiss: "The resolution is adopted."

Chairman Kozakiewicz: "Is there any other business?"

Chairman Kent: "3-2."

Andrea Lohneiss: "No."

Chairman Kozakiewicz: "The time being 9:38, the CDA portion is closed."

Meeting adjourned: 9:38 p.m.

*Barbara Guttman*  
Town Clerk

Resolution # 10

Amends CDA Resolution #18 of 2000 Regarding License Agreement with BMB Millwork, Inc.

Member Kent offered the following resolution,

which was seconded by Member Lull

WHEREAS, the CDA previously approved a License Agreement for Buildings 06-52, 53 and 54, totaling approximately 23,477 square feet, with BMB Millwork, Inc. at \$4.50 per square foot; and

WHEREAS, BMB Millwork, Inc. did not execute said agreement and has requested use of a larger building, known as the Warehouse (06-04) and comprising 35,000 square feet, beginning June 1, 2001, for \$5 per square foot.

WHEREAS, approximately 17,000 square feet of 06-04 is being used by the Brookhaven Volunteer Fire Department at no cost; and

WHEREAS, BMB is willing to use 18,500 square feet for three months and 35,000 square feet from September 1, 2001.

WHEREAS, the Town Board desires to encourage additional jobs and revenue to the Town pending closing on the property by the Buyer; and

WHEREAS, this Town Board has balanced such interests and hereby makes the following findings:

1. The proposed license agreements are of short duration;
2. That proposed uses under the license agreements are consistent with the objectives of the Town's Zoning Ordinance;
3. There is a clear mutuality of purpose and goals in this action being that the same elected representatives serve as members of the CDA and the Town Board; and

WHEREAS, the CDA will realize net income of \$7,708 per month for the first three months and then \$14,583 per month during the duration of license period.

THEREFORE, BE IT RESOLVED, that the CDA hereby authorizes the Chairman to execute the license agreement substantially in the form attached hereto.

AND BE IT FURTHER RESOLVED, that the Town Clerk shall provide a certified copy of this resolution to Community Development Agency Director Andrea Lohneiss and John Graziano at BMB Millwork, 66 Old Country Road, PO Box 1659, Quogue, NY 11959.

The Vote:

Member Densieski	YES	
Member Cardinale	ABSTAIN	
Member Kent	YES	
Member Lull	YES	The Resolution is ADOPTED.
Chairman Kozakiewicz	YES	

Councilman offered the resolution to be amended, which was seconded by Councilman Lull.

LICENSE

License ("License"), made as of the \_\_\_ day of May, 2001, by and between the **Town of Riverhead Community Development Agency**, having an address at 200 Howell Avenue, Riverhead, NY 11901, Attention: Andrea Lohneiss ("Licensor") and **BMB Millwork**, a corporation having an address at: 66 Old Country Road, PO Box 1659, Quogue, NY 11959, ATTN: John Graziano ("Licensee").

W I T N E S S E T H

**WHEREAS**, Licensor desires to license to Licensee, and Licensee desires to license to Licensor, the right to use approximately 35,000 square feet in Building 06-04, known as the Warehouse, as depicted on Exhibit A (the "License Premises") located at the property formerly known as the Naval Weapons Industrial Reserve Plant, Department of Defense Number 466, Calverton, New York (the "Calverton Site"), upon all of the terms and conditions hereinafter set forth. The Licensee will lease 18,500 square feet from June 1, 2001 to August 31, 2001 then 35,000 beginning September 1, 2001;

**NOW, THEREFORE**, in consideration of the mutual agreements herein contained, Licensor and Licensee, for themselves, their successors and assigns, hereby agree as follows:

1. **LICENSING.** Upon the terms and conditions hereafter set forth, Licensor hereby licenses to Licensee, and Licensee hereby licenses from Licensor, the right to use the License Premises.
2. **TERM OF LICENSE.** The term of this License (the "Term") shall commence on June 1, 2001 (the "License Commencement Date") and shall end on the earlier of (a) November 30, 2001 and (b) the date on which the closing shall occur under that certain Agreement of Sale dated as of June 15, 1999 between Licensor and Calverton Camelot LLC. (in either case, the "Expiration Date") or such earlier date upon which this License shall expire or be canceled or terminated pursuant to any of the conditions or covenants of this License or pursuant to law. Notwithstanding anything to the contrary contained in this License, Licensor shall have the right, exercisable in its sole discretion, to terminate this License effective immediately upon written notice from Licensor to Licensee, if (i) Licensee shall default under or be in breach, of in any of its obligations, representations or warranties hereunder and (ii) such default continues for (x) five days after written notice from Licensor with respect to monetary defaults or (y) thirty days after written notice from Licensor with respect to nonmonetary defaults. If Licensor shall so terminate this License, from and after the termination date neither party hereto shall have any rights or obligations hereunder other than those that, pursuant to the express terms hereof, survive termination of this License; provided that Licensee shall remain liable to Licensor for any default or breach by Licensee that occurred prior to such termination. Furthermore, this License is not, and shall not be construed to be, a lease or a sublease and nothing contained in this License shall be construed as granting to Licensee any interest or right as tenant

or subtenant or any other interest or right other than the interest of a Licensee in accordance with the terms and provisions hereof.

3. **CONDITIONS OF LICENSE PREMISES.** Licensee agrees to accept the License Premises "as is," and Licensor shall have no obligation to perform any work or repairs on behalf of Licensee. Licensee acknowledges that no representations with respect to the condition of the License Premises, or with respect to any improvement or fixtures thereon or attached thereto, have been made to it. Licensee shall be responsible for all start-up costs and expenses and for all costs and expenses associated with the operation of the License Premises, including without limitation, utility usage costs. Invoices will be provided to Licensee monthly and are to be paid within 10 days. Specifically, Licensee must install electric and steam meter per specification by Grubb & Ellis and incur other start-up costs, including but not limited to reactivation of sprinklers, including quarterly testing as required by the Riverhead Fire Marshall, and reactivation of bathrooms. Licensee is responsible for connection of building to municipal water including design, inspection and key money.
4. **SECURITY DEPOSIT.** Licensee shall deposit with Licensor on the date hereof an amount equal to \$14,583 as security for the faithful performance and observation by Licensee of the terms, conditions and provisions of this License. If a default shall occur and be continuing hereunder, Licensor may apply or retain the whole or any part of the security so deposited to the extent necessary to cure such default. Upon termination of this License, Licensor shall return to Licensee such deposit, less any amounts to which Licensor is entitled pursuant to the terms hereof.
5. **LICENSE FEE.** Licensee shall pay to Licensor, in accordance with Section 6 hereof (a) on the date hereof an amount equal to \$23,124 and (b) on the first business day of each month commencing with September 1, 2001, an amount equal to \$14,583 (all of the amounts to be paid by Licensee hereunder, collectively, the "Fee"). In the event that the Term shall terminate on a day other than the last day of a calendar month or in the event that the Term shall terminate prior to August 14, 2001, Licensor and Licensee shall equitably prorate the amount of the Fee actually paid to Licensor for such period.

