

Nassau Candy Tax Deviation 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, Mincola, County of Nassau, New York, on November 16, 2017, at 9:00 a.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
Christopher Fusco	Asst. Secretary
Michael Rodin	

NOT PRESENT:

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Joseph J. Kearney	Executive Director
Colleen Pereira	Administrative Director
Nicholas Terzulli	Director of Business Development
Paul O'Brien, Esq.	Bond/Transaction Counsel

The attached resolution no. 2017-58 was offered by M. Rodin, seconded by C. Fusco:

Resolution No. 2017-58

RESOLUTION AUTHORIZING A DEVIATION FROM THE UNIFORM
TAX EXEMPTION POLICY OF THE NASSAU COUNTY
INDUSTRIAL DEVELOPMENT AGENCY WITH RESPECT
TO A PROJECT FOR NASSAU CANDY DISTRIBUTORS, INC.

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 153,216 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 and restated pursuant to a certain Amended and Restated Payment in Lieu of Taxes Agreement, dated as of December 1, 2015, among 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 a request for additional financial assistance dated October 17, 2017 (as amended, the “Amendment Request”), the Applicant has proposed the construction, installation and equipping of an approximately 7,210 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 (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 (the “Tax Exemption Policy”) with respect to the making of payments in lieu of real property taxes; and

WHEREAS, pursuant to Section 874(4) of the Act, (A) the Executive Director of the Agency caused a letter dated October 25, 2017 (collectively, the “Pilot Deviation Notice Letter”) to be mailed to the chief executive officer of each affected tax jurisdiction, informing said individuals that the Agency would, at its meeting on November 16, 2017 (the “IDA Meeting”), consider a proposed deviation from the Tax Exemption Policy with respect to the second amended and restated payment in lieu of taxes agreement to be entered into by the Agency with respect to the Project Facility; and (B) the members of the Agency conducted the IDA Meeting on the date hereof and

reviewed any written comments and correspondence received with respect to the proposed deviation from the Tax Exemption Policy; and

WHEREAS, the Agency desires to provide for compliance with the provisions of Section 874(4) of the Act with respect to the proposed deviation from the Tax Exemption Policy;

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

Section 1. The Agency hereby determines that the Agency has fully complied with the requirements of Section 874(4) of the Act relating to the proposed deviation from the Tax Exemption Policy.

Section 2. Having reviewed all written comments and correspondence received at or prior to the IDA Meeting, the Agency hereby approves the proposed deviation from the Tax Exemption Policy as described in the Pilot Deviation Notice Letter (copies of which are attached hereto as Exhibit A) because such deviation (i) is necessary to induce the Applicant to undertake the Proposed Project, and (ii) the PILOT Payments for Years 3 through 20 of the term of the amended property tax exemption are greater than the payments that would otherwise apply with respect to the Project Facility for those years under the Existing PILOT Agreement.

Section 3. The Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency are each hereby authorized and directed, acting individually or jointly, to distribute copies of this Resolution to the Applicant and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution. If the Agency hereafter adopts appropriate final approving resolutions with respect to the proposed amendment and restatement of the Existing PILOT Agreement (the "Transaction"), the Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency are each hereby authorized and directed, acting individually or jointly, to cause the Agency to (A) enter into a Second Amended and Restated Payment in Lieu of Taxes Agreement with the Applicant and the Overlandlord providing, among other things, that the Applicant and the Overlandlord shall make amended payments in lieu of taxes consistent with the formula set forth in the Pilot Deviation Notice Letter, and (B) file an amended application for real property tax exemption with the appropriate assessor(s) with respect to the Project Facility.

Section 5. This Resolution shall take effect immediately, but is subject to and conditioned upon the closing of the Transaction.

ADOPTED: November 16, 2017

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
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 16, 2017 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.

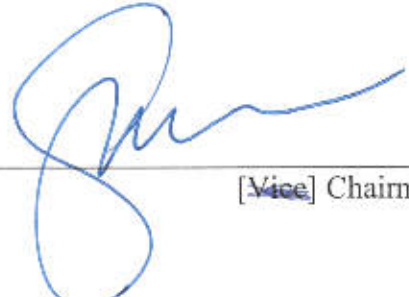
WE FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said 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 16th day of November, 2017.



