

**The following are “DRAFT” Minutes of the Rhode Island Industrial-Recreational Building Authority Board of Directors Meeting #418 held on August 4, 2004. Upon acceptance of the Minutes by the Board of Directors, the Minutes will be posted in their approved form.**

**MINUTES OF**

**THE RHODE ISLAND INDUSTRIAL-RECREATIONAL BUILDING  
AUTHORITY**

**Meeting #418 – August 4, 2004**

**PRESENT: Frank R. Benell -- Chairperson**

**Frances H. Gammell-Roach -- Vice Chairperson**

**Peter R. Dunn -- Member**

**Donald Harris – Member**

**Robert H. Luneberg -- Member**

**ABSENT: None**

**ALSO PRESENT: Earl F. Queenan, Jr. -- Manager**

**Alicia A. Pomfret -- Assistant Manager**

**Anthony J. Scolavino -- Sr. Financial Program Administrator**

**Philomena Teixeira -- Financial Program Administrator**

**Thomas V. Moses, Esquire -- Legal Counsel**

**Natalie Jackvony, Esquire -- Legal Counsel**

**The meeting was held at One West Exchange Street, Providence, and was called to order by Mr. Benell at 8:41 a.m.**

**Mr. Benell presented the Open Session and Executive Session Minutes of the Meeting of June 2, 2004. Following review and discussion of the Minutes, a motion to accept the Open Session Minutes and Executive Session Minutes as presented, and, to maintain the confidentiality of the Executive Session Minutes, was made by Mr. Harris, was seconded by Mrs. Gammell-Roach, and was unanimously adopted; a roll call vote was taken:**

**Mr. Dunn – aye**

**Mrs. Gammell-Roach – aye**

**Mr. Harris – aye**

**Mr. Luneberg – aye**

**Mr. Benell – aye**

**Mr. Benell presented the Watch List as of July 29, 2004. Mr. Queenan gave a review of the report. He informed the Board that the closing was held with Fleet to refinance the AKL FLEXO TECH-USA, LP defaulted bonds. JP Morgan, the Trustee of the defaulted bonds**

initiated notice to the bond holders. The interest rate was capped at rate of 4.25%. However, the three-year cap was no longer available. Mr. Moses noted that the cap was restricted to 19 months. Mr. Queenan added that the interest will be payable quarterly. After disbursement of closing costs, the Fleet loan should have approximately \$350,000 left in the reserve account. Ms. Pomfret noted that staff is requesting a vote to reaffirm the interest cap period of 19 months. Mr. Queenan then discussed STEM CELLS. He stated that the

appraisals came in on the Authority insured buildings in Lincoln, and noted the values of Six Court Drive and One Court Drive. The Company met the debt-service payment due on August 1, 2004; they did not turn the keys over to the Authority and walk away as they had previously indicated that they were interested in doing. Nephros, the tenant currently occupying Six Court Drive, has grown from 19 employees, to 63. Mr. Queenan noted that the SULZER METAPLAS (US), Inc. lease on the Authority-owned facility at 222 Goldstein Drive, Woonsocket, comes up for option to renew or purchase in one year. The Company has expressed an interest in purchasing the building. Mr. Moses discussed ULTRA FINE POWDER TECHNOLOGY. He said the Company has been approached by a party that is interested in acquiring them. Discussions are beginning. If it happens, the acquisition entity will move its operations to the Woonsocket facility. If ULTRA FINE POWDER TECHNOLOGY is sold, the Authority's warrants will be bought out. Following this, a motion to reaffirm the

**Interest Cap for a period of 19 months on the AKL FLEXO TECH-USA, LP refinancing with Fleet Bank, and, to accept the Watch List as presented, was made by Mr. Harris, was seconded by Mr. Dunn, and was unanimously approved; a roll call vote was then taken:**