Licensee covenants and agrees that in no event shall Licensee permit any motor Vehicle to (1) enter the Calverton Site other than through the Access Point (as defined below) or (2) park anywhere other than in the parking area depicted on Exhibit A attached here (the "Parking Area"). Licensee shall be solely responsible for keeping the Parking Area free and clear of debris and snow.

6. **PAYMENT.** The Fee and all other charges, costs and expenses payable by Licensee under this License shall be paid by certified check payable to the order of the Town of Riverhead Community Development Agency and delivered to Andrea Lohneiss at the address provided for Licensor in the preamble to this License, without notice or demand therefor (except to the extent otherwise expressly provided herein)

and without any deduction, credit, set-off, counterclaim or abatement whatsoever in every case in which Licensee is required to pay Licensor a sum of money and said sum (or any portion thereof) is not Paid when due, interest at an annual rate of 12% shall be payable on such sum (or so much thereof as shall be unpaid) from the date said sum becomes due until the date the unpaid amount is paid.

7. **USE; COVENANTS.** (a) Licensee shall use the License Premises only for the design and manufacturing of woodworking products (the "Uses") to prepare the License Premises for the same and to clean and restore the License Premises, in each case, in accordance with, and subject to, the terms and provisions of this License. **Licensee shall be responsible for compliance with local zoning and for obtaining all permits necessary to conduct its business.**

(b) Licensee, at its own cost and expense, shall protect, maintain, and keep in good order, the License Premises.

(c) No additions to, or alterations of, the License Premises shall be made without the prior consent of Licensor or in violation of any applicable building codes. Upon revocation or surrender of this License, to the extent directed by Licensor, Licensee shall remove all alterations, additions, betterments and improvements made, or installed, and restore the License Premises to the same, or as good condition as existed on the date of entry under this License, reasonable wear and tear excepted.

(d) Licensee shall be liable for any loss of, or damage to, the Calverton Site incurred in connection with the Uses and shall make restoration or repair, or monetary compensation as may be directed by Licensor. Licensee shall maintain, at a minimum, the types and amounts of insurance evidenced by the certificates attached hereto as Exhibit B. Licensee agrees that not less than thirty (30) days prior to the expiration of any insurance required by this License, it will deliver to Licensor's local representative a certificate of insurance or a certified copy of each renewal policy to cover the same risks. Each policy of insurance required hereunder shall name Licensor "Town of Riverhead Community Development Agency" and "Grubb & Ellis Management Services, Inc." as additional insureds. In the event that any items or part of the Calverton Site shall require repair, rebuilding or replacement resulting from loss or damage, the risk of which is assumed under this Section 7, Licensee shall promptly give notice thereof to Licensor and shall, upon demand, either compensate Licensor for such loss or damage, or rebuild, replace or repair the item or items of the Calverton Site so lost or damaged, as Licensor may elect. In the event Licensee shall not have been required to effect such repair, rebuilding, or replacement, and the insurance proceeds allocable to the loss or damage that has created the need for such repair, rebuilding or replacement have been paid to Licensee, Licensee shall promptly refund to Licensor the amount of such proceeds.

(e) Without limiting the generality of any other provision of this Agreement, Licensee hereby covenants and agrees that Licensee shall provide ample vehicles, personnel, equipment and containers to clean the License Premises and insure that the same is

restored to as good condition, subject to reasonable wear and tear, on the Expiration Date as it was in on the License Commencement Date.

(f) In connection with the performance of work under this License, Licensee agrees not to discriminate against any employee or applicant for employment because race, religion, color or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Licensee agrees to post hereafter in conspicuous places available for employees and applicants for employment, notices to be provided by Licensor setting forth the provisions of the nondiscrimination clause. Licensee further agrees to insert the foregoing in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

(g) Licensor shall have the sole authority to determine what entity or entities shall provide the following services to the Calverton Site: any and all telecommunications products and services including but not limited to telephone, intellipath, ISDN, data circuits, satellite communications services, fiber, cable, electric and water. Licensee shall not install or contract for the installation of any of the foregoing services without the express written consent of the Licensor.

8. **ASSIGNMENT AND LICENSING.** Notwithstanding anything to the contrary contained in this License, Licensee shall not assign this License, License the License Premises in whole or in part or permit Licensee's interest in this License to be vested in any party other than Licensee by operation of law or otherwise. A transfer of more than fifty (50%) at any one time or, in the aggregate from time to time, of the stock, partnership or other ownership interests in Licensee, direct or indirectly shall be deemed to be an assignment of this License.

9. **LICENSOR'S REMEDIES.** (a) If Licensee fails to perform any of its obligations hereunder in accordance with the terms hereof, then, after reasonable notice to Licensee not to exceed thirty (30) days, and an opportunity for Licensee to cure such failure, (except in case of emergency) Licensee may (but shall not be obligated to) cure such failure at the expense of Licensee, and the amount incurred by Licensor in connection with such cure shall be payable by Licensee to Licensor on demand.

(b) Except as provided in Section 2 and in the immediately following sentence, in the event of a breach by Licensee hereunder, Licensor shall be limited to an action at law for damages. Notwithstanding the foregoing, in the event that Licensee holds over after the expiration of the Term, (i) Licensee shall be obligated to pay Licensor an amount equal to \$1,000 per diem for each day of the holdover term and (ii) Licensor shall have all of the rights and remedies available to it at law or in equity, including, without limitation, the right to exercise self help and to dispossess Licensee of the License Premises, change the locks on the License Premises, deny Licensee access to the License Premises and take possession of or dispose of any property at the License

Premises, all at the cost and expense of Licensee. Except as provided in Section 2, in no event shall Licensor have the right to enjoin Licensee's performance of the Uses.

10. **INDEMNITY.** (a) Licensee shall indemnify and hold Licensor harmless from and against any and all claims, actions, liabilities, losses, damages (including, without limitation, consequential and special damages), costs and expenses (including, without limitation, court costs and reasonable attorneys' fees and expenses) arising from or in connection with (i) the use or occupancy by Licensee of the License Premises during the term hereof, or (ii) any work or thing done or any condition created by or any other act or omission of Licensee or its employees, agents, contractors, visitors or licensees, in the License Premises or any other part of the Calverton Site in connection with Licensee's use of the License Premises, or (iii) Licensee's failure to perform any of the obligations imposed on it hereunder.  
  
