

Nassau Candy Distributors, Inc., Approving Resolution

A regular meeting of the Nassau County Industrial Development Agency (the "Agency") was convened in public session at the Theodore Roosevelt Executive & Legislative Building, Ceremonial Chambers, 1550 Franklin Avenue, Mineola, Nassau County, New York on October 17, 2019 at 6:30 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:

Richard Kessel	Chairman
Lewis M. Warren	Vice Chairman
Anthony Simon	2nd Vice Chairman
Timothy Williams	Secretary
Amy Flores	Treasurer
John Coumatos	Asst. Treasurer
Chris Fusco	Asst. Secretary

NOT PRESENT:

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Harry Coghlan	Chief Executive Officer/Executive Director
Danielle Oglesby	Chief Operating Officer/Deputy Executive Director
Colleen Pereira	Administrative Director
Thomas D. Glascock	Agency Counsel
Andrew Komaromi	Bond/Transaction Counsel

The attached resolution no. 2019-94 was offered by Amy Flores, seconded by Chris Fusco.

Resolution No. 2019-94

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND APPROVING
THE ACQUISITION AND STRAIGHT LEASING OF A CERTAIN 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 1 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, on or about December 5, 2013, NASSAU CANDY DISTRIBUTORS, INC. (the "Applicant") presented an application for financial assistance (the "Original Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Original Project") consisting, inter alia, 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 "Original 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 "Original 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 "Original Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) (the "Original Financial Assistance") with respect to the foregoing, in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes; 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 December 9, 2015, pursuant to an application for financial assistance dated September 28, 2015 (as amended, the "2015 Amendment Request"), the Applicant presented an application to amend the Original Project to permit: (A) the construction, installation and equipping of an approximately 26,216 square foot addition to the Original

Building; (B) 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 "2015 Financial Assistance"); and (C) the amendment of certain Transaction Documents (as defined in the Lease Agreement) in connection therewith (collectively, the "2015 Project"); and

WHEREAS, on or about December 19, 2017, pursuant to an application for financial assistance dated October 17, 2017 (as amended, the "2017 Amendment Request"), the Applicant presented an application to amend the Original Project to permit: (A) the construction, installation and equipping of an approximately 7,210 square foot addition to the Original Building on Lot 424 (together with the Original Land, the "Land"); (B) 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 "2017 Financial Assistance"); and (C) the amendment of certain Transaction Documents (as defined in the Lease Agreement) in connection therewith (collectively, the "2017 Project"); and

WHEREAS, in connection with the Original Project Facility the Agency entered into a straight-lease with the Company and granted the Original Financial Assistance; and

WHEREAS, in connection with the 2015 Amended Request the Agency entered into certain amendments of the straight-lease and granted the 2015 Financial Assistance; and

WHEREAS, in connection with the 2017 Amended Request the Agency entered into certain amendments of the straight-lease and granted the 2017 Financial Assistance; and

WHEREAS, the Applicant presented an application for additional financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting, inter alia, of the following: (A)(1) retention of an interest in the Land, (2) renovations to the Original Building and the construction of an approximately 20,000 square foot addition to the building, 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 its headquarters and main manufacturing, warehouse and distribution facility for the Applicant's wholesale confectionary business (collectively, the "Project Facility"); (B) the granting of certain additional "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes, mortgage recording taxes, and real property taxes (but not including special assessments and ad valorem levies) (the "Financial Assistance"); and (C) the amendment of certain Transaction Documents (as defined in the Lease Agreement) in connection therewith; and

WHEREAS, the Chief Executive Officer/Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on September 30, 2019 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 September 30, 2019 in the Nassau edition of *Newsday*, a newspaper of general circulation available to residents of the County of Nassau, New York; (C) caused the Public Hearing to be conducted on October 15, 2019, at 1:00 pm., local time, at Town of Oyster Bay Community Center, 59 Church Street, Oyster Bay, Nassau County, New York; and (D) caused a report of the Public Hearing (the “Report”) to be prepared which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, in accordance with Section 874(4) of the Act, (A) the Executive Director of the Agency caused notice of a meeting of the Agency with respect to the proposed deviation from the Agency’s uniform tax exemption policy to be mailed on September 30, 2019 (the “IDA Meeting”) 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 and reviewed any written comments or correspondence received with respect to the proposed deviation from the Agency’s uniform tax exemption policy and approved the proposed deviation; 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 adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the “Regulations”, and collectively with the SEQR Act, “SEQRA”), the appropriate personnel of the Agency reviewed the environmental assessment form and other materials submitted by the Applicant and made any necessary comments to the 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 Project and determined that the 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 Project and to grant the Financial Assistance, subject to the terms hereof; and