[Assistant] Secretary



[~~Vice~~] Chairman

(SEAL)

EXHIBIT A

Pilot Deviation Notice Letter

See Attached

EDWARD P. MANGANO
COUNTY EXECUTIVE



JOSEPH J. KEARNEY
EXECUTIVE DIRECTOR

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY
THEODORE ROOSEVELT COUNTY EXECUTIVE & LEGISLATIVE BLDG.
1550 FRANKLIN AVENUE, SUITE 235
MINEOLA, NY 11501
TELEPHONE (516) 571-1945 FAX (516) 571-1076
www.nassaiidu.org

October 25, 2017

**CERTIFIED MAIL, RETURN
RECEIPT REQUESTED and
FIRST CLASS MAIL**

County Executive Edward P. Mangano
County of Nassau
1550 Franklin Avenue
Mineola, NY 11501

**NOTICE OF PROPOSED DEVIATION FROM UNIFORM
TAX EXEMPTION POLICY AND GUIDELINES**

Dear County Executive Edward P. Mangano:

Notice is hereby given that at a meeting of the Nassau County Industrial Development Agency (the "Agency") to be held on November 16, 2017 at 9:00 a.m. at the offices of the Agency at 1550 Franklin Avenue, Suite 235, Mineola, New York 11501, the Agency will consider whether to approve an application from NASSAU CANDY DISTRIBUTORS, INC., a corporation organized and existing under the laws of the State of New York (the "Applicant"), for certain "financial assistance" which, if granted, would represent a deviation from the Agency's Uniform Tax Exemption Policy and Guidelines (the "Policy") with respect to the payment of real property taxes. The meeting of the Agency will be open to the public.

The Applicant and the Agency are parties to an Amended and Restated Payment in Lieu of Taxes Agreement dated as of December 1, 2015 (as amended, modified, supplemented or restated to date, the "Existing PILOT Agreement") pursuant to which the Agency granted an exemption from real property taxes to the Applicant with respect to the existing facility, and the improvements thereon, on certain land commonly known as 300 Duffy Avenue, Hicksville, Town of Oyster Bay, Nassau County, New York (Section: 11; Block: 327; Lots: 406, 408, 412 and 422) (the "Facility").

The Applicant has requested that the Agency provide additional financial assistance for the Applicant, including, without limitation, an amended exemption from real property taxes with respect to the Facility (the "Financial Assistance"), in connection with the construction of an approximately 7,210 square foot addition to the Facility (the "Project").

Based upon preliminary negotiations between representatives of the Applicant and the Agency, the parties contemplate that the Agency may agree to grant an amended real property tax exemption (the "Amended Property Tax Exemption") with respect to the Facility, commencing in Year 3 of the term of the Existing PILOT Agreement (i.e., 2017/18 School Year and 2018 General Year), such that the Applicant would pay the PILOT Payments set forth under the column "Amended PILOT Payments" in Exhibit A attached hereto. For purposes of illustration, the PILOT Payments for the corresponding years under the Existing PILOT Agreement are set forth under the column "Existing PILOT Payments" in Exhibit A attached hereto.

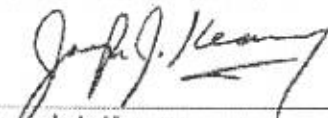
After the expiration of the term of the Amended Property Tax Exemption, and through the end of the period in which the Agency has an interest in the Facility, the payments would be equal to the real property taxes that would be payable as if the Facility were returned to the tax rolls as taxable real property and subject to taxation at its then current, full assessed value, as the same may be reassessed from time to time, and subject to tax rate increases imposed by the affected tax jurisdictions.

The Amended Property Tax Exemption, if approved by the Agency, would constitute a deviation from the Policy.

The reasons for the proposed deviation from the Policy are that the Amended Property Tax Exemption, if approved by the Agency, (i) is necessary to induce the Applicant to undertake the Project, and (ii) the PILOT Payments for Years 3 through 20 of the term of the Amended Property Tax Exemption are greater than the payments that would otherwise apply with respect to the Facility for those years under the Existing PILOT Agreement.

Sincerely,

NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 

Joseph J. Kearney
Executive Director

EXHIBIT A

Amended Property Tax Exemption

<u>PILOT Yr.</u>	<u>Existing PILOT Payments</u>	<u>Amended PILOT Payments</u>
1	\$380,984	\$380,984 (no change)
2	\$460,473	\$460,473 (no change)
3	\$460,473	\$482,148
4	\$460,473	\$482,148
5	\$460,473	\$482,148
6	\$460,473	\$482,148
7	\$460,473	\$482,148
8	\$460,473	\$482,148
9	\$460,473	\$482,148
10	\$460,473	\$482,148
11	\$460,473	\$482,148
12	\$460,473	\$482,148
13	\$460,473	\$482,148
14	\$460,473	\$482,148
15	\$460,473	\$482,148
16	\$468,117	\$490,152
17	\$475,888	\$498,288
18	\$483,787	\$506,560
19	\$491,818	\$514,969
20	\$499,982	\$523,517