(b) The foregoing indemnity does not include any claims, actions, liabilities, losses, damages, costs and expenses resulting from Licensor's gross negligence or willful misconduct.
11. **Brokers.** Licensee represents that it has not dealt with any broker or finder other than Grubb & Ellis with respect to this License. Licensee agrees to indemnify and hold Licensor harmless from and against any and all loss, liability, damage, cost and expense (including, but not limited to, court costs and reasonable attorneys' fees and expenses) which Licensor may incur or sustain in connection with any claim or action by any broker or finder that may be asserted against Licensor as a result of any conversations, correspondence or other dealings between Licensee and such broker or finder.
12. **NOTICES.** Any notices to be given under this License shall be in writing and shall be sent by registered or certified mail, return receipt requested. If such notice is directed to Licensee, it shall be addressed to Licensee at 66 Old Country Road, PO Box 1659, Quogue, NY 11959, Attention: John Graziano, and if such notice is directed to Licensor, it shall be addressed to Licensor at 200 Howell Avenue, Riverhead, New York 11901, Attention: Andrea Lohneiss. Either party may, by notice in writing, direct that future notices be sent to a different address and to the attention of such other people as either Licensor or Licensee shall designate.
13. **HAZARDOUS SUBSTANCES.** (a) Generally. Licensee shall not generate, store, manufacture, refine, transport, treat, dispose of, or otherwise permit to be present on or about the License Premises, any Hazardous Substances (other than Hazardous Substances (x) customarily used in events such as the Event and (y) used, stored, transported, and disposed of in strict compliance with applicable law). As used herein, the term "Hazardous Substances" shall mean any flammables, explosives, radioactive materials, hazardous wastes, hazardous and toxic substances or related materials, asbestos or any materials containing asbestos, or any other hazardous or toxic substance or material as defined by any Federal, State or local environmental law, rule or regulation, including, without limitation, the Resource Conservation and Recovery Act of 1976, as amended from time to time, the Comprehensive

Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, the Toxic Substances Control Act, as amended from time to time, the Hazardous Materials Transportation Act, as amended from time to time, and the regulations adopted and the publications promulgated pursuant to each of the foregoing.

- b. In addition to the foregoing, (A) Licensee hereby agrees to comply at all times with and to cause the License Premises to be in compliance at all times with the Suffolk County Health Department Regulations and (B) Licensee shall file for a fire prevention permit and hazardous material permit from the Town of Riverhead.
  - c. Indemnification. Licensee shall indemnify and hold harmless Licensor from and against any and all liabilities, damages, claims, losses, penalties, judgments, causes of action, costs and expenses (including, without limitation, court costs and the reasonable fees and expenses of counsel) which may be incurred by Licensor directly arising out of any breach by Licensee of the obligations imposed upon it under this Section 13. The foregoing indemnity shall survive the expiration or sooner termination of this License.
14. **CROSS-DEFAULT**. To the extent that the Licensor and the Licensee are parties to any other similar agreements, any default under such similar agreements shall be deemed to be a default under this License, and any default under such similar agreements.
15. **MISCELLANEOUS**. (a) Merger. All prior understandings and agreements between the parties with respect to the subject matter hereof are merged within this License, which alone fully and completely sets forth the understanding of the parties with respect to the subject matter hereof. This License may not be changed or terminated orally or in any manner other than by a writing signed by the party against whom enforcement of the change or termination is sought.
- (b) Successors and Assigns. This License shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. The term "Licensor," as used in this License, shall mean only the owner from time to time of the License Premises, so that in the event of any transfer or assignment of the License Premises, the transferor or assignor shall be and hereby is entirely freed and relieved of all covenants, obligations and liability of Licensor under this License, and it shall be deemed, without further agreement, that the transferee or assignee has assumed and agreed to perform and observe all obligations of Licensor under this License during the period that such transferee or assignee is the owner of the interest of License Premises.
- (c) Licensee represents that this License has been duly authorized, executed and delivered by Licensee and is enforceable against Licensee in accordance with its terms.

(d) Neither Licensor nor any tenant, nor other party now or hereafter having an interest in the Calverton Site, shall have any right of action based upon invasion of privacy, publicity, defamation, or other civil rights, in connection with the exercise of the permission and/or rights herein granted. Notwithstanding the foregoing, Licensee shall not use the name "Calverton" or "Riverhead", or any signage containing such names, and shall not use the names, pictures, or likenesses of any officials or employees of the Town of Riverhead in connection with or production of the "use" hereunder without the prior consent of Licensor, which consent shall not be unreasonably withheld or delayed.

LICENSOR:

THE TOWN OF RIVERHEAD COMMUNITY  
DEVELOPMENT AGENCY

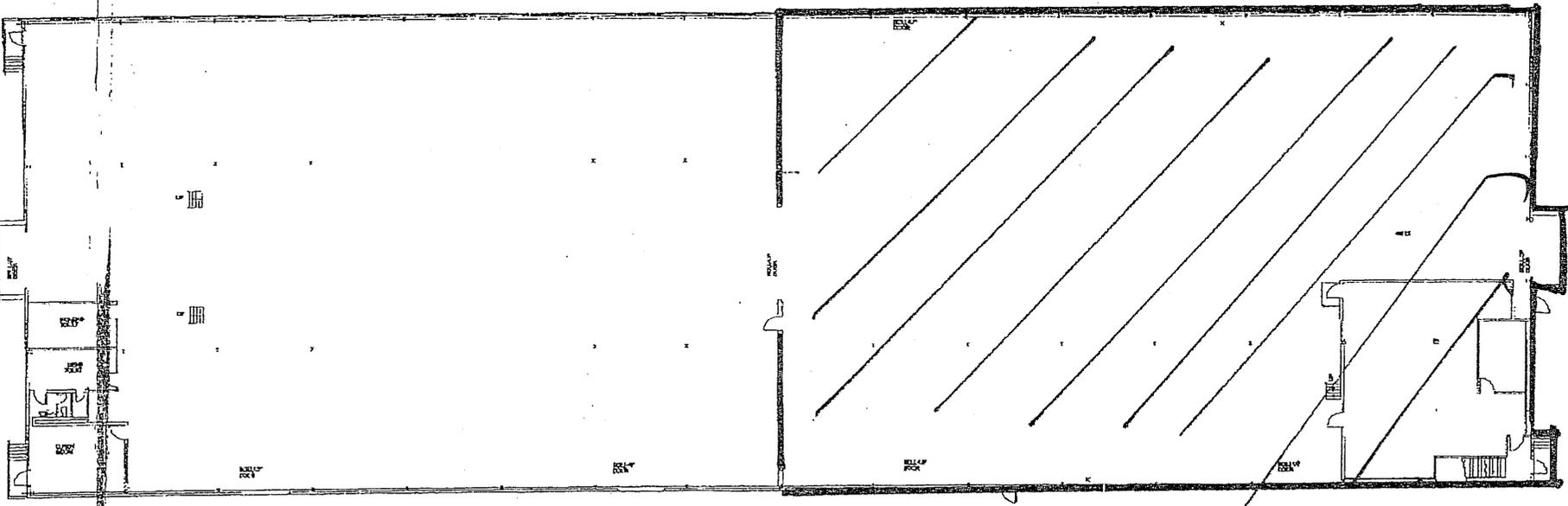
By: \_\_\_\_\_  
Name:  
Title:

LICENSEE:

BMB MILLWORK, INC.