WHEREAS, the Company will execute and deliver: (A) a certain bargain and sale deed, assignment of lease or company lease, or original or amendment of such agreement heretofore executed and delivered in connection with the Original Project, to the Agency, pursuant to which the Applicant has or will convey an interest in the Land and Building to the Agency (the “Conveyance Instrument”), (B) a certain Bill of Sale (the “Bill of Sale to Agency”) to the Agency, pursuant to which the Applicant will convey to the Agency its interest in the Equipment, (C) an amendment to the Lease between the Agency and the Applicant, pursuant to which the Agency granted to the Applicant a leasehold interest in the Project Facility, heretofore executed and delivered in connection with the Original Project, (D) an amendment to the Environmental Compliance and Indemnification Agreement to include the Project, heretofore executed and delivered in connection with the Original Project, (the “Environmental Indemnification”) pursuant to which the Agency will be indemnified from and against certain losses, costs, damages and liabilities, (E) an amendment to the Payment in Lieu of Taxes (“PILOT”) Agreement, heretofore executed and delivered in connection with the Original Project, (the “PILOT Agreement”) to the Agency, and, to secure the obligations thereunder, execute and deliver or cause to be executed and delivered a PILOT Mortgage to include the Project in favor of the County of Nassau, New York, heretofore executed and delivered in connection with the Original Project or an amendment thereof (the “PILOT Mortgage”), and (F) or cause to be executed and delivered certain other certificates, documents, instruments and

agreements related to the Project including a Uniform Project Agreement by and between the Agency and the Company, to appoint the Company as the Agency's agent with respect to the Project (together with the Conveyance Instrument, the Bill of Sale to Agency, the Lease, the Environmental Indemnification, the PILOT Agreement and the PILOT Mortgage, collectively, the "Transaction Documents"); and

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

Section 1. The Agency has reviewed the Application and the Report and, based upon the representations made by the Applicant to the Agency and the facts and information obtained by the Staff of the Agency and reported to and reviewed by the members of the Agency at this meeting (including, without limitation, the facts and information set forth in the Staff Review of the Application), the Agency has reviewed and assessed all material information necessary to afford a reasonable basis for the Agency to make a determination to approve the Financial Assistance. In addition, the Agency makes the following findings and determinations with respect to the Project:

(a) based on the proposed use of the Project Facility as set forth in the Application, the economic effects of the Project on the area in which it is situated including the prevention of economic deterioration, the job opportunities to be created and/or maintained by the Project, the Project will constitute a commercial facility and, therefore, the Project constitutes a "project" within the meaning of the Act;

(b) the granting of the Financial Assistance by the Agency to the Applicant is necessary to induce the Applicant to proceed with the Project;

(c) there is a likelihood that the Project would not be undertaken but for the granting of the Financial Assistance by the Agency to the Applicant;

(d) the undertaking of the Project will not result in the removal of a facility or plant of the Applicant or any other proposed user, occupant or tenant 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 proposed user, occupant or tenant of the Project Facility located within the State (but outside of Nassau County). Therefore, the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Financial Assistance by the Agency to the Applicant;

(e) the 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;

(f) no funds of the Agency shall be used in connection with the 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 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;

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

(h) 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 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; and

(i) the Project will not result in the removal or abandonment of a plant or facility of the Applicants, or of a proposed user, occupant or tenant of the Project Facility, currently located within Nassau County.

Section 2. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Chief Executive Officer / Executive Director and the staff of the Agency with respect to the Application, the IDA Meeting and the Public Hearing, including, without limitation, (a) those actions required to ensure full compliance with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Project, and (b) the appointment of the law firm of Harris Beach PLLC, Uniondale, New York, as Special Counsel to the Agency with respect to all matters in connection with the Project.

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 Project.

Section 4. Having considered fully all comments received at the Public Hearing or otherwise in connection with the Project, the Agency hereby further determines to proceed with the Project and the granting of the Financial Assistance.

Section 5. The Agency hereby approves the Applicant as the lessee/sublessee under the Lease with the Agency and hereby approves the Applicant as the recipient of the Financial Assistance.

