

## **Nassau Candy Amendment Resolution**

A regular meeting of the Nassau County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 1550 Franklin Avenue, Mineola, County of Nassau, New York, on November 9, 2015, at 5:00 p.m., local time.

The meeting was called to order by the Chairman, upon roll being called, the following members of the Agency were:

### **PRESENT:**

Timothy Williams	Chairman
John Coumatos	Vice Chairman
Gary Weiss	Secretary
Christopher Fusco	Asst. Secretary
Michael Rodin	

### **NOT PRESENT:**

### **THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:**

Joseph J. Kearney	Executive Director
Joseph Foarile	Chief Financial Officer
Colleen Pereira	Administrative Director
Nicholas Terzulli	Director of Business Development
Edward Ambrosino, Esq.	General Counsel
Paul O'Brien, Esq.	Bond/Transaction Counsel

The attached resolution no. 2015-61 was offered by G. Weiss, seconded by M. Rodin:

RESOLUTION TAKING OFFICIAL ACTION TOWARD THE CONTINUED  
STRAIGHT LEASING OF AND THE GRANTING OF CERTAIN  
ADDITIONAL FINANCIAL ASSISTANCE WITH RESPECT TO A CERTAIN  
PROJECT FOR NASSAU CANDY DISTRIBUTIONS, INC., AND OTHER  
MATTERS IN CONNECTION THEREWITH

WHEREAS, the Nassau County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), and Chapter 674 of the 1975 Laws of New York, as amended, constituting Section 922 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, NASSAU CANDY DISTRIBUTORS, INC., a corporation organized and existing under the laws of the State of New York (the "Applicant"), submitted an application for financial assistance (the "Application") to the Agency requesting that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in a parcel of land located at 300 Duffy Avenue, Hicksville, Town of Oyster Bay, Nassau County, New York (Section: 11; Block: 327; Lots: 406, 408, 412 and 422) (the "Land"), (2) the renovation of the existing approximately 127,000 square foot building (collectively, the "Building") on the Land, together with related improvements to the Land, and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all of the foregoing for use by the Applicant as a manufacturing, warehouse and distribution facility in connection with its wholesale confectionery business (collectively, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing including potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and

agreed upon by the Agency; and

WHEREAS, on or about January 30, 2014, the Applicant entered into a “straight lease” transaction with the Agency under the Act pursuant to, inter alia, a certain Sublease Agreement, dated as of January 1, 2014, between the Agency and the Applicant (as amended, modified, supplemented and restated, the “Lease Agreement”); and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement, dated as of January 1, 2014, among 300 DUFFY REAL ESTATE, LLC (the “Overlandlord”), the Applicant and the Agency (as amended, modified, supplemented and restated, collectively, the “Existing PILOT Agreement”), the Overlandlord and the Applicant agreed to make certain payments in lieu of real property taxes with respect to the Land and the improvements thereon, and such obligation is secured by a certain Mortgage and Assignment of Leases and Rents, dated as of January 1, 2014 (as amended, modified, supplemented and restated, the “PILOT Mortgage”), made by the Overlandlord, the Applicant and the Agency, as mortgagors, in favor of the County of Nassau, as mortgagee (in such capacity, the “PILOT Mortgagee”), pursuant to which the Agency, the Overlandlord and the Applicant granted a first mortgage on the Land and the improvements thereon to the PILOT Mortgagee; and

WHEREAS, pursuant to an application for financial assistance dated September 28, 2015 (as amended, the “Amendment Request”), the Applicant has proposed the construction, installation and equipping of an approximately 26,216 square foot addition to the Building, has requested the granting of certain additional “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, in the form of a potential exemption or partial exemption from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the “Additional Financial Assistance”), and the amendment of certain Transaction Documents (as defined in the Lease Agreement) in connection therewith (collectively, the “Proposed Project”); and