**Mr. Dunn – aye**

**Mrs. Gammell-Roach – aye**

**Mr. Harris – aye**

**Mr. Luneberg – aye**

**Mr. Benell – aye**

**Mr. Benell presented the Portfolio Report as of July 29, 2004. Mr. Queenan told the Board that he had received a telephone call from Karl Steimle, who wanted to express his appreciation of the Board's approval for his recent request. Mr. Moses explained that he had received an email from Stanley Weiss yesterday wherein Mr. Weiss suggested that the Authority-insured loan should begin as interest-only. Mr. Moses noted that the mortgage insurance is not yet in place; Mr. Weiss has until February to close. Mr. Moses was advised to inform Mr. Weiss that it is too premature for Mr. Weiss to make such a request. Mrs. Teixeira discussed HENRY BIRKS & SONS US, INC. She recalled that at the time the application was submitted to the Board, the Authority wanted the Operating Company to be the guarantor. The Company proposed that the guarantor be the Holding Company instead. The European branch of the Company now wants the Operating Company to act as guarantor. And, they have**

conveyed that they think that the legal documentation for the guarantee is too long and would like to have the length of the document reduced. The need for the legal documentation to remain as-is was discussed. Mr. Moses stated that he would need to retain Canadian Counsel now that the Guarantor is going to be the Canadian entity. After this, a motion to authorize the change in Guarantee from HENRY BIRKS & SONS HOLDINGS, INC., to HENRY BIRKS & SONS, INC.; and to accept the Portfolio Report as presented, was made by Mr. Harris, was seconded by Mr. Dunn, and was unanimously approved. A vote was taken by roll call:

Mr. Dunn – aye

Mrs. Gammell-Roach – aye

Mr. Harris – aye

Mr. Luneberg – aye

Mr. Benell – aye

Mr. Queenan presented Invoices for Directors and Officers Liability Insurance and General Liability insurance for ratification by the Board. The policies cover the fiscal year ending June 30, 2005. Following brief discussion, a motion to approve the renewal of the Directors and Officers Insurance Policy for \$26,301.00, and the General Liability Insurance Policy for \$3,689.46 was made by Mr. Dunn, was seconded by Mrs. Gammell-Roach, and was unanimously approved. A roll call vote was then taken:

**Mr. Dunn – aye**

**Mrs. Gammell-Roach – aye**

**Mr. Harris – aye**

**Mr. Luneberg – aye**

**Mr. Benell – aye**

**Under Administrative Matters, Mr. Queenan presented the Rules and Regulations Adopted by the Secretary of State Pursuant to Title 42, Chapter 46 of the Rhode Island General Laws Entitled “Electronic Filing of Meeting Minutes and Notices – Open Meetings”. He, Mr. Moses, and Ms. Pomfret briefly discussed the changes that were effective July 17, 2004, and the related requirement that Meeting Notices and Open Session Minutes be filed electronically with the Secretary of State’s Office. Mr. Queenan noted that no action was necessary as the handout was for informational purposes. Mrs. Teixeira stated that she would like to discuss a perspective applicant, but would like to address the matter after all agenda items have been visited.**

**Mr. Queenan presented on behalf of THE NEW ENGLAND EXPEDITION, a letter dated July 12, 2004, from Barry E. Feldman requesting Authority approval for a subordination of a portion of the Authority collateral. Ms. Jackvony explained that the tenant of Condo “D-2” is in need of further improvements than initially planned, which total approximately \$100,000. Mr. Feldman has expressed that the commercial property value was appraised at \$5,000,000 and that he**

**believes that today's appraised value would be more in the \$7,500,000 range. Mr. Moses reminded the Board that the debt-service payments will be met by the City of Providence's Tax Increment Payments Pledge Agreement. Mr. Feldman will have to provide an updated appraisal to support the increase in value. The bonds are publicly held and will require bondholder consent. Also, the Authority should not provide a stand-still provision as requested by the lender. Mr. Scolavino stated that the first floor condo of condo unit "D-2" would have to be separated into a stand alone condo unit so that Sovereign Bank would only have a senior lien on that particular floor. Following further discussion, a motion to issue a Resolution of Approval for the condominium unit known as "D-2" in the Eagle Square Commons project was made by Mr. Dunn, was seconded by Mr. Harris, and was unanimously approved. A copy of the Resolution is attached hereto and made a part hereof. The vote was then called by roll:**

**Mr. Dunn – aye**

**Mrs. Gammell-Roach – aye**

**Mr. Harris – aye**

**Mr. Luneberg – aye**

**Mr. Benell – aye**

**Mr. Queenan presented a letter dated May 31, 2004, on behalf of SLAVIN POINT JUDITH CO., requesting an extension for the Annual Audited Financial Statement submission for the Fiscal Year Ended December 31, 2003. Ms. Pomfret noted that she was unable to obtain**