By: \_\_\_\_\_  
Name:  
Title:

Exhibit A



BLDG 006-04 FIRST FLOOR

## EXHIBIT B

Insurance Certificates:

Liability – minimum \$1 million per occurrence

Fire Damage legal - \$100,000 minimum

Auto liability – minimum \$1 million per occurrence

Building contents – as desired

Worker's compensation – as required by law

**Note: The conditions of Paragraph 7 (d) regarding additional insureds, 30 day notification etc.. must be complied with and reflected in the Certificate of Insurance provided by the Licensee prior to execution of the License.**

COMMUNITY DEVELOPMENT AGENCY

RESOLUTION # 11

Adopted

At a regular meeting of the Members of the Town of Riverhead Community Development Agency, Town of Riverhead, Suffolk County, New York, held at the Town of Riverhead Town Hall, 200 Howell Avenue, in Riverhead, New York, in said Town, on May 1, 2001, at 7:00 o'clock P.M., Prevailing Time.

The meeting was called to order by Supervisor Kozakiewicz and upon roll being called, the following were

PRESENT: Supervisor Kozakiewicz  
Councilman Densieski  
Councilman Cardinale  
Councilman Kent  
Councilman Lull

ABSENT:

The following resolution was offered by Member Councilman Kent, who moved its adoption, seconded by Member Councilman Lull, to-wit:

THE VOTE  
Densieski  Yes  No Cardinale  Yes  No  
Kent  Yes  No Lull  Yes  No  
Kozakiewicz  Yes  No  
THE RESOLUTION WAS  WAS NOT   
THEREUPON DULY ADOPTED

RESOLUTION DATED May 01, 2001.

A RESOLUTION DESIGNATING ALTITUDE EXPRESS, D/B/A SKYDIVE LONG ISLAND, INC., AS A QUALIFIED AND ELIGIBLE SPONSOR FOR THE NON-EXCLUSIVE LEASING OF THE SO-CALLED EASTERN RUNWAY AND THE AIRCRAFT TIE DOWN AREA ADJACENT THERETO AT THE FORMER NAVAL WEAPONS INDUSTRIAL RESERVE PLANT, CALVERTON AND FOR THE NON-EXCLUSIVE LEASING BY THE AGENCY OF SUCH PROPERTY TO SKYDIVE LONG ISLAND, INC., FOR USE BY SKYDIVE LONG ISLAND, INC., IN PROVIDING SKYDIVING SERVICES TO THE PUBLIC.

WHEREAS, the Town of Riverhead Community Development Agency (the "Agency") is the owner of an approximately 2,900 acre parcel of land, together with the buildings, runways and aircraft tie down areas located thereon, in Riverhead, which land is known as the former Naval Weapons Industrial Reserve Plant, Calverton (the "Calverton Site") a portion of which Calverton Site is located within an economic development zone duly designated as such pursuant to the New York State Economic Development Zones Act, being Article 18-B of the General Municipal Law; and

WHEREAS, there has been submitted to the Agency a proposal for, and the Agency is considering, (i) designating Altitude Express, d/b/a Skydive Long Island, Inc. ("Skydive Long Island") the "qualified and eligible sponsor" (the "Sponsor"), pursuant to Section 507(2)(c) and (d) of the General Municipal Law and in accordance with the established rules and procedures provided by the Agency, for the non-exclusive leasing of the so-called eastern runway and the aircraft tie down area adjacent thereto of the Calverton Site, (the "Property"), and (ii) leasing the Property, on a non-exclusive basis, pursuant to Sections 507(2)(d), 556(2) and 968(b) of the General Municipal Law, to Skydive Long Island for a period of approximately five and one-half years for an initial monthly rental of \$2,000 per month for use by Skydive Long Island in providing skydiving services to the public; and

-2-

WHEREAS, Sections 556(2), 507(2)(c) and (d) and 968(b) of the General Municipal Law require that a public hearing, following at least ten days public notice, be held by the Agency on the question of designating Skydive Long Island the Sponsor for such leasing of the Property and the leasing of the Property by the Agency to Skydive Long Island; and

WHEREAS, the Town of Riverhead (the "Town"), pursuant to Article 8 of the Environmental Conservation Law and the regulations promulgated thereunder by the State Department of Environmental Conservation ("SEQRA") has by Resolution Number 614 of 1998 accepted a final generic Environmental Impact Statement upon the redevelopment of the Calverton Site and has further adopted a Findings Statement contemplating the use of the Property for such aircraft use; and

WHEREAS, the Agency, pursuant to SEQRA, has declared itself "lead agency" for such leasing the Property to and such proposed use of the Property by Skydive Long Island, has determined that such leasing of the Property and such proposed use is in conformance with such Findings Statement resulting from such Generic Environmental Impact Statement, and that such leasing of the Property and such proposed use is an "Unlisted Action" under SEQRA without a significant impact upon either the natural or social environment; and

WHEREAS, the Agency, by resolution duly adopted on March 9, 2001, called a public hearing on the designation of Skydive Long Island as the Sponsor for the redevelopment of the Property in the manner described herein and the non-exclusive leasing of the Property by the Agency to Skydive Long Island; and

WHEREAS, on April 3, 2001, the Agency duly held said public hearing on the designation of Skydive Long Island as the Sponsor for the redevelopment of the Property and the non-exclusive leasing of the Property by the Agency to Skydive Long Island, as Sponsor, after the requisite public

notice at which public hearing all interested parties were provided with reasonable opportunity to present their views with respect to the designation of Skydive Long Island as the Sponsor for the redevelopment of the Property and the non-exclusive leasing of the Property by the agency to Skydive Long Island, as Sponsor, and

WHEREAS, a majority of the Town Board of the Town, acting as Members of the Agency, attended such public hearing; NOW, THEREFORE, BE IT

RESOLVED, by the Members of the Agency, as follows:

Section 1. Based upon the record of the proceedings and the public hearing held at the Town Hall, 200 Howell Avenue, in Riverhead, New York, in said Town on April 3, 2001 at 7:05 o'clock P.M., Prevailing Time, on the question of designating Skydive Long Island the Sponsor for the redevelopment of the Property and the non-exclusive leasing of the Property by the Agency to Skydive Long Island, the non-exclusive leasing of the Property by the Agency to Skydive Long Island, for no monetary consideration, is hereby authorized in accordance with Sections 507(2)(d) and 556(2) of the General Municipal Law.

Section 2. The Town Attorney for the Town of Riverhead, acting as special counsel to the Agency, has prepared, and the Agency has approved and caused to be executed and delivered, a Runway Use Agreement with Skydive Long Island under which Skydive Long Island has been given a non-exclusive license to the Property. A form of an addendum thereto which would establish a definite term of such non-exclusive use ending September 20, 2006, and constituting a non-exclusive lease thereof is attached to this Resolution as Appendix A (the Runway Use Agreement and the Runway Use Agreement Addendum, collectively, the "Use Agreement"). It is hereby determined that the non-exclusive use permitted under the Use Agreement will further the

urban renewal plan for the urban renewal area in which the Property is located by conserving the Property and facilitating its further future redevelopment.