WHEREAS, the Additional Financial Assistance would represent a deviation from the Agency’s uniform tax exemption policy with respect to the making of payments in lieu of real property taxes; and

WHEREAS, any approval of the Proposed Project and the granting of the Additional Financial Assistance is contingent upon, inter alia, a determination by the members of the Agency to proceed with the Proposed Project following a determination by the Agency that (i) the applicable public hearing and notice requirements and other procedural requirements contained in the Act relating to the Proposed Project have been satisfied, and (ii) the undertaking of the Proposed Project by the Agency and the granting of the Additional Financial Assistance are and will be in compliance with all other applicable requirements of SEQRA (as hereinafter defined), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Proposed Project (collectively, the “Applicable Laws”); and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) to hear all persons interested in the Proposed Project and the

Additional Financial Assistance contemplated by the Agency with respect to the Proposed Project, to be mailed on October 9, 2015 to the chief executive officer of Nassau County, New York and of each other affected tax jurisdiction within which the Project Facility is or is to be located, (B) caused notice of the Public Hearing to be published on October 10, 2015 in the Nassau edition of *Newsday*, a newspaper of general circulation available to residents of the Town of Oyster Bay and the County of Nassau, New York, (C) conducted the Public Hearing on October 28, 2015 at 10:00 a.m. local time at Oyster Bay Community Center, 59 Church Street, Oyster Bay, Town of Oyster Bay, Nassau County, New York, and (D) prepared a report of the Public Hearing (the "Report") which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, (A) the Executive Director of the Agency caused notice of a meeting of the Agency (the "IDA Meeting") with respect to the proposed deviation from the Agency's uniform tax exemption policy and guidelines to be mailed on October 21, 2015 to the chief executive officer of each affected tax jurisdiction, and (B) the members of the Agency conducted the IDA Meeting on the date hereof, reviewed any written comments or correspondence received at or before the IDA Meeting regarding the proposed deviation from the Agency's uniform tax exemption policy, and approved the proposed deviation by resolution of the members of the Agency adopted immediately prior to the adoption hereof; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the appropriate personnel of the Agency reviewed the materials submitted by the Applicant and made any necessary comments to members of the Agency, and by resolution of the members of the Agency adopted immediately prior to the adoption hereof, the Agency decided to conduct an uncoordinated review of the Proposed Project and determined that the Proposed Project will not have a significant adverse environmental impact and that an environmental impact statement will not be prepared; and

WHEREAS, the Agency now desires to make its determination to proceed with the Proposed Project and to grant the Additional Financial Assistance, subject to the terms hereof; and

WHEREAS, as preconditions to the granting of the Additional Financial Assistance, it is necessary to provide for reaffirmation and/or amendment of certain agreements and the certification of certain facts; and

WHEREAS, the Agency is willing to accommodate the Applicant's requests set forth above, subject to the terms and conditions set forth in this Resolution; and

WHEREAS, to accomplish the foregoing there has been prepared a form of Amended and Restated Payment in Lieu of Taxes Agreement, together with certain reaffirmations, consents, certifications and amendments (collectively, the "Project Documents") for authorization, approval and, where appropriate, execution and delivery by the Agency;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Lease Agreement.

Section 2. The Agency has reviewed the Amendment Request and the Report and, based upon the representations made by the Applicant to the Agency, the Agency hereby makes the following findings and determinations with respect to the Proposed Project:

(a) the granting by the Agency of the Additional Financial Assistance is reasonably necessary to cause the Applicant to undertake the Proposed Project;

(b) the undertaking of the Proposed Project will not result in the removal of a facility or plant of the Applicant or any other occupant or user of the Project Facility from one area of the State of New York (the "State") to another area of the State or in the abandonment of one or more plants or facilities of the Applicant or any other occupant or user of the Project Facility located within the State;

(c) the Proposed Project will serve the public purposes of the Act by preserving permanent, private sector jobs and increasing the overall number of permanent, private sector jobs in the State;