**a Draft Financial Statement from the Company prior to the meeting. The Company is in default with the Trustee and the Authority for non-submission of the Audited Financial Statement within the required submission dates. The Company's Controller, Dave Majeika, had told Ms. Pomfret that the Company is awaiting the outcome of an insurance settlement for an inventory loss before they will issue the Fiscal Year End Statement. Mr. Queenan expressed that the Authority should not consider the waiver until the Authority has received a Draft Statement and further clarification of the insurance claim. Consideration of this request will be deferred until the required information is received by staff.**

**Mrs. Teixeira briefed the Board on a pending Authority application for 848 Park Avenue Associates; a guarantee request for the permanent financing of the renovation and expansion of the Park Theatre in Cranston. It was noted that Lynn Singleton of the Providence Performance Arts Center, was quoted in the June 11, 2004 edition of the Providence Journal as stating: "A casino built near or adjacent to Providence will deliver a mortal blow to the Providence Performing Arts Center and will eventually close it as the two Connecticut casinos closed the Warwick Musical Theater." The Board questioned whether the Casino Referendum scheduled for the November Election would have an impact on such a project. The Board advised, that prior to a request being submitted, the Board would like to have the outcome of the Casino Referendum. The Board also stated that this project, due to its risk, would not be considered for a guarantee of the**

**Authority's maximum allowable recreational project cap of 75%.**

**At 10:05 a.m., there being no other business to discuss, Mr. Benell requested a motion to adjourn the meeting. Mr. Luneberg made a motion to adjourn, Mrs. Gammell-Roach seconded, and it was unanimously adopted to conclude the meeting.**

**The meeting adjourned at 10:06 a.m.**

**Respectfully submitted,**

**Alicia A. Pomfret**

**Assistant Manager & Assistant Secretary**

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**Whereas, on August 4, 2004, the Rhode Island Industrial-Recreational Building Authority (the "Authority") unanimously voted to approve the request by THE NEW ENGLAND EXPEDITION – PROVIDENCE COMMERCIAL, LP to subordinate its mortgage on the second floor of the current condominium unit known as Unit D-2 in the EAGLE SQUARE COMMONS, subject to the following conditions, all of which must be satisfactory to IRBA and its counsel in their discretion:**

**(a) The Trustee on the \$4,445,000 Rhode Island Industrial Facilities Corporation Taxable Economic Development Revenue Bonds (Industrial-Recreational Building Authority Program – Eagle Square Commons Project) 2003 Series (the “Bonds”) agrees to the same action and obtains the necessary bondholder approvals and legal opinion letters to accomplish such subordination;**

**(b) Obligor makes the second floor of Unit D-2 its own condominium unit, so that IRBA and the Trustee retain their first-priority lien on the remaining two (2) floors of Unit D-2 and Unit C-2;**

**(c) The amount of the indebtedness to which IRBA is subordinating its interest is not greater than \$1,500,000.00;**

**(d) Obligor must provide an appraisal of the four floors that is not less than \$7,500,000.00;**

**(e) Obligor will provide an appraisal for the real estate at the corner of Tuxedo Avenue and Atwells Avenue in Providence that is not less than \$250,000 and will provide the Trustee and IRBA with a first-priority mortgage and mortgagee’s title policy on that real estate and all improvements thereon. Obligor will also provide to the Trustee and IRBA evidence of the cost and value of the garage to be constructed on that real estate. In the event that the entity that owns such real estate is not the Obligor or one of the Guarantors of the**

**obligations under the Financing Documents, such entity will execute a Guaranty Agreement. Obligor will also deliver usual and customary documents delivered in connection with the provision of a commercial mortgage, such as a satisfactory environmental appraisal report and property and liability insurance naming IRBA and Trustee as certificate holders;**

**(f) Obligor and Guarantors will restate and reaffirm all of their representations and warranties in the various Financing Documents (as defined in the Lease Agreement between the Rhode Island Industrial Facilities Corporation and Obligor (the “Lease”));**

**(g) Obligor shall be responsible to pay all fees and costs associated with the appraisal, documentation and legal review; and**

**(h) Obligor shall deliver such other documents and such other terms and conditions as IRBA or the Trustee may request.**

**(i) Submission to the Authority of a copy of the executed Lease Agreement for the Condominium Unit D-2.**

**All capitalized terms used but not otherwise defined in this Resolution shall have the meaning set forth in the Lease.**

**Frank R. Benell -- Chairman**

**Frances H. Gammell-Roach-- Vice Chairman**

**Peter R. Dunn -- Member**

**Donald E. Harris -- Member**

**Robert H. Luneberg -- Member**

**August 4, 2004**

**Date**