Section 6. The Agency is hereby authorized to (a) acquire an interest in the Project Facility pursuant to the Conveyance Instrument, the Bill of Sale to Agency and the other Transaction Documents, (b) grant a leasehold interest in the Project Facility pursuant to the Lease and the other Transaction Documents, (c) grant the aforementioned Financial Assistance, (d) execute the PILOT Mortgage for the sole purpose of encumbering its interest in the Project Facility or accept such other collateral as the Chief Executive Officer / Executive Director shall determine to secure the performance by the Applicant of its obligations under the PILOT Agreement, (e) execute and deliver the Project Agreement for the purpose of, inter alia,

appointing the Applicant as agent of the Agency, (f) execute one (1) or more fee and leasehold mortgage, assignment of rents and leases, and security agreements in favor of such bank, governmental agency or financial institution as the Applicant may determine (such bank, governmental agency or financial institution, the "Bank"), encumbering the Project Facility, solely to subject to the lien thereof its interest in the Project Facility, all to secure one (1) or more loans made by such Bank to the Applicant with respect to the Project Facility, and (g) do all things necessary, convenient or appropriate for the accomplishment thereof. All acts heretofore taken by the Agency with respect to the foregoing are hereby approved, ratified and confirmed.

Section 7. The form and substance of the Project Agreement, Conveyance Instrument, the Bill of Sale to Agency, the Lease, the Environmental Indemnification, the PILOT Agreement, the PILOT Mortgage and the other Transaction Documents, in the forms used by the Agency with respect to prior projects, together with such changes as the Chairman, the Vice Chairman or the Chief Executive Officer / Executive Director may hereafter deem necessary or appropriate, are hereby approved. The Chairman, the Vice Chairman, the Chief Executive Officer / Executive Director, Chief Operating Officer and the Administrative Director are hereby authorized, on behalf of the Agency, acting together or individually, to execute and deliver the Conveyance Instrument, the Lease, the PILOT Agreement, the PILOT Mortgage, the other Transaction Documents, and any document with or in favor of the Bank to which the Agency is a party, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The execution and delivery of each such agreement, approval and consent by such person(s) shall be conclusive evidence of such approval.

Section 8. The Chairman, the Vice Chairman, the Chief Executive Officer/Executive Director, the Chief Operating Officer and the Administrative Director of the Agency are hereby further authorized, on behalf of the Agency, acting together or individually, to designate any additional Authorized Representatives (as defined in the Lease) of the Agency.

Section 9. The officers, employees and agents of the Agency are hereby authorized and directed, acting individually or jointly, for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Transaction Documents, to execute and deliver all such additional certificates, instruments, agreements and documents, to pay all such fees, charges and expenses, and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, convenient or appropriate to effect the purposes of this Resolution and to cause compliance with all of the terms, covenants and provisions of the Transaction Documents to which the Agency is a party or which are binding on the Agency.

Section 10. The Agency recognizes that due to the complexities of the proposed transaction it may become necessary that certain of the terms approved hereby may require modifications from time to time which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman and Chief Executive Officer/Executive Director of the Agency, acting individually or jointly, to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution. The approval of such modifications shall be evidenced by the certificate of determination of an Agency officer or the execution and delivery by some or all such Agency officers of relevant documents containing such modified terms.

Section 11. The members of the Agency acknowledge the terms and conditions of Section 875(3) of the Act and the duties and obligations of the Agency thereunder with respect to granting of State Sales and Use Taxes (as such term is defined in Section 875 of the Act) with respect to the Project. The members hereby direct the officers of the Agency to comply with such terms and conditions with respect to the Project and hereby direct Special Counsel to the Agency to include such terms and conditions in all relevant Transaction Documents.

Section 12. The Chairman, the Vice Chairman, the Chief Executive Officer/Executive Director, Chief Operating Officer and the Administrative Director of the Agency are hereby authorized and directed 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.

Section 13. This Resolution shall take effect immediately and shall be effective for one hundred eighty (180) days from the date of its adoption.

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

Richard Kessel	VOTING Aye
Lewis M. Warren	VOTING Aye
Anthony Simon	VOTING Aye
Timothy Williams	VOTING Aye
Chris Fusco	VOTING Aye
Amy Flores	VOTING Aye
John Coumatos	VOTING Aye

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK

) SS.:

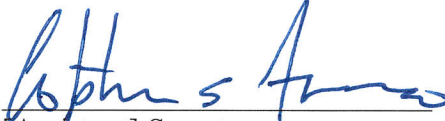
COUNTY OF NASSAU

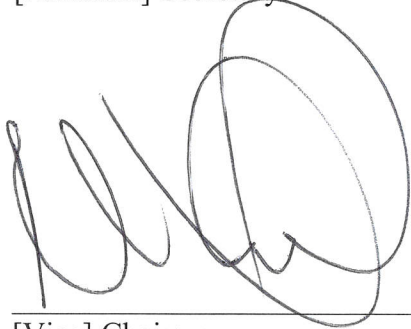
We, the undersigned [Vice] Chairman and [Assistant] Secretary of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on October 17, 2019 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 17th day of October, 2019.


[Assistant] Secretary


[Vice] Chairman

(SEAL)