Section 3. The Chairman of the Agency is hereby authorized and directed to distribute copies of this Resolution to Skydive Long Island and to do such further things and perform such acts as may be necessary or convenient to implement the provisions of this Resolution and the Deed.

Section 4. This Resolution shall take effect immediately.

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

\_\_\_\_\_ VOTING

\_\_\_\_\_ VOTING

\_\_\_\_\_ VOTING

\_\_\_\_\_ VOTING

\_\_\_\_\_ VOTING

The resolution was thereupon declared duly adopted.

\* \* \* \*

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

I, the undersigned Secretary of the Town of Riverhead Community Development Agency, Town of Riverhead, Suffolk County, New York, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Members of said Agency, including the resolution contained therein, held on May 01, 2001, with the original thereof on file in my office, and that the same is a true and correct transcript therefrom and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that all Members of said Agency had due notice of said meeting.

I FURTHER CERTIFY that, pursuant to Section 103 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public.

I FURTHER CERTIFY that, PRIOR to the time of said meeting, I duly caused a public notice of the time and place of said meeting to be given to the following newspapers and/or other news media as follows:

Newspaper and/or other news media    Date given

Times Review

May 4, 2001

I FURTHER CERTIFY that PRIOR to the time of said meeting, I duly caused public notice of the time and place of said meeting to be conspicuously posted in the following designated public location(s) on the following dates:

Designated Location(s)  
of posted notice \_\_\_\_\_ Date of Posting \_\_\_\_\_

Town Clerks Office ~~HERE~~

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency on May 1, 2001.

Andrew Johnson  
Secretary

State of New York)  
County of Suffolk) ss:  
Town of Riverhead

THIS IS TO CERTIFY that I, the undersigned, Secretary/Treasurer of the Riverhead Community Development Agency, Town of Riverhead, County of Suffolk, have compared the foregoing copy with the original now on file in this office and which was duly filed on the 2nd day of May 2001, and that the same is a true and correct transcript of said and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the said Riverhead Community Development Agency, this 2nd day of May 2001.

Andrew Johnson  
Secretary/Treasurer of the Community Development Agency

Adopted

05/01/01

TOWN OF RIVERHEAD  
Community Development Agency

Resolution 12

AUTHORIZES CHAIRMAN TO EXECUTE RUNWAY USE AGREEMENT WITH  
UNITED AERIAL ADVERTISING

Member Councilman Cardinale offered the following resolution, which was seconded by Member Councilman Densieski:

WHEREAS, United Aerial Advertising has requested use of the Calverton Airport for the purpose of banner towing, landing, banner storage and takeoff activities from May 25, 2001 through September 4, 2001; and

WHEREAS the Town of Riverhead will receive \$7,000.00 for the three month period payable upon the execution of the Runway Use Agreement.

THEREFORE, BE IT RESOLVED, that the Town Board authorizes the Chairman to execute the license agreement with Untied Aerial Advertising upon receipt and approval by the Town Attorney of all applicable permits and approvals, including but not limited to the Federal Aviation Administration, the Suffolk County Health Department and New York State Department of Environmental Conservation, adequate insurance and Buyer's consent.

AND BE IT FURTHER RESOLVED, that the Town Clerk shall provide a certified copy of this resolution to Community Development Agency Director, Andrea Lohneiss.

The Vote:

Member Densieski	<u>yes</u>
Member Cardinale	<u>yes</u>
Member Kent	<u>yes</u>
Member Lull	<u>yes</u>
Chairman Kozakiewicz	<u>yes</u>

## RUNWAY USE AGREEMENT

This agreement, made and entered into this \_\_\_\_ day of \_\_, 2000, between the Town of Riverhead Community Development Agency ("CDA") and United Aerial Advertising., a New Jersey corporation with offices Allaire Airport, Farmingdale, New Jersey 07727.

### W I T N E S S E T H

WHEREAS, the CDA owns two runways and related facilities located at Enterprise Park in Calverton ("EPCAL"), New York, and

WHEREAS, United Aerial Advertising wishes to utilize the eastern runway in connection with the operations of its aerial advertising business, which use is a permitted use pursuant to the Town's Zoning Code (Planned Industrial Park District), and

NOW, THEREFORE, and in consideration of the mutual covenants and agreements herein contained, and subject to the licensee's having obtained use of an on site building to use for the storage of banners, CDA does hereby demise and provide to United Aerial Advertising and United Aerial Advertising hereby take from CDA the right to utilize certain facilities, rights, services and privileges as follows:

1. Term: The term of this Agreement shall be for a period of three (3) months commencing May 25, 2001 and ending September 4, 2001, at which time this Agreement shall terminate, unless sooner terminated as provided for herein.

2. Premises: CDA hereby grants United Aerial Advertising the right to utilize the full length of the eastern runway, as shown on Exhibit annexed hereto, as is necessary to conduct its business for taxiing, take-offs, landings and banner storage. CDA further grants United Aerial Advertising the right to utilize the "tie down" area depicted in Exhibit B annexed hereto for the parking of aircraft. United Aerial Advertising agrees not to utilize the premises for any purposes, other than the purposes identified herein, unless otherwise authorized, in writing, by the CDA and subject to any other licenses or approvals, governmental or otherwise, that may be required.

3. Permitted Aircraft: United Aerial Advertising agrees that it shall utilize only the aircraft listed on Exhibit B hereto without prior express written permission from the CDA

4. License Fee: The License fee to the utilization of the runway and taxiways and tie downs shall be Seven Thousand (\$7,000.00) Dollars, payable upon the execution of this agreement.

5. Ingress and Egress: Subject to any applicable rules and regulations governing the use of the runway, CDA grants United Aerial Advertising the right the full free and unrestricted right of ingress and egress in common with others having such right.

6. Signs and Advertising: No signs shall be placed at the premises, other than on the building licensed to be used by United Aerial Advertising pursuant to the license agreement between United Aerial Advertising and the CDA, without first obtaining permission from the CDA and the necessary permits from the Town of Riverhead.

7. Condition of the Facilities: United Aerial Advertising has examined the subject runway and tie down area listed as Exhibit A hereto. United Aerial Advertising is fully familiar with the condition of the runway and its related facilities and agrees to accept the runway and its related facilities, including, but not limited to runway lighting and painting, in "as is" condition. United Aerial Advertising further agrees to maintain the runway and taxiway in a safe and usable condition, free of debris and other foreign objects.

8. Wildlife. United Aerial Advertising is fully aware of the existence of the large numbers of wildlife, including, but not limited to geese and deer, that freely traverse the runway, taxiways and adjacent areas on the subject property. United Aerial Advertising acknowledges that the existence of the wildlife poses a potential hazard to aircraft utilizing the runway. Notwithstanding the foregoing, United Aerial Advertising agrees that it is responsible for ensuring that any wildlife is cleared from runway, taxiways, and adjacent areas as is necessary to enable it to conduct its business as set forth herein. United Aerial Advertising further agrees that it shall indemnify and hold the Town harmless from any liability arising from the existence of wildlife on the runways as described herein.