(d) the granting of the Additional Financial Assistance by the Agency with respect to the Proposed Project will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Nassau County, New York and the State and improve their standard of living, and prevent unemployment and economic deterioration, and thereby serve the public purposes of the Act;

(e) based on the proposed use of the Project Facility, the economic effects of the Proposed Project on the area in which it is situated, and the employment reasonably expected to be created and/or maintained by the Proposed Project, the Project Facility constitutes a commercial facility, and, therefore, the Proposed Project constitutes a "project" within the meaning of the Act;

(f) no funds of the Agency shall be used in connection with the Proposed Project for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the Agency be given in connection with the Proposed Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State, nor shall any funds of the Agency be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media; and



(g) the Project Facility does not and will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Proposed Project. For purposes of this finding, retail sales shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section 1101 of the New York Tax Law; or (ii) sales of a service to such customers.

Section 3. The Agency hereby determines that the Agency has fully complied with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Proposed Project.

Section 4. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Executive Director and the staff of the Agency with respect to the matters contemplated by this Resolution, including, without limitation, those actions required to ensure full compliance with the requirements of the Act, SEQRA and all other Applicable Laws that relate thereto.

Section 5. Having considered fully all comments received at or in connection with the Public Hearing, the Agency hereby further determines to proceed with the Proposed Project and the granting of the Additional Financial Assistance, subject to the terms hereof.

Section 6. The Project Documents are hereby authorized and approved. The Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency, acting individually or jointly, are each hereby authorized to execute, acknowledge and deliver each Project Document requiring execution by the Agency, and the Secretary, Assistant Secretary, Administrative Director and Executive Director of the Agency, if required, acting individually or jointly, are each hereby authorized to affix the seal of the Agency on any such Project Document and attest the same. The execution and delivery of any such Project Document by any one of said officers shall be conclusive evidence of due authorization and approval.

Section 7. The Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency are each hereby designated an Authorized Representative of the Agency and each of them is hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and the transactions contemplated herein, including, without limitation, the execution and delivery of one (1) or more replacement or amended and restated mortgages in replacement or amendment of the Bank Mortgage (as defined in the Lease Agreement), if required.

Section 8. The authorizations set forth in this Resolution are subject to the condition that the Applicant shall reimburse the Agency for all costs and expenses incurred by or payable to the Agency in connection with the transactions contemplated herein, including, without limitation, the Agency's administrative fee and all attorneys' fees and disbursements incurred by the Agency.

Section 9. All covenants, stipulations, obligations and agreements of the Agency

contained in this Resolution and the Project Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred, and duties and liabilities imposed, upon the Agency or the members thereof by the provisions of this Resolution and the Project Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in any Project Document shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent (other than the Applicant) or employee of the Agency in his or her individual capacity and neither the members of the Agency nor any officer executing any Project Document shall be liable personally on such Project Document or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 10. The Agency hereby authorizes the Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency, acting individually or jointly, to approve modifications to the terms approved hereby which are not inconsistent with the intent and substance of this Resolution, such approval to be evidenced by the execution by such officers of the Project Documents containing such modifications.

Section 11. The Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency, acting individually or jointly, are hereby authorized and directed to distribute copies of this Resolution to the Applicant and such other parties as any such officer may determine.

Section 12. 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:

Timothy Williams	VOTING	Aye
John Coumatos	VOTING	Aye
Gary Weiss	VOTING	Aye
Christopher Fusco	VOTING	Aye
Michael Rodin	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.

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

We, the undersigned [~~Vice~~] Chairman and [~~Assistant~~] Secretary of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on November 9, 2015 with the original thereof on file in our office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

WE FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

WE FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, we have hereunto set our respective hands and affixed the seal of the Agency this 9<sup>th</sup> day of November, 2015.

  
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[~~Assistant~~] Secretary

  
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[~~Vice~~] Chairman

(SEAL)