

Nassau Candy Distributors, Inc., PILOT Deviation 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. 2019-93 was offered by Amy Flores, seconded by Chris Fusco.

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 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 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 Chief Executive Officer / Executive Director of the Agency caused a letter dated September 30, 2019 (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 October 17, 2019 (the “IDA Meeting”), consider a proposed deviation from the Tax Exemption Policy with respect to the payments in lieu of real property taxes to be made pursuant to a 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 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. Prior to making the determinations set forth in this resolution, the members of the Agency have considered the following factors set forth in the Tax Exemption Policy: (1) the extent to which the Project would create or retain permanent jobs; (2) the extent to which the Project would create construction jobs; (3) the estimated value of tax exemptions to be provided with respect to the Project; (4) the amount of private sector investment generated or likely to be generated by the Project; (5) the likelihood of the Project being accomplished in a timely manner; (6) the extent of new revenue that would be provided to affected tax jurisdictions as a result of the Project; (7) whether affected tax jurisdictions would be reimbursed by the Applicant if a Project does not fulfill the purposes for which an exemption was provided, (8) the impact of the Project on existing and proposed businesses and economic development projects in the vicinity, (9) the demonstrated public support for the Project, (10) the effect of the Project on the environment, (11) the extent to which the Project would require the provision of additional services, including, but not limited to, additional educational, transportation, police, emergency, medical or fire services, and (12) any other miscellaneous public benefits that might result from the Project.

Section 2. 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 3. Having reviewed all 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 (a copy of which is attached hereto as Exhibit A) because the proposed deviation is necessary to induce the Applicant to undertake the Project and because the PILOT payments for years 5 through 20 of the term of the to be amended Property Tax Exemption are greater than the payments that would otherwise apply with respect to the Facility under the Existing Pilot Agreement.

Section 4. The Chairman, Vice Chairman, Chief Executive Officer/Executive Director, Chief Operating Officer 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 straight-lease transaction with the Applicant (the “Transaction”), the Chairman, Vice Chairman, Chief Executive Officer/Executive Director, Chief Operating Officer 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 Third 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.

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 approved.

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.

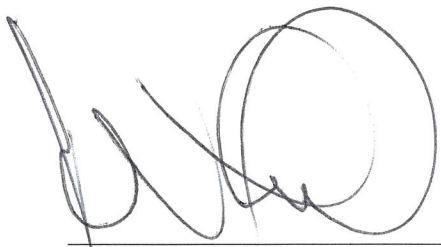
WE FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said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

EXHIBIT A

DEVIATION NOTICE



NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY
1 WEST STREET
4TH FLOOR
MINEOLA, NY 11501
TELEPHONE (516) 571-1945 FAX (516) 571-1076
www.nassauida.org

September 30, 2019

CERTIFIED MAIL, RETURN
RECEIPT REQUESTED and
FIRST CLASS MAIL

County Executive Laura Curran
County of Nassau
1550 Franklin Avenue
Mineola, NY 11501

NOTICE OF PROPOSED DEVIATION FROM
UNIFORM TAX EXEMPTION POLICY

Ladies and Gentlemen:

Notice is hereby given that at a meeting of the Nassau County Industrial Development Agency (the "Agency") to be held on October 17, 2019 at 6:30 p.m. at the Nassau County Executive & Legislative Building, Ceremonial Chambers, 1550 Franklin Avenue, Mineola, New York 11501, the Agency will consider whether to approve an application from NASSAU CANDY DISTRIBUTORS, Inc., a corporation duly organized and existing under the laws of the State of New York (the "Applicant"), for certain additional "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, 2017 (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 certain land commonly known as 300 Duffy Avenue, Hicksville, Town of Oyster Bay, County of Nassau, New York (Section: 11; Block: 327; Lots: 406, 408, 412, 422 and 424) (the "Existing Land"), and the improvements thereon (collectively, the "Existing Project 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 20,000 square foot addition to the Facility (the "Additional Facility") (collectively, 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 and the Additional Facility, commencing in Year 5 of the term of the Existing PILOT Agreement (i.e., 2019/20 School Year and 2020 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 and the Additional Facility, the payments would be equal to the real property taxes that would be payable as if the Facility and the Additional 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 5 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

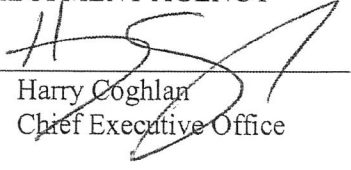
By: 
Harry Coghlan
Chief Executive Office

Exhibit "A"

PILOT Year	Existing PILOT Payments	Amended PILOT Payments	
1	\$380,984.00	\$380,984.00	(no change)
2	\$460,473.00	\$460,473.00	(no change)
3	\$482,148.00	\$482,148.00	(no change)
4	\$482,148.00	\$482,148.00	(no change)
5	\$482,148.00	\$542,257.00	
6	\$482,148.00	\$542,257.00	
7	\$482,148.00	\$542,257.00	
8	\$482,148.00	\$542,257.00	
9	\$482,148.00	\$542,257.00	
10	\$482,148.00	\$542,257.00	
11	\$482,148.00	\$542,257.00	
12	\$482,148.00	\$542,257.00	
13	\$482,148.00	\$542,257.00	
14	\$482,148.00	\$542,257.00	
15	\$482,148.00	\$542,257.00	
16	\$490,152.00	\$551,259.00	
17	\$498,288.00	\$560,409.00	
18	\$506,560.00	\$569,712.00	
19	\$514,969.00	\$579,170.00	
20	\$523,517.00	\$588,783.00	