9. United Aerial Advertising acknowledges the existence of a runway use agreement between the Town of Riverhead Community Development Agency and Skydive Long Island. United Aerial Advertising agrees to coordinate with Skydive Long Island in the use of the runway to prevent conflicts between the two runway users.

10. United Aerial Advertising hereby acknowledges that the airport is currently unattended and that the CDA does not carry out any of the maintenance or operational functions at the airport.

11. United Aerial Advertising hereby releases, holds harmless and indemnifies the CDA and the Town of Riverhead from any liability arising in connection with the use of the runway, taxiways and related facilities, as set forth in this agreement.

12. Assignment. United Aerial Advertising may not assign, transfer or sub-lease the whole, or any part of this agreement, or the subject properties. Nor will United Aerial Advertising allow the use of its rights and privileges granted hereunder, by any entity, without the prior written permission of the CDA.

13. Successors and Assigns: All the covenants, stipulations and agreements herein shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

14. Indemnity and Insurance: United Aerial Advertising shall protect, defend and hold the CDA and the Town of Riverhead completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person, or damage to any property, including all reasonable costs for investigation and defense thereof (including, but not limited to, attorneys fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the premises or the acts or omissions of Lessee's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage is caused by the sole negligence of the CDA or the Town of Riverhead in carrying out its obligations hereunder. The provision of this section shall survive the expiration or early termination of this Agreement.

15. United Aerial Advertising further agrees to carry public liability and automobile liability insurance in an amount not less than \$1,000,000.00 combined single limit covering bodily injury and property damage per occurrence in a company(ies) acceptable to the CDA and the Town of Riverhead, in which policy the CDA and the Town of Riverhead shall be named as additional insureds. United Aerial Advertising shall furnish satisfactory evidence that such insurance is in effect and will not be canceled during the term of this Agreement without thirty (30) days prior written notice of such cancellation to Authority.

IN WITNESS WHEREOF, the parties hereto do hereby execute this License as of the date and year first above written.

\_\_\_\_\_  
Town of Riverhead  
Community Development Agency

\_\_\_\_\_  
United Aerial Advertising

By: \_\_\_\_\_

By: \_\_\_\_\_

Town of Riverhead Community Development Agency

~~Resolution # 13~~

Adopted

Authorizes Chairman to Execute License Agreement with Empire State Development Corporation for Use of a Portion of the Calverton Facility for One Year for the Provision of Small Business Assistance to the East End of Long Island

Member Densieski offered the following resolution,

which was seconded by Member Kent

**WHEREAS**, Empire State Development Corporation has requested a license agreement for 132 square feet in Guard House, as well as shared uses with the Town of Riverhead of the adjoining conference room for up to one year for the purposes of establishing a regional economic development office ; and

**WHEREAS**, the Town Board desires to encourage additional jobs and tax revenues for the benefit of eastern Long Island residents; and

**WHEREAS**, this Town Board has balanced such interests and hereby makes the following findings:

1. That proposed uses under the license agreements are consistent with the objectives of the Town's Zoning Ordinance;
2. There is a clear mutuality of purpose and goals in this action being that the same elected representatives serve as members of the CDA and the Town Board; and

**WHEREAS**, the licensee will receive use of the space at no consideration, but will be responsible for the cost of utilities and all start-up costs including, but not limited to office equipment, furniture, supplies, copy machine, phone(s) and fax machine, that are anticipated for the Licensee's use of the premises.

**THEREFORE, BE IT RESOLVED**, that the CDA hereby authorizes the Chairman to execute the license agreement substantially in the form attached hereto.

**AND BE IT FURTHER RESOLVED**, that the Town Clerk shall provide a certified copy of this resolution to Community Development Agency Director Andrea Lohneiss and Empire State Development Corporation Regional Director Henry Mund.

The Vote:

Member Densieski	<u>YES</u>
Member Cardinale	<u>NO</u>
Member Kent	<u>NO</u>
Member Lull	<u>YES</u>
Chairman Kozakiewicz	<u>YES</u>

**The Resolution is ADOPTED.**

LICENSE

LICENSE ("License"), made as of the \_\_\_ day of May 2001, by and between **THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY**, having an address at 200 Howell Avenue, Riverhead, New York 11901, Attention: Andrea Lohneiss ("Licensor"), and **Empire State Development Corporation (ESDC)**, a corporation of the State of New York, having an address at 45 Executive Drive, Plainview, NY, 11803 Attention: Henry Mund, Regional Director ("Licensee").

W I T N E S S E T H:

**WHEREAS**, Licensor desires to license to Licensee, and Licensee desires to license from Licensor, the right to use approximately 132 square feet in Guard House as depicted on Exhibit A (the "License Premises") located at the property formerly known as the Naval Weapons Industrial Reserve Plant, Department of Defense Number 466, Calverton, New York (the "Calverton Site"), as well as shared use of the adjoining conference room, upon all of the terms and conditions hereinafter set forth;

**NOW, THEREFORE**, in consideration of the mutual agreements herein contained, Licensor and Licensee, for themselves, their successors and assigns, hereby agree as follows:

1. **LICENSING**. Upon the terms and conditions hereinafter set forth, Licensor hereby licenses to Licensee, and Licensee hereby Licenses from Licensor, the right to use the License Premises.

2. **TERM OF LICENSE**. The term of this License (the "Term") shall commence on May 15, 2001 (the "License Commencement Date") and shall end on May 15, 2002 (the "Expiration Date") or on such earlier date upon which this License shall expire or be canceled or terminated pursuant to any of the conditions or covenants of this License or pursuant to law. Notwithstanding anything to the contrary contained in this License, Licensor shall have the right, exercisable in its sole discretion, to terminate this License effective immediately upon written notice from Licensor to Licensee, if (i) Licensee shall default under or be in breach, of any of its obligations, representations or warranties hereunder and (ii) such default continues for (x) five days after written notice from Licensor with respect to monetary defaults or (y) thirty days after written notice from Licensor with respect to nonmonetary defaults. If Licensor shall so terminate this License, from and after the termination date neither party hereto shall have any rights or obligations hereunder other than those that, pursuant to the express terms hereof, survive termination of this License; provided that Licensee shall remain liable to Licensor for any default or breach by Licensee that occurred prior to such termination. Furthermore, this License is not, and shall not be construed to be, a lease or a sublease and nothing contained in this License shall be construed as granting to Licensee any interest or right as tenant or subtenant or any other interest or right other than the interest of a Licensee in accordance with the terms and provisions hereof.

3. **CONDITIONS OF LICENSE PREMISES**. Licensee agrees to accept the License Premises "as is," and Licensor shall have no obligation to perform any work or repairs on behalf of Licensee. Licensee acknowledges that no representations with respect to the condition of the License Premises, or with respect to any improvement or fixtures thereon or attached thereto,

have been made to it. Licensee acknowledges responsibility for the cost and all start-up costs including, but not limited to office equipment, furniture, supplies, copy machine, phone(s) and fax machine, that are anticipated for the Licensee's use of the premises. Said costs shall be borne by the Licensee. Subsequent to sale of the premises, Licensee shall be responsible for trash collection, cleaning and all utilities.

4. **LICENSE FEE**. There shall be no license fee.

5. **SECURITY DEPOSIT**. There shall be no security deposit.

6. **USE; COVENANTS**. (a) Licensee shall use the License Premises only for the purpose of establishing a regional economic development office from May 15, 2001 through May 15, 2002, to prepare the premises for the same and to clean and restore the License Premises, in each case, in accordance with, and subject to, the terms and provisions of this License.

(b) Licensee, at its own cost and expense, shall protect, maintain, and keep in good order, the License Premises.

(c) No additions to, or alterations of, the License Premises shall be made without the prior consent of Licensor. Upon revocation or surrender of this License, to the extent directed by Licensor, Licensee shall remove all alterations, additions, betterments and improvements made, or installed, and restore the License Premises to the same, or as good condition as existed on the date of entry under this License, reasonable wear and tear excepted.

(d) Licensee shall be liable for any loss of, or damage to, the Calverton Site incurred in connection with the use and shall make such restoration or repair, or monetary compensation as may be directed by Licensor. Licensee shall maintain, at a minimum, the types and amounts of insurance evidenced by the certificates attached hereto as Exhibit B. Licensee agrees that not less than thirty (30) days prior to the expiration of any insurance required by this License, it will deliver to Licensor's local representative a certificate of insurance or a certified copy of each renewal policy to cover the same risks. Each policy of insurance required hereunder shall name Licensor and Grubb & Ellis Management Services, Inc. as additional insureds. In the event that any item or part of the Calverton Site shall require repair, rebuilding or replacement resulting from loss or damage, the risk of which is assumed under this Section 6, Licensee shall promptly give notice thereof to Licensor and shall, upon demand, either compensate Licensor for such loss or damage, or rebuild, replace or repair the item or items of the Calverton Site so lost or damaged, as Licensor may elect. In the event Licensee shall not have been required to effect such repair, rebuilding, or replacement, and the insurance proceeds allocable to the loss or damage which has created the need for such repair, rebuilding or replacement have been paid to Licensee, Licensee shall promptly refund to Licensor the amount of such proceeds.

(e) Without limiting the generality of any other provision of this Agreement, Licensee hereby covenants and agrees that (i) at all times during the Term, adequate private supervision shall be present at the Calverton Site to protect persons and property at the Calverton Site and (ii) Licensee shall provide ample vehicles, personnel, equipment and containers to clean the License Premises and insure that the same is restored to as good condition, subject to reasonable wear and tear, on the Expiration Date as it was in on the License Commencement Date.

(f) In connection with the performance of work under this License, Licensee agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Licensee agrees to post hereafter in conspicuous places available for employees and applicants for employment, notices to be provided by Licensor setting forth the provisions of the nondiscrimination clause. Licensee further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

7. **ASSIGNMENT AND LICENSING.** Notwithstanding anything to the contrary contained in this License, Licensee shall not assign this License, License the License Premises in whole or in part or permit Licensee's interest in this License to be vested in any party other than Licensee by operation of law or otherwise. A transfer of more than fifty (50%) percent at any one time or, in the aggregate from time to time, of the stock, partnership or other ownership interests in Licensee, direct or indirectly, shall be deemed to be an assignment of this License.

8. **LICENSOR'S REMEDIES.** (a) If Licensee fails to perform any of its obligations hereunder in accordance with the terms hereof, then, after reasonable notice to Licensee not to exceed thirty (30) days, and an opportunity for Licensee to cure such failure, (except in case of emergency) Licensor may (but shall not be obligated to) cure such failure at the expense of Licensee, and the amount incurred by Licensor in connection with such cure shall be payable by Licensee to Licensor on demand.

(b) Except as provided in Paragraph 2 and in the immediately following sentence, in the event of a breach by Licensee hereunder, Licensor shall be limited to an action at law for damages. Notwithstanding the foregoing, in the event that Licensee holds over after the expiration of the Term, (i) Licensee shall be obligated to pay Licensor an amount equal to \$250 per diem for each day of the holdover term and (ii) Licensor shall have all of the rights and remedies available to it at law or in equity, including, without limitation, the right to exercise self help and to dispossess Licensee of the License Premises, change the locks on the License Premises, deny Licensee access to the License Premises and take possession of or dispose of any property at the License Premises, all at the cost and expense of Licensee. Except as provided in Paragraph 2, in no event shall Licensor have the right to enjoin the development, production, distribution or exploitation of the event hereunder.

9. **INDEMNITY.** (a) Licensee shall indemnify and hold Licensor harmless from and against any and all claims, actions, liabilities, losses, damages (including, without limitation, consequential and special damages), costs and expenses (including, without limitation, court costs and reasonable attorneys' fees and expenses) arising from or in connection with (i) the use or occupancy by Licensee of the License Premises during the term hereof, or (ii) any work or thing done or any condition created by or any other act or omission of Licensee or its employees, agents, contractors, visitors or licensees, in the License Premises or any other part of the Calverton Site in connection with Licensee's use of the License Premises, or (iii) Licensee's failure to perform any of the obligations imposed on it hereunder.

(b) The foregoing indemnity does not include any claims, actions, liabilities, losses, damages, costs and expenses resulting from Licensor's gross negligence or willful misconduct.

(c) This indemnification on the part of the Licensee shall include the Town of Riverhead, the Town of Riverhead Community Development Agency, Grubb & Ellis and all and any of its agents.

10. **BROKERS**. Licensee represents that it has not dealt with any broker or finder with respect to this License. Licensee agrees to indemnify and hold Licensor harmless from and against any and all loss, liability, damage, cost and expense (including, but not limited to, court costs and reasonable attorneys' fees and expenses) which Licensor may incur or sustain in connection with any claim or action by any broker or finder that may be asserted against Licensor as a result of any conversations, correspondence or other dealings between Licensee and such broker or finder.

11. **NOTICES**. Any notices to be given under this License shall be in writing and shall be sent by registered or certified mail, return receipt requested. If such notice is directed to Licensee, it shall be addressed to Licensee at 45 Executive Drive, Plainview, NY, Attention: Henry Mund, Regional Director, and if such notice is directed to Licensor, it shall be addressed to Licensor at 200 Howell Avenue, Riverhead, New York 11901, Attention: Andrea Lohneiss. Either party may, by notice in writing, direct that future notices be sent to a different address and to the attention of such other people as either Licensor or Licensee shall designate.

12. **HAZARDOUS SUBSTANCES**. (a) Generally. Licensee shall not generate, store, manufacture, refine, transport, treat, dispose of, or otherwise permit to be present on or about the License Premises, any Hazardous Substances (other than Hazardous Substances (x) customarily used in events such as the Event and (y) used, stored, transported, and disposed of in strict compliance with applicable law). As used herein, the term "Hazardous Substances" shall mean any flammables, explosives, radioactive materials, hazardous wastes, hazardous and toxic substances or related materials, asbestos or any materials containing asbestos, or any other hazardous or toxic substance or material as defined by any Federal, State or local environmental law, rule or regulation, including, without limitation, the Resource Conservation and Recovery Act of 1976, as amended from time to time, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, the Toxic Substances Control Act, as amended from time to time, the Hazardous Materials Transportation Act, as amended from time to time, and the regulations adopted and the publications promulgated pursuant to each of the foregoing.

(b) Indemnification. Licensee shall indemnify and hold harmless Licensor from and against any and all liabilities, damages, claims, losses, penalties, judgments, causes of action, costs and expenses (including, without limitation, court costs and the reasonable fees and expenses of counsel) which may be incurred by Licensor directly arising out of any breach by Licensee of the obligations imposed upon it under this Section 12. The foregoing indemnity shall survive the expiration or sooner termination of this License.

13. **MISCELLANEOUS**. (a) Merger. All prior understandings and agreements between the parties with respect to the subject matter hereof are merged within this License, which alone fully and completely sets forth the understanding of the parties with respect to the subject matter hereof. This License may not be changed or terminated orally or in any manner other than by a writing signed by the party against whom enforcement of the change or termination is sought.

(b) Successors and Assigns. This License shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. The term

"Licensor," as used in this License, shall mean only the owner from time to time of the License Premises, so that in the event of any transfer or assignment of the License Premises, the transferor or assignor shall be and hereby is entirely freed and relieved of all covenants, obligations and liability of Licensor under this License, and it shall be deemed, without further agreement, that the transferee or assignee has assumed and agreed to perform and observe all obligations of Licensor under this License during the period that such transferee or assignee is the owner of the interest of License Premises.

(c) Licensee represents that this License has been duly authorized, executed and delivered by Licensee and is enforceable against Licensee in accordance with its terms.

(d) Neither Licensor nor any tenant, nor other party now or hereafter having an interest in the Calverton Site, shall have any right of action based upon invasion of privacy, publicity, defamation, or other civil rights, in connection with the exercise of the permission and/or rights herein granted.

**IN WITNESS WHEREOF**, Licensor and Licensee do hereby execute this License as of the date and year first above written.

**LICENSOR:**

**THE TOWN OF RIVERHEAD COMMUNITY  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name:  
Title:

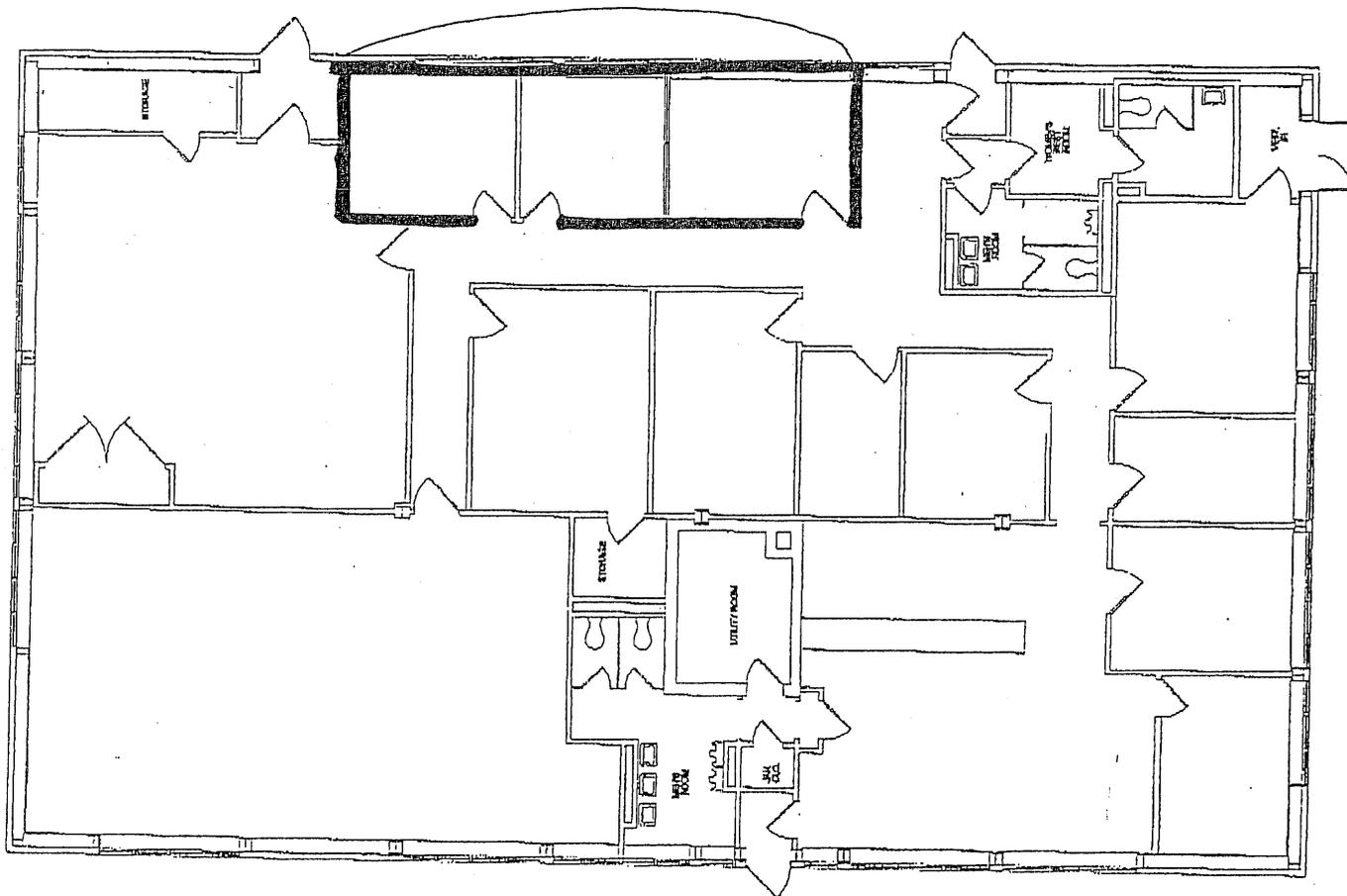
**LICENSEE:**

**EMPIRE STATE DEVELOPMENT  
CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT A

132 Square Feet



## EXHIBIT B

Insurance Certificates:

Liability – minimum \$1 million per occurrence

Fire Damage legal - \$100,000 minimum

Auto liability – minimum \$1 million per occurrence

Building contents – as desired

Worker's compensation – as required by law

**Note: The conditions of Paragraph 7 (d) regarding additional insureds, 30 day notification etc.. must be complied with and reflected in the Certificate of Insurance provided by the Licensee prior to execution of the License.**